



Planning Commission

AGENDA

REGULAR MEETING OF THE PLANNING COMMISSION

Wednesday, February 1, 2023
7:00 PM

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE. Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the Planning Commission will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us06web.zoom.us/j/89522096702>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.

To join by phone: Dial **1 669 900 6833** and enter Meeting ID: **895 2209 6702**. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.

Please be mindful that the video conference and teleconference will be recorded. All rules of procedure and decorum that apply for in-person Planning Commission meetings apply for Planning Commission meetings conducted by teleconference or videoconference.

See "**MEETING PROCEDURES**" below.

All written materials identified on this agenda are available on the Planning Commission webpage:[https://www.cityofberkeley.info/Clerk/Commissions/Commissions_Planning Commission_Homepage.aspx](https://www.cityofberkeley.info/Clerk/Commissions/Commissions_Planning_Commission_Homepage.aspx)

PRELIMINARY MATTERS

- 1. Roll Call:** Merker, Blaine, appointed by Councilmember Kesarwani, District 1
Vincent, Jeff, appointed by Councilmember Taplin, District 2
Moore III, John E. "Chip", appointed by Councilmember Bartlett, District 3
Oatfield, Christina, appointed by Councilmember Harrison, District 4
Mikiten, Elisa, Chair, appointed by Councilmember Hahn, District 5
Vacancy, appointed by Councilmember Wengraf, District 6
Twu, Alfred, appointed by Councilmember Robinson, District 7

Hauser, Savlan, Vice Chair, appointed by Councilmember Droste, District 8
Ghosh, Barnali, appointed by Mayor Arreguin

2. Land Acknowledgment.

3. Order of Agenda: The Commission may rearrange the agenda or place items on the Consent Calendar.

4. 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):

5. Planning Staff Report including Future Agenda Items: In addition to the items below, additional matters may be reported at the meeting.

6. Chairperson’s Report: Report by Planning Commission Chair.

7. Committee Reports: Reports by Commission committees or liaisons. In addition to the items below, additional matters may be reported at the meeting.

8. Approval of Minutes: Approval of Draft Minutes from the meeting on **December 7, 2022.**

9. Other Planning-Related Events:

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

9. Action: **2023 Nominations and Elections for Chair and Vice Chair**

Recommendation: *Nominate and elect Commissioners for Chair and Vice Chair of the Planning Commission.*

Written Materials: N/A

Presentation: N/A

10. Discussion: **Preparations for In-Person Meetings**

Recommendation: *Discuss preparations for in-person meetings at the South Berkeley Senior Center beginning in March 2023.*

Written Materials: Attached

Presentation: N/A

11. Action: **Public Hearing: Demolition Ordinance**

Recommendation: *Conduct a public hearing and make a recommendation to the City Council to adopt amendments to the demolition ordinance portion of the Berkeley Municipal Code Chapter 23.326.*

Written Materials: Attached

Presentation: N/A

12. Discussion: **Pacific Steel Casting Zoning and General Plan**

Recommendation: *Review the Notice of Preparation and draft General Plan and Zoning*

Text Amendments, take public comment, and provide comment on the scope and the content of the EIR, and provide feedback on proposed zoning text.

Written Materials: Attached
Presentation: N/A

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:

- *December 18, 2022* – Southside Student Housing Survey Results.
https://berkeleyca.gov/sites/default/files/documents/FinalSummary_Southside%20Area%20UC%20Student%20Housing%20Survey%20-%202019%20December%202022.pdf
- *January 17, 2023* – City Council Meeting – Citywide Affordable Housing Requirements.
<https://berkeleyca.gov/sites/default/files/documents/2023-01-17%20Item%2021%20Citywide%20Affordable%20Housing%20Requirements.pdf>
- *January 18, 2023* – City Council Meeting – 2023-2031 Housing Element Update.
<https://berkeleyca.gov/city-council-special-meeting-eagenda-january-18-2023>

Communications:

- General

Late Communications: (Received after the packet deadline):

- Supplemental Packet One – received by noon two days before the meeting
- Supplemental Packet Two
- Supplemental Packet Three

ADJOURNMENT

**** **MEETING PROCEDURES** ****

Public Testimony Guidelines:

All persons are welcome to attend the virtual meeting and will be given an opportunity to address the Commission. 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. 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.

Procedures for Correspondence to the Commissioners:

All persons are welcome to attend the virtual hearing and will be given an opportunity to address the Commission. Comments may be made verbally at the public hearing and/or in writing before the hearing. The Commission may limit the time granted to each speaker.

Written comments must be directed to the Planning Commission Clerk at the Land Use Planning Division (Attn: Planning Commission Clerk), 1947 Center Street, Second Floor, Berkeley CA 94704, or via e-mail to: zcovello@cityofberkeley.info. All materials will be made available via the Planning Commission agenda page online at this address:
<https://www.cityofberkeley.info/PC/>.

Correspondence received by **12 noon, nine days** before this public meeting, will be included as a Communication in the agenda packet. Correspondence received after this deadline will be conveyed to the Commission and the public in the following manner:

- Correspondence received by **12 noon two days** before this public meeting, will be included in a Supplemental Packet, which will be posted to the online agenda as a Late Communication and emailed to Commissioners one day before the public meeting.
- Correspondence received after the above deadline and before the meeting will be included in a second and/or third Supplemental Packet, as needed, which will be posted to the online agenda as a Late Communication and emailed to the Commissioners by 5pm on the day of the public meeting.

Note: It will not be possible to submit written comments at the meeting.

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.

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.

Meeting Access: 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.

I hereby certify that the agenda for this regular meeting of the Planning Commission was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on **January 26, 2023.**

Grace Wu
Planning Commission Secretary



Planning Commission

1 **DRAFT MINUTES OF THE REGULAR PLANNING COMMISSION MEETING**
2 **December 7, 2022**

3 The meeting was called to order at 7:05 p.m.

4 **Location:** Virtual meeting via Zoom

5 **1. ROLL CALL:**

6 **Commissioners Present:** Teresa Clarke (temporary appointee), Jeff Vincent, Christina
7 Oatfield, Elisa Mikiten, Alfred Twu, Savlan Hauser, and Barnali Ghosh.

8
9 **Commissioner Absent:** Brad Wiblin (temporarily replaced by Teresa Clarke) and Chip
10 Moore.

11
12 **Staff Present:** Secretary Grace Wu, Clerk Zoe Covello, Jordan Klein, Justin Horner, and
13 Jenny Wyant.

14 **2. ORDER OF AGENDA:** No changes.

15 **3. PUBLIC COMMENT PERIOD:** 1

16 **4. PLANNING STAFF REPORT:**

- 17 • BART recently entered into an exclusive negotiating agreement with BRIDGE
18 Housing at the North Berkeley BART Station.
- 19 • The Department of Parks, Recreation, and Waterfront, are moving forward with the
20 Marina Area Specific Plan. There is a focus group next week, Monday, December 12,
21 2022 and the plan is to present at a City Council Work Session in February 2023. If
22 interested in participating/being kept apprised, please send an email to
23 bmasp@cityofberkeley.info to ensure that you are on the project mailing list.
- 24 • Staff are continuing public engagement efforts on the proposed Southside objective
25 zoning standards. Staff continues to seek input from UC Berkeley students about the
26 standards via a survey (link under Information Items below), which is open until
27 Sunday, December 18, 2022.
- 28 • City Council is planning to take action on the Housing Element and EIR at a special
29 meeting on Wednesday, January 18, 2023. It is possible that the January Planning
30 Commission meeting will be canceled because it coincides with that same date.

31
32 **Information Items:**

- *December 1, 2022* – BART Board Meeting - Authorization to Enter into Exclusive Negotiating Agreement for North Berkeley BART
<https://bart.legistar.com/LegislationDetail.aspx?ID=5946992&GUID=ABA28840-B1B5-4B2B-B4A3-2A5A8F315889&Options=&Search=>
- *November 29, 2022* – City Council Meeting - Adeline Street at Ashby BART Conceptual Designs. <https://berkeleyca.gov/sites/default/files/documents/2022-11-29%20Item%2015%20Adeline%20Street%20at%20Ashby%20BART.pdf>
- *November 22, 2022* – Southside Student Housing Survey. Survey open through December 18, 2022. <https://berkeleyplanning.surveyparrot.com/s/southside-survey/tt-bN9HUHjkYtoE5ihNXJuSop>
- *November 16, 2022* – North Berkeley BART - Objective Design Standards - Community Meeting #1. www.berkeleyca.gov/bartplanning (Scroll down to Past Events for meeting materials.)
- *November 10, 2022* – North Berkeley BART Developer Solicitation meeting. <https://www.bart.gov/about/business/tod/north-berkeley>

Communications:

- General.

Late Communications: *See agenda for links.*

- Supplemental 1.

5. CHAIR REPORT:

- No updates.

6. COMMITTEE REPORT: Reports by Commission committees or liaisons. In addition to the items below, additional matters may be reported at the meeting.

- Bird Safe Glass Subcommittee – Commissioners Oatfield and Twu met with staff and members of the public on Friday, November 4, 2022, and engaged in a very productive meeting to further the Bird Safe Glass Ordinance. An outline of the draft ordinance is planned to be shared with subcommittee in mid-December. Staff is aiming to bring a draft ordinance back to the Planning Commission in February or March 2023.

7. APPROVAL OF MINUTES:

Motion/Second/Carried (Mikiten/Vincent) to approve the Planning Commission Meeting Minutes, pending a correction to the years (to be changed from 2022 to 2023) listed under Item 11 of the Draft Minutes from November 2, 2022.

Ayes: Ghosh, Hauser, Mikiten, Oatfield, Twu, and Vincent. Noes: None. Abstain: Clarke. Absent: Moore. (6-0-1-1)

72

73 **8. OTHER PLANNING RELATED EVENTS:**

- 74 • None.

75 **AGENDA ITEMS**

76 **9. Public Hearing: Housing Element Update**

77 Principal Planner Grace Wu and Associate Planner Justin Horner presented information on the
78 Housing Element Update and Environmental Impact Report, made a recommendation to the
79 Planning Commission, and took public comments as well as questions from the Commissioners.

80 Motion/Second/Carried (Hauser/Vincent) to close the public hearing at 8:10 p.m.

81

82 Ayes: Clarke, Ghosh, Hauser, Mikiten, Oatfield, Twu, and Vincent. Noes: None. Abstain: None.
83 Absent: Moore. (7-0-0-1)

84

85 Motion/Second/Carried (Vincent/Mikiten) to recommend to City Council staff's
86 recommendation to:

87

- 88 1. Certify the EIR,
89 2. Adopt the proposed 2023-2031 Housing Element,
90 3. Authorize the City Manager to make non-substantive changes,

91

92 and to attach a Planning Commission cover letter, written by the Chair, that includes three
93 strong recommendations for City Council's consideration at 9:26 p.m.

94

95 Ayes: Clarke, Ghosh, Hauser, Mikiten, Oatfield, Twu, and Vincent. Noes: None. Abstain: None.
96 Absent: Moore. (7-0-0-1)

97

98 **Public Comments: 8**

99 **10. Discussion: Land Acknowledgement Practice**

100 The Commissioners discussed the City Council Memorandum dated October 11, 2022 and
101 Resolution 70,564 recognizing Berkeley as the ancestral, unceded home of the Ohlone People,
102 and determined that the Planning Commission will include a placeholder in every agenda for a
103 land acknowledgement statement. Commissioners are welcome to reach out to the Chair in
104 advance of the meeting if they would like to make their own acknowledgement statement, or
105 read the statement as adopted by the Council.

106 **Public Comments: 1**

107 Motion/Second/Carried (Mikiten/Twu) to adjourn the meeting at 9:42 p.m.

108
109
110
111

Ayes: Clarke, Ghosh, Hauser, Mikiten, Oatfield, Twu, and Vincent. Noes: None. Abstain: None.
Absent: Moore. (7-0-0-1)

112 **Members in the public in attendance: 12**
113 **Public Speakers: 10**
114 **Length of the meeting: 2 hr 37 minutes**

Q2 Which board(s) and/or commission(s) do you serve on?

Answered: 95 Skipped: 0

#	RESPONSES	DATE
1	Planning Commission Transportation and Infrastructure Commission	12/8/2022 9:47 AM
2	Mental Health Commission	12/1/2022 10:53 AM
3	Environment and Climate	11/28/2022 7:47 PM
4	Disaster and Fire Safety	11/28/2022 1:57 PM
5	Transportation & Infrastructure Commission	11/27/2022 1:59 PM
6	Park, Waterfront and Recreation	11/23/2022 6:16 PM
7	Parks, Recreation and Waterfront	11/23/2022 9:44 AM
8	Peace and Justice Commission	11/22/2022 6:00 PM
9	Cannabis Commission	11/22/2022 11:02 AM
10	Zero Waste Commission	11/22/2022 3:24 AM
11	Police Accountability Board	11/21/2022 5:54 PM
12	Zoning Adjustment Board/ Design Review Committee	11/21/2022 4:12 PM
13	Transportation and Infrastructure Commission	11/21/2022 1:35 PM
14	Board of Library Trustees	11/21/2022 9:41 AM
15	Civic Arts	11/21/2022 8:26 AM
16	Civic Arts Commission	11/21/2022 7:41 AM
17	Public Art Commission	11/21/2022 1:28 AM
18	Labor Commission	11/20/2022 4:08 PM
19	HAC	11/19/2022 9:57 PM
20	Police Accountability Board	11/19/2022 7:46 PM
21	Peace & Justice	11/19/2022 5:13 PM
22	Commission on Aging	11/19/2022 12:15 PM
23	Homeless Services	11/19/2022 9:26 AM
24	Environment & Climate Commission	11/19/2022 9:21 AM
25	Design Review Committee	11/19/2022 8:53 AM
26	Public health commission	11/19/2022 2:17 AM
27	Community Health Commission	11/19/2022 1:12 AM
28	Labor Commission	11/19/2022 12:55 AM
29	Parks Rec & Waterfront	11/18/2022 9:23 PM
30	Fair Campaign Practices Commission Open Government Commission Alternate for Planning Commission and others	11/18/2022 9:01 PM
31	Environment and Climate	11/18/2022 7:56 PM
32	HSPE	11/18/2022 6:01 PM

Item 10 - Attachment 1
 Planning Commission
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	Returning to In-Person Meetings for Berkeley Boards and Commissions	SurveyMonkey
33	Personnel Board	11/18/2022 4:37 PM
34	Transportation and Infrastructure Commission	11/18/2022 4:31 PM
35	Human welfare	11/18/2022 4:26 PM
36	Planning Commission	11/18/2022 4:16 PM
37	Civic Arts	11/18/2022 4:05 PM
38	Police Accountability Board	11/18/2022 3:54 PM
39	Personnel Board	11/18/2022 3:51 PM
40	Commission on Disability	11/18/2022 3:41 PM
41	Housing Advisory Commission	11/18/2022 3:25 PM
42	Commission on Labor	11/18/2022 3:13 PM
43	Landmarks Planning	11/18/2022 3:09 PM
44	Planning, and serve as alternate on several more	11/18/2022 2:40 PM
45	Sugar Sweetened Beverage Product Panel of Experts	11/18/2022 2:37 PM
46	Campaign Finance and Open Government	11/18/2022 2:12 PM
47	Alternate	11/18/2022 1:47 PM
48	Youth Commission	11/18/2022 1:32 PM
49	Homeless Services Panel of Experts	11/18/2022 1:26 PM
50	HSPE	11/18/2022 1:21 PM
51	Environment & Climate Commission; Alternate Commissioner	11/18/2022 1:20 PM
52	Zero Waste Commission	11/18/2022 1:12 PM
53	Homeless Services Panel of Experts; Commission on the Status of Wimen	11/18/2022 1:07 PM
54	Police Accountability Board	11/18/2022 12:53 PM
55	Environment and Climate Commission, in application process for Zoning Adjustment Board	11/18/2022 12:51 PM
56	Civic Arts Commission	11/18/2022 12:50 PM
57	Loan Administration Board	11/18/2022 12:45 PM
58	Chair, Commission on the Status of Women	11/18/2022 12:41 PM
59	FCPC/OGC	11/18/2022 12:40 PM
60	Disaster, Fire and Safety Commission	11/18/2022 12:35 PM
61	Environment and Climate Commission	11/18/2022 12:34 PM
62	Landmark Preservation Commission	11/18/2022 12:33 PM
63	Landmarks Preservation	11/18/2022 12:31 PM
64	Housing advisory Commission	11/18/2022 12:27 PM
65	Personnel	11/18/2022 12:24 PM
66	Disaster and Fire Safety Commission	11/18/2022 12:23 PM
67	Landmarks Preservation Commission Design Review Committee	11/18/2022 12:22 PM
68	SSBPPE	11/18/2022 12:20 PM
69	Housing Advisory Commission, chair	11/18/2022 12:13 PM
70	SSBPPE	11/18/2022 12:06 PM

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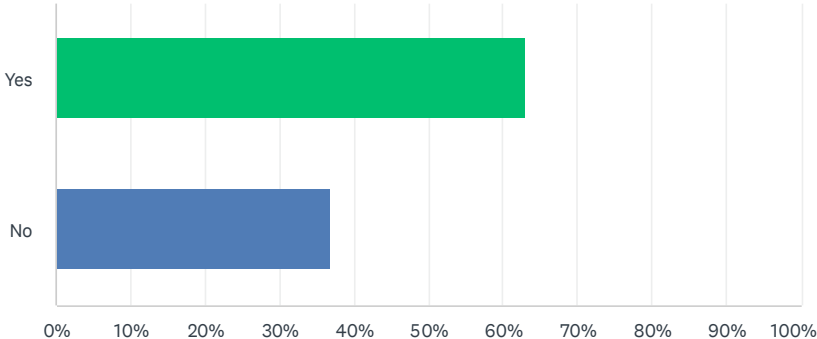
Returning to In-Person Meetings for Berkeley Boards and Commissions

SurveyMonkey

71	Landmarks Preservation Commission	11/18/2022 12:05 PM
72	Zoning Adjustments Board	11/18/2022 12:03 PM
73	Zero waste	11/18/2022 11:59 AM
74	LPC	11/18/2022 11:59 AM
75	Civic Arts Commission	11/18/2022 11:57 AM
76	Housing Advisory Commission	11/18/2022 11:56 AM
77	Community Health	11/18/2022 11:55 AM
78	Transportation & Infrastructure	11/18/2022 11:55 AM
79	FCPC/OGC	11/18/2022 11:54 AM
80	Commission on the Status of Women	11/18/2022 11:54 AM
81	Housing Advisory Commission	11/18/2022 11:53 AM
82	Parks, Waterfront	11/18/2022 11:48 AM
83	Elmwood BID	11/18/2022 11:47 AM
84	Mental Health Commission	11/18/2022 11:47 AM
85	Environment & Climate Commission	11/18/2022 11:47 AM
86	Housing Advisory Commission	11/18/2022 11:47 AM
87	Human Welfare and Community Action Commission	11/18/2022 11:47 AM
88	Community Health	11/18/2022 11:43 AM
89	Commission on Aging	11/18/2022 11:43 AM
90	Againg	11/18/2022 11:43 AM
91	Disaster and Fire Safety	11/18/2022 11:43 AM
92	Parks, Recreation and Waterfront	11/18/2022 11:41 AM
93	Personnel Board	11/18/2022 11:40 AM
94	Planning Commission	11/18/2022 11:39 AM
95	Disability Commission	11/18/2022 11:37 AM

Q3 During the COVID-19 pandemic, certain provisions of the Brown Act were temporarily suspended to enable remote participation for all members of legislative bodies. Are you aware that these temporary exemptions will expire on February 28, 2023?

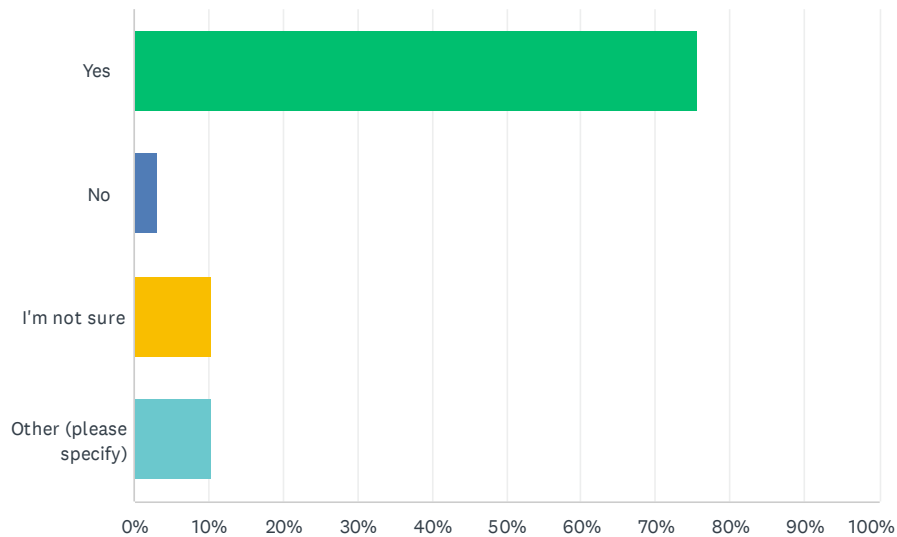
Answered: 95 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	63.16%	60
No	36.84%	35
TOTAL		95

Q4 This means that starting March 1, 2023 City boards and commissions will return to in-person meetings. Will you be able to attend in-person meetings starting in March 2023?

Answered: 95 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	75.79%	72
No	3.16%	3
I'm not sure	10.53%	10
Other (please specify)	10.53%	10
TOTAL		95

#	OTHER (PLEASE SPECIFY)	DATE
1	My term on the DFSC expires in February.	11/28/2022 1:57 PM
2	I could attend in-person meetings, but have reservations regarding safety issues related to meeting so late at night (which are unrelated to Covid)..	11/21/2022 5:54 PM
3	I won't be able to assess my decision until then. My decision will be based upon what is going on with COVID in our community COVID	11/19/2022 7:46 PM
4	If precautions against COVID are required when needed	11/18/2022 1:47 PM
5	I will be applying for an ADA accommodation.	11/18/2022 12:45 PM
6	under certain conditions, described below.	11/18/2022 12:22 PM
7	I can if needed but I would prefer to stay online	11/18/2022 12:13 PM
8	I am not sure it will be safe and depends on the size of the room, ventilation, and distancing as well as everyone masking and proving vaccination.	11/18/2022 11:43 AM

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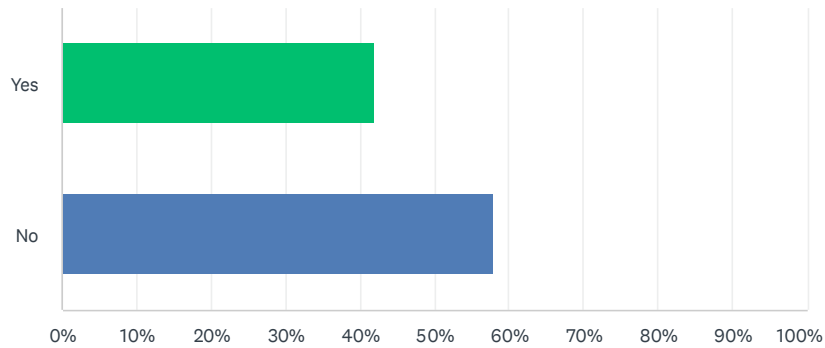
Returning to In-Person Meetings for Berkeley Boards and Commissions

SurveyMonkey

9	I would prefer to have the option to do in person or zoom	11/18/2022 11:41 AM
10	Dependent on Covid Situation & Health	11/18/2022 11:37 AM

Q5 After the Brown Act exemptions expire, if a commissioner participates remotely for an ADA accommodation, their address must be listed on the agenda and the location from which they participate (including their home) must be open to the public during the meeting. Are you aware of these state regulations?

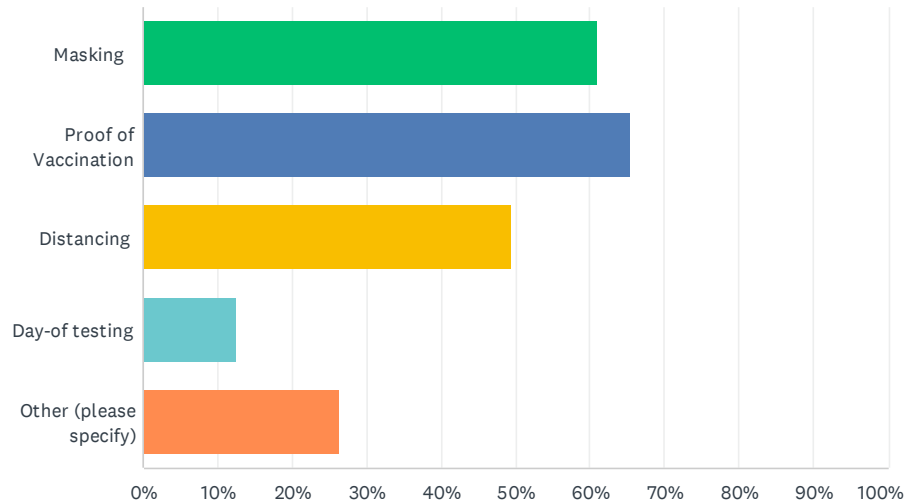
Answered: 95 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	42.11%	40
No	57.89%	55
TOTAL		95

Q6 What types of public health protocols do you think should be required for commissioners and public attendees at an in-person commission meeting? Choose all that apply.

Answered: 87 Skipped: 8



ANSWER CHOICES	RESPONSES
Masking	60.92% 53
Proof of Vaccination	65.52% 57
Distancing	49.43% 43
Day-of testing	12.64% 11
Other (please specify)	26.44% 23
Total Respondents: 87	

#	OTHER (PLEASE SPECIFY)	DATE
1	I realize that these might be cost prohibitive for volunteer commissioners, so if we decided to meet in person, I recommend the city arrange for funds to do testing and provide high quality masks for all folks at the meeting.	12/8/2022 9:47 AM
2	I do not think any Public Health protocols are appropriate.	11/28/2022 1:57 PM
3	Have an air filter running in the room?	11/21/2022 8:26 AM
4	Providing excellent quality air filtering system	11/19/2022 1:12 AM
5	No eating at meetings, removing masks only for brief sips of drinks	11/18/2022 9:01 PM
6	Maximum ventilation/fresh air. Masking optional, but recommended.	11/18/2022 4:16 PM
7	Hand sanitizer provided at entry	11/18/2022 4:05 PM
8	All of the above depend on the state of the virus at that point.	11/18/2022 3:54 PM

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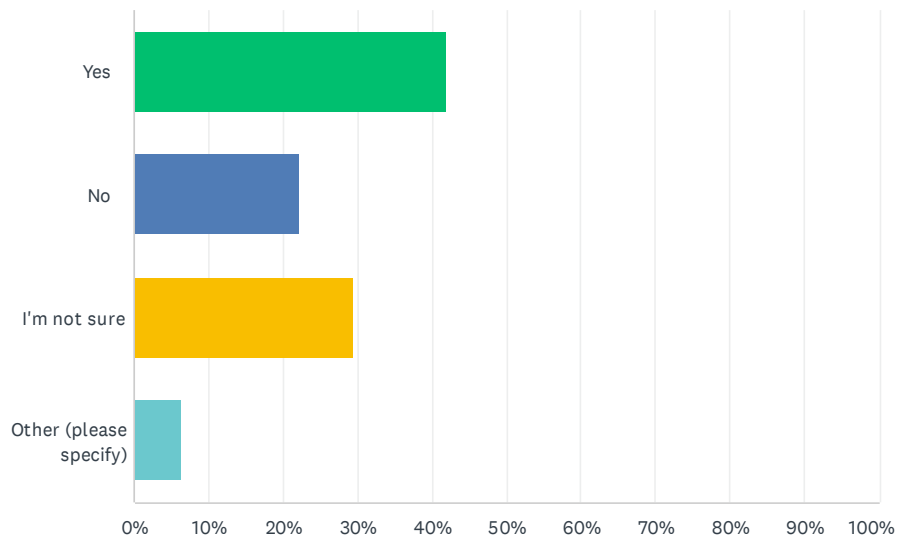
Returning to In-Person Meetings for Berkeley Boards and Commissions

SurveyMonkey

9	hybrid meetings or livestreaming of meetings for people with compromised (and underlying medical conditions) who cannot risk exposure.m	11/18/2022 3:41 PM
10	HEPA filtration in the room, adequate for room size	11/18/2022 1:20 PM
11	I am willing to accept all of the above.	11/18/2022 1:07 PM
12	the MOST important thing is ability to distance and airflow in the room. Some of the spaces where my commissions have met are now unacceptable from that perspective--e.g. the basement meeting room on Center Street.	11/18/2022 12:22 PM
13	Air/Filter	11/18/2022 12:03 PM
14	Should be dependent upon then current conditions	11/18/2022 11:59 AM
15	Ventilation and air filtration	11/18/2022 11:55 AM
16	Stricter protocols should be implemented if Covid rates increase	11/18/2022 11:54 AM
17	Masking optional. I haven't participated in in-person meetings as I was appointed during COVID. If the meeting room is small, then masking should be required.	11/18/2022 11:53 AM
18	Depends on current scope of pandemic	11/18/2022 11:48 AM
19	Disinfect microphones, common areas, etc	11/18/2022 11:47 AM
20	none	11/18/2022 11:47 AM
21	Good ventilation and room size. Posbbily limiting number of people allowed to attend.	11/18/2022 11:43 AM
22	If masking then microphones should be supplied so commissioners and the public can hear each other	11/18/2022 11:41 AM
23	none	11/18/2022 11:39 AM

Q7 Do you believe that the current suspension of noticing and participation requirements for subcommittee meetings should remain in place for the foreseeable future? (In January 2021, Council suspended the local requirements that commission subcommittee meetings must be noticed and allow for public participation.)

Answered: 95 Skipped: 0



ANSWER CHOICES	RESPONSES
Yes	42.11% 40
No	22.11% 21
I'm not sure	29.47% 28
Other (please specify)	6.32% 6
TOTAL	95

#	OTHER (PLEASE SPECIFY)	DATE
1	Yes, if this allows us to have these subcommittee meetings on Zoom. This would allow folks to participate with more flexibility and increase participation on committees by reducing commute times.	12/8/2022 9:47 AM
2	Wasn't aware of this, not very relevant for PB, but don't like lack of transparency	11/18/2022 3:51 PM
3	This question is asked in the negative - Does "yes" mean "Yes, I want them noticed" or "Yes, I'm okay with no noticing"	11/18/2022 1:47 PM
4	what does this mean? who are the subcommittees?	11/18/2022 1:21 PM
5	Hybrid options would be ideal to accommodate public health fears.	11/18/2022 12:51 PM

Returning to In-Person Meetings for Berkeley Boards and Commissions

SurveyMonkey

6

Subcommittees should always be noticed!

11/18/2022 11:41 AM

Q8 Please provide any other suggestions, concerns, or feedback in the field below.

Answered: 40 Skipped: 55

#	RESPONSES	DATE
1	I think online Zoom meetings have been much more participatory, convenient, and efficient. It allows folks with children, caregiving responsibilities, mobility issues, transportation issues, fragrance sensibilities, work conflicts, etc to have more flexibility. This is true for staff, commissioners and member of the public. Cutting commute time makes attending the meetings are more time efficient. It seems like the pandemic is on the ebb but just this last month we have had so many folks fall sick from the tripledemic (flu, RSV, and COVID). Reporting of home tests is not happening at the previous rate, and waste water is showing a rise in cases. For volunteer commissioners it is an additional burden to be exposed to the different viruses every month. I understand that in-person meetings have their benefits, so I would recommend that one meeting every quarter (pre selected) be in person. This would help build rapport with each other, staff, and community. The public always have the option to call in with their comments even when we are meeting in person. If a commissioner is symptomatic but wants to participate, we figure out a way for them to attend on Zoom. Since many meetings tend to last 3 hours, the exposure is significant. I think commissioners and staff should test, and have masks optional, and members of the public at the least be required to wear high quality masks.	12/8/2022 9:47 AM
2	I'd like to learn more about possibilities for hybrid attendance, outside of ADA accomodation compliance. For example, would a Commissioner have the option to attend via Zoom while recovering from respiratory illness? If so, would their home address need to be listed? (I'm assuming the public would not want to come to a sick commissioner's home!). Also, will there be accomodations outside of ADA accomodations to allow a Commissioner to join via Zoom while traveling for work or vacation? Are there special limitations to joining via Zoom when outside of Berkeley / California? Personally I look forward to in-person attendance for the majority of my meetings, but would very much like the ability to join remotely when needed. Thanks! -Sarah	11/28/2022 7:47 PM
3	While I think in-person meetings are a generally good thing,I think the ability to use Zoom (or another video meeting app) makes the commission meetings much more accessible. I think the City of Berkeley should push the State to update the Brown Act to allow for electronic attendance.	11/28/2022 1:57 PM
4	None at this time.	11/23/2022 6:16 PM
5	I am underage and a student therefore I cannot attend the meeting in person and do not feel comfortable given that I am a minor of sharing my address to the public.	11/22/2022 6:00 PM
6	The Cannabis Commission had some very important items to help facilitate with, particularly around equity applicants. These items along with others were halted when COVID started. These items, especially regarding the equity program are crucial to address since the City of Berkeley supposedly agrees that we, as a city, need to support the community that has been disproportionately impacted by the war on drugs. Let's get these meetings back on track and help support our cannabis business community. Best, Ezra Malmuth	11/22/2022 11:02 AM
7	My primary concern about the return of PAB meetings is public safety, since our meetings typically adjourn very late at night. It would be helpful if we could at least meet at the North Berkeley Senior Center, since it has a parking lot. I served on the CSW, and that is where we met. Also, is there any way our meetings could be hybrid or we could alternate in person meetings and remote meetings without violating the Brown Act? Public participation has increased substantially since we have been remote, although it certainly has drawbacks, too.	11/21/2022 5:54 PM
8	Listing a commissioner's home address on the agenda/making their home open to the public because they are attending a meeting from home is a preposterous law and needs to be rectified. There is no public interest this requirement serves that would outweigh a commissioner's right to privacy.	11/21/2022 7:41 AM

Item 10 - Attachment 1
 Planning Commission
 February 1, 2023

Returning to In-Person Meetings for Berkeley Boards and Commissions

SurveyMonkey

9	Thank you for the survey. Although we may feel a bit uncomfortable being in-person again, I think it's time for us to return to a more normal setting. As an aside, we really need rooms where subcommittees can meet in the evening. It is difficult to find a place, especially now that restaurants like Au Coquelet have been demolished.	11/18/2022 9:23 PM
10	Any changes to policies should be based on our local infection rates. We must be able to change from in person to zoom and back again if warranted.	11/18/2022 9:01 PM
11	Remote participation was much more convenient as a parent with a child at home, both as a commissioner and when I attended other public meetings as an attendee. It would be really nice to be able to continue that if possible.	11/18/2022 4:31 PM
12	I actually think that public meetings via zoom hasn't been a bad thing. I think it gives more people an option to participate. For example, families with kids at home...it is very difficult for parents to attend a meeting and leave their children at home. But via zoom they can be home and still listen and participate/comment at the meeting. So I tend to think that public participation has increased during these recent years.	11/18/2022 4:16 PM
13	An individual's risk tolerance to COVID is personal and made in the best interest of their health and family considerations. Since the infection status of participants cannot be ascertained or non-exposure guaranteed of infectious disease(s) the city needs to ensure those volunteering on commission know how to continue accessing online or hybrid resources to continue participating before changes take place.	11/18/2022 3:41 PM
14	Public should remain able to call in to make public comments	11/18/2022 3:09 PM
15	Much more inclusive and democratic to hold public hearings via zoom, particularly for volunteer boards and commissions. Also more democratic and inclusive for participants with work and childcare obligations to be able to join and comment from the site of their work/childcare obligations, While showing up at a specific venue imposes a significant cost and physical barrier to participation.	11/18/2022 2:40 PM
16	I want for meetings to be publicly noticed	11/18/2022 1:47 PM
17	Requiring commission subcommittees to have noticing requirements does not make sense, because a sub-quorum of commissioners can get together and discuss on their own without notice anyways. I am concerned that in-person meetings will be more difficult to attend, especially for people with scheduling conflicts (e.g. have to commute back to Berkeley from work). I believe we should be ensuring adequate indoor air filtration & cleaning in all our meeting spaces. Solely relying on personal controls is insufficient, as other controls are unreliable and make health an individual and not a public responsibility.	11/18/2022 1:20 PM
18	Excellent job, City Clerk Now I have to share with you the roster is a mess not only as to HSPE but other commissions. Who is proofreading these rosters?	11/18/2022 1:07 PM
19	I strongly suggest a hybrid format for commission meetings.	11/18/2022 12:51 PM
20	I may leave the commission if we have to begin meeting in person. Too many Covid risks. I also think there is more participation when the meetings are on Zoom.	11/18/2022 12:50 PM
21	It would be helpful to have the remote option. However if we are going to in-person meetings that will work for our commission.	11/18/2022 12:41 PM
22	We need see how variants continue to evolve over the Winter	11/18/2022 12:40 PM
23	My ideal would be a hybrid meeting to allow for the most participation. That said, I would very much like to have a minimum for participation such as name or face video or some sort of mechanism to be able to put a face with a name.	11/18/2022 12:35 PM
24	Zoom meetings have made participation much easier for me as a parent of younger kids. Unless there is a very clear reason to stop them, I think they are a benefit for civic engagement generally. Also, I'd say that hybrid meetings (some in person/some on Zoom) are much harder than either all-in-person or all-on-Zoom meetings. Given those two things, I would advocate for all-Zoom meetings indefinitely.	11/18/2022 12:34 PM
25	As I have told the LPC chair and LPC secretary, my ability to attend evening meetings is limited by my caregiving responsibilities for a family member. I don't think this is an ADA issue, but it is a real constraint on my ability to remain a commissioner.	11/18/2022 12:33 PM

Item 10 - Attachment 1
 Planning Commission
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Returning to In-Person Meetings for Berkeley Boards and Commissions

SurveyMonkey

26	I have very young children (3 and 1) and the in-person meeting requirement + "bedtime" time of the meeting may be too onerous for me.	11/18/2022 12:23 PM
27	In person meetings are important. Current situation isolates commissioners and the public, and reduces participation and good interaction between commissioners. Good democracy has been eroded by all "virtual" civic meetings, especially when the public audience is locked and gagged in an online room and can't be full participants. I want to get back to the in-person situation. That said, tiny meeting rooms where commissioners are packed shoulder to shoulder at tables, and no air flow, will be unacceptable / unsafe as long as COVID is a serious concern--which it will be (along with other respiratory illnesses) through 2023. The Commissions really MUST be given meeting spaces where members can distance at tables, and there's separation between the tables and the audience, and the audience isn't packed together itself. So for the land use commissions that can often have large audiences, absolutely NO to the basement meeting rooms on Center Street, or the tiny meeting rooms in the Senior Centers (the big Senior Center rooms are workable). Also, while I am a firm and strong advocate of in-person meetings, the ability of people to make visual presentations during Zoom meetings, and the ability of people to watch the meeting / testify from a distance without having to physically attend, is of value. So an ideal would be a hybrid situation where Commissions meet in person, but in settings that have a video / audio link to take testimony / public comments / presentations remotely, AND to broadcast the meeting to remote attendees. You know, like the City Council has. Finally, DRC and LPC NEED to have good graphics set-ups where complex plans, drawings, etc. can easily be projected and seen by the whole Commission and the audience.	11/18/2022 12:22 PM
28	I look forward to being in person again!	11/18/2022 12:20 PM
29	I have 2 young children and attending meetings via Zoom has enabled me to easily participate in a commission. I *could* be in person but I'd prefer not to for logistical and personality reasons. Public meetings attract cranks, sometimes they are angry, and I do not want to be around them physically. Being around angry cranks for several hours -- even just once a month -- is not how I'd like to spend my spare time.	11/18/2022 12:13 PM
30	If others cannot attend in person for health or other reasons (ie living w/ a compromised family member, etc.) I think meetings should continue remotely. Also, my instinct is that remote meetings are more accessible for everyone - commissioners, public, staff, etc. So maybe public meeting should just remain remote permanently.	11/18/2022 12:05 PM
31	The ability to participate in commission meetings remotely has greatly improved my quality of life. As a parent who also works full time and serves on a commission on a volunteer basis, remote meetings allow me to participate more frequently in these meetings. Moving to in-person, I would have to miss more meetings if I cannot make childcare arrangements. The same applies to public participation. I have seen a huge increase in the number and diversity of members of the public who can participate in public meetings since the move to the remote. Let's not lose this and return to a situation where only the most privileged can participate. Finally, although I personally don't require ADA accommodations around COVID, I have a severely immunocompromised parent who I help care for a few days a week. I would prefer to limit my exposure when possible, and in-person commission meetings don't seem to do this.	11/18/2022 11:55 AM
32	If subcommittee meetings return with public and the meetings are held in conference rooms (or similar spaces), then masking should be required.	11/18/2022 11:53 AM
33	Any policy changes should be considered in the context of the pandemic. We could be in the midst of a winter surge next month. I would lean on public health for guidance.	11/18/2022 11:48 AM
34	The rule should be in-person with exception for surges being remote	11/18/2022 11:47 AM
35	Ideally, I'd prefer "hybrid" meetings (in person and Zoom), but I also know hybrids are expensive and require technological training and skill.	11/18/2022 11:43 AM
36	Let's see what this winter brings.	11/18/2022 11:43 AM
37	Ideally, a Zoom option would be available for members of the public, at least to listen and watch the meeting, if not participate.	11/18/2022 11:43 AM
38	It is important to consider having both in person and virtual, many people with small children or for other reasons, cannot physically attend meetings.	11/18/2022 11:41 AM
39	Let's get back to it. No need to wait until March.	11/18/2022 11:39 AM

Returning to In-Person Meetings for Berkeley Boards and Commissions

SurveyMonkey

40

A remote option opens up significant opportunity for public participation as it often eliminates temporal, financial, and disability-related barriers to participation.

11/18/2022 11:37 AM



Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: February 1, 2023

TO: Members of the Planning Commission

FROM: Steven Buckley, Land Use Planning Manager

SUBJECT: Zoning Ordinance Amendments to Berkeley Municipal Code Chapter 23.326 [Demolition and Dwelling Unit Controls]

BACKGROUND

The Planning Commission is asked to make a recommendation to the City Council regarding amendments to the demolition ordinance (Berkeley Municipal Code Chapter 23.326). The existing and proposed ordinance are presented in Attachments 1 and 2, respectively. A comparison of the two versions is provided in Attachment 3. Excerpts of relevant State law are provided in Attachment 4.

The impetus for these revisions is recent changes in State law that provide additional requirements for new housing development projects that involve the demolition of existing residential units. These provisions of the Housing Crisis Act of 2019, which modified Government Code sections relating to zoning and density bonus, require all new housing development projects to provide replacement units of equivalent size, defined as having the same number of bedrooms as the demolished units.

The State law provides optional ways to comply depending on whether the units were occupied or vacant, whether those tenants were low income, whether the units were subject to local rent control (in Berkeley, this would be most properties with more than two units built before 1980), and whether the units were removed from the rental market pursuant to the Ellis Act (which allows landlords to “go out of the rental business”). In particular, replacement units required by the Housing Crisis Act of 2019, may be deed restricted to low income households or they may be subject to local rent control. The law also addresses the rights of existing tenants that would be displaced by demolition, including relocation benefits and a right of first refusal to return to the new units at an affordable rent.

Density bonus law now mirrors these requirements. This law goes on to specifically address requirements where units are vacant and/or existing tenant incomes are not known, and thus the level of affordability of replacement units must be inferred from HUD data for the community and distributed accordingly.

Summary of Existing Demolition Ordinance Provisions

The existing demolition ordinance addresses issues similar to the new State law, as well as additional situations such as when housing units are demolished and no new housing units are being developed at the site (e.g. commercial development), when tenants have been unlawfully evicted, and when units are being merged or converted within an existing building rather than physical demolished.

A Use Permit is required for the demolition or other elimination of a dwelling unit in Berkeley. The Zoning Adjustments Board (ZAB) may issue a Use Permit for the demolition of a dwelling unit for specific enumerated reasons, including in instances where a building is “hazardous or unusable and is infeasible to repair” or “demolition is necessary to permit construction... of at least the same number of dwelling units.” Before permitting the demolition of a dwelling unit, ZAB must also find that “the elimination of the dwelling units would not be materially detrimental to the housing needs and public interest of the affected neighborhood and the City.” Finally, applicants must either provide below-market-rate replacement units to “qualifying household[s]” or pay an in-lieu fee (but the fee has never been set).

Demolition of dwelling units is prohibited where a building has been removed from the rental market under the Ellis Act during the preceding five years or where there have been verified cases of harassment or threatened or actual illegal eviction during the immediately preceding three years. Applicants are generally required to provide relocation benefits, including moving expenses and differential rent payments. In addition, displaced tenants are provided a right of first refusal to rent new units. Most of these provisions are carried forward in the proposed ordinance.

Previous Discussions

Planning Commission. On October 19, 2022, the Planning Commission considered the most recent version of proposed amendments.

Staff provides the following response to questions raised during the Commission’s discussion.

- Does this ordinance apply to condominium conversions?
 - The ordinance does not apply to condominium conversions because the housing unit remains physically available as housing. However, a mitigation fee is required upon sale to recoup some of the value

differential, if any, which is placed into the Housing Trust Fund to provide affordable housing elsewhere in the city.

- Would displaced tenants be able to return at the same rent in a “market rate” unit?
 - Yes, for tenants that are not low income, the proposed ordinance requires a form of rent control in a replacement unit that is not designated as one of the below-market-rate (BMR) replacement units equivalent to their prior rent for the duration of their tenancy. The Commission requested clarification of the income restrictions / rent / BMR requirements, which is provided in the revised draft attached to this report.

- Did SB330 override Costa-Hawkins (which prohibits the imposition of rent control on new dwelling units) to allow rent control / BMR units for the new project?
 - Yes, SB330 allows the imposition of rent control if it is required by local ordinance. In Berkeley, the citywide rent control ordinance does not apply to new units, but this demolition ordinance is being drafted to mimic rent control by limiting the annual rent increases for any tenant that returns to a new unit for the duration of that tenancy, in addition to the requirement that all of the demolished units be replaced as BMR units in perpetuity.

- Would there be a “right of return” for existing tenants even if demolition would be for the purpose of constructing a project that contains only affordable units?
 - To the extent a displaced tenant could qualify for one of the replacement units, then they would have a right of first refusal. However, because of how they are funded and operated, 100%-affordable projects would not be required to provide additional units for those tenants that do not income-qualify. However, those displaced tenants would receive all of the specified relocation benefits.

- Is the University of California required to comply with this ordinance?
 - No, but they are subject to applicable State law.

- What applicability would this have to illegal units?
 - The revised draft of the ordinance includes a section that applies the demolition, tenant protection and replacement requirements to illegal units, to the degree those units are recognized in some form as previously rented (registered with the Rent Stabilization Board) and/or there is substantial evidence of landlord-tenant relationship within the past five years.

Public commenters requested clarity whether the five-year prohibition on demolition of units that were vacated by Ellis Act evictions should apply to the entire building versus each unit. Comments also noted a general desire to replace older, dilapidated housing stock and that the provision of BMR units would be preferable as a long-term solution. Commenters also indicated a desire that the 4x4 Committee be provided an opportunity to review the revised ordinance.

The Commission summarized its recommendations as follows:

- Illegal units should be covered by the ordinance, and an amnesty program should be considered for units that can be made safe to remain occupied.
 - Illegal units are included for the purpose of providing tenant protections. Replacing illegal units is subject to the usual code enforcement, zoning and building code compliance process.
- Focus on like-for-like replacement units – rent control is preferable.
 - Rent control is available as a means of accommodating the return of tenants that don't income qualify for BMR units. for the 4x4 Committee recommended that the ordinance require replacement unit =s to be established as BMR units, which are permanently affordable, while also protecting the rights of existing/returning tenants.
- The exemption for demolitions to create childcare and other public benefit uses is not needed because other buildings are available for those uses.
 - Staff has not received a consensus direction from all policymakers on this topic, so the provision for certain exceptions remains in the draft ordinance.
- No mitigation fee should be allowed – all units should be replaced.
 - Some cases will require that replacement units are not provided, for example when the project results in no new residential development. The existing ordinance has a fee requirement for cases where an owner-occupant eliminates a unit – the same requirement could apply in some other cases, but a nexus and feasibility study would be needed.
- Consider whether the Rent Stabilization Board will administer tenant rights or if another review body is appropriate.
 - The ordinance has been amended to clarify that the Rent Stabilization Board would serve as an appeal body to review any disputes from the Hearing Officer's determination.

- Evaluate the provisions related to combining units, which address owner-occupancy / relocation and the death of an owner.
 - The 4x4 Committee recommended that these provisions be retained.
- Clarify whether historic resources are affected and how Landmarks Preservation Commission review occurs.

The LPC is only involved in demolitions of non-residential properties, though an historic evaluation is required for all development on properties over 40 years old in order to comply with CEQA.
- Clarify how the local rent stabilization ordinance affects the ability of the City to require rent controlled replacement units.
 - In general, local rent control does not apply to new units that receive a Certificate of Occupancy. However, this ordinance is intended to impose an equivalent of rent control for the returning tenants for the duration of their tenancy, as allowed by SB330 and Density Bonus Law.
- Consider whether tenants may benefit from “market rate” rents if they are less than prior rents.
 - A provision has been added to require the lesser of prior rents or market rents for returning tenants. In practice, “market rents” are difficult to determine or enforce.
- Clarify whether single-family homes are subject to rent control.
 - Single-family homes are not subject to rent control, but tenant protections apply.
- Make sure that the local ordinance is sufficient to address the issues in case State law is amended or sunsets.
 - The intent of this ordinance is to supplement the law, and to incorporate all of the substantive provisions of the law. To the degree the law is amended, the City is required to conform to it, so restating the law in its entirety in our local ordinance would lead to non-conformities that would require further ordinance amendment and potentially lead to unenforceable provisions, so not every provision of the law is restated.

The Commission moved to refer the draft ordinance back to the 4x4 Committee for consideration.

4x4 Joint Committee on Housing. On December 14, 2022, the 4x4 Committee reviewed a revised version of the ordinance and provided the following comments and recommendations:

- Revise the process regarding the determination of whether harassment has occurred to restate so that the Hearing officer makes the determination and ZAB reviews/confirms. Consider whether a body other than ZAB (i.e., City Council or Rent Board) should make the determination.
 - This amendment has been included in the revised draft ordinance.
- Reconsider applicability to ADUs/JADUs (and review whether it would be allowable under State law). Alternatively, add tenant protections requirements for demolished ADUs/JADUs (as is applied to unpermitted units).
 - This amendment has been included in the revised draft ordinance.
- Reconsider applicability to unpermitted units; consider distinguishing between units that are unsafe and other units.
 - Illegal units are included in the definition of Residential Unit for the purpose of providing tenant protections. Replacing illegal units is subject to the usual code enforcement, zoning and building code compliance process.
- Add definition of "comparable unit" - size, amenities, location (e.g., consider requiring in the same school district).
 - This amendment has been included in the revised draft ordinance.
- Expand noticing requirements for tenants and neighbors.
 - This amendment has been included in the revised draft ordinance.
- Keep section "23.326.040.D. Effect of Eliminating a Dwelling Unit."
 - This section has been reinstated in the revised draft ordinance.
- Reconsider deletion of the non-detriment finding (23.326.030.A).
 - The non-detriment finding is a standard finding for all Use Permits.
- Use definition of harassment from Tenant Protection Ordinance.
 - Reference is made to the other code sections for purposes of addressing tenant rights.

The revised draft ordinance being presented for consideration by the Planning Commission includes revisions reflecting the direction of the Planning Commission, the 4x4 Committee, and additional technical and administrative edits recommended by staff.

Issues for Discussion

Staff has identified topics for further discussion.

Use Permit. The requirement to obtain a Use Permit may interfere with the trend toward by-right approval of housing development projects. Several policies in the Housing Element and regulations in State law provide for the approval of smaller multi-family housing in lower density zoning districts without public hearings or discretionary permits. In light of State law and the revised demolition ordinance, there are clear mandates for how the effect of removing units and displacing tenants are mitigated. While a Use Permit provides an opportunity for public review and a hearing by the Zoning Adjustments Board, it would not necessarily provide an opportunity to require anything different from the law and ordinance. The revised draft ordinance provides that a Use Permit is required except as otherwise provided by the Zoning Ordinance or State law, i.e. where the City is mandated, or may choose in the future, to approve a project by-right. The City Council adopted the 2023-2031 Housing Element on January 18, 2023, and amended a program specifically related to this topic. The Council action states:

To facilitate the by-right development of Middle Housing, the City will consider eliminating the requirement of a use permit to demolish single-family homes for applications that 1) add net density and 2) have not been occupied by tenants within the past five years and in which Ellis Act eviction did not occur within the preceding five years. This policy will be referred for consideration to the 4x4 Committee of the City Council and Rent Board. Further, explore the effect on local and state laws relating to the demolition of historic resources.

Illegal Units. A clause has been added to the definition section to clarify that illegal units are considered residential units for the purposes of this ordinance and that the tenant protections apply. Whether those units can be removed without being replaced remains a question. In some cases the units can be legalized under the zoning, building and housing codes. In other cases these units are substandard, unsafe, exceed allowable density, or otherwise impermissible such that they should be permanently removed. Tenant protections are provided in these cases, but no replacement units are required. A rent differential cap is established because these tenants will be relocated with no option to return, , so it is advisable to not have an indefinite time and cost to the relocation benefits.

Elimination of Units Through Combination and Conversion to Other Uses. The ordinance addresses several situations in which residential units are combined with other units or converted to another use, such as a daycare center or nursing home. These situations have occasionally occurred in the past and led to the special provisions in the existing ordinance. The intent is to allow conversion of owner-occupied buildings with a lesser standard, i.e. no replacement units are required. However, the

special provisions related to continued occupancy by the owner, retroactive penalties if the owner moves out, and provisions for inheritances and changes in life circumstances are difficult to interpret and enforce.

The Commission and public commenters in the past have suggested these provisions should be eliminated. One of these circumstances references a mitigation fee, which could be expanded to cover other similar circumstances. For now, Section 23.326.040 remains in the draft ordinance pending clearer direction. A defined relocation benefit could be established for these circumstances, similar to the one established for tenants of illegal units, because these tenants will not have a new unit to return to.

Recommendation

Staff recommends that the Planning Commission conduct a Public Hearing, receive public comment, discuss draft Ordinance amendments, provide direction, and forward a recommendation to City Council, with any changes identified through a vote of the Planning Commission.

ATTACHMENTS

1. Existing Ordinance
2. Revised Draft Ordinance
3. Compare Version of Ordinances
4. State Law Excerpts
5. Public Hearing Notice

Chapter 23.326
DEMOLITION AND DWELLING UNIT CONTROL

Sections:

23.326.010	Chapter Purpose.
23.326.020	General Requirements.
23.326.030	Eliminating Dwelling Units through Demolition.
23.326.040	Eliminating Dwelling Units through Conversion and Change of Use.
23.326.050	Private Right of Action.
23.326.060	Elimination of Residential Hotel Rooms.
23.326.070	Demolitions of Non-Residential Buildings.
23.326.080	Building Relocations.
23.326.090	Limitations.

23.326.010 Chapter Purpose.

This chapter establishes demolition and dwelling unit control standards that promote the affordable housing, aesthetic, and safety goals of the City.

23.326.020 General Requirements.

A. *Applicability.* No dwelling unit or units may be eliminated or demolished except as authorized by this chapter.

B. *Findings.* In addition to the requirements below, the Zoning Adjustments Board (ZAB) may approve a Use Permit to eliminate or demolish a dwelling unit only upon finding that eliminating the dwelling unit would not be materially detrimental to the housing needs and public interest of the affected neighborhood and Berkeley.

23.326.030 Eliminating Dwelling Units through Demolition.

A. *Buildings with Two or More Units Constructed Before June 1980.*

1. *Applicability.* This subsection only applies to building with two or more units constructed before June 1980.

2. *Limitation.*

(a) Demolition is not allowed if:

- i. The building was removed from the rental market under the Ellis Act during the preceding five years; or
- ii. There have been verified cases of harassment or threatened or actual illegal eviction during the immediately preceding three years.

(b) Where allegations of harassment or threatened or actual illegal eviction are in dispute, either party may request a hearing before a Rent Board Hearing Examiner. The Rent Board Hearing Examiner will provide an assessment of the evidence and all available documentation to the ZAB. The ZAB shall determine whether harassment or threatened or actual illegal eviction occurred.

3. *Findings.* The ZAB may approve a Use Permit to demolish a building constructed before June 1980 on a property containing two or more dwelling units if any of the following are true:

- (a) The building containing the units is hazardous or unusable and is infeasible to repair.
- (b) The building containing the units will be moved to a different location within Berkeley with no net loss of units and no change in the affordability levels of the units.
- (c) The demolition is necessary to permit construction of special housing needs facilities such as, but not limited to, childcare centers and affordable housing developments that serve the greater good of the entire community.
- (d) The demolition is necessary to permit construction approved pursuant to this chapter of at least the same number of dwelling units.

4. *Fee Required.*

(a) The applicant shall pay a fee for each unit demolished to mitigate the impact of the loss of affordable housing in Berkeley.

(b) The amount of the fee shall be set by resolution of the City Council.

(c) *In Lieu of a Fee.*

i. In lieu of paying the impact fee, the applicant may provide a designated unit in the new project at a below market rate to a qualifying household in perpetuity.

ii. The affordability level of the below market rent and the income level of the qualifying household shall be set by resolution of the City Council.

iii. The applicant shall enter into a regulatory agreement with the City of Berkeley to provide the in lieu units.

5. *Occupied Units.*

(a) *Applicability.*

i. The requirements in this subsection apply if units to be demolished are occupied.

ii. These requirements do not apply to tenants who move in after the application for demolition is submitted to the City if the owner informs each prospective tenant about the proposed demolition and that demolition constitutes good cause for eviction.

(b) *Notice.* The applicant shall provide all sitting tenants notice of the application to demolish the building no later than the date it is submitted to the City, including notice of their rights under Municipal Code Section 13.76 (Rent Stabilization and Eviction for Good Cause Program).

(c) *General Requirements.*

i. The applicant shall provide assistance with moving expenses equivalent to in Chapter 13.84 (Relocation Services and Payments for Residential Tenant Households).

ii. The applicant shall subsidize the rent differential for a comparable replacement unit, in the same neighborhood if feasible, until new units are

ready for occupancy. Funding for the rent differential shall be guaranteed in a manner approved by the City.

iii. *Exception.* An applicant who proposes to construct a 100 percent affordable housing project is not required to comply with this subsection but must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended and the California Relocation Act (Government Code sections 7260 et seq.).

(d) *Sitting Tenants Rights.*

i. Sitting tenants who are displaced as a result of demolition shall be provided the right of first refusal to move into the new building.

ii. Tenants of units that are demolished shall have the right of first refusal to rent new below-market rate units designated to replace the units that were demolished, at the rent that would have applied if they had remained in place, as long as their tenancy continues.

iii. Income restrictions do not apply to displaced tenants.

iv. *Exception.*

(1) An applicant who proposes to construct a 100 percent affordable housing project is not required to comply with 23.326.030.A.5.a, b, and c, but must comply with the following requirement.

(2) Sitting tenants who are displaced as a result of demolition and who desire to return to the newly constructed building will be granted a right of first refusal subject to their ability to meet income qualifications and other applicable eligibility requirements when the new units are ready for occupancy.

B. *Buildings with a Single Dwelling Unit.*

1. *Applicability.* This subsection only applies to buildings with a single dwelling unit.
2. *Limitation.*

(a) Demolition is not allowed if:

- i. The building was removed from the rental market under the Ellis Act during the preceding five years; or
- ii. There have been verified cases of harassment or threatened or actual illegal eviction during the immediately preceding three years.

(b) Where allegations of harassment or threatened or actual illegal eviction are in dispute, either party may request a hearing before a Rent Board Hearing Examiner. The Rent Board Hearing Examiner will provide an assessment of the evidence and all available documentation to the ZAB. The ZAB shall determine whether harassment or threatened or actual illegal eviction occurred.

C. *Accessory Buildings.* Notwithstanding anything in Municipal Code Title 23 (Zoning Ordinance) to the contrary, but subject to any applicable requirements in Municipal Code Section 3.24 (Landmarks Preservation Ordinance), accessory buildings of any size, including, but not limited to, garages, carports, and sheds, but not including any structure containing a lawfully established dwelling unit, which serves and is located on the same lot as a lawful residential use, may be demolished by right.

23.326.040 Eliminating Dwelling Units through Conversion and Change of Use.

A. *General.* The ZAB may approve a Use Permit for the elimination of a dwelling unit in combination with another dwelling unit used for occupancy by a single household if it finds that:

1. The existing number of dwelling units exceeds maximum residential density in the district where the building is located; and
2. One of the following is true:
 - (a) One of the affected dwelling units has been occupied by the applicant's household as its principal place of residence for no less than two years before the date of the application and none of the affected units are currently occupied by a tenant.

(b) All of the affected dwelling units are being sold by an estate and the decedent occupied the units as their principal residence for no less than two years before the date of their death.

B. *Limitations.*

1. Demolition is not allowed if:

(a) The building was removed from the rental market under the Ellis Act during the preceding five years; or

(b) There have been verified cases of harassment or threatened or actual illegal eviction during the immediately preceding three years.

2. Where allegations of harassment or threatened or actual illegal eviction are in dispute, either party may request a hearing before a Rent Board Hearing Examiner. The Rent Board Hearing Examiner will provide an assessment of the evidence and all available documentation to the ZAB. The ZAB shall determine whether harassment or threatened or actual illegal eviction occurred.

C. *Effect of Noncompliance with the Two-Year Requirement.*

1. If a unit eliminated under Subsection A (General) is not occupied by the applicant's household for at least two consecutive years from the date of elimination, the affected unit must be restored to separate status.

2. This requirement shall be implemented by a condition of approval and a notice of limitation on the property, acceptable to the City of Berkeley.

3. The condition and notice will provide that if the owner's household does not occupy the unit for at least two years from the date of elimination the affected units must either be restored as separate dwelling units and the vacant unit(s) offered for rent within six months or the owner must pay a fee of \$75,000 in 2013 dollars, adjusted in May of each year according to the Consumer Price Index for the San Francisco Bay Area. The fee shall be deposited into the City of Berkeley's Housing Trust Fund.

4. The City of Berkeley may exempt an applicant from the two-year residency requirement if of an unforeseeable life change that requires relocation.

D. *Effect of Eliminating a Dwelling Unit.*

1. If eliminating a dwelling unit reduces the number of units in a building to four, the applicant shall record a notice of limitation against the subject property that the limitation on eviction of tenants under Chapter 13 (Public Peace, Morals and Welfare) shall continue to apply until:

(a) The building is demolished; or

(b) Sufficient units are added or restored such that the building contains at least five units.

2. The Zoning Officer may issue an AUP for a building conversion which eliminates a dwelling unit upon finding that the conversion will restore or bring the building closer to the original number of dwelling units that was present at the time it was first constructed, provided the conversion meets the requirements 23.326.040.A.1 and 2 and 23.326.040.B and C.

E. *Exceptions.*

1. The ZAB may approve a Use Permit for a change of use to a community care or a child care facility which eliminates a dwelling unit if it finds that such use is in conformance with the regulations of the district in which it is located.

2. The ZAB may approve a Use Permit to eliminate a dwelling unit through combination with another dwelling unit for the purpose of providing private bathrooms, kitchenettes, accessibility upgrades, and/or seismic safety upgrades to single-residential occupancy rooms in residential developments undergoing a publicly-funded rehabilitation.

3. Notwithstanding the general Use Permit requirement under 23.326.020 (General Requirements), a lawfully established accessory dwelling unit that is not a controlled rental unit may be eliminated with a Zoning Certificate if:

- (a) The re-conversion restores the original single-family use of the main building or lot; and
- (b) No tenant is evicted.

23.326.050 Private Right of Action.

Any affected tenant may bring a private action for injunctive and/or compensatory relief against any applicant and/or owner to prevent or remedy a violation of Sections 23.326.030 (Eliminating Dwelling Units through Demolition) and 23.326.040 (Eliminating Dwelling Units through Conversion and Change of Use). In any such action a prevailing plaintiff may recover reasonable attorney's fees.

23.326.060 Elimination of Residential Hotel Rooms.

A. *General Requirements.* Before removal, the following requirements must be met for the ZAB to approve a Use Permit for the elimination of residential hotel rooms:

1. The residential hotel owner shall provide or cause to be provided standard housing of at least comparable size and quality, at comparable rents and total monthly or weekly charges to each affected tenant.
2. One of the following three requirements shall be met:
 - (a) The residential hotel rooms being removed are replaced by a common use facility, including, but not limited to, a shared kitchen, lounge, or recreation room, that will be available to and primarily of benefit to the existing residents of the residential hotel and that a majority of existing residents give their consent to the removal of the rooms.
 - (b) Before the date on which the residential hotel rooms are removed, one-for-one replacement of each room to be removed is made, with a comparable room, in one of the methods set forth in this section.
 - (c) Residential hotel rooms are removed because of building alterations related to seismic upgrade to the building or to improve access to meet the requirements of the American Disabilities Act (ADA).

B. *Criteria for Replacement Rooms.* For purposes of this section, replacement rooms must be:

1. Substantially comparable in size, location, quality, and amenities;
2. Subject to rent and eviction controls substantially equivalent to those provided by the Rent Stabilization Ordinance or those that applied to the original rooms which are being replaced; and
3. Available at comparable rents and total monthly or weekly charges to those being removed. Comparable rooms may be provided by:
 - (a) Offering the existing tenants of the affected rooms the right of first refusal to occupy the replacement rooms;
 - (b) Making available comparable rooms, which are not already classified as residential hotel rooms to replace each of the rooms to be removed; or
 - (c) Paying to the City of Berkeley's Housing Trust Fund an amount sufficient to provide replacement rooms.
 - i. The amount to be paid to the City of Berkeley shall be the difference between the replacement cost, including land cost, for the rooms and the amount which the City of Berkeley can obtain by getting a mortgage on the anticipated rents from the newly constructed rooms.
 - ii. The calculations shall assume that rents in the newly constructed rooms shall not exceed the greater of either a level comparable to the weekly or monthly charges for the replaced rooms or the level which would be charged if no current tenant paid more than 30 percent of such tenant's gross income for rent.

C. *Exception for Non-Profit Ownership.* In a residential hotel owned and operated by a non-profit organization, recognized as tax-exempt by either the Franchise Tax Board and/or the Internal Revenue Service, residential hotel rooms may be changed to non-residential hotel room uses if the average number of residential hotel rooms per day in

each calendar year is at least 95 percent of residential hotel rooms established for that particular residential hotel.

23.326.070 Demolitions of Non-Residential Buildings.

A. *Main Non-Residential Buildings.* A main building used for non-residential purposes may be demolished with a Use Permit.

B. *Accessory Buildings.*

1. Demolishing an accessory building with less than 300 square feet of floor area is permitted as of right.
2. An accessory building with 300 square feet or more of floor area may be demolished with an AUP.

C. *Landmarks Preservation Commission Review.*

1. Any application for a Use Permit or AUP to demolish a non-residential building or structure which is 40 or more years old shall be forwarded to the Landmarks Preservation Commission (LPC) for review before consideration of the Use Permit or AUP.
2. The LPC may initiate a landmark or structure-of-merit designation or may choose solely to forward to the ZAB its comments on the application.
3. The ZAB shall consider the recommendations of the LPC in when acting on the application.

D. *Findings.* A Use Permit or an AUP for demolition of a non-residential building or structure may be approved only if the ZAB or the Zoning Officer finds that:

1. The demolition will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City of Berkeley; and
2. The demolition:
 - (a) Is required to allow a proposed new building or other proposed new use;

- (b) Will remove a building which is unusable for activities which are compatible with the purposes of the district in which it is located or which is infeasible to modify for such uses;
- (c) Will remove a structure which represents an inhabitable attractive nuisance to the public; or
- (d) Is required for the furtherance of specific plans or projects sponsored by the City of Berkeley or other local district or authority upon a demonstration that it is infeasible to obtain prior or concurrent approval for the new construction or new use which is contemplated by such specific plans or projects and that adhering to such a requirement would threaten the viability of the plan or project.

23.326.080 Building Relocations.

A. *Treatment of Building Relocation.*

1. Relocating a building from a lot is considered a demolition for purposes of this chapter.
2. Relocating a building to a lot is considered new construction and is subject to all requirements applicable to new construction.
3. When a building is relocated to a different lot within in Berkeley, the lot from which the building is removed shall be known as the source lot and the lot on which the building is to be sited shall be known as the receiving lot. In such cases all notification requirements apply to both the source and receiving lots.

B. *Findings.* The ZAB may approve a Use Permit to relocate a building upon finding that:

1. The building to be relocated is not in conflict with the architectural character, or the building scale of the neighborhood or area to which it will be relocated; and
2. The receiving lot provides adequate separation of buildings, privacy, yards, and usable open space.

Demolition Ordinance Update
Attachment 1 – Existing Ordinance

23.326.090 Limitations.

A. *Unsafe, Hazard, or Danger.*

1. Notwithstanding anything to the contrary, if a building or structure is unsafe, presents a public hazard, and is not securable and/or is in imminent danger of collapse so as to endanger persons or property, as determined by the city's building official, it may be demolished without a Use Permit.

2. The Building Official's determination in this matter shall be governed by the standards and criteria in the most recent edition of the California Building Code that is in effect in the City of Berkeley.

B. *Ellis Act.* This chapter shall be applied only to the extent permitted by state law as to buildings which have been entirely withdrawn from the rental market pursuant to the Ellis Act (California Government Code Chapter 12.75).

ORDINANCE NO.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 23.326, DEMOLITION AND
DWELLING UNIT CONTROLS

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

Section 1. That Berkeley Municipal Code Chapter 23.326 is hereby amended to read as follows:

Chapter 23.326 DEMOLITION AND DWELLING UNIT CONTROLS

Sections:

- 23.326.010 Chapter Purpose.
- 23.326.020 General Requirements.
- 23.326.030 Demolition of Residential Units.
- 23.326.040 Eliminating Dwelling Units through Combination with Other Units.
- 23.326.050 Demolition of Accessory Buildings.
- 23.326.060 Private Right of Action.
- 23.326.070 Demolition of Non-Residential Buildings.
- 23.326.080 Building Relocations.
- 23.326.090 Limitations.

23.326.010 Chapter Purpose.

This chapter establishes demolition and dwelling unit control standards that promote the affordable housing and safety goals of the City.

23.326.020 General Requirements.

A. No Residential Unit or units may be eliminated or demolished except as authorized by this chapter.

1. "Residential Unit" means, for purposes of this Chapter, any Dwelling Unit, any Live-Work Unit, any Residential Hotel unit, or any bedroom of

a Group Living Accommodation (GLA) except a GLA in a University-recognized fraternity, sorority or co-op.

2. “Residential Unit” includes any Accessory Dwelling Unit or Junior Accessory Dwelling Unit to the extent that tenant notice, protections for eviction and relocation benefits outlined in this ordinance shall apply to any Accessory Dwelling Unit or Junior Accessory Dwelling Unit that is removed from the rental market.
3. “Residential Unit” includes Dwelling Units created without proper Use Permit(s) or Building Permit(s) if they have been registered with the Rent Stabilization Board or there is substantial evidence of a tenant-landlord relationship during the preceding five years to the extent that tenant notice, protections for eviction and relocation benefits outlined in this ordinance shall apply to an illegal unit that is removed from the rental market.
4. “Comparable Unit” means a dwelling unit of similar size (square footage and number of bedrooms), amenities (private open space and common facilities) and location within the city (neighborhood and school attendance area).

23.326.030 Demolition of Residential Units.

A. *Limitation.* Demolition is not allowed if:

1. The unit (or units) was removed from the rental market through a no-fault eviction during the preceding five years; or
2. There is substantial evidence of harassment or threatened or actual illegal eviction during the immediately preceding three years. Where allegations of harassment or threatened or actual illegal eviction are in dispute, either party may request a hearing before a Rent Board Hearing Examiner, whose determination may be appealed to the Rent Stabilization Board.

B. *Procedure and Findings.* A Use Permit is required to eliminate or demolish one or more Residential Units, except where otherwise provided by the Zoning Ordinance. The Board shall only approve the Use Permit if one of the following is true:

1. The building containing the units is hazardous or unusable and is infeasible to repair.
2. The building containing the unit(s) will be moved to a different location within Berkeley with no net loss of units and no change in the rent levels of the unit(s).
3. The demolition is necessary to permit construction of socially and/or economically beneficial uses that serve the greater good of the community.
4. The demolition is necessary to permit construction approved pursuant to this chapter of at least the same number of dwelling units.

C. *Conditions of Approval.* Any Residential Unit(s) that will be demolished shall be replaced with equivalent units and comply with applicable affordability requirements in Chapter 23.328 [Affordable Housing Requirements] and Chapter 23.330 [Density Bonus] as they may be amended from time to time.

D. *Requirements for Occupied Units.*

1. *Applicability.* The following requirements do not apply to tenants who move in after the application for demolition is submitted to the City if the owner informs each prospective tenant about the proposed demolition and that demolition constitutes good cause for eviction.
2. *Notice.* The applicant shall provide all sitting tenants and the Rent Stabilization Board notice of the application to demolish the unit(s) no later than the date the application is submitted to the City, including notice of their rights under Municipal Code Chapter 13.76 (Rent Stabilization and Eviction for Good Cause Program), Chapter 13.77 (Requirements, Procedures, Restrictions and Mitigations Concerning the Withdrawal of Residential Rental Accommodations from Rent or Lease), 13.79 (Tenant Protections: Automatically Renewing Leases and Buyout Agreements) and 13.84 (Relocation Services and Payments for Residential Tenant Households).
3. *General Requirements.*
 - (a) The applicant shall provide assistance with moving and relocation assistance equivalent to the requirements set forth in Municipal Code

Chapter 13.84 or Government Code section 66300(d)(2)(D)(i), whichever requires greater relocation assistance to displaced tenants, and shall not be subject to the limitations in section 13.84.070.B.3(a). The applicant shall subsidize the rent differential for a comparable replacement unit, in the same neighborhood if feasible, until new units are ready for occupancy. Tenants shall have until the date that the new units are ready for occupancy to decide whether to move into the newly constructed building. Funding for the rent differential shall be guaranteed in a manner approved by the City Council by Resolution; provided, however, that any project that is carried out or funded by the state or federal government shall be subject to applicable provisions of the California Relocation Act (Government Code section 7260 *et seq.*) and/or the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. sections 4601-4655).

(b) *Exception.* An applicant who proposes to construct a 100-percent affordable housing project is not required to comply with this subsection but must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended and the California Relocation Act (Government Code sections 7260 *et seq.*).

4. *Sitting Tenants Rights.*

(a) Any tenant of a Residential Unit that is permitted to be demolished under this section shall have the right of first refusal to rent a comparable unit in the new project.

(b) In the event that a displaced household is ineligible for Below-Market Rate replacement units, a market rate unit shall be made available to that household at the same rent as had been previously charged, or a lesser rent if that is the market rate.

(c) Where a displaced tenant exercises the right to rent a comparable unit, any increase in rent for the comparable unit for the duration of their tenancy shall be no greater than the lesser of 65% of the increase in the Consumer Price Index for All Urban Consumers (CPI-U) in the San Francisco-

Oakland-San Jose region (as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics for the twelve-month period ending the previous December 31) or 65% of the corresponding increase in Area Median Income (AMI) for the same calendar year.

(d) *Exception.*

- i. An applicant who proposes to construct a 100 percent affordable housing project is not required to comply with the preceding requirements but must comply with the following requirement.
- ii. Sitting tenants who are displaced as a result of demolition and who desire to return to the newly constructed affordable housing project will be granted a right of first refusal subject to their ability to meet income qualifications and other applicable eligibility requirements.

23.326.040 Eliminating Dwelling Units through Combination With Other Units.

A. *Process for Projects Where Density Exceeds Current Allowance.* A Use Permit is required to eliminate one or more Residential Units by combining with another unit when the existing development exceeds currently-allowable density. The ZAB shall approve a Use Permit for the elimination of one or more Residential Units by combining with another unit only if it finds that:

1. The existing number of units exceeds the current maximum allowed residential density in the zoning district where the units are located; and
2. One of the following is true:
 - (a) One of the affected units has been occupied by the applicant's household as its principal place of residence for no less than two years before the date of the application and none of the affected units are currently occupied by a tenant.
 - (b) All of the affected units are being sold by an estate and the decedent occupied the units as their principal residence for no less than two years before the date of their death.

B. *Process for Projects That Restore Original Development Density.* The Zoning Officer may issue an Administrative Use Permit (AUP) for a building conversion which eliminates a dwelling unit upon finding that the conversion will restore or bring the building closer to the original number of dwelling units that was present at the time it was first constructed.

C. *Limitations.* Combination is not allowed if:

1. The building was removed from the rental market through a no fault eviction during the preceding five years; or
2. There is substantial evidence of harassment or threatened or actual illegal eviction during the immediately preceding three years. Where allegations of harassment or threatened or actual illegal eviction are in dispute, either party may request a hearing before a Rent Board Hearing Examiner, whose determination may be appealed to the Rent Stabilization Board.

D. *Two-Year Occupancy Requirement Following Elimination*

1. If a unit that is eliminated through combination is not occupied by the applicant's household for at least two consecutive years from the date of elimination, the affected unit must be restored to separate status.
 2. This requirement shall be implemented by a condition of approval and a notice of limitation on the property, acceptable to the City of Berkeley.
 3. The condition and notice will provide that if the owner's household does not occupy the unit for at least two years from the date of elimination then the affected units must either be restored as separate dwelling units and the vacant unit(s) offered for rent within six months or the owner must pay a fee of \$75,000 in 2013 dollars, adjusted in May of each year according to the Consumer Price Index for the San Francisco Bay Area. The fee shall be deposited into the City of Berkeley's Housing Trust Fund.
 4. The City of Berkeley may exempt an applicant from the two-year residency requirement if there is an unforeseeable life change that requires relocation.
-

E. *Effect of Eliminating a Dwelling Unit.*

1. If eliminating a dwelling unit reduces the number of units in a building to four, the applicant shall record a notice of limitation against the subject property that the limitation on eviction of tenants under Chapter 13 (Public Peace, Morals and Welfare) shall continue to apply until:

(a) The building is demolished; or

(b) Sufficient units are added or restored such that the building contains at least five units.

2. The Zoning Officer may issue an AUP for a building conversion which eliminates a dwelling unit upon finding that the conversion will restore or bring the building closer to the original number of dwelling units that was present at the time it was first constructed, provided the conversion meets the requirements of 23.326.040.A.1 and 2 and 23.326.040.B and C.

F. *Exception.* The ZAB may approve a Use Permit to eliminate a dwelling unit through combination with another dwelling unit for the purpose of providing private bathrooms, kitchenettes, accessibility upgrades, and/or seismic safety upgrades to single-resident occupancy rooms in residential developments undergoing a publicly-funded rehabilitation.

23.326.050 Demolition of Accessory Buildings.

Notwithstanding anything in Municipal Code Title 23 (Zoning Ordinance) to the contrary, but subject to any applicable requirements in Municipal Code Section 3.24 (Landmarks Preservation Ordinance), Accessory Buildings of any size, including, but not limited to, garages, carports, and sheds may be demolished by right except where the Accessory Building is occupied by a residential tenant (regardless of whether it is lawfully permitted) or otherwise contains a lawfully established residential unit, which serves and is located on the same lot as a lawful residential use.

23.326.060 Private Right of Action.

Any affected tenant may bring a private action for injunctive and/or compensatory relief against any applicant and/or owner to prevent or remedy a violation of Sections

23.326.030 (Eliminating Dwelling Units through Demolition) and 23.326.040 (Eliminating Dwelling Units through Conversion and Change of Use). In any such action a prevailing plaintiff shall recover reasonable attorney's fees.

23.326.070 Demolition of Non-Residential Buildings.

A. *Main Non-Residential Buildings.* A Use Permit is required to demolish a main building used for non-residential purposes on any lot.

B. *Accessory Buildings.* For any lot located in a non-residential zoning district, Accessory Buildings may be demolished as follows:

1. Demolishing an accessory building with less than 300 square feet of floor area is permitted as of right.
2. An accessory building with 300 square feet or more of floor area may be demolished with an AUP.

C. *Landmarks Preservation Commission Review.*

1. Any application for a Use Permit or AUP to demolish a non-residential building or structure that is 40 or more years old shall be forwarded to the Landmarks Preservation Commission (LPC) for review before consideration of the Use Permit or AUP.
2. The LPC may initiate a landmark or structure-of-merit designation or may choose solely to forward to the ZAB or Zoning Officer its comments on the application.
3. The ZAB or Zoning Officer shall consider the recommendations of the LPC when acting on the application.

D. *Findings.* A Use Permit or an AUP for demolition of a main building used for non-residential purposes on any lot or an accessory building located on a lot in a non-residential district may be approved only if the ZAB or the Zoning Officer finds that:

1. The demolition will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City of Berkeley; and
2. The demolition:

- (a) Is required to allow a proposed new building or other proposed new use;
- (b) Will remove a building which is unusable for activities which are compatible with the purposes of the district in which it is located or which is infeasible to modify for such uses;
- (c) Will remove a structure which represents an uninhabitable attractive nuisance to the public; or
- (d) Is required for the furtherance of specific plans or projects sponsored by the City of Berkeley or other local district or authority upon a demonstration that it is infeasible to obtain prior or concurrent approval for the new construction or new use which is contemplated by such specific plans or projects and that adhering to such a requirement would threaten the viability of the plan or project.

23.326.080 Building Relocations.

A. *Treatment of Building Relocation.*

1. Relocating a building from a lot is considered a demolition for purposes of this chapter.
2. Relocating a building to a lot within the city is considered new construction and is subject to all requirements applicable to new construction.
3. When a building is relocated to a different lot within Berkeley, the lot from which the building is removed shall be known as the source lot and the lot on which the building is to be sited shall be known as the receiving lot.

B. *Findings.* The Zoning Officer shall approve Zoning Certificate to relocate a building upon finding that the resulting development on the receiving lot is in conformance with applicable zoning code development standards.

23.326.090 Limitations.

A. *Unsafe, Hazard, or Danger.*

1. Notwithstanding anything to the contrary, if a building or structure is unsafe, presents a public hazard, and is not securable and/or is in imminent danger of

collapse so as to endanger persons or property, as determined by the city's building official, it may be demolished without a Use Permit.

2. The Building Official's determination in this matter shall be governed by the standards and criteria in the most recent edition of the California Building Code that is in effect in the City of Berkeley.

B. *Ellis Act*. This chapter shall be applied only to the extent permitted by state law as to buildings which have been entirely withdrawn from the rental market pursuant to the Ellis Act (California Government Code Chapter 12.75).

~~Demolition Ordinance Update~~ ~~Planning Commission~~
~~Attachment 2 - Revised Draft Ordinance~~ ~~February 1, 2023~~
~~Attachment 1 - Existing Ordinance~~ ~~February 1, 2023~~

Chapter ORDINANCE NO.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 23.326
DEMOLITION AND DWELLING UNIT CONTROL CONTROLS

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

Section 1. That Berkeley Municipal Code Chapter 23.326 is hereby amended to read as follows:

Chapter 23.326 DEMOLITION AND DWELLING UNIT CONTROLS

Sections:

- ~~23.326.010 Chapter Purpose.~~
- ~~23.326.020 General Requirements.~~
- ~~23.326.030 Eliminating Dwelling Units through Demolition.~~
- ~~23.326.040 Eliminating Dwelling Units through Conversion and Change of Use.~~
- ~~23.326.050 Private Right of Action.~~
- ~~23.326.060 Elimination of Residential Hotel Rooms.~~
- ~~23.326.070 Demolitions of Non-Residential Buildings.~~
- ~~23.326.080 Building Relocations.~~
- ~~23.326.090 Limitations.~~
 - 23.326.010 Chapter Purpose.
 - 23.326.020 General Requirements.
 - 23.326.030 Demolition of Residential Units.
 - 23.326.040 Eliminating Dwelling Units through Combination with Other Units.
 - 23.326.050 Demolition of Accessory Buildings.
 - 23.326.060 Private Right of Action.
 - 23.326.070 Demolition of Non-Residential Buildings.
 - 23.326.080 Building Relocations.
 - 23.326.090 Limitations.

23.326.010 Chapter Purpose.

~~Demolition Ordinance Update~~ ~~Planning Commission~~
~~Attachment 2 - Revised Draft Ordinance~~ ~~February 1, 2023~~
~~Attachment 1 - Existing Ordinance~~ ~~February 1, 2023~~

This chapter establishes demolition and dwelling unit control standards that promote the affordable housing, ~~aesthetic~~, and safety goals of the City.

23.326.020 General Requirements.

~~A.~~ ~~A. Applicability.~~ No ~~dwelling unit~~ Residential Unit or units may be eliminated or demolished except as authorized by this chapter.

- ~~1. B. Findings.~~ In addition, “Residential Unit” means, for purposes of this Chapter, any Dwelling Unit, any Live-Work Unit, any Residential Hotel unit, or any bedroom of a Group Living Accommodation (GLA) except a GLA in a University-recognized fraternity, sorority or co-op.
- ~~2.~~ “Residential Unit” includes any Accessory Dwelling Unit or Junior Accessory Dwelling Unit to the requirements below, the Zoning Adjustments Board (ZAB) may approve a extent that tenant notice, protections for eviction and relocation benefits outlined in this ordinance shall apply to any Accessory Dwelling Unit or Junior Accessory Dwelling Unit that is removed from the rental market.
- ~~3.~~ “Residential Unit” includes Dwelling Units created without proper Use Permit to eliminate or demolish a dwelling(s) or Building Permit(s) if they have been registered with the Rent Stabilization Board or there is substantial evidence of a tenant-landlord relationship during the preceding five years to the extent that tenant notice, protections for eviction and relocation benefits outlined in this ordinance shall apply to an illegal unit only upon finding that eliminating is removed from the rental market.
- ~~4.~~ “Comparable Unit” means a dwelling unit would not be materially detrimental to the housing needs and public interest of the affected of similar size (square footage and number of bedrooms), amenities (private open space and common facilities) and location within the city (neighborhood and Berkeley school attendance area).

23.326.030 ~~Eliminating Dwelling Units through Demolition.~~

~~A. Buildings with Two or More of Residential Units Constructed Before June 1980.~~

~~Demolition Ordinance Update~~ ~~Planning Commission~~
~~Attachment 2 - Revised Draft Ordinance~~ ~~February 1, 2023~~
~~Attachment 1 - Existing Ordinance~~ ~~February 1, 2023~~

~~1. *Applicability.* This subsection only applies to building with two or more units constructed before June 1980.~~

~~2. *Limitation.*~~

~~A. (a) Demolition is not allowed if:~~

~~1. i.—The building unit (or units) was removed from the rental market ~~under the Ellis Act~~ through a no-fault eviction during the preceding five years; or~~

~~ii.—There ~~have been verified cases~~ is substantial evidence of harassment or threatened or actual illegal eviction during the immediately preceding three years.~~

~~2. (b) Where allegations of harassment or threatened or actual illegal eviction are in dispute, either party may request a hearing before a Rent Board Hearing Examiner. ~~The Rent Board Hearing Examiner will provide an assessment of the evidence and all available documentation to the ZAB. The ZAB shall determine whether harassment or threatened or actual illegal eviction occurred, whose determination may be appealed to the Rent Stabilization Board.~~~~

~~B. 3.—*Procedure and Findings.* ~~The ZAB may approve a~~ A Use Permit is required to eliminate or demolish a building constructed before June 1980 on a property containing two ~~one~~ or more dwelling units ~~Residential Units, except where otherwise provided by the Zoning Ordinance. The Board shall only approve the Use Permit if~~ anyone ~~of the following are~~ is true:~~

~~1. (a) The building containing the units is hazardous or unusable and is infeasible to repair.~~

~~2. (b) The building containing the ~~units~~ unit(s) will be moved to a different location within Berkeley with no net loss of units and no change in the ~~affordability~~ rent levels of the ~~units~~ unit(s).~~

~~3. (c) The demolition is necessary to permit construction of ~~special housing needs facilities such as, but not limited to, childcare centers~~ socially and ~~affordable housing developments/~~ or economically beneficial uses that serve the greater good of the ~~entire~~ community.~~

~~4. (d)–The demolition is necessary to permit construction approved pursuant to this chapter of at least the same number of dwelling units.~~

~~4. Fee Required.~~

~~(a)–The applicant shall pay a fee for each unit demolished to mitigate the impact of the loss of affordable housing in Berkeley.~~

~~(b)–The amount of the fee shall be set by resolution of the City Council.~~

~~(c)–In Lieu of a Fee.~~

~~i.–In lieu of paying the impact fee, the applicant may provide a designated unit in the new project at a below market rate to a qualifying household in perpetuity.~~

~~ii.–The affordability level of the below market rent and the income level of the qualifying household shall be set by resolution of the City Council.~~

~~iii.–The applicant shall enter into a regulatory agreement with the City of Berkeley to provide the in-lieu units.~~

~~5. C. Conditions of Approval. Any Residential Unit(s) that will be demolished shall be replaced with equivalent units and comply with applicable affordability requirements in Chapter 23.328 [Affordable Housing Requirements] and Chapter 23.330 [Density Bonus] as they may be amended from time to time.~~

~~D. Requirements for Occupied Units.~~

~~(a)–Applicability.~~

~~i.–The requirements in this subsection apply if units to be demolished are occupied.~~

~~1. ii.–These~~The following requirements do not apply to tenants who move in after the application for demolition is submitted to the City if the owner informs each prospective tenant about the proposed demolition and that demolition constitutes good cause for eviction.

~~2. (b)–Notice.~~ The applicant shall provide all sitting tenants and the Rent

Stabilization Board notice of the application to demolish the building unit(s) no later than the date ~~#~~the application is submitted to the City, including notice of their rights under Municipal Code ~~Section~~Chapter 13.76 (Rent Stabilization and Eviction for Good Cause Program), Chapter 13.77 (Requirements, Procedures, Restrictions and Mitigations Concerning the Withdrawal of Residential Rental Accommodations from Rent or Lease), 13.79 (Tenant Protections: Automatically Renewing Leases and Buyout Agreements) and 13.84 (Relocation Services and Payments for Residential Tenant Households).

3. (e) - General Requirements.

i.—The applicant shall provide assistance with moving ~~expenses and relocation assistance~~ equivalent to the requirements set forth in Chapter 13.84 (Relocation Services and Payments for Residential Tenant Households).

(a) ii.—Municipal Code Chapter 13.84 or Government Code section 66300(d)(2)(D)(i), whichever requires greater relocation assistance to displaced tenants, and shall not be subject to the limitations in section 13.84.070.B.3(a). The applicant shall subsidize the rent differential for a comparable replacement unit, in the same neighborhood if feasible, until new units are ready for occupancy. Tenants shall have until the date that the new units are ready for occupancy to decide whether to move into the newly constructed building. Funding for the rent differential shall be guaranteed in a manner approved by the City ~~Council by Resolution;~~ provided, however, that any project that is carried out or funded by the state or federal government shall be subject to applicable provisions of the California Relocation Act (Government Code section 7260 et seq.) and/or the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. sections 4601- 4655).

(b) iii.—Exception. An applicant who proposes to construct a 100-~~per~~cent affordable housing project is not required to comply with this subsection but must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended and the California Relocation Act (Government Code sections ~~7260~~7260 et seq.).

~~4. (d) - Sitting Tenants Rights.-~~

~~i. - Sitting tenants who are displaced as a result of demolition shall be provided the right of first refusal to move into the new building.~~

~~(a) ii. - Tenants of units a Residential Unit that are is permitted to be demolished under this section shall have the right of first refusal to rent new below a comparable unit in the new project.~~

~~(b) In the event that a displaced household is ineligible for Below-Market Rate replacement units, a market rate units designated unit shall be made available to replace the units that were demolished, household at the same rent that would have applied as had been previously charged, or a lesser rent if they had remained in place, as long as that is the market rate.~~

~~(c) Where a displaced tenant exercises the right to rent a comparable unit, any increase in rent for the comparable unit for the duration of their tenancy continuesshall be no greater than the lesser of 65% of the increase in the Consumer Price Index for All Urban Consumers (CPI-U) in the San Francisco-Oakland-San Jose region (as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics for the twelve-month period ending the previous December 31) or 65% of the corresponding increase in Area Median Income (AMI) for the same calendar year.~~

~~iii. - Income restrictions do not apply to displaced tenants.~~

~~(d) iv. - Exception.-~~

~~i. (1) - An applicant who proposes to construct a 100 percent affordable housing project is not required to comply with 23.326.030.A.5.a, b, and c, the preceding requirements but must comply with the following requirement.~~

~~ii. (2) - Sitting tenants who are displaced as a result of demolition and who desire to return to the newly constructed building affordable housing project will be granted a right of first refusal subject to their ability to meet income qualifications and~~

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other applicable eligibility requirements ~~when the new units are ready for occupancy.~~

~~B. Buildings with a Single Dwelling Unit.~~

~~1. Applicability. This subsection only applies to buildings with a single dwelling unit.~~

~~2. Limitation.~~

~~(a) Demolition is not allowed if:~~

~~i. The building was removed from the rental market under the Ellis Act during the preceding five years; or~~

~~ii. There have been verified cases of harassment or threatened or actual illegal eviction during the immediately preceding three years.~~

~~(b) Where allegations of harassment or threatened or actual illegal eviction are in dispute, either party may request a hearing before a Rent Board Hearing Examiner. The Rent Board Hearing Examiner will provide an assessment of the evidence and all available documentation to the ZAB. The ZAB shall determine whether harassment or threatened or actual illegal eviction occurred.~~

~~C. Accessory Buildings. Notwithstanding anything in Municipal Code Title 23 (Zoning Ordinance) to the contrary, but subject to any applicable requirements in Municipal Code Section 3.24 (Landmarks Preservation Ordinance), accessory buildings of any size, including, but not limited to, garages, carports, and sheds, but not including any structure containing a lawfully established dwelling unit, which serves and is located on the same lot as a lawful residential use, may be demolished by right.~~

23.326.040 Eliminating Dwelling Units through ~~Conversion and Change of Use~~Combination With Other Units.

A. Process for Projects Where Density Exceeds Current Allowance. ~~A. General. The ZAB may Use Permit is required to eliminate one or more Residential Units by combining with another unit when the existing development exceeds currently allowable density. The ZAB shall approve a Use Permit for the elimination of a dwelling unit in combination with another dwelling unit used for occupancy one or more~~

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Residential Units by ~~a single household combining with another unit only~~ if it finds that:

1. 1.—The existing number of ~~dwelling~~ units exceeds the current maximum allowed residential density in the zoning district where the ~~building is~~ units are located; and
2. 2.—One of the following is true:
 - (a) (a)—One of the affected ~~dwelling~~ units has been occupied by the applicant's household as its principal place of residence for no less than two years before the date of the application and none of the affected units are currently occupied by a tenant.
 - (b) (b)—All of the affected ~~dwelling~~ units are being sold by an estate and the decedent occupied the units as their principal residence for no less than two years before the date of their death.

B. B.—*Process for Projects That Restore Original Development Density.* The Zoning Officer may issue an Administrative Use Permit (AUP) for a building conversion which eliminates a dwelling unit upon finding that the conversion will restore or bring the building closer to the original number of dwelling units that was present at the time it was first constructed.

Limitations.

C. 1.—~~Demolition~~Combination is not allowed if:

1. (a)—The building was removed from the rental market ~~under the Ellis Act~~ through a no fault eviction during the preceding five years; or
 - (b)—There ~~have been verified cases~~ is substantial evidence of harassment or threatened or actual illegal eviction during the immediately preceding three years.
2. 2.—Where allegations of harassment or threatened or actual illegal eviction are in dispute, either party may request a hearing before a Rent Board Hearing Examiner. ~~The Rent Board Hearing Examiner will provide an assessment of the evidence and all available documentation to the ZAB. The ZAB shall determine whether harassment or threatened or actual illegal~~

~~eviction occurred, whose determination may be appealed to the Rent Stabilization Board.~~

~~D. C. - Effect of Noncompliance with the Two-Year Occupancy Requirement - Following Elimination~~

~~1. 1. - If a unit that is eliminated ~~under Subsection A (General)~~ through combination is not occupied by the applicant's household for at least two consecutive years from the date of elimination, the affected unit must be restored to separate status.~~

~~2. 2. - This requirement shall be implemented by a condition of approval and a notice of limitation on the property, acceptable to the City of Berkeley.~~

~~3. 3. - The condition and notice will provide that if the owner's household does not occupy the unit for at least two years from the date of elimination then the affected units must either be restored as separate dwelling units and the vacant unit(s) offered for rent within six months or the owner must pay a fee of \$75,000 in 2013 dollars, adjusted in May of each year according to the Consumer Price Index for the San Francisco Bay Area. The fee shall be deposited into the City of Berkeley's Housing Trust Fund.~~

~~4. 4. - The City of Berkeley may exempt an applicant from the two-year residency requirement if if there is an unforeseeable life change that requires relocation.~~

~~E. D. - Effect of Eliminating a Dwelling Unit.~~

1. If eliminating a dwelling unit reduces the number of units in a building to four, the applicant shall record a notice of limitation against the subject property that the limitation on eviction of tenants under Chapter 13 (Public Peace, Morals and Welfare) shall continue to apply until:

(a) The building is demolished; or

(b) Sufficient units are added or restored such that the building contains at least five units.

2. The Zoning Officer may issue an AUP for a building conversion which eliminates

a dwelling unit upon finding that the conversion will restore or bring the building closer to the original number of dwelling units that was present at the time it was first constructed, provided the conversion meets the requirements of 23.326.040.A.1 and 2 and 23.326.040.B and C.

~~E. Exceptions.~~

~~1. The ZAB may approve a Use Permit for a change of use to a community care or a child care facility which eliminates a dwelling unit if it finds that such use is in conformance with the regulations of the district in which it is located.~~

~~F. 2. Exception.~~ The ZAB may approve a Use Permit to eliminate a dwelling unit through combination with another dwelling unit for the purpose of providing private bathrooms, kitchenettes, accessibility upgrades, and/or seismic safety upgrades to single-~~residential~~resident occupancy rooms in residential developments undergoing a publicly-funded rehabilitation.

~~3. Notwithstanding the general Use Permit requirement under 23.326.020 (General Requirements), a lawfully established accessory dwelling unit that is not a controlled rental unit may be eliminated with a Zoning Certificate if:~~

- ~~(a) The re-conversion restores the original single-family use of the main building or lot; and~~
- ~~(b) No tenant is evicted.~~

~~23.326.050~~23.326.050 Demolition of Accessory Buildings.

~~Notwithstanding anything in Municipal Code Title 23 (Zoning Ordinance) to the contrary, but subject to any applicable requirements in Municipal Code Section 3.24 (Landmarks Preservation Ordinance), Accessory Buildings of any size, including, but not limited to, garages, carports, and sheds may be demolished by right except where the Accessory Building is occupied by a residential tenant (regardless of whether it is lawfully permitted) or otherwise contains a lawfully established residential unit, which serves and is located on the same lot as a lawful residential use.~~

23.326.060 Private Right of Action.

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Any affected tenant may bring a private action for injunctive and/or compensatory relief against any applicant and/or owner to prevent or remedy a violation of Sections 23.326.030 (Eliminating Dwelling Units through Demolition) and 23.326.040 (Eliminating Dwelling Units through Conversion and Change of Use). In any such action a prevailing plaintiff may recover reasonable attorney's fees.-

~~23.326.060 — Elimination of Residential Hotel Rooms:~~

~~A. General Requirements. Before removal, the following requirements must be met for the ZAB to approve a Use Permit for the elimination of residential hotel rooms:~~

~~1. The residential hotel owner shall provide or cause to be provided standard housing of at least comparable size and quality, at comparable rents and total monthly or weekly charges to each affected tenant.~~

~~2. One of the following three requirements shall be met:~~

~~(a) The residential hotel rooms being removed are replaced by a common use facility, including, but not limited to, a shared kitchen, lounge, or recreation room, that will be available to and primarily of benefit to the existing residents of the residential hotel and that a majority of existing residents give their consent to the removal of the rooms.~~

~~(b) Before the date on which the residential hotel rooms are removed, one-for-one replacement of each room to be removed is made, with a comparable room, in one of the methods set forth in this section.~~

~~(c) Residential hotel rooms are removed because of building alterations related to seismic upgrade to the building or to improve access to meet the requirements of the American Disabilities Act (ADA).~~

~~B. Criteria for Replacement Rooms. For purposes of this section, replacement rooms must be:~~

~~1. Substantially comparable in size, location, quality, and amenities;~~

~~2. Subject to rent and eviction controls substantially equivalent to those provided by the Rent Stabilization Ordinance or those that applied to the original rooms which are~~

being replaced; and

3. Available at comparable rents and total monthly or weekly charges to those being removed. Comparable rooms may be provided by:

(a) Offering the existing tenants of the affected rooms the right of first refusal to occupy the replacement rooms;

(b) Making available comparable rooms, which are not already classified as residential hotel rooms to replace each of the rooms to be removed; or

(c) Paying to the City of Berkeley's Housing Trust Fund an amount sufficient to provide replacement rooms.

i. The amount to be paid to the City of Berkeley shall be the difference between the replacement cost, including land cost, for the rooms and the amount which the City of Berkeley can obtain by getting a mortgage on the anticipated rents from the newly constructed rooms.

ii. The calculations shall assume that rents in the newly constructed rooms shall not exceed the greater of either a level comparable to the weekly or monthly charges for the replaced rooms or the level which would be charged if no current tenant paid more than 30 percent of such tenant's gross income for rent.

~~C. *Exception for Non-Profit Ownership.* In a residential hotel owned and operated by a non-profit organization, recognized as tax-exempt by either the Franchise Tax Board and/or the Internal Revenue Service, residential hotel rooms may be changed to non-residential hotel room uses if the average number of residential hotel rooms per day in each calendar year is at least 95 percent of residential hotel rooms established for that particular residential hotel.~~

23.326.070 ~~Demolitions~~Demolition of Non-Residential Buildings.

A. A.—*Main Non-Residential Buildings.* AA Use Permit is required to demolish a main building used for non-residential purposes ~~may be demolished with a Use Permit~~ on any lot.

B. B.—*Accessory Buildings.* For any lot located in a non-residential zoning district, Accessory Buildings may be demolished as follows:

1. 1.—Demolishing an accessory building with less than 300 square feet of floor area is permitted as of right.
2. 2.—An accessory building with 300 square feet or more of floor area may be demolished with an AUP.

C. C.—*Landmarks Preservation Commission Review.*—

1. 1.—Any application for a Use Permit or AUP to demolish a non-residential building or structure ~~which~~that is 40 or more years old shall be forwarded to the Landmarks Preservation Commission (LPC) for review before consideration of the Use Permit or AUP.
2. 2.—The LPC may initiate a landmark or structure-of-merit designation or may choose solely to forward to the ZAB or Zoning Officer its comments on the application.
3. 3.—The ZAB or Zoning Officer shall consider the recommendations of the LPC ~~in~~ when acting on the application.

D. D.—*Findings.* A Use Permit or an AUP for demolition of a main building used for non-residential building or structure purposes on any lot or an accessory building located on a lot in a non-residential district may be approved only if the ZAB or the Zoning Officer finds that:

1. 1.—The demolition will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City of Berkeley; and
2. 2.—The demolition:
 - (a) (a)—Is required to allow a proposed new building or other proposed new use;
 - (b) (b)—Will remove a building which is unusable for activities which are compatible with the purposes of the district in which it is located or which is infeasible to modify for such uses;

~~(c) (e)~~ Will remove a structure which represents an ~~inhabitable~~uninhabitable attractive nuisance to the public; or

~~(d) (d)~~ Is required for the furtherance of specific plans or projects sponsored by the City of Berkeley or other local district or authority upon a demonstration that it is infeasible to obtain prior or concurrent approval for the new construction or new use which is contemplated by such specific plans or projects and that adhering to such a requirement would threaten the viability of the plan or project.-

23.326.080 Building Relocations.

A. A. ~~Treatment of Building Relocation.-~~

1. 1. Relocating a building from a lot is considered a demolition for purposes of this chapter.

2. 2. Relocating a building to a lot within the city is considered new construction and is subject to all requirements applicable to new construction.

3. 3. When a building is relocated to a different lot within ~~in~~ Berkeley, the lot from which the building is removed shall be known as the source lot and the lot on which the building is to be sited shall be known as the receiving lot. ~~In such cases all notification requirements apply to both the source and receiving lots.~~

B. Findings. The ~~ZAB may~~Zoning Officer shall approve a ~~Use Permit~~Zoning Certificate to relocate a building upon finding that:

1. ~~The building to be relocated is not in conflict with the architectural character, or resulting development on the building scale of the neighborhood or area to which it will be relocated; and~~

B. 2. ~~The receiving lot provides adequate separation of buildings, privacy, yards, and usable open space. is in conformance with applicable zoning code development standards.~~

23.326.090 Limitations.

A. A. ~~Unsafe, Hazard, or Danger.-~~

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~~1. 4.~~ Notwithstanding anything to the contrary, if a building or structure is unsafe, presents a public hazard, and is not securable and/or is in imminent danger of collapse so as to endanger persons or property, as determined by the city's building official, it may be demolished without a Use Permit.

~~2. 2.~~ The Building Official's determination in this matter shall be governed by the standards and criteria in the most recent edition of the California Building Code that is in effect in the City of Berkeley.

~~B.~~ *Ellis Act.* This chapter shall be applied only to the extent permitted by state law as to buildings which have been entirely withdrawn from the rental market pursuant to the Ellis Act (California Government Code Chapter 12.75).-

B.

Govt. Code section 66300 (SB-330, Housing Crisis Act of 2019)

.....

(d) Notwithstanding any other provision of this section, both of the following shall apply:

(1) An affected city or an affected county shall not approve a housing development project that will require the demolition of residential dwelling units unless the project will create at least as many residential dwelling units as will be demolished.

(2) An affected city or an affected county shall not approve a housing development project that will require the demolition of occupied or vacant protected units, unless all of the following apply:

(A) (i) The project will replace all existing or demolished protected units.

(ii) Any protected units replaced pursuant to this subparagraph shall be considered in determining whether the housing development project satisfies the requirements of Section 65915 or a locally adopted requirement that requires, as a condition of the development of residential rental units, that the project provide a certain percentage of residential rental units affordable to, and occupied by, households with incomes that do not exceed the limits for moderate-income, lower income, very low income, or extremely low income households, as specified in Sections 50079.5, 50093, 50105, and 50106 of the Health and Safety Code.

(iii) Notwithstanding clause (i), in the case of a protected unit that is or was, within the five-year period preceding the application, subject to a form of rent or price control through a local government's valid exercise of its police power, and that is or was occupied by persons or families above lower income, the affected city or affected county may do either of the following:

(I) Require that the replacement units be made available at affordable rent or affordable housing cost to, and occupied by, low-income persons or families. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years.

(II) Require that the units be replaced in compliance with the jurisdiction's rent or price control ordinance, provided that each unit is replaced. Unless otherwise required by the affected city or affected county's rent or price control ordinance, these units shall not be subject to a recorded affordability restriction.

(B) The housing development project will include at least as many residential dwelling units as the greatest number of residential dwelling units that existed on the project site within the last five years.

(C) Any existing residents will be allowed to occupy their units until six months before the start of construction activities with proper notice, subject to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1.

(D) The developer agrees to provide both of the following to the occupants of any protected units:

(i) Relocation benefits to the occupants of those affordable residential rental units, subject to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1.

(ii) A right of first refusal for a comparable unit available in the new housing development affordable to the household at an affordable rent, as defined in Section 50053 of the Health and Safety Code, or an affordable housing cost, as defined in 50052.5.

(E) For purposes of this paragraph:

(i) "Equivalent size" means that the replacement units contain at least the same total number of bedrooms as the units being replaced.

(ii) "Protected units" means any of the following:

(I) Residential dwelling units that are or were subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income within the past five years.

(II) Residential dwelling units that are or were subject to any form of rent or price control through a public entity's valid exercise of its police power within the past five years.

(III) Residential dwelling units that are or were occupied by lower or very low income households within the past five years.

(IV) Residential dwelling units that were withdrawn from rent or lease in accordance with Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 within the past 10 years.

(iii) "Replace" shall have the same meaning as provided in subparagraph (B) of paragraph (3) of subdivision (c) of Section 65915.

(3) This subdivision shall not supersede any objective provision of a locally adopted ordinance that places restrictions on the demolition of residential dwelling units or the subdivision of residential rental units that are more protective of lower income households, requires the provision of a greater number of units affordable to lower income households, or that requires greater relocation assistance to displaced households.

(4) This subdivision shall only apply to a housing development project that submits a complete application pursuant to Section 65943 on or after January 1, 2020.

Govt. Code section 65915 (Density Bonus Law)

(c) (1) (A) An applicant shall agree to, and the city, county, or city and county shall ensure, the continued affordability of all very low and low-income rental units that qualified the applicant for the award of the density bonus for 55 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.

(B) (i) Except as otherwise provided in clause (ii), rents for the lower income density bonus units shall be set at an affordable rent, as defined in Section 50053 of the Health and Safety Code.

(ii) For housing developments meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b), rents for all units in the development, including both base density and density bonus units, shall be as follows:

(I) The rent for at least 20 percent of the units in the development shall be set at an affordable rent, as defined in Section 50053 of the Health and Safety Code.

(II) The rent for the remaining units in the development shall be set at an amount consistent with the maximum rent levels for a housing development that receives an allocation of state or federal low-income housing tax credits from the California Tax Credit Allocation Committee.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of all for-sale units that qualified the applicant for the award of the density bonus are persons and families of very low, low, or moderate income, as required, and that the units are offered at an affordable housing cost, as that cost is defined in Section 50052.5 of the Health and Safety Code. The local government shall enforce an equity sharing agreement, unless it is in conflict with the requirements of another public funding source or law. The following apply to the equity sharing agreement:

(A) Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation. The local government shall recapture any initial subsidy, as defined in subparagraph (B), and its proportionate share of appreciation, as defined in subparagraph (C), which amount shall be used within five years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote home ownership.

(B) For purposes of this subdivision, the local government's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any downpayment assistance or mortgage assistance. If upon resale the market

value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.

(C) For purposes of this subdivision, the local government's proportionate share of appreciation shall be equal to the ratio of the local government's initial subsidy to the fair market value of the home at the time of initial sale.

(3) (A) An applicant shall be ineligible for a density bonus or any other incentives or concessions under this section if the housing development is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; subject to any other form of rent or price control through a public entity's valid exercise of its police power; or occupied by lower or very low income households, unless the proposed housing development replaces those units, and either of the following applies:

(i) The proposed housing development, inclusive of the units replaced pursuant to this paragraph, contains affordable units at the percentages set forth in subdivision (b).

(ii) Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a lower or very low income household.

(B) For the purposes of this paragraph, "replace" shall mean either of the following:

(i) If any dwelling units described in subparagraph (A) are occupied on the date of application, the proposed housing development shall provide at least the same number of units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy. If the income category of the household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. For unoccupied dwelling units described in subparagraph (A) in a development with occupied units, the proposed housing development shall provide units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as the last household in occupancy. If the income category of the last household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data

from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(ii) If all dwelling units described in subparagraph (A) have been vacated or demolished within the five-year period preceding the application, the proposed housing development shall provide at least the same number of units of equivalent size as existed at the highpoint of those units in the five-year period preceding the application to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those persons and families in occupancy at that time, if known. If the incomes of the persons and families in occupancy at the highpoint is not known, it shall be rebuttably presumed that low-income and very low income renter households occupied these units in the same proportion of low-income and very low income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(C) Notwithstanding subparagraph (B), for any dwelling unit described in subparagraph (A) that is or was, within the five-year period preceding the application, subject to a form of rent or price control through a local government's valid exercise of its police power and that is or was occupied by persons or families above lower income, the city, county, or city and county may do either of the following:

(i) Require that the replacement units be made available at affordable rent or affordable housing cost to, and occupied by, low-income persons or families. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(ii) Require that the units be replaced in compliance with the jurisdiction's rent or price control ordinance, provided that each unit described in subparagraph (A) is replaced. Unless otherwise required by the jurisdiction's rent or price control ordinance, these units shall not be subject to a recorded affordability restriction.

(D) For purposes of this paragraph, “equivalent size” means that the replacement units contain at least the same total number of bedrooms as the units being replaced.

(E) Subparagraph (A) does not apply to an applicant seeking a density bonus for a proposed housing development if the applicant’s application was submitted to, or processed by, a city, county, or city and county before January 1, 2015.

Govt. Code section 7060 et seq (Ellis Act)

(a) No public entity, as defined in Section 811.2, shall, by statute, ordinance, or regulation, or by administrative action implementing any statute, ordinance or regulation, compel the owner of any residential real property to offer, or to continue to offer, accommodations in the property for rent or lease, except for guestrooms or efficiency units within a residential hotel, as defined in Section 50519 of the Health and Safety Code, if the residential hotel meets all of the following conditions:

(1) The residential hotel is located in a city and county, or in a city with a population of over 1,000,000.

(2) The residential hotel has a permit of occupancy issued prior to January 1, 1990.

(3) The residential hotel did not send a notice of intent to withdraw the accommodations from rent or lease pursuant to subdivision (a) of Section 7060.4 that was delivered to the public entity prior to January 1, 2004.

(b) For the purposes of this chapter, the following definitions apply:

(1) "Accommodations" means either of the following:

(A) The residential rental units in any detached physical structure containing four or more residential rental units.

(B) With respect to a detached physical structure containing three or fewer residential rental units, the residential rental units in that structure and in any other structure located on the same parcel of land, including any detached physical structure specified in subparagraph (A).

(2) "Disabled" means a person with a disability, as defined in Section 12955.3 of the Government Code.

7060.1

Notwithstanding Section 7060, nothing in this chapter does any of the following:

(a) Prevents a public entity from enforcing any contract or agreement by which an owner of residential real property has agreed to offer the accommodations for rent or lease in consideration for a direct financial contribution or, with respect to written contracts or agreements entered into prior to July 1, 1986, for any consideration. Any contract or agreement specified in this subdivision is not enforceable against a person who acquires title to the accommodations as a bona fide purchaser for value (or successors in interest thereof), unless:

(1) the purchaser at the time of acquiring title to the accommodations has actual knowledge of the contract or agreement, or

(2) a written memorandum of the contract or agreement which specifically describes the terms thereof and the affected real property, and which identifies the owner of the property, has been recorded with the county recorder prior to July 1, 1986, or not less than 30 days prior to transfer of title to the property to

the purchaser. The county recorder shall index such a written memorandum in the grantor-grantee index.

As used in this subdivision, “direct financial contribution” includes contributions specified in Section 65916 and any form of interest rate subsidy or tax abatement provided to facilitate the acquisition or development of real property.

(b) Diminishes or enhances, except as specifically provided in Section 7060.2, any power which currently exists or which may hereafter exist in any public entity to grant or deny any entitlement to the use of real property, including, but not limited to, planning, zoning, and subdivision map approvals.

(c) Diminishes or enhances any power in any public entity to mitigate any adverse impact on persons displaced by reason of the withdrawal from rent or lease of any accommodations.

(d) Supersedes any provision of Chapter 16 (commencing with Section 7260) of this division, Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of this code, Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code, Part 2 (commencing with Section 43) of Division 1 of the Civil Code, Title 5 (commencing with Section 1925) of Part 4 of Division 3 of the Civil Code, Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure, or Division 24 (commencing with Section 33000) of the Health and Safety Code.

(e) Relieves any party to a lease or rental agreement of the duty to perform any obligation under that lease or rental agreement.

7060.2

If a public entity, by valid exercise of its police power, has in effect any control or system of control on the price at which accommodations may be offered for rent or lease, that entity may, notwithstanding any provision of this chapter, provide by statute or ordinance, or by regulation as specified in Section 7060.5, that any accommodations which have been offered for rent or lease and which were subject to that control or system of control at the time the accommodations were withdrawn from rent or lease, shall be subject to the following:

(a) (1) For all tenancies commenced during the time periods described in paragraph (2), the accommodations shall be offered and rented or leased at the lawful rent in effect at the time any notice of intent to withdraw the accommodations is filed with the public entity, plus annual adjustments available under the system of control.

(2) The provisions of paragraph (1) shall apply to all tenancies commenced during either of the following time periods:

(A) The five-year period after any notice of intent to withdraw the accommodations is filed with the public entity, whether or not the notice of intent is rescinded or the withdrawal of the accommodations is completed pursuant to the notice of intent.

(B) The five-year period after the accommodations are withdrawn.

(3) This subdivision shall prevail over any conflicting provision of law authorizing the landlord to establish the rental rate upon the initial hiring of the accommodations.

(b) If the accommodations are offered again for rent or lease for residential purposes within two years of the date the accommodations were withdrawn from rent or lease, the following provisions shall govern:

(1) The owner of the accommodations shall be liable to any tenant or lessee who was displaced from the property by that action for actual and exemplary damages. Any action by a tenant or lessee pursuant to this paragraph shall be brought within three years of the withdrawal of the accommodations from rent or lease. However, nothing in this paragraph precludes a tenant from pursuing any alternative remedy available under the law.

(2) A public entity which has acted pursuant to this section may institute a civil proceeding against any owner who has again offered accommodations for rent or lease subject to this subdivision, for exemplary damages for displacement of tenants or lessees. Any action by a public entity pursuant to this paragraph shall be brought within three years of the withdrawal of the accommodations from rent or lease.

(3) Any owner who offers accommodations again for rent or lease shall first offer the unit for rent or lease to the tenant or lessee displaced from that unit by the withdrawal pursuant to this chapter, if the tenant has advised the owner in writing within 30 days of the displacement of the tenant's desire to consider an offer to renew the tenancy and has furnished the owner with an address to which that offer is to be directed. That tenant, lessee, or former tenant or lessee may advise the owner at any time during the eligibility of a change of address to which an offer is to be directed.

If the owner again offers the accommodations for rent or lease pursuant to this subdivision, and the tenant or lessee has advised the owner pursuant to this subdivision of a desire to consider an offer to renew the tenancy, then the owner shall offer to reinstitute a rental agreement or lease on terms permitted by law to that displaced tenant or lessee.

This offer shall be deposited in the United States mail, by registered or certified mail with postage prepaid, addressed to the displaced tenant or lessee at the address furnished to the owner as provided in this subdivision, and shall describe the terms of the offer. The displaced tenant or lessee shall have 30 days from the deposit of the offer in the mail to accept the offer by personal delivery of that acceptance or by deposit of

the acceptance in the United States mail by registered or certified mail with postage prepaid.

(c) A public entity which has acted pursuant to this section, may require by statute or ordinance, or by regulation as specified in Section 7060.5, that an owner who offers accommodations again for rent or lease within a period not exceeding 10 years from the date on which they are withdrawn, and which are subject to this subdivision, shall first offer the unit to the tenant or lessee displaced from that unit by the withdrawal, if that tenant or lessee requests the offer in writing within 30 days after the owner has notified the public entity of an intention to offer the accommodations again for residential rent or lease pursuant to a requirement adopted by the public entity under subdivision (c) of Section 7060.4. The owner of the accommodations shall be liable to any tenant or lessee who was displaced by that action for failure to comply with this paragraph, for punitive damages in an amount which does not exceed the contract rent for six months, and the payment of which shall not be construed to extinguish the owner's obligation to comply with this subdivision.

(d) If the accommodations are demolished, and new accommodations are constructed on the same property, and offered for rent or lease within five years of the date the accommodations were withdrawn from rent or lease, the newly constructed accommodations shall be subject to any system of controls on the price at which they would be offered on the basis of a fair and reasonable return on the newly constructed accommodations, notwithstanding any exemption from the system of controls for newly constructed accommodations.

(e) The amendments to this section enacted by the act adding this subdivision shall apply to all new tenancies created after December 31, 2002. If a new tenancy was lawfully created prior to January 1, 2003, after a lawful withdrawal of the unit under this chapter, the amendments to this section enacted by the act adding this subdivision may not apply to new tenancies created after that date.

7060.3

If a public entity determines to apply constraints pursuant to Section 7060.2 to a successor in interest of an owner who has withdrawn accommodations from rent or lease, the public entity shall record a notice with the county recorder which shall specifically describe the real property where the accommodations are located, the dates applicable to the constraints and the name of the owner of record of the real property. The notice shall be indexed in the grantor-grantee index.

A person who acquires title to the real property subsequent to the date upon which the accommodations thereon have been withdrawn from rent or lease, as a bona fide purchaser for value, shall not be a successor in interest for the purposes of this chapter if the notice prescribed by this section has not been recorded with the county recorder at least one day before the transfer of title.

7060.4

(a) Any public entity which, by a valid exercise of its police power, has in effect any control or system of control on the price at which accommodations are offered for rent or lease, may require by statute or ordinance, or by regulation as specified in Section 7060.5, that the owner notify the entity of an intention to withdraw those accommodations from rent or lease and may require that the notice contain statements, under penalty of perjury, providing information on the number of accommodations, the address or location of those accommodations, the name or names of the tenants or lessees of the accommodations, and the rent applicable to each residential rental unit. Information respecting the name or names of the tenants, the rent applicable to any residential rental unit, or the total number of accommodations, is confidential information and for purposes of this chapter shall be treated as confidential information by any public entity for purposes of the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). A public entity shall, to the extent required by the preceding sentence, be considered an “agency,” as defined by subdivision (d) of Section 1798.3 of the Civil Code.

(b) The statute, ordinance, or regulation of the public entity may require that the owner record with the county recorder a memorandum summarizing the provisions, other than the confidential provisions, of the notice in a form which shall be prescribed by the statute, ordinance, or regulation, and require a certification with that notice that actions have been initiated as required by law to terminate any existing tenancies. In that situation, the date on which the accommodations are withdrawn from rent or lease for purposes of this chapter is 120 days from the delivery in person or by first-class mail of that notice to the public entity. However, if the tenant or lessee is at least 62 years of age or disabled, and has lived in their accommodations or unit within the accommodations for at least one year prior to the date of delivery to the public entity of the notice of intent to withdraw pursuant to subdivision (a), then the date of withdrawal of the accommodations of that tenant or lessee shall be extended to one year after the date of delivery of that notice to the public entity, provided that the tenant or lessee gives written notice of their entitlement to an extension to the owner within 60 days of the date of delivery to the public entity of the notice of intent to withdraw. In that situation, the following provisions shall apply:

(1) The tenancy shall be continued on the same terms and conditions as existed on the date of delivery to the public entity of the notice of intent to withdraw, subject to any adjustments otherwise available under the system of control.

(2) No party shall be relieved of the duty to perform any obligation under the lease or rental agreement.

(3) The owner may elect to extend the tenancy on any other unit within the accommodations up to one year after date of delivery to the public entity of the notice of intent to withdraw, subject to paragraphs (1) and (2).

(4) Within 30 days of the notification by the tenant or lessee to the owner of their entitlement to an extension, the owner shall give written notice to the public entity of the claim that the tenant or lessee is entitled to stay in their accommodations or unit within the accommodations for one year after date of delivery to the public entity of the notice of intent to withdraw.

(5) Within 90 days of date of delivery to the public entity of the notice of intent to withdraw, the owner shall give written notice of the owner's election to extend a tenancy under paragraph (3) and the revised date of withdrawal to the public entity and any tenant or lessee whose tenancy is extended.

(6) The date of withdrawal for the accommodations as a whole, for purposes of calculating the time periods described in Section 7060.2, shall be the latest termination date among all tenants within the accommodations, as stated in the notices required by paragraphs (4) and (5). An owner's further voluntary extension of a tenancy beyond the date stated in the notices required by paragraphs (4) and (5) shall not extend the date of withdrawal.

(c) The statute, ordinance, or regulation of the public entity adopted pursuant to subdivision (a) may also require the owner to notify any tenant or lessee displaced pursuant to this chapter of the following:

(1) That the public entity has been notified pursuant to subdivision (a).

(2) That the notice to the public entity specified the name and the amount of rent paid by the tenant or lessee as an occupant of the accommodations.

(3) The amount of rent the owner specified in the notice to the public entity.

(4) Notice to the tenant or lessee of their rights under paragraph (3) of subdivision (b) of Section 7060.2.

(5) Notice to the tenant or lessee of the following:

(A) If the tenant or lessee is at least 62 years of age or disabled, and has lived in their accommodations for at least one year prior to the date of delivery to the public entity of the notice of intent to withdraw, then tenancy shall be extended to one year after date of delivery to the public entity of the notice of intent to withdraw, provided that the tenant or lessee gives written notice of their entitlement to the owner within 60 days of date of delivery to the public entity of the notice of intent to withdraw.

(B) The extended tenancy shall be continued on the same terms and conditions as existed on date of delivery to the public entity of the notice of intent to withdraw, subject to any adjustments otherwise available under the system of control.

(C) No party shall be relieved of the duty to perform any obligation under the lease or rental agreement during the extended tenancy.

(d) The statute, ordinance, or regulation of the public entity adopted pursuant to subdivision (a) may also require the owner to notify the public entity in writing of an intention to again offer the accommodations for rent or lease.

7060.5

The actions authorized by Sections 7060.2 and 7060.4 may be taken by regulation adopted after public notice and hearing by a public body of a public entity, if the members of the body have been elected by the voters of the public entity. The regulation shall be subject to referendum in the manner prescribed by law for the ordinances of the legislative body of the public entity except that:

(a) The decision to repeal the regulation or to submit it to the voters shall be made by the public body which adopted the regulation.

(b) The regulation shall become effective upon adoption by the public body of the public entity and shall remain in effect until a majority of the voters voting on the issue vote against the regulation, notwithstanding Section 9235, 9237, or 9241 of the Elections Code or any other law.

7060.6

If an owner seeks to displace a tenant or lessee from accommodations withdrawn from rent or lease pursuant to this chapter by an unlawful detainer proceeding, the tenant or lessee may appear and answer or demur pursuant to Section 1170 of the Code of Civil Procedure and may assert by way of defense that the owner has not complied with the applicable provisions of this chapter, or statutes, ordinances, or regulations of public entities adopted to implement this chapter, as authorized by this chapter.

7060.7

It is the intent of the Legislature in enacting this chapter to supersede any holding or portion of any holding in *Nash v. City of Santa Monica*, 37 Cal.3d 97 to the extent that the holding, or portion of the holding, conflicts with this chapter, so as to permit landlords to go out of business. However, this act is not otherwise intended to do any of the following:

(a) Interfere with local governmental authority over land use, including regulation of the conversion of existing housing to condominiums or other subdivided interests or to other nonresidential use following its withdrawal from rent or lease under this chapter.

(b) Preempt local or municipal environmental or land use regulations, procedures, or controls that govern the demolition and redevelopment of residential property.

(c) Override procedural protections designed to prevent abuse of the right to evict tenants.

(d) Permit an owner to do any of the following:

(1) Withdraw from rent or lease less than all of the accommodations, as defined by paragraph (1) or (2) of subdivision (b) of Section 7060.

(2) Decline to make a written re rental offer to any tenant or lessee who occupied a unit at the time when the owner gave the public entity notice of its intent to withdraw the accommodations, in the manner and within the timeframe specified in paragraph (3) of subdivision (b), or in subdivision (c), of Section 7060.2. But the requirements of this paragraph shall not apply to:

(A) A unit that was the principal place of residence of any owner or owner's family member at the time of withdrawal, provided that it continues to be that person's or those persons' principal place of residence when accommodations are returned to the rental market as provided in this section.

(B) A unit that is the principal place of residence of an owner when the accommodations are returned to the rental market, if it is the owners' principal place of residence, at the time of return to the rental market, as provided in this section. If the owner vacates the unit within 10 years from the date of withdrawal, the owner shall, within 30 days, offer to re rent if required under this paragraph.

(e) Grant to any public entity any power which it does not possess independent of this chapter to control or establish a system of control on the price at which accommodations may be offered for rent or lease, or to diminish any such power which that public entity may possess, except as specifically provided in this chapter.

(f) Alter in any way either Section 65863.7 relating to the withdrawal of accommodations which comprise a mobilehome park from rent or lease or subdivision (f) of Section 798.56 of the Civil Code relating to a change of use of a mobilehome park.



PLANNING COMMISSION

Notice of Public Hearing

Wednesday, February 1, 2023

Zoning Ordinance Amendments to the “Demolition and Dwelling Unit Controls”, Berkeley Municipal Code Section 23.326

The Planning Commission of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 23.412, on **Wednesday, February 1, 2023 at 7:00 p.m.** **The hearing will be conducted via Zoom** – see the Agenda for meeting details. The agenda will be posted on the Planning Commission website (<https://www.cityofberkeley.info/PC>) no later than 5pm on January 27, 2022.

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

PROJECT DESCRIPTION: Public hearing to review proposed amendments to the Demolition Ordinance, Berkeley Municipal Code section 23.326, and forward a recommendation to the City Council.

PUBLIC COMMENT & FURTHER INFORMATION

All persons are welcome to attend the virtual hearing and will be given an opportunity to address the Commission. Comments may be made verbally at the public hearing and/or in writing before the hearing. Written comments must be directed to:

Zoe Covello
Planning Commission Clerk
Email: zcovello@CityofBerkeley.info

City of Berkeley, Land Use Planning Division
1947 Center Street, 2nd Floor
Berkeley, CA 94704

Correspondence received by **12 pm on Monday, January 23, 2023**, will be included as a Communication in the agenda packet. Correspondence received after this deadline will be conveyed to the Commission and the public in the following manner:

- Correspondence received by **12pm on Monday, January 30, 2023** will be included in a Supplemental Packet, which will be posted to the online agenda as a Late Communication one day before the public hearing.
- Correspondence received by 5pm one day before this public hearing, will be included in a second Supplemental Packet, which will be posted to the online agenda as a Late Communication by 5pm on the day of the public hearing.

- Correspondence received after 5pm one day before this public hearing will be saved as part of the public record.

Note: It will not be possible to submit written comments at the meeting.

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. All materials will be made available via the Planning Commission agenda page online at <https://www.cityofberkeley.info/PC/>.

FURTHER INFORMATION

Questions should be directed to Steven Buckley, at (510) 981-7411 or stbuckley@cityofberkeley.info. Current and past agendas are available on the City of Berkeley website at: <https://www.cityofberkeley.info/PC/>



Planning and Development Department
Land Use Planning Division

DATE: February 1, 2023

TO: Members of the Planning Commission

FROM: Ashley James, Senior Planner

SUBJECT: Pacific Steel Casting Zoning and General Plan Amendments and Environmental Impact Report (EIR) Scoping Session

SUMMARY

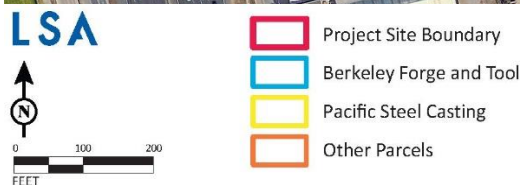
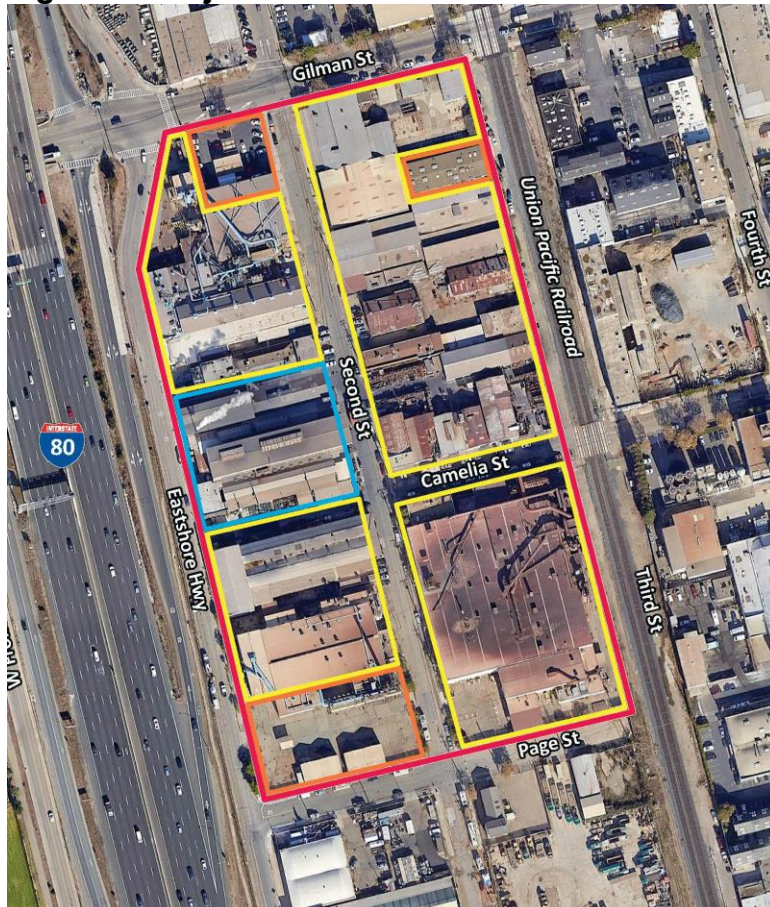
- City staff are preparing Zoning Ordinance and Zoning Map amendments and associated General Plan amendments to re-zone an approximately 11-acre area within the West Berkeley Plan Area from M (Manufacturing) to a new district entitled M-RD (Manufacturing, Research and Development). The 11-acre area contains 18 parcels and is bounded by Gilman Street to the north, the Union Pacific Railroad tracks to the east, Page Street to the south, and Eastshore Highway to the west (**Figure 1**). The Planning Commission is asked to receive a staff presentation and provide feedback on the proposed zoning and associated West Berkeley Plan and General Plan changes.
- The City has determined, based on the scale and scope of the proposed project, that an Environment Impact Report (EIR) is required to evaluate the potential physical environmental impacts that could result from future development in accordance with the new zoning. A Notice of Preparation (NOP) to gather input from agencies and the public was released on December 27, 2022 for a 60-day comment period ending on February 27, 2023. In this scoping session, the Planning Commission will receive a status report on the NOP, consider public testimony, and provide comments on the scope and content of the EIR.

BACKGROUND

On April 20, 2021, the City Council referred to the Planning Commission creation of a zoning overlay at the former Pacific Steel Casting (PSC) property in West Berkeley, which is currently zoned Manufacturing (M), and re-designate it as Mixed Use - Light Industrial (MU-LI) due to the unique issues of public concern associated with this property (described below); specifically, include in the PSC zoning overlay allowances to enable all MU-LI uses and override any existing constraints in the Berkeley Municipal

Code for Zoning (Title 23) on such MU-LI uses for the PSC property, such as manufacturing floor area replacement requirements (**Attachment 1**).

Figure 1: Project Area

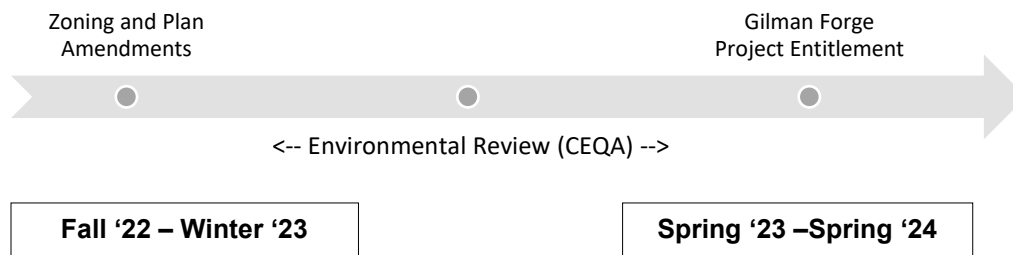


In October of 2022, the Planning Department received a zoning map amendment application from Rhoades Planning Group on behalf of SPUR Capital, pursuant to BMC Chapter 23.412 (Zoning Ordinance Amendments), to re-designate the zoning of 15 parcels over an 8.16-acre area at the PSC and Berkeley Forge and Tool properties from M to MU-LI, consistent with the Council referral. That application includes only the parcels that SPUR Capital has site control over, referred to here as “Gilman Forge,” and is thus slightly smaller than the total project area being considered in the rezoning and EIR. According to the applicant statement, the project sponsor intends to submit a development project application following completion of the rezoning and EIR. The

applicant statement provides preliminary information regarding the possible uses and development envelope of the project (**Attachment 2**).

Environmental review will fully evaluate the potential physical effects to the environment of the proposed policy changes as well as the proposed future development project (**Figure 2**). The role of the Planning Commission is to provide comments on the draft zoning and plan amendments, the NOP, and the EIR when it becomes available, and make a recommendation to the City Council for decision.

Figure 2: Planning and Entitlement Process



PROJECT DESCRIPTION

The project being analyzed in the EIR is the proposed zoning text and map amendments and associated General Plan amendments, as well as the proposed Gilman Forge concept plan. The EIR will evaluate the maximum reasonable development scenario of the rezone and associated general plan amendments, as well as demolition of the existing buildings, construction of up to 1,000,000 square feet of nonresidential space at a maximum building height of 105 feet, and up to 2,000 off-street automobile parking spaces. The proposed M-RD zoning district regulations are described in greater detail below. The EIR will also evaluate the impact of the Gilman Forge concept plan, located on an approximately 8.16-acre portion of the project area, to the extent that such development is foreseeable at the time of preparation of this programmatic EIR. The buildout of the concept plan is assumed to be consistent with the development standards of the proposed M-RD zoning district.

Rationale for Approach to Re-Zoning from M to M-RD

As stated above, the Council referral is to create a zoning overlay at the former PSC property in West Berkeley, which is currently zoned M, and re-designate it as MU-LI, and include in the overlay allowances to enable all MU-LI uses and override existing constraints on MU-LI uses for the property. Staff is recommending that a new zoning district be created for the following reasons.

Staff evaluated the utility of an overlay district as a means of achieving the objective of the referral, and noted that an overlay district is typically applied over multiple underlying districts as a more efficient method of applying additional regulations to serve a particular public purpose (e.g., airport noise, creek setbacks). An overlay typically modifies development standards and administrative processes; it does not

usually modify allowed land uses. As the underlying zoning at the site is M and the referral seeks to reduce constraints on allowed uses, Staff found that an overlay is not the preferred zoning method to achieve the objectives of the referral.

The referral also intends to re-zone the site from M to MU-LI and override existing constraints on MU-LI uses to enable redevelopment. The property representative has identified certain constraints in the MU-LI regulations, including allowed uses, maximum height, and protections on existing manufacturing uses, that would interfere with their intended development. Staff found that re-zoning to MU-LI with exceptions would be inefficient in that the zoning would essentially be mooted by the exceptions. Therefore, staff is recommending creation of a new district – Manufacturing, Research & Development (M-RD) – that is consistent with the existing adopted Plans for the area and General Plan Manufacturing land use designation, helps achieve the objectives of the referral and zoning map amendment application, and facilitates implementation (i.e., does not require Variances or other exceptions to MU-LI standards on a project-by-project basis).

The Office of Economic Development has prepared a report that provides context into the current and projected economic conditions in West Berkeley to help inform the City's approach to addressing the Council referral. Specifically, the report provides information about the city's economy and the innovation sector in particular – advanced manufacturing, software, life sciences, clean technology, food tech, and other science, technology, engineering and math (STEM) industries – such as employment, wages, wealth creation, social impacts and location decisions. A discussion of the economic conditions and impacts of the proposed rezoning within the West Berkeley industrial area is also provided (**Attachment 4**).

M-RD Zoning District Boundary

As shown in Figure 1 above, Staff propose that the M-RD district boundary encompass the 15 parcels that make up the PSC and Berkeley Forge and Tool properties, as well as three additional parcels in the immediate vicinity, resulting in a two-block area bounded by Gilman Street to the north, the Union Pacific Railroad tracks to the east, Page Street to the south, and the Eastshore Highway to the west consisting of 11 acres over 18 parcels. The three additional parcels are the following:

- 1306 Third Street: A 6,204 square-foot parcel developed with a two-story, approximately 6,000 square-foot building containing three live/work units, which is a legal non-conforming use.
- 600 Gilman Street: A 11,625 square-foot parcel developed with a one-story, approximately 1,000 square-foot building containing a vehicle rental service.
- 1433 Eastshore Hwy: A 38,850 square-foot parcel developed with a one-story metal building totaling approximately 1,944 square feet containing a recycled materials processing use.

The proposed boundary would be consistent with the Council referral to re-zone the PSC property and includes the Berkeley Forge and Tool properties that are part of the

applicant-initiated zoning map amendment. The additional three parcels would complete the two-block boundary to facilitate potential future development. More information about each parcel included in the district, including address, APN, parcel size, and existing use, is provided in Attachment 3.

Proposed District Intent and Purposes

The proposed M-RD district would be consistent with the Manufacturing land use designation and adopted plans, and would further the objectives of the Council referral and zoning map amendment application.

General Plan Land Use Element. The Manufacturing designation is intended to maintain and preserve areas of Berkeley for manufacturing and industrial uses necessary for a multi-faceted economy and job growth, and the appropriate uses are identified in the West Berkeley Plan.¹ The General Plan Land Use Element policy regarding Industrial Areas is to take actions that will achieve the three purposes of the West Berkeley Plan:

1. Maintain the full range of land uses and economic activities including residences, manufacturing, services, retailing, and other activities in West Berkeley.
2. Maintain the ethnic and economic diversity of West Berkeley's resident population.
3. Maintain and improve the quality of urban life, environmental quality, public and private service availability, transit and transportation, and aesthetic and physical qualities for West Berkeley residents and workers.²

West Berkeley Plan. Accordingly, the goal of the West Berkeley Plan Land Use Element is to provide for a continued economic and land use mix, incorporating manufacturing, other industrial, retail and office/laboratory uses, to benefit Berkeley residents and businesses economically, benefit the City government fiscally, and promote the varied and interesting character of the area.³ Policies under this goal speak to:

- Retaining sufficient land and buildings to maintain manufacturing employment;
- Providing, through zoning districts, development standards, the appropriate tools to expand the light manufacturing sector; and
- Providing space and designating appropriate locations for office, service and laboratory businesses, particularly growing Berkeley based businesses which are particularly suited to West Berkeley's physical environment.

Proposed M-RD District. The proposed purposes of the M-RD district are to:

¹ City of Berkeley General Plan, *Land Use Element*. Land Use Classifications – Manufacturing, page LU-24. [02_Land Use Element-FINAL.pdf \(berkeleyca.gov\)](#)

² City of Berkeley General Plan, *Land Use Element*. Element Objectives, Policy LU-33, page LU-17. [02_Land Use Element-FINAL.pdf \(berkeleyca.gov\)](#)

³ City of Berkeley West Berkeley Plan, *Land Use Element*. Goal 1, page 34. [12/14/1993; CLK - Resolution: City Council: 57301; \(berkeleyca.gov\)](#)

1. Implement the West Berkeley Plan Manufacturing, Research and Development District designation;
2. Support a mix of industrial and heavy commercial uses, such as light manufacturing and research and development, particularly those which retain a diversity of employment opportunities in West Berkeley and can provide high quality employment for people at all educational levels and add significantly to the tax base;
3. Allow office and laboratory uses that support light industrial and research and development uses, and provide for high employment density;
4. Provide opportunities for an urban campus-like environment with high-quality design and site planning that includes amenities for employees and visitors;
5. Support the development of industrial uses which satisfy performance standards that protect the environment; and
6. Facilitate land uses that improve the quality of the West Berkeley environment, while allowing existing industrial uses.

While a number of industrial uses are allowed, this district is more restrictive with regard to heavy industrial uses than the Manufacturing (M) or Mixed Manufacturing (MM) districts in order to maintain and improve the quality of the West Berkeley environment. Further, the proposed uses are tightly targeted to a mix of light manufacturing, research and development (R&D), laboratory and office uses to provide for high-quality employment density for people at all educational levels.

Proposed Allowed and Prohibited Uses

The M-RD district would permit a variety of uses, including office, industrial and heavy commercial, laboratory, light manufacturing, and R&D, which would primarily be subject to the permit requirements of the MU-LI district. This proposed set of allowed uses would help ensure that the mix of industrial and heavy commercial uses provide high-quality employment for people at educational levels, add significantly to the tax base, and support uses that improve the quality of the West Berkeley environment. The existing live/work use at 1306 Third Street would continue to be legally non-conforming and the existing vehicle rental use at 600 Gilman Street would become non-conforming.

Staff are proposing a narrower set of allowed uses than the MU-LI district for consistency with the objectives of the 2021 Council referral and purposes of the M-RD district listed above. The following uses allowed in the MU-LI district that would be prohibited in the M-RD district are:

- *Public and Quasi-Public, Retail and Food and Alcohol Service, Lodging, Entertainment and Assembly, Vehicle Service and Sales use categories:* Club/lodge, Retail, Theaters, and Vehicle Service and Sales, except for Alternative Fuel Stations.
- *Industrial and Heavy Commercial use category:* Bus/Cab/Truck/Public Utility Depot, Commercial Excavation, Contractors Yard, Construction Products Manufacturing, Recycled Materials Processing, and Recycling Redemption Center.

- *Incidental and miscellaneous use category:* Live Entertainment, Art/Craft Studios, Live/Work, Public Markets, and Urban Agriculture.

Proposed Development Standards

While the full zoning district text will be developed over the next several months and presented to the Planning Commission for a recommendation to Council with the Final EIR, staff has developed basic standards to set a project description for analysis in the EIR. Table 1 below provides a summary of the proposed development standards along with the policy rationale. Each regulation is further discussed below. Overall, the proposed development standards are consistent with the MU-LI district standards, except for changes to the maximum allowed height, maximum lot coverage, and minimum vehicle parking. Staff are presenting additional standards that could be included to meet the intent and purposes of the district but are not required as part of the EIR project description.

Table 1. Summary of Proposed Zoning Regulations

Regulation	Existing M Standard	Proposed M-RD Standard	Rationale
Maximum Height	45 feet	105 feet	Facilitate construction of buildings with minimum floor-to-floor heights and floor plates for allowed uses (e.g. 20-foot ground-floor height, smaller floorplates)
Maximum Floor Area Ratio (FAR)	2.0	2.0	Maintain maximum buildout evaluated in General Plan EIR
Minimum Setbacks, and Building Separation	Not regulated	Not regulated	Maintain existing development pattern in Manufacturing districts.
Maximum Lot Coverage	Not regulated	50 percent	Provide opportunities for an urban campus-like environment that includes amenities for employees and visitors.
Minimum Off-Street Parking and Minimum Bicycle Parking	Vehicle: See BMC Table 23.322-4	Vehicle: Same as Table 23.322-4, with following changes: <ul style="list-style-type: none"> • All non-residential uses except uses listed below: 1 per 1,000 sq.ft. • Laboratories: 1 per 1,000 sq.ft. • Storage, warehousing, and wholesale trade: 1, per 1,000 sq.ft. 	Provide flexibility for future users and acknowledge current Transportation Demand Management practices.

	Bicycle: 1 per 2,000 sq.ft.	Bicycle: Same requirements as existing for non-residential uses	Maintain existing Manufacturing district standard
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Maximum FAR

No changes are proposed to the existing maximum FAR of 2.0 allowed in the M district. As the total area of the proposed M-RD district is approximately 463,549 square feet, the maximum buildout of approximately 927,098 square feet of gross floor area would be the same amount that was previously evaluated in the General Plan and West Berkeley Plan and the associated EIRs. In other words, development within this district would not exceed the amount of development already anticipated in the area.

Maximum Building Height

The proposed maximum building height of 105 feet is higher than the current maximum of 45 feet allowed in the M district. The proposed maximum is supported by a recommendation in the Council referral to enable all MU-LI uses and override any existing constraints in the Zoning Ordinance on such uses. Allowed uses in both the MU-LI and proposed M-RD district include research and development and laboratories, which require certain building design characteristics that necessitate additional building height allowances. This topic was addressed as part of the Bayer Development Agreement process⁴ and in the current zoning map amendment application, which is summarized below:

- **Minimum Floor Heights:** The nature of research and development and laboratory uses can include large pieces of machinery, deliveries, equipment, and ductwork that require taller ceiling heights and highly reinforced floors. These uses generally require 20-foot ground-floor heights and 16.5-foot upper story heights, measured floor to floor, in order to provide leasable space, which would result in a two-story building under the existing 45-foot height limit, impacting the feasibility of future development.
- **Building Modulation and Variation:** The average floor plate size for research and development and laboratory uses is approximately 35,000 square feet, and is usually no larger than 50,000 square feet. Floor plates larger than 50,000 sq. ft. can result in operational inefficiencies given the requirements for laboratory uses that include equipment, air circulation and structural integrity, and subsequent impacts on the functionality and mechanical, electric, and plumbing (MEP) infrastructure. Additionally, the privacy, safety and security needs of these tenants makes a multi-tenant approach to leasing less attractive than other uses.

⁴ October 20, 2021. *Public Hearing on Bayer Development Agreement, Attachment 3.F, Report on Justification for Heights*. Planning Commission. [2021-10-20 PC Agenda Packet.pdf \(berkeleyca.gov\)](https://www.berkeleyca.gov/2021-10-20_PC_Agenda_Packet.pdf)

Within Berkeley, the Amended and Restated Bayer Development Agreement allows a maximum height of 80 feet for production uses (similar to Pharmaceuticals Manufacturing) and 65 feet for other uses (Administration, Laboratory, Utility, Warehouse) in the campus.⁵ Since the West Berkeley Plan was adopted in 1993, three variances have been approved to allow construction of buildings intended for research and development and laboratory uses that range from 60 to 74 feet in height.⁶ A common finding among the variances granted is that unique building requirements for these uses justify additional height. Outside of Berkeley within the Bay Area region, maximum height limits in districts that allow research and development and laboratory uses range from 35 to 100 feet, and a few do not regulate maximum height. Some cities provide flexibility by offering discretionary permit procedures such as awarding 'bonus height' if the project meets certain community goals, including providing community benefits, above a base allowed height. Assuming that buildings developed in the proposed M-RD zoning district would have a ground floor height of 20 feet with subsequent floors at a height of 16.5 feet, the maximum height of 105 feet would allow up to six stories.⁷

Additional height for buildings that contain other uses, such as for administrative purposes (offices, conference rooms, cafeteria, etc.), can provide benefits for employees and visitors. For example, additional height can free up floor area that can result in the development of amenities and open spaces that will provide a social benefit, as well as help attract and retain talent. A taller building can occupy a smaller footprint than would otherwise be feasible, allowing opportunities to include on-site public open space, landscaping, and street trees, bioswales to capture stormwater, and pedestrian and bicycle facilities. These benefits are consistent with the purposes of the proposed M-RD district as well as the General Plan Land Use Element Policy LU-33 to "...improve the quality of urban life, environmental quality...and aesthetic and physical qualities for West Berkeley residents and workers."

Lot Coverage, Setbacks and Building Separation

While lot coverage is not currently regulated in any Manufacturing district, the proposed M-RD zoning sets the maximum at 50 percent. The proposed maximum was developed assuming a FAR of 2.0 and minimum building height of 4 stories on parcels in the project area. Regulating lot coverage in this district would support development of on-site open space and green space associated with new development, consistent with the purposes of the district and policies of the General Plan and West Berkeley Plan. Setbacks and minimum building separation would not be regulated, similar to other Manufacturing districts.

⁵ November 30, 2021. *Bayer Healthcare LLC – Amended and Restated Development Agreement*. City Council. [City Council Report ##-##-#### \(berkeleyca.gov\)](#)

⁶ 742 Grayson: 74 feet (ZP2021-0161); 740 Heinz: 74 feet (UP05-10000017); 725 Potter: 45 feet, four stories (UP01-10000047).

⁷ Four-story building: between 70 to 85 feet; Five-story building: 86 to 102 feet; Six-story building: 103 to 118 feet.

Minimum Off-Street Vehicular Parking and Bicycle Parking

Minimum parking requirements in Manufacturing districts vary depending on the type of use, from a low of 1 per 1,500 square feet for buildings over 10,000 square feet in size that contain manufacturing uses to a high of 1 per 300 square feet for food service establishments and medical practitioners.⁸ The proposed minimum parking requirements of the M-RD district would be set at 1 per 1,000 square feet for laboratories and other uses not otherwise listed in Table 23.322-4, which include research and development and office. The proposed change would standardize the off-street requirement among these allowed uses, acknowledging the fact that multiple uses may occupy different portions of one building at any time and the amount of floor area dedicated to one use may change over time.

The proposed off-street parking minimum also considers the amount of parking demanded by recently approved, similar developments in the vicinity. For example, the Bayer Development agreement includes a minimum parking ratio of 1 per 1,000 square feet for production and laboratory uses; the project at 742 Grayson Street sought and was granted a parking reduction to allow 325 spaces where 380 are the minimum; and the project at 600 Addison provided the minimum amount required. Further, the proposed minimum supports current Transportation Demand Management (TDM) practices to reduce vehicle miles traveled by lowering the amount of off-street parking required, and is consistent with the policies of the West Berkeley Plan to provide “through...development standards...space...for expansion of manufacturing firms, particularly the growing light manufacturing sector” by freeing up space for new gross floor area that would otherwise be reserved for parking.⁹

Additional Development Standards

The Planning Commission is asked to provide feedback on the following additional development standards, as well as any other topics not addressed that Staff should consider in developing the zoning text.

- **Minimum Open Space**: A minimum open space requirement is not currently required in any Manufacturing district; however, Staff notes that open space could be complementary to the proposed maximum height limit, as the additional height would free up space to provide amenities. Looking to recent projects entitled in the Manufacturing districts, open space has been provided as part of the 600 Addison Street project, totaling 75,000 square feet; at 742 Grayson Street (50,000 square feet); and the Bayer campus (at least 9 acres by year 30 of the development agreement). An open space requirement would help further the purpose of the M-RD district to provide opportunities for an urban campus-like environment that includes amenities for employees and visitors. Additionally, the proposed requirement is supported by General Plan Land Use Policy LU-33 to “...improve the quality of urban

⁸ [BMC Section 23.322.030\(C\)](#)

⁹ City of Berkeley West Berkeley Plan, *Land Use Element*. Policy 1B, page 34. [12/14/1993; CLK - Resolution; City Council; 57301; \(berkeleyca.gov\)](#)

life, environmental quality...and aesthetic and physical qualities for West Berkeley residents and workers.”

The City of Berkeley similarly regulates open space in the Commercial – Downtown Mixed Use (C-DMU) District by requiring at least 1 square foot of privately-owned public open space per 50 square feet of commercial floor area. Looking to other jurisdictions such as Emeryville, open space in the M-RD district could be provided as either common or privately-owned public open space. Common open space is defined as: fields, courtyards, sport courts, pedestrian paths, outdoor eating areas, landscaping, gardens and similar uses, and could be located at the ground level, on terraces above the ground level, and/or the roof.

- Site and Building Design Standards: The Physical Form Element of the West Berkeley Plan identifies Gilman Street as an Industrial Entry Corridor and considers the question of how the area may be improved as an entry corridor while recognizing that it is to remain an industrial corridor. The Plan suggests that the answer may be improved design of private sites and the public right-of-way by, for example, strengthening the “street wall without losing industrial utility”, creating a setting where industrial buildings “turn their faces” to Gilman through greater design uniformity that improves the street image.¹⁰ Further, Goal 3 of the Physical Form Element is to “visually improve the...the entry corridors into West Berkeley.” Consistent with the adopted Plan, a proposed purpose of the M-RD zoning is to encourage an urban campus-like environment with high-quality design and site planning that includes amenities for employees and visitors. Although site and building design standards are not included in other Manufacturing districts, they have been included in two recently-adopted zoning districts – the Adeline Corridor (C-AC) and Residential BART Mixed-Use (R-BMU). Potential topic areas include:
 - Building placement and orientation:
 - Requiring main building entrances to face Second Street.
 - Facades:
 - Requiring a minimum amount of articulation on all facades facing publicly accessible open space and/or public streets.
 - Improving areas between the building and front property line, or between a building and open space or public right-of-way, with pedestrian-scale amenities.
 - Building colors and materials:
 - Requiring a minimum number of colors, differentiating the base, middle and top, etc.
 - Ground floor street frontages:
 - Requiring a minimum ground-story height.
 - Green roofs or other building sustainability features.

¹⁰ City of Berkeley West Berkeley Plan, *Physical Form Element*. West Berkeley’s Entry Corridors, Gilman St. – Industrial Entry Corridor, page 134. [12/14/1993; CLK - Resolution; City Council; 57301; \(berkeleyca.gov\)](#)

- Parking location, screening and landscaping:
 - Light screening
 - Percent of off-street parking provided in surface lots versus parking structures.

General Plan and West Berkeley Plan Amendments

The proposed zoning text and map amendments require associated amendments to the General Plan and West Berkeley Plan to ensure consistency between the Zoning Ordinance and the General Plan.¹¹ The General Plan and West Berkeley Plan changes will add the new zoning district (Manufacturing, Research and Development) to the Manufacturing land use classification. Pursuant to BMC Chapter 22.04, the Planning Commission will be asked to consider these proposed amendments with the proposed zoning text and map amendments and EIR.

DISCUSSION

The purpose of this scoping meeting is to receive comments from the Planning Commission and the public on the scope and content of the EIR. These comments, along with the comments received through the NOP review period, will be considered in the preparation of the EIR. The result of the EIR analysis will inform the zoning changes and the recommendations submitted to the City Council for adoption. The Planning Commission should review the NOP, provide comments on the scope and content of the EIR, and receive comments from members of the public, organizations and interested agencies on issues the EIR should address. Written comments can be directed in writing to Ashley James, Senior Planner either by mail or electronically:

Land Use Planning Division
1947 Center Street, 2nd Floor
Berkeley, CA 94704

AJames@cityofberkeley.info.

Comments must be received on or before 5pm on Monday, February 27, 2023.

The Planning Commission is also requested to provide feedback on the proposed zoning text and associated West Berkeley Plan and General Plan changes.

NEXT STEPS

The Planning Department has hired LSA to prepare the CEQA analysis, including the NOP. This scoping meeting informs the community and public agencies about the Zoning Text, Map and General Plan Amendments and EIR, and solicits comments from the Planning Commission and the public regarding the EIR scope, issues of concern, potential alternatives, and mitigation measures. These comments, along with the comments collected through the entire review period, will be considered in the preparation of the EIR. The result of the EIR analysis will inform future Planning

¹¹ The West Berkeley Plan is an amendment to Berkeley's General Plan, providing policies to guide development in West Berkeley.

Commission discussion and the recommendations submitted to the City Council for adoption.

Following the close of the NOP comment period, the Draft EIR will be prepared and circulated for the required 45-day public comment period. Although the Zoning and General Plan Amendments would not approve any physical development (e.g., construction of buildings or infrastructure), the EIR will assume that such actions are reasonably foreseeable future outcomes. Therefore, the EIR will evaluate the potential physical environmental impacts that could result from future actions for implementing the policies and programs, and resulting development, at a programmatic level. To the extent that technical studies have been received as part of the Zoning Map Amendment application, the EIR will evaluate potential impacts at a project-level of detail.

The Draft EIR will also examine a reasonable range of alternatives to the proposed project, including the CEQA-mandated No Project Alternative and other potential alternatives that may be capable of reducing or avoiding potential environmental effects while meeting most of the basic objectives of the project. In addition, the EIR will address cumulative impacts, growth inducing impacts, and other issues required by CEQA. The estimated timeline for the public portions of the CEQA review are as follows:

Table 2. Project Timeline

Description	Timing	Public Review Process
60-day NOP Comment Period	December 21, 2022 – February 27, 2023	Scoping Meetings: <ul style="list-style-type: none"> • 2/1/23 Planning Commission • 2/2/23 Landmarks Preservation Commission
Draft EIR released for 45-day review and comment period	Summer-Fall 2023	Planning Commission meeting
Final EIR and Final Zoning and General Plan amendments adopted	Fall-Winter 2023	Planning Commission recommendation; City Council action

ATTACHMENTS

1. City Council Referral to the Planning Commission to Establish a Zoning Overlay at the Pacific Steel Casting Property, April 20, 2021
2. Zoning Map Amendment Application (PLN2022-0079), October 25, 2022
3. Notice of Preparation
4. City of Berkeley, Office of Economic Development. *The Innovation Ecosystem in West Berkeley: An Economic Snapshot*, January 2023.



Rashi Kesarwani
Councilmember, District 1

ACTION CALENDAR
April 20, 2021

TO: Honorable Mayor and Members of the City Council

FROM: Councilmember Rashi Kesarwani (Author), Councilmember Taplin (Co-Sponsor)

SUBJECT: Referral to the Planning Commission to Establish a Zoning Overlay at the Pacific Steel Casting Property

RECOMMENDATION

Refer to the Planning Commission to create a zoning overlay at the Pacific Steel Casting (PSC) property in West Berkeley—currently zoned Manufacturing (M) and redesignate it as Mixed Use - Light Industrial (MULI) due to the unique issues of public concern associated with this property (described below); specifically, include in the PSC zoning overlay allowances to enable all MULI uses and override any existing constraints in the Berkeley Municipal Code for Zoning (Title 23) on such MULI uses for the PSC property.

CURRENT SITUATION AND ITS EFFECTS

The Pacific Steel Casting (PSC) property sits at the corner of Eastshore Highway and Gilman Street, extending two blocks south to Page Street with structures on either side of Second Street. Once a thriving manufacturer of custom industrial-use parts employing more than 650 workers, PSC declared bankruptcy in 2014 and permanently shuttered in 2018. The site is known to have a number of problems of public concern, including: (1) environmental contamination at the site, (2) hundreds of blue-collar workers awaiting receipt of their pension benefits as a result of a future sale of the property, and (3) neighborhood blight and safety concerns resulting from an eight-acre multi-block area of abandoned buildings and graffitied fencing around the property.

The site, which is in close proximity to the highly-anticipated reconstruction of the Gilman Interchange, has generated some interest from real estate and business representatives for numerous mixed-use light industrial uses, such as biotechnology labs, warehouse and commercial uses, or office space, among other possibilities. The site has been on the market for more than two years without a serious buyer

due in part to concerns that the current Manufacturing zoning designation limits the potential uses of the site to heavy manufacturing only. Because of the difficulty in generating a prospective buyer for the PSC site—more than two years have elapsed since the property was first put on the market—and the issues of public concern noted above, a zoning overlay specifically for the PSC site is recommended. This referral and establishment of a zoning overlay signals to prospective buyers that the City is eager to see this site reinvented and contributing to our tax base and the vitality of our post-Covid local economy.

BACKGROUND

Established in 1934 and owned for more than 80 years by the Genger and Delsol families, PSC declared bankruptcy in 2014. Prior to that, a worker class action lawsuit was filed in 2011 against the company for wage theft.¹

In 2014, the company was purchased by Speyside Equity for \$11.3 million. Until that time, the company had been generating \$100 million in sales annually. Speyside turned the assets of PSC into a limited liability company and pledged to honor the collective bargaining agreements with the union representing the workers, including assuming pension liabilities and paying workers' health benefits.² The new company, Pacific Steel Casting LLC, however, failed to pay those benefits in part due to growing financial insecurity prompted by plummeting gas and oil prices which limited the need for production, and in part due to increased competition from China. It was also later discovered that Speyside used suspect financial practices that further drove the company into the ground.³

According to reporting from Berkeleyside, "The Speyside Fund, Speyside Equity, Alcast Company of Illinois, various business partners and managers, 'looted' \$14.5 million from the West Berkeley company over a four-year period, and justified the siphoning off by 'cooking' the books, according to the action filed by Sarah L. Little, the bankruptcy trustee."⁴ These legal entanglements encumber the land for any potential buyers, as it is predicted it will take between \$27 to \$30 million to make the workers and all the past creditors whole. This is in addition to the costs it will take for the environmental remediation of the property.

FISCAL IMPACT

¹ See Berkeleyside, Nov. 7, 2019 article, "Buyers of Pacific Steel Casting 'looted' its assets, made 'insider deals,' according to bankruptcy trustee:"

<https://www.berkeleyside.com/2019/11/07/buyers-of-pacific-steel-casting-looted-its-assets-made-insider-deals-according-to-bankruptcy-trustee>

² See Berkeleysides' Dec. 12, 2017 article, "Temporary reprieve for workers: Pacific Steel Casting to remain open through March:" <https://www.berkeleyside.com/2017/12/12/reprieve-workers-berkeleys-pacific-steel-casting-remain-open-march>

³ See Berkeleysides' Nov. 7, 2019 article, ""Buyers of Pacific Steel Casting 'looted' its assets, made 'insider deals,' according to bankruptcy trustee:" *Op Cit.*

⁴ Berkeleyside, Nov. 7, 2019, *Op. Cit.*

Staff time to facilitate the Planning Commission referral and prepare language for the zoning overlay.

ENVIRONMENTAL SUSTAINABILITY

The PSC site requires considerable environmental remediation. A property buyer would address all of the environmental clean-up issues, contributing to a revitalization of West Berkeley's Gilman District and responsible stewardship of the land. The 2014 Atwell, LLC report commissioned by Speyside Equity, LLC concluded that substances such as arsenic, petroleum hydrocarbons, tetrachloroethylene and trichloroethylene and others were present in samplings taken during the environmental investigation of the site.

RATIONALE FOR RECOMMENDATION

Creating a zoning overlay to enable the PSC site to be zoned MULI will increase the desirability of this property for prospective buyers. This in turn could reap many public benefits once the site is sold. First and foremost, it could enable former PSC workers to receive their pension benefits. It would also result in an environmentally sound property and contribute to the City's tax base.

CONTACT PERSON

Councilmember Rashi Kesarwani, District 1

(510) 981-7110

Applicant Statement
Gilman Gateway
December 15, 2022

Gilman Gateway will revitalize a 10+ acre, environmentally impacted, vacant, formerly industrial property into Berkeley’s premier research and development and life sciences campus. The Gilman Gateway is composed of the former Pacific Steel Casting and Berkeley Forge and Tool sites. Pacific Steel Casting ceased operations in 2018 and is currently under bankruptcy. Berkeley Forge and Tool is in the process of closing operations. The project provides an opportunity to build on the history of research, development, and manufacturing in West Berkeley and will bring the next era of innovation in life sciences to Berkeley.



The proposed rezoning encompasses the former Pacific Steel Casting and Berkeley Forge and Tool sites, both of which have ceased operations

This application proposes the rezoning of the land generally bounded by Eastshore Highway, Gilman Street, Union Pacific Railroad tracks, and Page Street. The zoning designation is proposed to change from M (Manufacturing) to MU-LI (Mixed-Use Light Industrial). This application is consistent with the Berkeley General Plan Manufacturing land use designation. MU-LI is identified in the General Plan as compatible with the General Plan Manufacturing land use designation.

SPUR Gilman Gateway: Plan



Concept diagram of new Research and Development/Life Science Innovation campus

Rezoning the properties offers numerous financial, social, and environmental benefits to the City and local community. The Gilman Gateway project fulfills the goals of the West Berkeley Plan to facilitate development of multi-parcel sites, attract emerging business sectors, and retain and promote economic diversity in West Berkeley. By restoring derelict, environmentally blighted properties to productive industrial use, creating jobs and tax base in West Berkeley, the Gilman Gateway project will implement the vision of the West

Rezoning Request: Zoning map amendment as identified and supported by the 2021 City Council referral: rezone subject sites from Manufacturing (M) to Mixed Use-Light Industrial (MU-LI). The project team expects that the City will initiate accompanying text amendments, as permitted under BMC Section 23.412.020(B) and in accordance with the Council referral, including:

- Maximum height of 105 feet
- Allowed uses, including Research and Development
- Exemption from MU-LI protected use regulations

Berkeley Plan to maintain and improve the quality of urban life for West Berkeley residents and workers.¹

The proceeds from the sale of the Pacific Steel Casting land—currently held in bankruptcy court—will fund the unpaid pensions of the company's former workers, whose pensions were eliminated when Pacific Steel Casting closed and filed bankruptcy.

The project will also contribute over \$6 million in dedicated special assessments to be used for affordable housing, childcare, schools, and public art.

In addition, the project will also:

- contribute to increased property tax and secondary sales tax benefits to the City
- revitalize and environmentally blighted site;
- create new public open space and landscaping, and install stormwater management systems, where none exist today;
- create new sidewalk and bicycle facilities, supporting community pedestrian and bike travel across the new flyover;
- further Berkeley's history of progressive research and innovation, supporting new jobs at a range of skill levels to train and keep workers and existing businesses in Berkeley, as well as attracting new businesses to further energize the city.

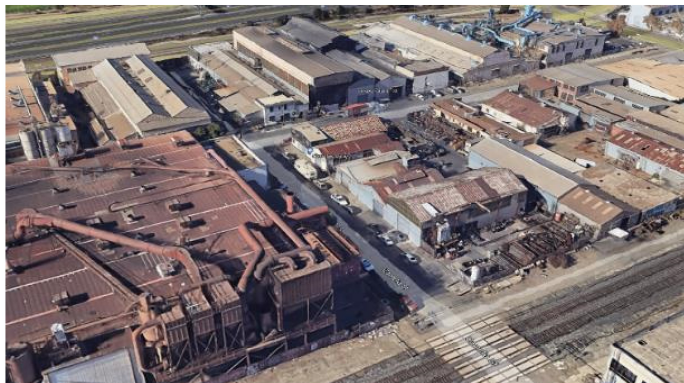
These enhancements will help drive environmental improvements across West Berkeley in the form of improved air quality, social equity, environment, bicycle and pedestrian access, and flooding resilience. This rezoning request is the first step toward making this vision a reality.



The sale of the Pacific Steel Casting site will fund the unpaid pensions of its former workers.



Modern skilled industrial labor employment



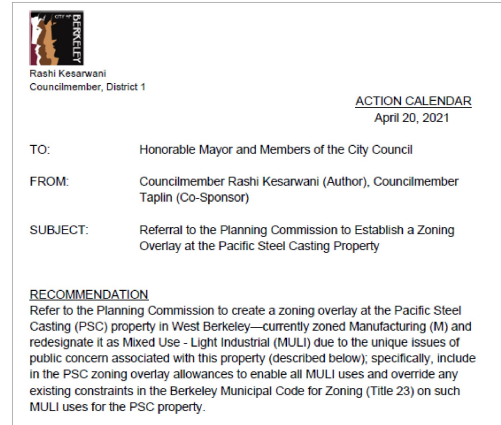
Subject site along Camelia and Second Streets

¹ Resolution No. 57,301-NS Adopting the West Berkeley Plan as an area plan and as an amendment to the City of Berkeley's Master Plan (December 14, 1993).

City Council #1 Referral Priority

In 2021, the City Council approved a Council referral to the Planning Commission to create a zoning overlay at the Pacific Steel Casting property. The referral called for redesignation of the project area as Mixed Use-Light Industrial (MU-LI) to enable allowed MU-LI uses and override existing constraints in the Zoning Ordinance, such as manufacturing floor area replacement requirements. This overlay was intended as an incentive to attract a buyer of the property, which had sat vacant and in limbo, beginning with Pacific Steel Casting's layoffs in 2011 and ending with its declaring bankruptcy in 2014 and closure in 2018.

In 2022, the City Council adopted the rezoning of the Pacific Steel Casting property as its #1 priority out of 46 Council referrals. This action emphasizes the City's support for rezoning, redevelopment of vacant obsolete buildings, environmental clean-up, and sale of the property, which will also aid in the pension payout. In turn, the Council adopted a budget item in its 1st tier of budget priorities to fund City staff positions to assist with project review and approval, and environmental analysis under the California Environmental Quality Act (CEQA).



BERKELEY
 Rashi Kesarani
 Councilmember, District 1

ACTION CALENDAR
 April 20, 2021

TO: Honorable Mayor and Members of the City Council

FROM: Councilmember Rashi Kesarani (Author), Councilmember Taplin (Co-Sponsor)

SUBJECT: Referral to the Planning Commission to Establish a Zoning Overlay at the Pacific Steel Casting Property

RECOMMENDATION
 Refer to the Planning Commission to create a zoning overlay at the Pacific Steel Casting (PSC) property in West Berkeley—currently zoned Manufacturing (M) and redesignate it as Mixed Use - Light Industrial (MULI) due to the unique issues of public concern associated with this property (described below); specifically, include in the PSC zoning overlay allowances to enable all MULI uses and override any existing constraints in the Berkeley Municipal Code for Zoning (Title 23) on such MULI uses for the PSC property.

In 2021, the City Council approved a referral to the Planning Commission to establish a Zoning Overlay at the Pacific Steel Casting site to encourage redevelopment.

Project Site

Located on Berkeley's northwestern edge, the site includes a collection of 15 parcels bisected by Second Street from Gilman Street to Page Street. The subject parcels proposed for rezoning are identified in Table 1 and include approximately 10.2 acres (net of public rights-of-way). In addition to the former Pacific Steel Casting parcels, the rezoning request includes sites owned by Berkeley Forge & Tool, which is in the process of closing its operations.

The project site has been characterized by heavy industrial uses for over a century, evolving from iron and steel industries to warehouses and foundries. Industries operating within and in the vicinity of the site have environmentally impacted soil and soil vapor, as detailed below. The area has always been vehicle, rail, and heavy truck oriented—no sidewalks, no bike facilities, limited street trees, overhead utility poles, and railroad tracks in the street. Since the closure of Pacific Steel Casting, the area has suffered from neglect.



Gilman Street/Berkeley Gateway currently

Table 1: Rezoning Request by Address & APN

Address	APN
1305 Eastshore Hwy	59-2344-1-2
1331 Eastshore Hwy	59-2344-7
1401 Eastshore Hwy	59-2341-4
1421 Second St	59-2340-8-2
1420 Second St	59-2341-5
1330 Second St	59-2344-5-1
1320 Second St	59-2344-4-1
1314 Second St	59-2344-3-1
1333 Second St	59-2345-9
1337 Second St	
1332 Third St	59-2345-8-1
1310 Third St	59-2345-2-2
625 & 631 Camelia St	59-2345-7
635 Camelia St	59-2345-6-1
643 Camelia St	59-2345-4
1311 Second St	
630 & 640 Gilman St	59-2345-1

Site Context

The project site is located at the northwest corner of the city. It is one of the three major gateways to the city from the west. The sites are generally bounded by Interstate 80 and the Frontage Road to the west, Gilman Street to the north, Union Pacific Railroad (UPRR) freight and passenger tracks to the east, and Page Street to the south. Camelia Street extends west to Second Street but does not connect to the Eastshore frontage road.

The subject parcels fall within the General Plan designation for Manufacturing, which includes manufacturing and light industrial use, and the West Berkeley Plan, as shown in Figure 1. The site is zoned for Manufacturing (M) which implements the West Berkeley Plan's Manufacturing designation, as shown in Figure 2.

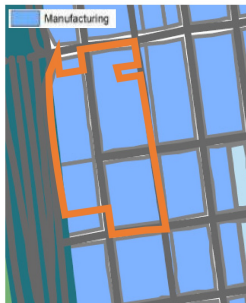


Figure 1: General Plan Map



Figure 2: Zoning & Parcel Map



Figure 3: Vicinity Map, by Zoning District

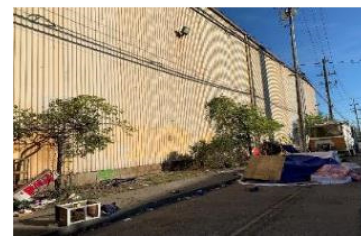
The proposed uses and buildings are compatible with the West Berkeley Plan in that they will develop research and development, and ancillary uses, that meet the West Berkeley Plan's Manufacturing designation; provide a range of job opportunities and wage ranges, including those that do not require advanced degrees. Additionally, the project will improve the quality of the West Berkeley environment by addressing impacts caused by a century of industrial use, and adding new bioretention systems, landscaping, street trees, bicycle improvements and sidewalks, which will create a more inviting, accessible and health inducing urban design.

The surrounding area is also designated Manufacturing under the city's general plan, and zoned Manufacturing (M) and Mixed Use-Light Industrial (MU-LI), as shown in Figure 3. The proposed uses are compatible with the surrounding uses, which include: warehousing, manufacturing, office, research and development, live/work units, wineries and breweries, transfer and recycling centers, restaurants and retail stores. Additionally, the combination of laboratory, office and research & development (R&D) uses envisioned for the subject site would further contribute to the economic and land use diversity in the West Berkeley area.²

² The West Berkeley Plan has as a primary goal to "provide for a continued economic and land use mix, incorporating manufacturing, other industrial, retail and office/laboratory uses, to benefit Berkeley residents and



Most existing buildings are in disrepair, plagued by hazardous materials, and cannot be adaptively reused under current building code requirements and for contemporary R&D.

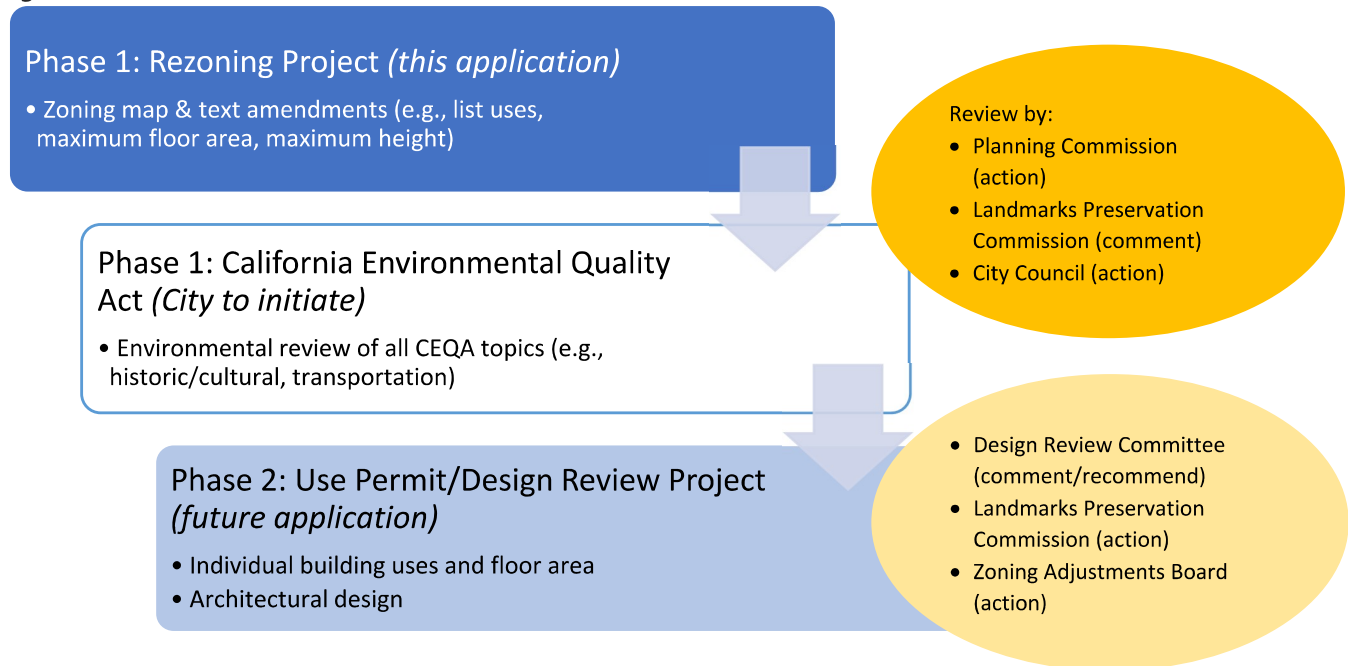


Second Street currently lacks sidewalks, bicycle facilities, and street trees. Illegal dumping, RV parking and tent encampments encompass the lower portion of the street and sidewalks.

Process & Phasing

Community members and decision-makers can expect two key phases of the project: the rezoning phase and the entitlement phase, as shown in Figure 4.

Figure 4: Two-Phased Process



This rezoning project is a *policy* request—to revise the zoning designation and zoning regulations of the project—as stated in the 2021 City Council referral. The use permit project, anticipated for submittal in early 2023, is the *entitlement* request and will illustrate the architecture, placement and uses of individual buildings, and project data, including floor area, parking, etc. The CEQA analysis will be completed as part of the rezoning request, but will cover both the rezoning and entitlement portions of the project.

Rezoning Project (This Application)

This application represents a request under Berkeley Municipal Code (BMC) Section 23.412.020(A)(2), which allows property owners to request a zoning map amendment on their property. This request is explicitly identified and supported by the City Council referral: rezone the sites listed in Table 1 from Manufacturing (M) to Mixed Use-Light Industrial (MU-LI).

In addition to being consistent with the General Plan and the West Berkeley Plan, the rezoning is consistent with the Zoning Ordinance and promotes public health, environmental and economic welfare and safety. This rezoning allows the opportunity to redevelop abandoned, moribund manufacturing uses and sites into more viable research and development, and life science uses that still capture the intent of the West Berkeley Plan. This includes a range of job opportunities, including those that do not require

businesses economically, benefit the City government fiscally, and promotes the varied and interest character of the West Berkeley area. West Berkeley Plan, p. 34.

college degrees, environmental clean-up of legacy toxic industries, and economic and social benefits to West Berkeley businesses and neighborhoods.

The City will initiate accompanying text amendments, as permitted under BMC Section 23.412.020(B) and in accordance with the Council referral. As described in the Process & Phasing section above, the project sponsor intends to submit an entitlement project following the rezoning and prepare a CEQA document that addresses both the rezoning request and the entitlement request. Therefore, the project sponsor proposes to narrowly define this rezoning request to allow for a focused CEQA review. These requests include:

1. Maximum height: Increase the maximum building height, pursuant to BMC Table 23.206-12: MU-LI Development Standards, from 45 feet to 105 feet
2. Allowed uses: Only allow the following uses, at the permit levels identified in Table 23.206-1:³
 - Research and Development;
 - Laboratory, Commercial Physical or Biological;
 - Office, Business and Professional;
 - Light Manufacturing; and
 - Incidental Uses (On-Site Cafeteria, Child Care Center, and Food Service Establishment)
3. Protected uses: Exempt the project site from BMC Section 23.206.050: Protected Uses, which typically requires the protection of manufacturing and warehouse uses in the MU-LI district. (Note: this request extends current regulations for the project site regarding protected uses, since BMC Section 23.206.050 does not apply to the M district.)

All other MU-LI provisions in BMC Section 23.206.020 would apply to the subject site.

Use Permit/Design Review Project (Future Application)

Rezoning of the project sites will allow for preparation of an entitlement application. Based on the MU-LI zone development standard which is existing and proposed at an FAR of 2.0, the project sites could generate approximately 890,078 sq. ft. of development. For R&D uses, this floor area would require 1,780 vehicle parking spaces and 445 bicycle parking spaces.

Rationale for Building Height

The rezoning to MU-LI with a maximum height limit of 105 feet—beyond the typical MU-LI height limit of 45 feet—is justified for several reasons, including the minimum floor heights and maximum floor plates required for this type of project and the substantial cost of clean-up for this site, which has been plagued with hazardous materials and contamination for years. Notably, no change is proposed to the 2.0 FAR standard allowed in the MU-LI district. In other words, the project does not propose any increase in otherwise allowed floor area, only in its configuration in a smaller footprint and with a taller height. These justifications are detailed below.

³ Rather than broadly allowing all of the uses permitted in the MU-LI district, pursuant to BMC Table 23.206-1, the project sponsor is identifying the specific uses that are anticipated for the project site over the life of the building. Each of these requested uses is permitted within the MU-LI.

Hazardous Materials & Site Clean-up: The project site is environmentally contaminated following years of use for manufacturing. Environmental constituents include metals, total petroleum hydrocarbon (TPH) products, and volatile organic compounds (VOCs) (primarily chlorinated solvents and petroleum products). It can be presumed that TPH and VOC impacts to soil gas are also present at the site, given their presence in soil. There is also a potential that undocumented underground storage tanks (USTs) may also still be present within the site.

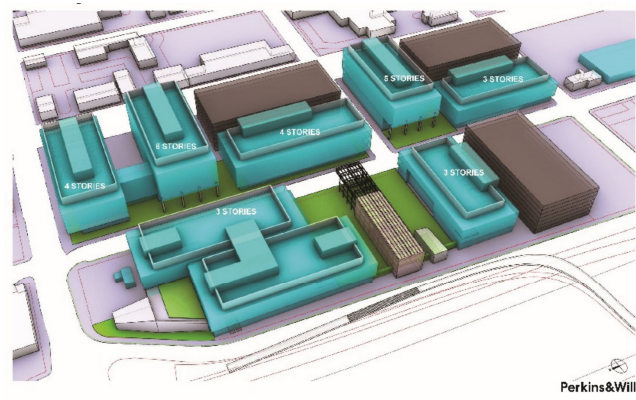
The project team is working with the State Department of Toxic Substances Control (DTSC) to fully characterize and delineate conditions and develop a plan to address site conditions that are acceptable for the research and development campus. The clean-up will likely include excavation and remediation of areas containing gross contamination, measures to separate people from environmental constituents, and mitigation measures and land use control to minimize residual risk to future users. Impacted soil excavated for disposal and encountered during construction will be transported and disposed off-site, in accordance with State law. Other soil, soil vapor concerns, and residual ground water conditions will be addressed onsite under DTSC to protect future site users and minimize the environmental footprint of remedial activities and risk (e.g., limiting generation of air quality and greenhouse gas emissions, reduce truck trips and unnecessarily taking-up scarce landfill spaces).

The cost of clean-up is a significant portion of the redevelopment expense and will cost millions of dollars. Providing for a 2.0 FAR life science campus will meet the needs of future occupants and make the project financially viable given the cost of the measures required to address the site's blighted environmental condition.

Minimum Floor Heights: The nature of R&D and life science users can include large pieces of machinery, deliveries, equipment, and ductwork that require taller ceiling heights and highly reinforced floors. As Berkeley continues to generate new innovations, companies, and technologies, space requirements and equipment needs are continuing to evolve. Future buildings will need to be flexible to adapt to these changing technologies and the needs of lessees over time. R&D and laboratory uses



Extent of groundwater and hazardous materials impact, preliminary testing



Axonometric view (looking east) of potential project following rezoning.

generally require 20-foot ground-floor heights and 16.5-foot upper story heights, measured floor to floor, in order to provide these quality leasable spaces. Given the proximity to the railroad, structural framing requirements—and potentially concrete slab thickness—will be greater at this site to reduce vibration associated with passing trains. To achieve these floor heights, the project would be limited to two stories, not the four stories that are anticipated by the MU-LI district’s 45-foot height limit. Therefore, the project proposes a range of building heights from 56 feet (3 stories) to 105 feet (6 stories) to create visual interest, highlight key site features and open space, and maintain views.



Figure 5: In Southwest Berkeley, several recent projects have obtained building height variances up to 80, 90, and even 128 feet, due to R&D floor height needs or other particular use requirements. (Source: Brick, Inc. 742 Grayson)

Notably, this challenge is not unique to this proposed project. As shown in Figure 5, several recent projects have obtained height variances for similar reasons, with heights variances up to 80, 90, and even 128 feet.

Building Modulation and Variation: Floor plates for research and development and laboratory uses generally should not exceed 50,000 sq. ft., with the average size being around 35,000 sq. ft., or smaller, and are market driven. The East Bay, which typically attracts earlier to mid-stage life science companies that occupy smaller spaces with a heavier lab component. Therefore, the functionality and mechanical, electric, and plumbing (MEP) infrastructure requirement for their use create cost, planning and operational inefficiencies to operate large floor plates. In addition to these inefficiency issues, multi-tenanting approach for large floor plates also raises concerns on privacy, safety, and security. This market condition necessitates smaller building footprints than what would otherwise be feasible on this large 10.2-acre site.

SPUR Gilman Gateway: Plan

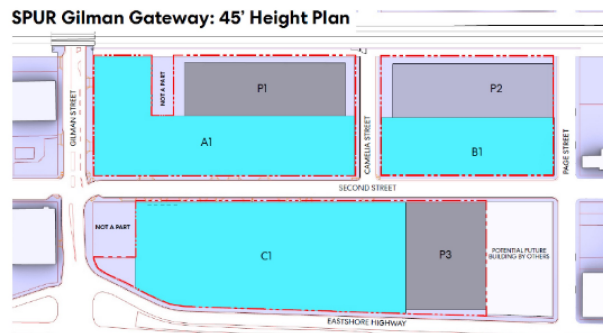


Plan view of potential project following rezoning.

The result is more sustainable compact building forms, with taller buildings in smaller footprints, that highlight views and open up the ground plane for other uses. Less impactful on the land, these compact forms allow opportunities for on-site public open space, landscaping, and street trees; bioswales to capture stormwater; and new sidewalks and bicycles facilities—none of which currently exist on the site.

Taller building heights of 4 to 5 stories are placed on the eastern block and transition down to 3 stories on the west block, closer to the Bay to highlight views and create visual interest from the Gilman gateway and from the pedestrian-level within the site. Additionally, the proposed concept plan offers a chance to retain a significant portion of one of the Berkeley Forge & Tool buildings with its iconic gantry crane. Lower heights adjacent to the gantry crane highlight this unique structure as a focal point for the project site's identity and provide more natural lighting to this central open space feature.

Without the height increase, the project will not be feasible as a modern research and development campus. The current height restrictions would require two-story buildings that would cover nearly all of the site area, limiting opportunities for environmental improvements, retention of existing structures, and public open space. Moreover, the floor plates would be unusable and unleaseable up to 95,000 sq. ft. and 144,000 sq. ft. and still only achieve an FAR of 1.3, well below what is allowed for the zoning district.



Alternatively, a project that meets the 45-foot height limit is limited to 2 stories and 1.3 FAR, and cannot provide benefits in terms of public open space and potential retention of existing structures.

The proposed FAR requirement of 2.0 will naturally control for building height variation so there is no potential for the project to provide building heights that result entirely in 4-6 story buildings. For projects that do include buildings in this height range there will be significant open area at the ground level and/or building massing modulation.

Sea Level Rise: The building footprints lie outside the floodplain and worst-case sea level rise areas, but anecdotally, Second St. in this area is known to take on water during heavy rain events. Raising portions of the buildings a few feet improves the resiliency of the project, including the property investment, future employees' job security and safety, and the property owner's continued revenue generation. The application for the development project will further refine and detail this strategy to support the long-term resilience of the site.

Rational for Rezoning: Community Benefits

The rezoning and entitlement project will offer substantial economic, social, and environmental benefits to the City, Berkeley community, in addition to West Berkeley. In this way, the project fulfills the objectives of the West Berkeley Plan of creating City-wide benefits from industrial and light-industrial activities in West Berkeley, while offering a safe, contemporary industrial approach to economic diversity that is responsive to market demands and trends.



The former Pacific Steel Casting workers will have their pensions paid as a result of the sale of the property to Spur Capital.

Pension Funding: Following the bankruptcy of Pacific Steel Casting in 2014, the company was

purchased by a private equity firm. That firm created a new legal entity that was obligated to assume about \$24 million in pension liabilities and health care benefits. The new entity intended to keep the business operating, but a series of business decisions and macroeconomic forces led to layoffs and the businesses closure in 2018. Ultimately, the new entity has not fulfilled the pension payments. Conveyance of the land, currently held in bankruptcy court, will fund the unpaid pensions of the former workers of Pacific Steel Casting. This commitment of resources for the benefit of the former workers will make good on the promises made to the workers who have been denied their earned pensions.

Environmental Clean-up of Hazardous Materials: As noted above, the project will spend millions of dollars to address impacted soils and soil vapor, and abate hazardous materials in the existing structures prior to site demolition and grading.

Environmental Health: Site remediation and the cessation of high intensity combustion activities associated with the site former use will reduce, control and minimize risks posed by historical releases to soil and substantially eliminate environmental area wide risk posed by chemicals released to the air. It will also substantially reduce the site's carbon footprint. The introduction high quality stormwater management techniques will greatly reduce run-off and improve water quality and groundwater recharge, as discussed below.

Water Quality, Flooding Resilience & Stormwater Management: The 10.2-acre property is composed of nearly 100% impervious surfaces and does not currently have any stormwater management in place. As a result, when it rains, stormwater runs off buildings and is exposed to potentially toxic hazardous materials before entering the Bay. Pre-development remedial activities and subsequent development will replace asphalt, concrete and contaminated soils with state-of-the art buildings, public open space landscaped with clean soil, and stormwater management treatments designed to capture and treat stormwater on-site. This will both avoid continuation of negative impacts and improve water quality in the Bay.

Pedestrian & Bicycle Connections: The proposed project is timely to coordinate with the under-construction Gilman interchange project. With the addition of new sidewalk and bicycle facilities, the project will support community pedestrian and bike travel across the new flyover and provide access to the San Francisco Bay, and highly significant amenities such as the Bay Trail and Tom Bates Fields.



The project will support and integrate with the planned pedestrian and bikeway improvements on Gilman by providing new sidewalks, landscaping, street trees, and a new destination in West Berkeley.

Project Feasibility: Costs associated with the purchase, clean-up and redevelopment of the property do not support pure manufacturing, wholesale or warehouse function. Regardless of the zoning use allowance, the existing buildings are not functional or usable by future potential users. The proposed rezoning and subsequent re-entitlement of the property will unlock the site's potential in a manner that serves the community, improves environmental health and quality, maintains the vision, and compliance with, the general plan, and responds to market conditions.

Property Tax and Community Value: The sale of the property and construction of the project will result in significant increases in property tax, new community investment, other business tax revenue generation for the City, including sales tax due to food and beverage spending on Gilman Street and elsewhere in Berkeley. The project has opportunity to contribute to the nascent Gilman District Business Improvement District (BID), which may provide beautification and security improvements to support local businesses, shopping, and community gathering.

Support for Manufacturing/Growth of Other Local Businesses: R&D is a necessary part of the manufacturing process that West Berkeley is trying to preserve, as called out in the West Berkeley Plan.

Indeed, the project requires no modification of the general plan. Life sciences and other research and development industries take full advantage of the innovation ecosystem and ideas that are coming out of UC Berkeley and other entrepreneurial sources, such as Skydeck and UC Berkeley's Bakar Labs. Already, Berkeley is home to over 3,000 jobs in "R&D intensive industries," according to the City's Office of Economic Development, with 80% of these jobs located in West Berkeley. The city is home to over 400 businesses in software, clean tech, biotech, R&D, and related industries. Nearly 87% of these innovation companies are relatively early stage and take advantage of the city's coworking spaces, accelerators, and incubators. However, these businesses often leave Berkeley once they grow and require more space. This project can take advantage of local talent and set up shop here in Berkeley, so that jobs, businesses, and revenues do not have to be exported to South San Francisco or other hubs for life science and R&D uses.

Education Opportunities & Diverse Labor Force: This new employment destination is anticipated to have a range of job needs. This includes an estimate of over 2,700 life science related jobs being created, with an additional ~15% supporting and servicing employment and several hundreds of construction jobs during the development phase that do not require college degrees. This campus can support college degree job creation that benefit Berkeley residents who are currently commuting to other places for these same jobs. This can have the effect of improving Berkeley's job/housing balance, by better matching Berkeley residents to local jobs. Moreover, the project can offer a pipeline for students engaged in STEAM curriculum (science, technology, engineering, the arts, and mathematics)—whether at Berkeley Unified School District, City College, or UC, for education, training, and job placement.

Conclusion

The project team looks forward to working with the City of Berkeley, decision-makers, and community members on this exciting project at the Gilman Gateway.



The secondary sales tax benefits of West Berkeley employees have proven to be one of the City's largest revenue sources. We expect workers at this future campus to support Gilman District businesses during the workday and after hours.

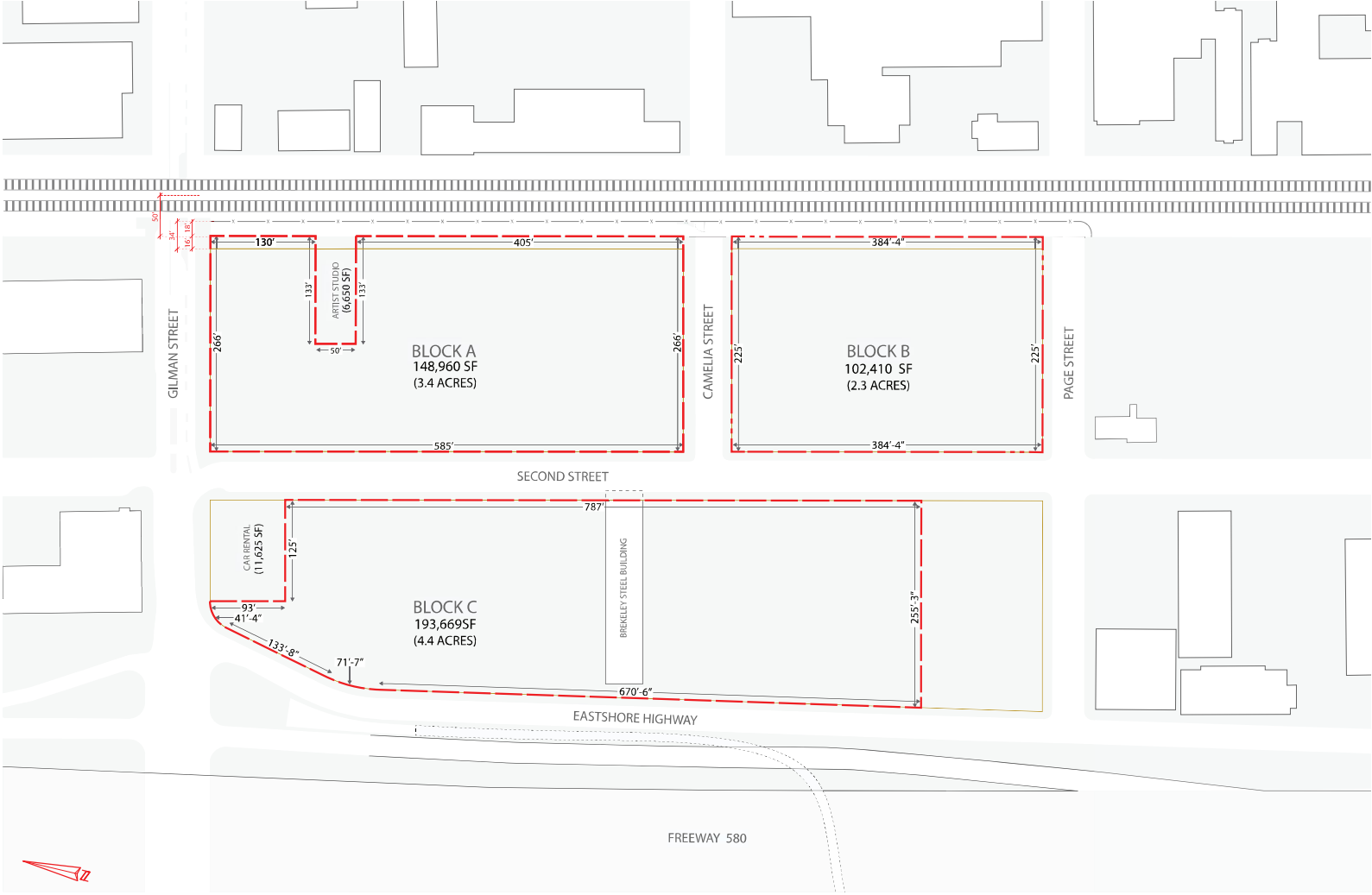
SPUR Gilman Gateway

December 14th, 2022

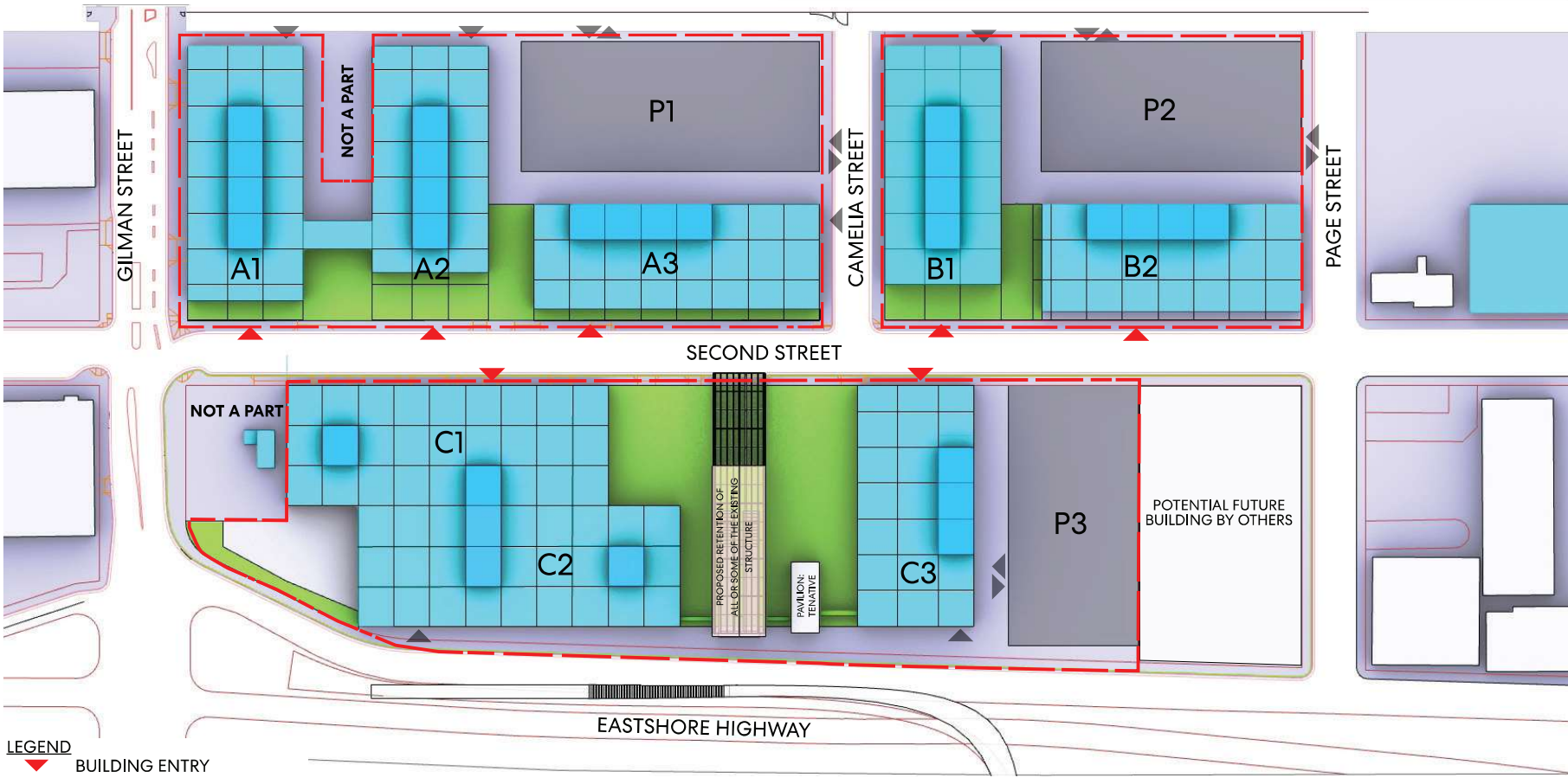
Perkins&Will



Site Diagram

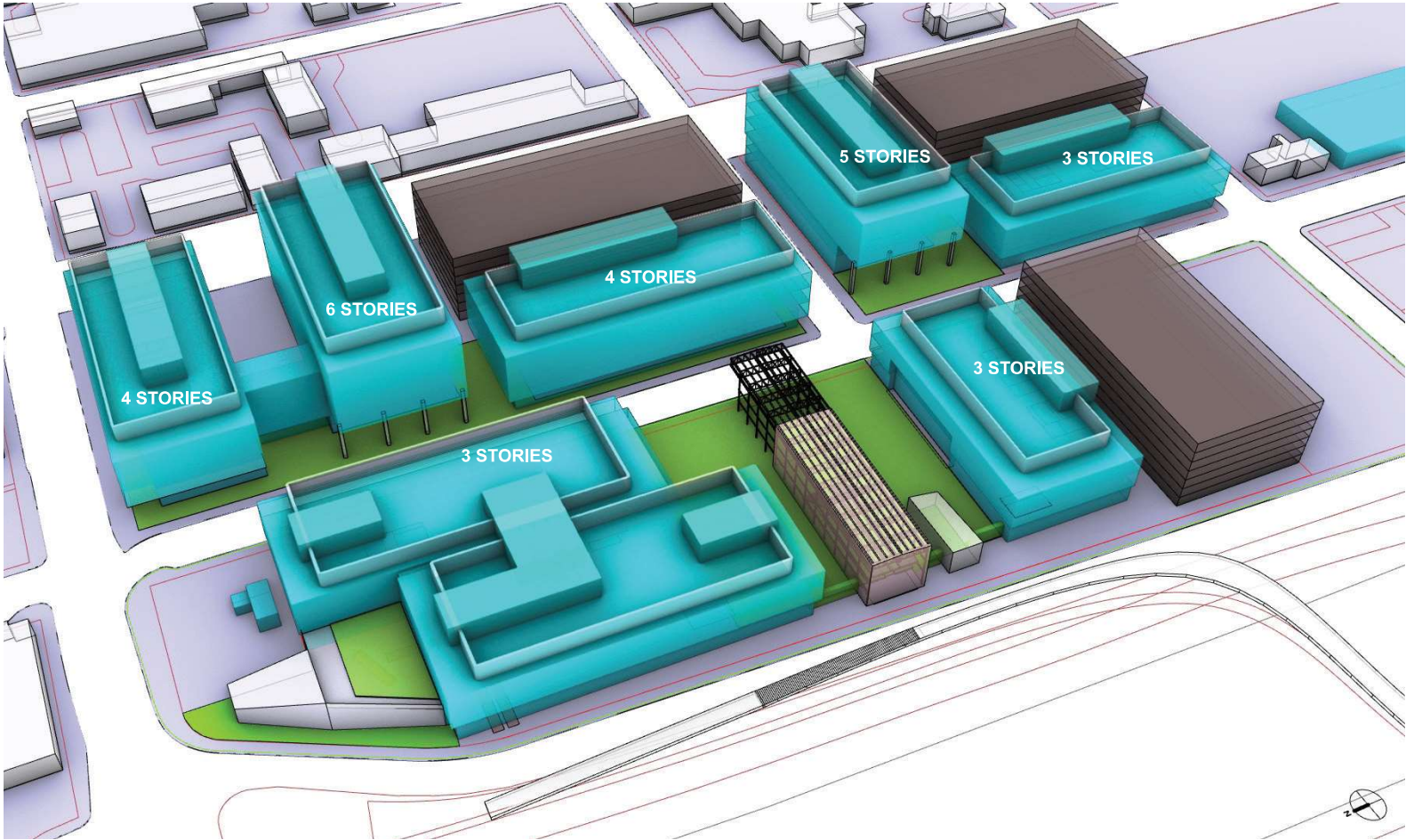


SPUR Gilman Gateway: Plan



- LEGEND**
- Red triangle: BUILDING ENTRY
 - Grey triangle: PARKING ENTRY & LOADING
 - Blue square: CORE

SPUR Gilman Gateway: Axonometric



SPUR Gilman Gateway: Program Breakdown

BUILDING MATRIX

SPUR Gilman Gateway

TOTAL SITE SF 445,039 SF

BLOCK	BUILDING	HEIGHT(ft)	TOTAL # OF FLOORS	F2F HEIGHT(ft)	PROGRAM	FLOOR PLATE (sq ft)	TOTAL GFA (sq ft)	PARKING SPACES
A	A1	72	4	16' - 20'	R&D/OFFICE	25,175	113,255	662
	A2	104	6	16' - 20'	R&D/OFFICE	24,195	163,830	
	A3	72	4	16' - 20'	R&D/OFFICE	26,500	114,670	
	P1	72	7	10'-12'	PARKING	35,000	245,000	
BLOCK	BUILDING	HEIGHT(ft)	TOTAL # OF FLOORS	F2F HEIGHT(ft)	PROGRAM	FLOOR PLATE (sq ft)	TOTAL GFA (sq ft)	PARKING SPACES
B	B1	88	5	16' - 20'	R&D/OFFICE	21,615	122,055	594
	B2	56	3	16' - 20'	R&D/OFFICE	23,660	76,520	
	P2	72	7	10'-12'	PARKING	31,615	221,305	
BLOCK	BUILDING	HEIGHT(ft)	TOTAL # OF FLOORS	F2F HEIGHT(ft)	PROGRAM	FLOOR PLATE (sq ft)	TOTAL GFA (sq ft)	PARKING SPACES
C	C1 & C2	56	3	16' - 20'	R&D/OFFICE	75,000	213,200	594
	C3	56	3	16' - 20'	R&D/OFFICE	24,640	73,920	
	SHED	48	1	48	AMENITY	10,500	10,500	
	PAVILION	25	1	25	AMENITY	2,128	2,128	
	P2	72	7	10'-12'	PARKING	31,615	221,305	

PROPOSED FAR 2.00

890,078 SF

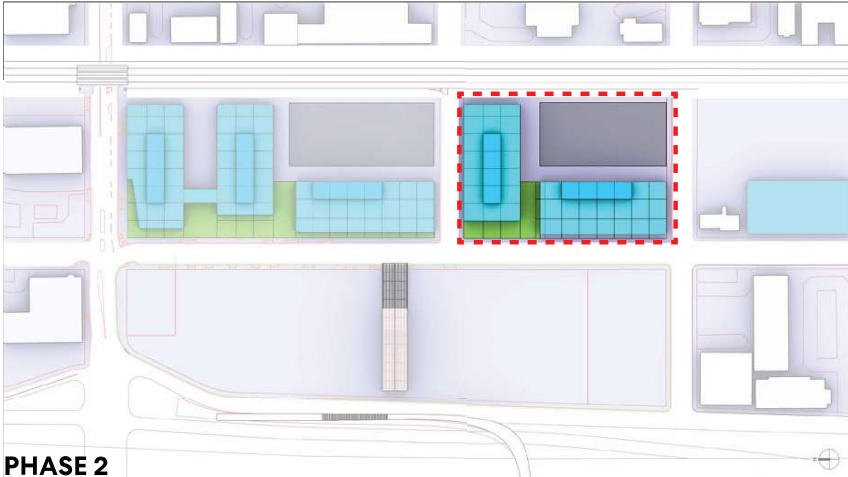
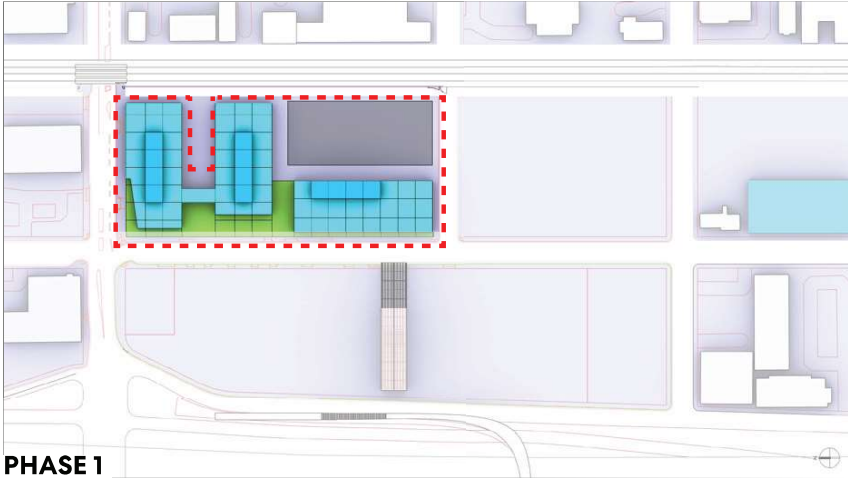
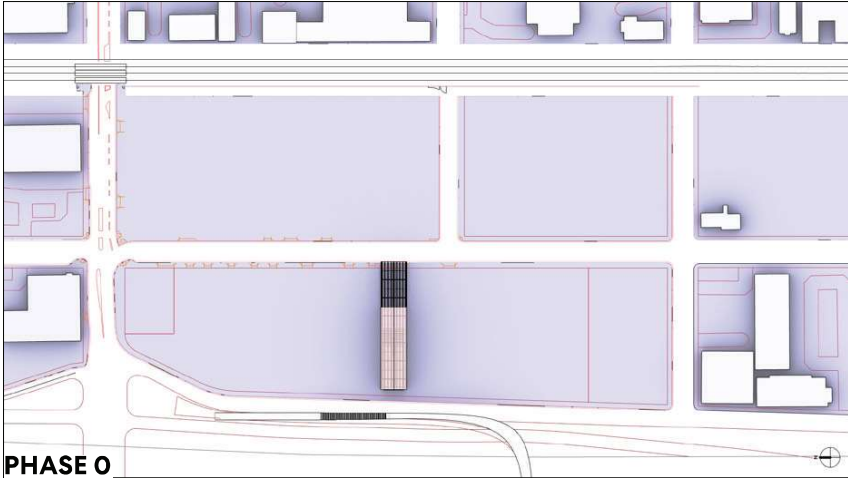
PARKING REQUIRED 2/1000SF

1,780 SPACES REQUIRED

1,850 SPACES PROVIDED

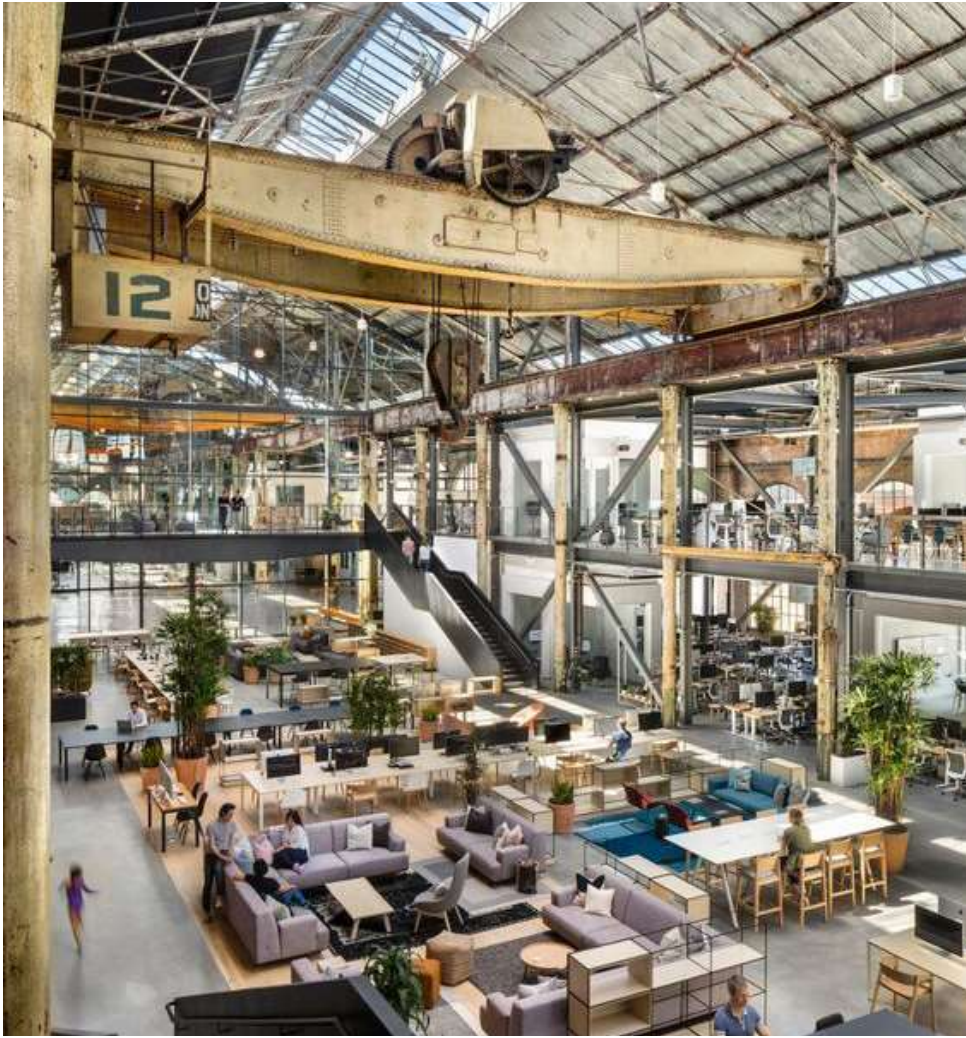
* GROUND FLOOR HEIGHTS ARE 20' ABOVE RAISED PLINTH

Phasing Diagram



Perkins&Will

Precedent Projects



Perkins&Will





Perkins&Will







LAND USE PLANNING

NOTICE OF PREPARATION OF AN ENVIRONMENTAL IMPACT REPORT

Date: December 21, 2022

To: State Clearinghouse, Responsible Agencies, Trustee Agencies, Organizations, and Interested Persons

Lead Agency: City of Berkeley

Project Title: Gilman Gateway Rezone Project

Project Location: The project site is comprised of 18 parcels totaling approximately 10.64 acres located in West Berkeley. The Project site is bisected by Second Street and bordered by Gilman Street to the north, Union Pacific Railroad (UPRR) and Amtrak heavy rail corridor to the east, Page Street to the south, and Eastshore Highway (Interstate 80 [I-80]) to the west.

Project Applicant: City of Berkeley and SPUR Capital

Purpose of Notice

The City of Berkeley (City), as the lead agency, is preparing an Environmental Impact Report (EIR) for the proposed Gilman Gateway Rezone project, located at the properties listed in Table 1 below. The project will rezone the site to a new zoning district and General Plan to allow a range of light industrial, research and development, and similar/related uses, and amend the development standards related to building height and other matters. In accordance with the provisions of the State of California Environmental Quality Act (CEQA) Guidelines, California Code of Regulations (CCR) Section 15082(a), this Notice of Preparation (NOP) provides response and trustee agencies, nearby property owners, and other interested parties with a description of the proposed project and information on its potential environmental effects. The City also invites input and/or comments from public agencies and the general public as to the scope and content of the environmental information that will be studied in connection with the project.

Project Description and Location

As shown on Figure 1 below, the project site is located in West Berkeley. As shown in Table 1 and on Figure 2 below, the project site is comprised of 18 parcels totaling approximately 10.64 acres, bisected by Second Street and bordered by Gilman Street to the north, Union Pacific Railroad (UPRR) and Amtrak heavy rail corridor to the east, Page Street to the south, and Eastshore Highway (Interstate 80 [I-80]) to the west. Of these 18 parcels, 13 are associated with the former Pacific Steel Casting site and total approximately 8.16 acres. This site is developed with a number of buildings that have exceeded their economic life and are expected to be demolished and the site redeveloped by private parties. The remaining parcels include two which are associated with the former Berkeley Forge and Tool, which total approximately 1.18 acres, and three unassociated parcels totaling approximately 1.3 acres, currently occupied by a vehicle rental business, live/work building, and recycled materials processing business.

Table 1: Project Site				
Existing Uses	Address	APN	Lot Size (sf)	Building Size (sf)
Pacific Steel Casting	1305 Eastshore Highway	59-2344-1-2	8,666	n/a
	1401 Eastshore Highway	59-2341-4	41,286	26,217
	1421 Second Street	59-2340-8-2	102,366	73,640
	1420 Second Street	59-2341-5	25,452	19,942
	1320 Second Street	59-2344-4-1	55,003	44,343
	1314 Second Street	59-2344-3-1	14,000	12,504
	1333 Second Street	59-2345-9	36,575	14,840
	1337 Second Street	59-2345-8-1	14,630	2,432
	1332 Third Street			
	1310 Third Street	59-2345-2-2	17,985	26,550
	631 Camelia Street	59-2345-7	8,100	5,200
	625 Camelia Street			
	635 Camelia Street	59-2345-6-1	13,000	9,024
	643 Camelia Street	59-2345-4	5,500	n/a
	1311 Second Street			
	630 Gilman Street	59-2345-1	13,000	13,000
640 Gilman Street				
Berkeley Forge and Tool	1331 Eastshore Highway	59-2344-7	39,192	31,092
	1330 Second Street	59-2344-5-1	12,115	10,000
Live/Work	1306 Third Street	58-2345-2-1	6,204	6,204
Vehicle Rental	600 Gilman Street	59-2344-2-1	11,625	1,008
Recycled Materials Processing	1433 Eastshore Highway	59-2341-3-2	38,850	1,944
Total Area (sf)			463,549	297,940

Existing Land Uses

The project site is currently designated Manufacturing by the City of Berkeley General Plan adopted in 2002 and zoned Manufacturing (M) per the Zoning Ordinance and West Berkeley Plan. The project site is currently developed with approximately 16 buildings totaling 297,940 square feet that have been in

use for industrial, commercial and live/work uses. There are paved roadways that extend throughout the site and the Union Pacific Railroad right-of-way is adjacent to and runs north-south along the eastern boundary of site.

The following parcels within the project area are included on the lists of sites enumerated under Government Code Section 65962.5:

- 600 Gilman Street (Budget Rent a Car)
- 1333 Second Street (Pacific Steel Plant #2)

Surrounding Land Uses

The project site is surrounded by a mix of manufacturing, warehouse, office, and commercial uses. Residential uses are located to the northeast and southeast.

Proposed Project

The project would create a new zoning district - Manufacturing, Research and Development (M-RD) – in order to facilitate future development. The M-RD zoning district would permit a variety of uses, including office, industrial and heavy commercial, laboratory, light manufacturing, and research and development (R&D), which would primarily be subject to the permit thresholds of the Mixed-Use Light Industrial (MU-LI) district. The EIR will evaluate the impact of the rezone and associated general plan amendments, as well as demolition of the existing buildings totaling approximately 298,000 square feet, except for the existing 10,000 square-foot building at 1330 Second Street, which would be adaptively reused, construction of up to 1,000,000 square feet of nonresidential space and 2,000 off-street automobile parking spaces, at a maximum building height of 105 feet.

While the proposed project does not involve any specific development project, it will evaluate the buildout of a potential future development on an approximately 8.16-acre portion of the project area to the extent that such development is foreseeable at the time of preparation of this EIR. The buildout of the potential future project is assumed to be consistent with the development standards of the proposed M-RD zoning district, and would consist of up to 900,000 square feet of R&D, office, laboratory, and light manufacturing uses and 1,900 automobile parking spaces.

Environmental Impact Report

The EIR will include a discussion of all topic areas required by the CEQA Guidelines, with a particular focus on the following specific environmental categories most relevant to the proposed project:

- Air Quality
- Cultural Resources
- Energy
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Land Use Planning
- Transportation
- Tribal Cultural Resources

The EIR will also identify and compare a reasonable range of alternatives to the project. Alternatives will be chosen based on their ability to avoid or reduce identified significant environmental impacts of the project while achieving most of the project objectives (CEQA Guidelines Section 15126.6), and all other sections required by CEQA.

Public Review and Comment Period

The City requests written comments that focus on the scope and content of the environmental information

of the EIR for the Gilman Gateway Rezone project. All comments on environmental issues received during the public comment period will be considered when preparing the EIR.

This NOP will be circulated for a 60-day review period, which will extend from December 21, 2022 to February 27, 2023. Responses to this NOP must be received by 5:00 p.m. on February 27, 2023. Please send your written or electronic responses, with appropriate contact information, to the following:

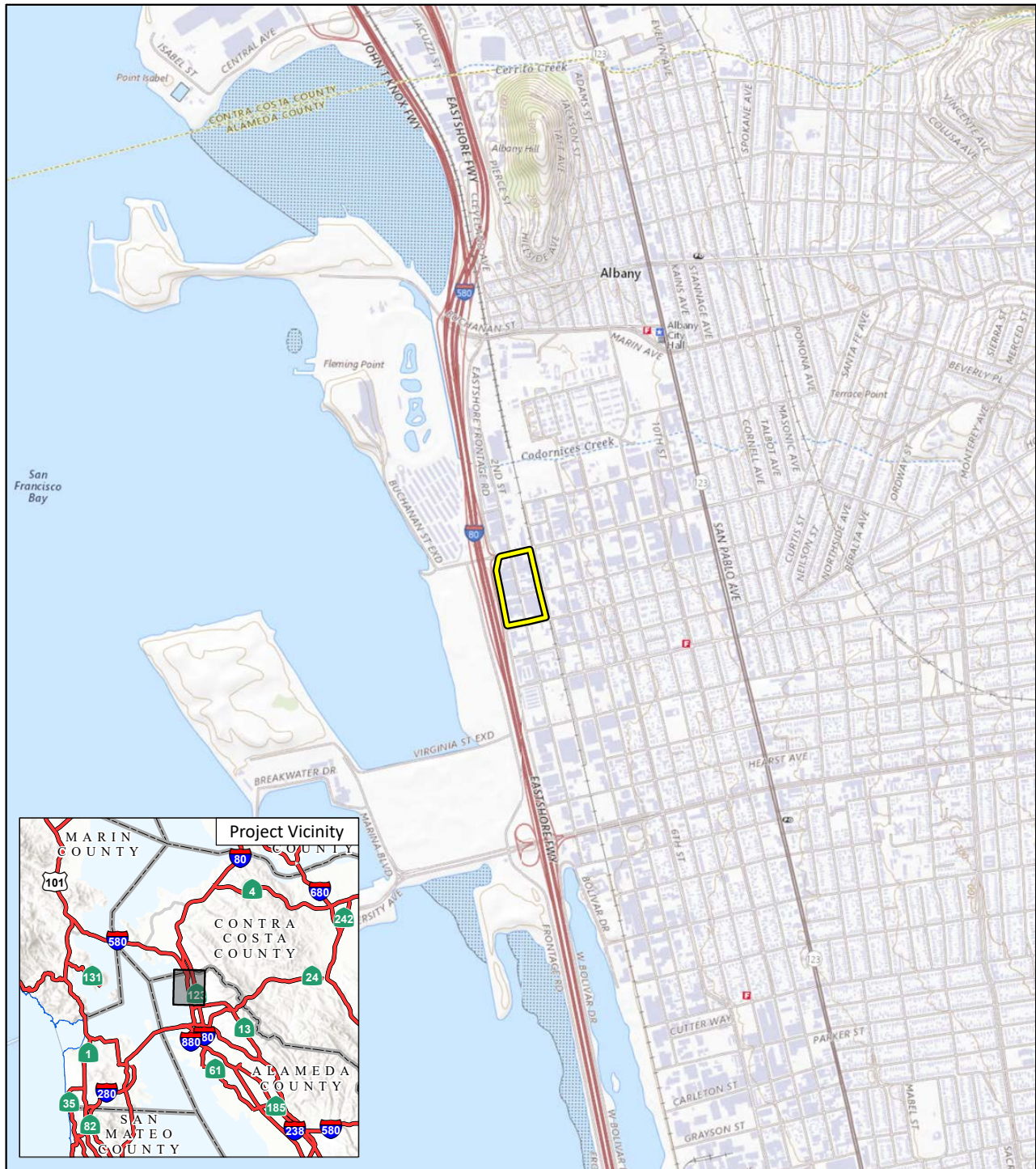
Ashley James
City of Berkeley
Land Use and Planning Division
1947 Center Street, 2nd Floor
Berkeley, CA 94704
Email: ajames@cityofberkeley.info

For electronic responses, please include the project name in the subject line.

Public Scoping Meeting

The City will hold two public meetings to inform interested parties about the project, and to provide agencies and the public with an opportunity to provide comments on the scope and content of the EIR. The meetings will be held via video and teleconference on the following dates:

- Planning Commission: Wednesday, February 1st at 7:00pm. The meeting agenda with corresponding meeting link will be posted by 5:00 p.m. on January 27 on the Commission website: [Planning Commission | City of Berkeley \(berkeleyca.gov\)](https://www.berkeleyca.gov/planning-commission)
- Landmarks Preservation Commission: Thursday, February 2nd at 7:00pm. The meeting agenda with corresponding meeting link will be posted by 5:00 p.m. on January 27 on the Commission website: [Landmarks Preservation Commission | City of Berkeley \(berkeleyca.gov\)](https://www.berkeleyca.gov/landmarks-preservation-commission)



 Project Location

FIGURE 1



0 1000 2000
 FEET

SOURCE: USGS The National Map (2017)

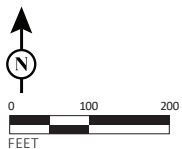
J:\20220844\Pro\SPUR Gilman Gateway Project.aprx (12/16/2022)

Gilman Gateway Rezone Project NOP
 Regional Location and Project Vicinity



FIGURE 2

LSA



- Project Site Boundary
- Berkeley Forge and Tool
- Pacific Steel Casting
- Other Parcels

SOURCES: Google Earth, 8/6/2020; LSA, 2022

I:\22020844\G\Aerial Photo of Project Site.ai (12/16/2022)

*Gilman Gateway Rezone Project NOP
 Aerial Photograph of the Project Site*

The Innovation Ecosystem in West Berkeley

An Economic Snapshot

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The Innovation Ecosystem in West Berkeley: An Economic Snapshot

Executive Summary

Berkeley's economy, while deeply impacted by the COVID-19 pandemic, continues to rebound, in large part because the city supports a diverse economy. The City of Berkeley's location next to the University of California – Berkeley (UC Berkeley), a preeminent public research university, and federally-funded national laboratory (Lawrence Berkeley National Laboratory) position it as a natural home for research and development (R&D) industries, including life science and climate technologies, sectors whose tremendous growth in recent years is expected to continue in the years ahead.

The purpose of this report is to provide context into the current and projected economic conditions in West Berkeley, which will inform the City's approach to addressing the 2021 Council referral to the Planning Commission to establish a zoning overlay at the Pacific Steel Casting property. Per the Council referral, "the site, which is in close proximity to the highly-anticipated reconstruction of the Gilman Interchange, has generated some interest from real estate and business representatives for numerous mixed-use light industrial uses, such as biotechnology labs, warehouse and commercial uses, or office space, among other possibilities". However, the current Manufacturing (M) zoning designation limits the potential uses of the site to heavy manufacturing only. The City's proposed approach to this referral is to create a new zoning district ("M-RD") at the approximately 10-acre project site to enable such uses, thereby allowing R&D companies to build their teams and refine their technologies in Berkeley, bringing with them local jobs, investments, and associated improvements to neighborhood vitality. Furthermore, consistent with the Council referral, the proposed change in zoning regulations at this site would enable the current prospective buyer to clean up a contaminated property, pay off the pensions of Pacific Steel Casting's former employees, and turn a currently underutilized and unsightly property into a productive hub of economic activity in West Berkeley. Ultimately, the proposed change would support the City's innovation ecosystem, improve economic vitality in nearby West Berkeley commercial corridors, and improve the environment, thus contributing to a better quality of life for local community members.

The Berkeley Economy

In the past five years (2017-2022), Berkeley has experienced economic growth and pandemic impacts comparable with that of the greater Bay Area region. By a variety of indicators, the acute phase of the pandemic has receded and Berkeley's economy is on track for continued healthy performance. With a labor force of 62,400, Berkeley's 2.7% unemployment rate is very low; in fact, it is 0.2% lower than that of Alameda County (2.9%). For context, the "full employment" rate is generally considered to be between 94% and 96%, meaning an unemployment rate from 4-6% is "low"; a rate below 4% is very low.¹

While traditionally strong Berkeley economic sectors like performing arts, hospitality, and retail experienced job losses during the pandemic and still earn revenues below pre-pandemic levels, others, including healthcare, biotechnology and other R&D industries, continue to see new investment, employment gains, and opportunities for growth. While remaining lower than in neighboring cities, office vacancy rates in Berkeley have increased; currently the average citywide ground floor commercial vacancy rate averages 8.4%, just above the level associated with normal market churn².

Other indicators show recovery from the COVID-19 pandemic as well; for example, the City of Berkeley's Q3 2022 sales tax increased by 5.1% from the same quarter in 2021 and was up 11.8% since the beginning of 2022. And, lastly, housing costs in Berkeley remain high for both buyers and renters, consistent with the Bay Area region overall. Berkeley's median home sale price of (\$1.32M) observed in November 2022 was higher than most other incorporated East Bay communities in Alameda and Contra Costa counties, save for Piedmont (\$2.78M) and Alameda (\$1.35M).³

Berkeley's Innovation Ecosystem

The West Berkeley Industry section of the City's General Plan includes the recommended action to "publicize the economic, social, and environmental benefits of industry, emphasizing the health of Berkeley manufacturing, the 'high-tech' dimensions of industry in Berkeley and the United States, manufacturing's comparatively high 'multiplier' effect on the economy, and the community value of well-paying, high-benefit, low-bar-of-entry industrial employment".⁴ This section describes how the "'high-tech' dimensions of industry in Berkeley", which the City of Berkeley's Office of Economic Development (OED) often refers to as Berkeley's "innovation sector", bring jobs, wealth, and other economic, social, and environmental benefits to our community, with a special focus West Berkeley.

In 2022, the City of Berkeley was home to more than 400 innovation sector businesses in software, life sciences, clean technology, food tech, and other science, technology, engineering and math (STEM)

¹ Per the Bureau of Labor Statistics (BLS), 'full employment' is defined as an economy in which the unemployment rate equals the nonaccelerating inflation rate of unemployment, no cyclical unemployment exists, and GDP (Gross Domestic Product) is at its potential.

² For commercial districts or areas, ground floor vacancy rates between 4%-8% are typical and considered normal.

³ City of Berkeley, Office of Economic Development, *Economic Dashboard*, March 2022, page 14, online: <https://berkeleyca.gov/doing-business/economic-development/economic-dashboards-and-reports>.

⁴ *City of Berkeley General Plan*, West Berkeley Industry Section, Economic Development Policy ED-2, Section A: *Continue to implement the West Berkeley Plan, with its central emphasis on protecting and strengthening the city's manufacturing sector.* (Also see Land Use Policies LU-33 and LU-34.) Online: <https://berkeleyca.gov/your-government/our-work/adopted-plans/west-berkeley-plan> (1993) or <https://berkeleyca.gov/your-government/our-work/adopted-plans/general-plan> (2002).

industries.⁵ Many of these companies undertake significant research & development (R&D) in Berkeley and, as such, can also be considered part of the “R&D industry”. Thus, one considering this topic must recognize that “R&D” refers not only to a *land use* defined in the City’s zoning code but also to an *industry* and set of *activities* that companies undertake to create innovative, commercially-viable products and services.

Specifically, Berkeley’s R&D industry is comprised of companies in the following sectors:

- Software (35%)
- Life Sciences, including biotechnology and healthcare (31%)
- Hardware (14%)
- Cleantech (12%)
- Food & Beverage (5%)⁶.

More than four-fifths (83%) of Berkeley’s innovation companies are relatively early stage (defined as a company uniquely focused on product development, building a customer base, and establishing a strong cash flow) and take advantage of the city’s coworking spaces, accelerators, and incubators to engage in their work. The other companies that are part of the local innovation ecosystem are either:

- established, e.g. publicly traded or others operating profitably in the STEM industry (10%),
- consultants without explicit goals to scale up (4%),
- subsidiary companies who are now part of a larger parent company (2%), or
- incubators or coworking facilities, like Bonneville Labs or Cell Valley Labs, at 626 Bancroft Way and 2865 Seventh St, respectively (1%).

Of these innovation sector companies, one third are located in West Berkeley⁷.

Employment

Objective 1 of the Economic Development Element of the City’s General Plan reads, “Provide a variety of jobs with varied skill levels for residents of Berkeley.”⁸ In order to provide more information about the types of jobs in Berkeley, especially in West Berkeley, the Office of Economic Development (OED) researched economic data from a variety of sources:

- The State of California Employment Development Department (EDD) data, which uses the North American Industry Classification System (NAICS) for industry categorization and records employment data⁹ by month and quarterly payroll based on state Unemployment Insurance records;
- Research assembled by trade groups representing local industries, e.g. Biocom for the life science industry; and
- Direct meetings with businesses and industry professionals, including real estate brokers and market analysts.

⁵ Innovation industry data is collected throughout the year by OED and draws on a variety of sources including PitchBook, OED’s business license database (maintained with information from the City’s [Open Data Portal](#)), LinkedIn, Crunchbase, OED’s firsthand knowledge from personal communications with local firms, and more.

⁶ These numbers add up to more than 100% because companies can be classified in more than one category, e.g. a software service with a human health application, or a food product developed using biotechnology.

⁷ For this analysis, West Berkeley was defined as having a business address with the zip code 94710.

⁸ There are 9 stated objectives in the Economic Development Element of Berkeley’s *General Plan* (adopted 2002), online: <https://berkeleyca.gov/your-government/our-work/adopted-plans/general-plan>.

⁹ Information is drawn from Quarterly Census of Employment and Wage (QCEW) data as maintained by the EDD.

While there are minor discrepancies between classifications in these data sources and in the way that businesses classify themselves (based on criteria that don't always match land use classifications), OED defines Berkeley's "R&D-intensive industries" as those labeled with the NAICS code for "Scientific Research and Development Services"¹⁰ and those with a NAICS code for a Manufacturing industry with a significant R&D component (shown in Figure 1 below as "R&D-Intensive Manufacturing").¹¹ These R&D-intensive industries currently provide more than 3,600 jobs in the City of Berkeley, or close to 8% of the approximately 45,000 total private sector jobs in Berkeley. Of these, 72% (more than 2,600 jobs) can be found in West Berkeley.¹² See Appendices 1 and 2 for the detailed breakdown of job types.

OED's data analysis also provides a glimpse into the job creation potential (jobs per firm or "Jobs/Firm") offered by R&D-intensive industries, using the definitions by NAICS codes explained above.

Figure 1: Jobs Creation Potential in Manufacturing + R&D Industries

	TRADITIONAL MANUFACTURING	R&D-INTENSIVE MANUFACTURING	LIFE SCIENCES**	R&D-INTENSIVE INDUSTRIES (combined)	R&D
Jobs/Firm*	11	15	16	16	17
*Jobs/firm numbers exclude Bayer as it has a significantly larger number of employees than any other company in this analysis. **includes firms in NAICS 541713-15 (Research and Development in the Physical, Engineering, and Life Sciences) and NAICS 325411-12 - (Pharmaceutical and Medicine Manufacturing)					

Source: State of California Employment Development Department (EDD) data, Q1 2022

As compared to the job creation rate of 11 jobs per firm in Berkeley for "traditional manufacturers"¹³ in Q1 2022, the rate for R&D-Intensive industries overall was 16 jobs per firm, with even more – an average of 17 jobs per firm – in NAICS-defined "Scientific Research and Development Services" industries (labeled as "R&D" in Figure 1).¹⁴ In fact, more than three fifths (62%) of overall manufacturing jobs in West Berkeley (represented by 1,638 jobs in Q1 2022) are from *R&D-intensive* manufacturing sectors and the vast majority (85%) of R&D-intensive manufacturing citywide happens in West Berkeley. Not including pharmaceutical manufacturer Bayer, Berkeley's largest private sector employer, "Life Sciences" jobs comprise 50% of the total.¹⁵

¹⁰ NAICS codes for Scientific Research and Development Services start with the 4-digits 5417.

¹¹ "R&D-Intensive Manufacturing" industries with a significant R&D component were determined to be: NAICS 325 (chemicals), NAICS 326 (plastics and rubber products), NAICS 327 (nonmetallic mineral products), NAICS 333 (machinery), NAICS 334 (Computer and Electronic Products), NAICS 335 (Electrical Equipment, Appliance, and Component), and NAICS 336 (Transportation Equipment).

¹² For this analysis, "West Berkeley" businesses were defined as those with the zip code 94710.

¹³ For the purpose of this analysis, "traditional manufacturers" are the subset of firms classified under NAICS manufacturing codes starting the 2-digits 31-33 that didn't fall in the R&D-Intensive industries definition described above. More than half (56%) of traditional manufacturers in Berkeley are comprised of Food & Beverage manufacturers.

¹⁴ Jobs/firm numbers exclude Bayer as the company's 1000+ employees skew the analysis.

¹⁵ "Life Sciences" is defined using the following NAICS: 325411-Medicinal and Botanical Manufacturing, 325412-Pharmaceutical Preparation Manufacturing, and the 541713-15 codes that fall under 54171 - Research and

Thus, OED’s analysis shows that the R&D activity that takes place in West Berkeley has tremendous potential to create jobs, and elicit powerful multiplier impacts which is consistent with the trends being reported by life science industry analysts and real estate brokerage firms:

- “Life sciences now a leading source of US employment growth” and “Biotechnology R&D jobs are growing at their fastest pace on record” (*CBRE Research, Q4 2021*)
- “year-over-year growth in the Biotech R&D sector remained high at 11%” (*CBRE Research, Q3 2022*)
- In Alameda County, every 1 direct job in the life science industry creates 3.18 jobs overall. (*Biocom California Life Science Economic Impact Report 2022*)

Wages

OED’s data analysis showed that the average wages found in R&D-intensive industries are higher than in many other industries. Berkeley’s R&D intensive industries overall contributed more than 14% of *all* private sector payroll in Berkeley in the first quarter of 2022.¹⁶ Further, almost 30% of the overall West Berkeley quarterly payroll (Q1 2022) came from R&D-intensive industries.

In the first quarter of 2022, average quarterly payroll per employee translated into nearly \$139,000 average annual wages in R&D-intensive industries and more than \$140,000 annually specifically for companies labeled as “Scientific Research and Development Services” (NAICS 5417). For context, these annual salaries are more than 2.2 times the \$62,000 average annual wages reported for traditional manufacturing industries. Overall, in the Bay Area, life science jobs in 2022 paid an average of \$148,167 and \$142,316 in Alameda County.¹⁷ Figure 2 below shows a 2020 snapshot of countywide wages in the biotechnology industry by sub-sector.

Figure 2: Alameda County biotech industry annual wages by sub-sector, 2020

Subsector Average Wage (Wages by Sector & County)						
	BIORENEWABLES	BIOPHARMACEUTICAL MANUFACTURING	MEDICAL DEVICES & DIAGNOSTIC EQUIP	LIFE SCIENCE WHOLESALE	RESEARCH & LAB SERVICES	ALL LIFE SCIENCES
Alameda	\$94,936	\$178,266	\$168,290	\$98,985	\$106,139	\$127,173

Source: *Biocom 2020 California Economic Impact Report – East Bay*

Worker Demographics

Then there is the question of *who* fills these jobs¹⁸. Though it is challenging to obtain demographic information about *all* Berkeley R&D firms’ employees, we can use the demographic makeup of the Bay Area life sciences industry as a proxy, since the life science industry comprises more than a third of Berkeley’s total innovation sector. From Biocom California’s *2021 California Economic Impact Report*, which includes life science wages by occupational title statewide, we see that the industry provides “various career paths to advance upward” including positions not only for chemists, biologists, and

Development in the Physical, Engineering, and Life Sciences Biotechnology. If firms fit in these codes but were clearly not Life Sciences, their job totals were eliminated from the analysis.

¹⁶ See Appendix 1: Berkeley Jobs & Wage Analysis.

¹⁷ Biocom California *Life Science Economic Impact Report 2022 - Bay Area*, online: <https://www.biocom.org/news/eir/economic-impact-report-fact-sheets/>.

¹⁸ City of Berkeley, *General Plan*, Economic Development Element, Goal 5: “Promote revitalization in neighborhoods and communities that have historically higher-than-average rates of unemployment.”

other scientists with advanced degrees, but also for many types of technicians who have an associate’s or community college degree.¹⁹ Meanwhile, Biocom’s 2022 *Bay Area Economic Impact Report* shows that 9.8% of workers in the life science industry in Alameda County have no high school education, 16.1% only have a high school degree, and 22.9% either have attended some college without obtaining a degree or have an associate’s degree, meaning almost half of Life Science employees countywide don’t have a bachelor’s degree or higher – see Figure 3 below for the full breakdown. In fact, at Bayer (800 Dwight Way), which is one of Berkeley’s largest private sector employers, the firm does both drug development & manufacturing in Berkeley, and only about one-fifth of their employees have an advanced degree.²⁰

Figure 3: Educational Attainment in CA & Alameda County Life Sciences Industry, 2022

Region	No High School	High School Graduate	Some College No Degree	Associate Degree	Bachelor’s Degree	Postgraduate Degree
California	15.2%	20.4%	21.0%	8.0%	22.6%	12.9%
Alameda County	9.8%	16.1%	16.5%	6.4%	30.0%	21.2%

Source: *Biocom California, 2022- Bay Area Life Science Economic Impact Report*

In terms of racial composition, Bayer also provides a point for comparison. The company reported in 2021 that they employed a workforce that was “less than one third ‘white’.” Meanwhile, as of November 2021, 56% of employees at Caribou Biosciences (2929 Seventh St) identified as female and 46% as non-white. These statistics, while not comprehensive, show the industry has the potential to achieve the West Berkeley Plan’s purpose to “maintain the ethnic and economic diversity of West Berkeley’s resident population.”²¹

Wealth Creation

Several elements in Berkeley’s local economy have tremendous wealth creation potential. UC Berkeley, the state’s first land-grant university and the founding campus of the University of California system, ranks globally as the number-one public university in the world overall for undergraduate programs that produce entrepreneurs who go on to obtain venture funding (and is the second-best overall among both public and private universities), according to PitchBook’s 2022 university rankings.²²

In 2022 alone, 100 Berkeley innovation-focused companies raised nearly \$2.1 billion in capital (from venture investment, convertible securities, government and philanthropic R&D grants, and debt financing). Of this, almost \$5.9 million came from government-funded grants for R&D in 2022.

Current economic reports demonstrate robust fundraising opportunities in this sector, with a Q4 2022 report by real estate brokerage firm, JLL, reporting:

“The Bay Area captured 32.4% of national life sciences VC funding during 2022, upholding its status as the leading region in private life sciences funding.”²³

¹⁹ Biocom California’s 2021 *California Economic Impact Report*, page 11.

²⁰ Data provided to City of Berkeley staff by staff at the Bayer Campus, 2021.

²¹ City of Berkeley, *West Berkeley Plan*, Purpose 2, 1993.

²² PitchBook University Rankings, Oct. 31, 2022 <https://pitchbook.com/news/articles/pitchbook-university-rankings>

²³ JLL, *Life Sciences Industry Insight*, Bay Area Q4 2022.

Meanwhile, brokerage CBRE reported in Q3 2022 that the National Institutes of Health (NIH) had granted more than \$2.1 billion in funding to San Francisco Bay Area institutions in 2022, with UC Berkeley alone accounting for \$144,272,440 (7%).²⁴ Overall, according to Biocom California, 40% of NIH funding in California comes to the Bay Area.²⁵ Correspondingly, companies of all stages of growth in this industry are motivated to locate in Berkeley, as it is situated precisely at the confluence of these lucrative streams.

Social & Environmental Impact

In addition to providing jobs and fueling economic development locally, innovation companies develop solutions to some of the world's greatest social and environmental challenges, such as those related to human health and the fight against climate change.²⁶ In fact, Berkeley is the only city in the Bay Area with a federally-funded national lab and a top-tier research university that has employed 70 faculty and staff who have been awarded 71 Nobel Prizes.²⁷

The following examples of local companies show the breadth of health and environmental innovation happening in Berkeley today:

- **Caribou Biosciences, Inc.**, co-founded by Dr. Rachel Haurwitz, who worked in Nobel prize winner Dr. Jennifer Doudna's CRISPR gene editing lab on the UC Berkeley campus, has a mission to develop innovative, transformative therapies for patients with devastating diseases. The company's lead off-the-shelf cell therapy for blood cancer has demonstrated promising clinical data and a second cell therapy is entering the clinic. Headquartered in West Berkeley, the company occupies approximately 60,000 square feet and employs approximately 130 people. In 2021, Caribou raised approximately \$495 million, including a successful \$350 million initial public offering, to advance the company's pipeline and technologies. In addition to advancing a pipeline of cell therapies, Caribou gives back to the local community through volunteering for Bay Area clean ups and fundraising for the Women's Cancer Resource Center in Berkeley and the Alameda food bank.
- **UPSIDE Foods**, who grows meat, poultry and seafood directly from animal cells without the need to raise and slaughter billions of animals, became the first company in the world to receive a "No Questions" letter from the U.S. Food and Drug Administration (FDA) for cultivated meat, poultry, or seafood in November 2022. Part of a fast growing "alt meat" component of the Bay Area's food manufacturing industry, the company, which started in 2015 with 5 employees and 36 square feet of shared lab and office space, now leases over 70,000 sq. ft. of property in Berkeley and employs over 200 people in Berkeley.
- **Squishy Robotics** designs, tests, and builds tensegrity robots that provide situational awareness in HazMat emergencies and at bomb sites. The company, which began and operated out of the Berkeley SkyDeck startup accelerator in Downtown Berkeley, now leases a two-room office plus shared space in the Wareham Development building at 2600 Tenth Street. Squishy Robotics employs seven people and currently has six interns. The company helps protect the lives of first responders and new contracts will expand robot use cases in early wildfire detection and in the discovery and reduction of methane leaks.

²⁴ CBRE, *Figures U.S. Life Sciences*, Q3 2022.

²⁵ Biocom Bay Area, *Bay Area Life Science Economic Impact Report*, 2022.

²⁶ These efforts are connected to and supportive of the City of Berkeley General Plan, Economic Development Element, *Objective 4: Encourage Environmentally Sustainable Business*, adopted 2002.

²⁷ UC Berkeley, <https://light.berkeley.edu/nobels/> (multi-years) and Nobel Prize <https://www.nobelprize.org/prizes/facts/lists/affiliations.php> (2022).

- **Twelve**, named for the carbon isotope that makes up the vast majority of carbon on earth, started at the Berkeley Lab’s Activate program on Cyclotron Road in 2015 with a team of 3 co-founders. Today, they occupy a 20,000 sq.ft. facility in West Berkeley and employ nearly 250 people. Their technology, which splits carbon dioxide and water into syngas, provides an environmentally friendly way to produce fuels, plastics, and other materials. After raising \$130M series B & other funding in 2022 and continuing to secure partnerships with big brands like Alaska Airlines, Microsoft, Virgin Voyages, and P&G, Twelve is looking for 130,000 sq.ft. where they can continue to design, test, and manufacture their carbon transformation technology for use in a range of applications, from chemicals and fuels to products.

Innovation companies – Location Decisions

One of the most critical decisions that an R&D or innovation firm can make is regarding its location. Location decisions are usually not stand-alone choices of a firm, but are part of a broader set of company decisions and are often related to their ability to access target markets, transportation networks, technology, and talent. Sound location decisions can significantly boost a company's long-term performance; poor ones can sacrifice large amounts of productivity and capital.

Berkeley Innovation Hubs

Berkeley is lucky to be the home of two strong innovation hubs - the areas surrounding the UC Berkeley campus and West Berkeley. Innovation companies often spin out of UC Berkeley and the Lawrence Berkeley National Lab (the Berkeley Lab), fueled by campus-based accelerators like Berkeley SkyDeck, Bakar Labs, and CITRIS Foundry or the Berkeley Lab’s science-based entrepreneur mentorship program, Activate – Berkeley (also known as Cyclotron Road). Companies who have grown out of these institutions, or whose businesses rely on the talent, intellectual property, or equipment they provide, seek to build their enterprises in Berkeley.

Historically, the vast majority of life science and R&D activity in Berkeley has been geographically concentrated in West Berkeley, where R&D is specifically allowed in the *MM – Mixed Manufacturing* and *MU-LI – Mixed Use Light Industrial* zoning districts, or on and around the UC Berkeley campus. The majority of the city’s R&D companies that require a workshop or lab, primarily in life sciences or biotechnology, and also other hardware, electronics, medical devices, clean energy and “advanced manufacturing” industries can be found in West Berkeley.

In Downtown Berkeley and the commercial districts close to campus, only software companies and companies that perform R&D in an office (rather than industrial setting or lab) are currently permitted. Key hubs in Downtown Berkeley that offer co-working or innovation space include Berkeley Sky Deck (2150 Shattuck Ave), Berkeley WeWork (2120 University Ave) and east of campus the Bakar BioEngenuity Hub (2630 Bancroft), though other on-campus labs and accelerators like the CITRIS Foundry also house early-stage R&D companies.

Unfortunately, in recent years, Berkeley has lost innovation firms simply because the city did not have enough space to accommodate their uses. Between 2018 and 2021, Berkeley lost more than 70 companies to its closest neighbors (Emeryville, Alameda and Oakland)—including many innovative companies in life sciences, medical devices, plant-based foods, renewable energy (including batteries), robotics, and other food, beverage, and women’s health products.²⁸ A local broker from commercial

²⁸ Firms that have left Berkeley in recent years (with the city they departed for shown in **BOLD**) include:
Emeryville: Agenus West (life sciences), Cuberg (battery R&D), Fauna Bio (life sciences), SuitX (medical devices),

brokerage CBRE lamented in 2021, “They [commercial tenants, innovation companies] all want to be in Berkeley. But they can’t find move-in ready spaces with any assurance.”²⁹ Ari Rokeach, a real estate broker at Newmark, another commercial brokerage working in the East Bay, estimates that the Berkeley-Emeryville corridor has “lost over a half million to a million square feet” in recent years due to limited supply of these move-in ready spaces, of which roughly half went to Alameda.³⁰

In addition to not being able to nurture startups to stay in Berkeley as they grow, the City has a hard time attracting companies due to the city’s reputation as a place that isn’t friendly to startups and that has hard-to-navigate land use policies. For example, a Bay Area real estate developer stated, “It’s so complicated if you are coming in as a tenant! People look at the time required [to locate in Berkeley] and don’t want to touch it; people want cookie cutter space they can move in to without risk. They find that elsewhere.”³¹

Innovation Firms - Building and Space Needs

The commercial real estate demands of R&D companies depend largely on the stage of the company’s growth, the type of equipment they use, the number of people they employ (or expect to employ), and whether they will have ancillary sales, marketing, manufacturing, warehousing & shipping, or other office or quality control functions on site. For example, the many early stage companies that spin out from UC Berkeley and the Berkeley Lab, or attend local accelerator programs, often seek move-in ready spaces that are larger and more private than they can get in a shared facility like Bonnevill Labs or Bakar Labs, but smaller than 15,000 sq. ft. Ideally, the space should permit a combination of office and R&D uses and include high ceilings that can accommodate large scientific equipment, good power³², ductwork for safe ventilation, highly reinforced floors, and easy-to-access loading facilities for shipping and deliveries. As R&D companies grow locally or companies relocate to Berkeley from elsewhere, they often require these same things, only with significantly more square footage (i.e. 30,000+ sq. ft.).

The one area of Berkeley that has the most land and largest parcels available to accommodate these innovation activities is West Berkeley. As mentioned, the vast majority of life science and R&D activity in Berkeley has been geographically concentrated in West Berkeley, where R&D is an allowed use in the *MM – Mixed Manufacturing* and the *MU-LI – Mixed Use Light Industrial* zoning districts. In Berkeley, as of this writing, there are approx. 63 acres of land zoned *MM*, and approximately 187 acres of land zoned *MU-LI*. For context, together these acres represent about 5.3% of all zoned land in Berkeley (4,700 total acres of land).³³

West Berkeley - Area Overview

West Berkeley includes all the commercial corridors on San Pablo Avenue and west, including 4th Street, International Marketplace (near the intersection of San Pablo & University), the Gilman District, Wareham Development’s Aquatic Park Center campus, and the new R&D facilities being developed by

Xoma (life sciences), **Alameda:** Checkerspot (materials), Iota Biosciences (life sciences), Kyverna Therapeutics (life sciences), Scribe Therapeutics (life sciences), NAMUH (life sciences) **Oakland:** Eko Devices (medical devices), Berkeley Brewing Science (food tech), Eclipse Foods (food tech), Lioness (women’s health products).

²⁹ CBRE, Mike Raffeto, Senior Vice President, Personal communication, 2021.

³⁰ Newmark, Ari Rokeach, Managing Director, Personal communication, Jan. 2023.

³¹ Wareham Development, Chris Barlow, Partner, Personal communication, 2021.

³² 400-600 amps is considered the bare minimum for power supply; Cushman & Wakefield brokers report that today’s occupiers often look for 2,000 amps or more when evaluating potential sites. (Personal communication, January 2023).

³³ City of Berkeley, Open Data Portal, Land Parcels, accessed January 7, 2023, online: <https://data.cityofberkeley.info/City-Government/Parcels/bhxd-e6up>.

Steelwave (“theLAB”), Lane Partners (“Berkeley Commons”), and Oxford Properties Group (“Foundry 31”).

The West Berkeley area includes a number of major, large-floor-plate retailers, a dense cluster of home supplies and construction businesses, non-retail commercial businesses including manufacturers and warehouses – as well as significant biotech and R&D activity. West Berkeley also has a number of vacant or under-utilized manufacturing and warehouse buildings that can provide occasions for graffiti, illegal dumping, abandoned vehicles, and trash to accumulate, particularly along the railroad tracks (3rd Street).

Historically, the greatest share of the R&D and innovation activity has taken place west of San Pablo between Bancroft and Ashby Ave, in facilities owned by Wareham Development, such as their Aquatic Park Center campus, or in Bonneville Labs’ coworking lab space.

Industrial real estate – inventory, costs and trends

Inventory

According to the CoStar multiple listing service that most real estate brokers use, there is a total of more than 10.5 million sq. ft. of Rentable Building Area (RBA) across “Industrial”, “Office” and “Flex” space in West Berkeley, of which “Industrial” properties comprise 50- 60%.³⁴ “Flex” spaces, which enable clients to undertake “Light Distribution”, “Light Manufacturing” and “R&D” activities comprise a third of the total, with the latter accounting for less than a quarter of the RBA in West Berkeley (just over 2.5 million square feet).

In reality, companies undertaking R&D in Berkeley occupy more commercial real estate than properties categorized as “Flex-R&D” by CoStar. For example, companies doing R&D in areas as broad-reaching as air quality monitoring, cultivated meat, electric vehicle battery design, and drug development are occupying spaces categorized as “Industrial-Warehouse”, “Office” and other “Flex” sub-categories, like “Light Distribution”.

Additionally, more R&D facilities will be available in the period ahead. In the last five years (since 2017), the City of Berkeley has permitted more than 800,000 square feet (sq. ft.); these are either under construction, entitled, or under review, and include properties such as Foundry 31, theLab Berkeley, Berkeley Commons, and 742 Grayson.³⁵ Of the owners of R&D facilities citywide, Wareham Development has historically been the largest player, with a portfolio of 775,000 sq. ft. in Berkeley (approximately 40% of the 2.5 million RBA of “flex” spaces available today), of which the vast majority is inhabited by R&D tenants.

Using their proprietary data collection method, real estate brokerage firm JLL reported just over 32 million sq. ft. of life science (“lab”) inventory in Q4 2022 in the Bay Area overall, of which Berkeley’s inventory comprised 2.7% (871,017 sq. ft.). Berkeley’s nearly one million sq. ft. of life science inventory comprises approximately a tenth of the overall supply of commercial real estate in West Berkeley, not including retail spaces.

³⁴ See Appendix 3 for data on sq. ft. by property type in West Berkeley from CoStar, accessed January 2023. As a point of comparison, the real estate brokerage, Cushman & Wakefield, reported 6,344,936 sq. ft. of space in their *MarketBeat East Bay Oakland, Industrial* report for Q3 2022.

³⁵ See Appendix 5 for the City of Berkeley’s *R&D Development Pipeline* as of January 10, 2023.

Of these facilities, JLL reported a 5.3% lab vacancy rate in Q4 2022 in Berkeley, which is lower than the 14.7% vacancy rate in neighboring Emeryville, 10.1% rate reported for the East Bay, and the 6.5% lab vacancy rate reported for the Bay Area overall.³⁶

Meanwhile, the city’s small size (and thus small overall inventory of industrial buildings) paired with its proximity to major innovation institutions, talent, and population centers also creates an imbalance between the demand for advanced manufacturing space and local supply. Real estate firm, Cushman & Wakefield, reported a 1.1% overall vacancy rate in Berkeley’s industrial real estate market for Q3 2022, with several East Bay industrial brokers noting that the market for light manufacturing and warehouse space is very tight in Berkeley. The city has less building stock overall and clients often have an easier time finding affordable space for scaled production in East Bay cities such as San Leandro, Oakland, Fremont and Hayward.³⁷

Prices

Costs per sq. ft. for West Berkeley commercial property vary dramatically based on whether they are based on *sale* or *rental* price and also based on the property age, quality, embedded operating systems, submarket location, and other included amenities or assets. Pricing range is also affected by total rented square footage, with smaller spaces (such as the type that are prevalent in West Berkeley) tending to drive a higher price per square foot.³⁸ See Figure 4 for a summary of the range of rents associated with different West Berkeley commercial property types.

Figure 4: Rent Range associated with commercial property types found in West Berkeley, January 2023

	Manufacturing	Warehousing (traditional)	Warehousing (Advanced Manufacturing / R&D)	Life Sciences/ Lab	Office	Retail
Rents per sq. ft. (monthly)	\$0.78 - \$1.88 ³⁹	\$0.90 - \$2.00 ⁴⁰	\$1.49 - \$2.25 ⁴¹	\$2.75 - \$7.44 ⁴²	\$2.50 - \$3.25 ⁴³	\$3.00 - \$3.25 ⁴⁴

³⁶ See Appendix 4 for life sciences real estate statistics for Q4 2022 from brokerage firm JLL.

³⁷ Cushman & Wakefield, MarketBeat East Bay Oakland, Industrial Q3 2022; Communication with Ted Anderson and Andrew Schmieder, Cushman & Wakefield, Jan. 2023; Communication with Ari Rokeach, Newmark, Jan. 2023.

³⁸ Steve Smith, Norheim & Yost. Personal communication, January 18, 2023.

³⁹ According to CoStar, rent prices for “Manufacturing” properties were between \$0.78 - \$1.88 per sq. ft. per month in December 2022; Cushman & Wakefield reported asking rents in Q3 2022 as \$1.49 per sq. ft. for “Manufacturing” space in Berkeley.

⁴⁰ According to CoStar, rent prices for “Warehousing” properties (which includes many R&D facilities) were between \$0.90 - \$3.41 per sq. ft. per month; Steve Smith of Norheim & Yost reports that basic warehouse spaces typically lease for less than \$2 per sq. ft. In Q3 2022, Cushman & Wakefield reported *Warehouse and Distribution* space leasing for \$2.83 per sq. ft. in Q3 2022.

⁴¹ CoStar + conversations with real estate brokers from Cushman & Wakefield, Norheim & Yost, and JLL. Norheim & Yost reports that warehouse spaces with additional amenities or updates that make them suitable for R&D uses lease in the \$2.75-\$3.25 range; Cushman & Wakefield also provided a recent example from the Pyramid building (901 Gilman) where upgraded warehouse space is leasing for \$1.75 per sq. ft. and says “ownership’s willingness to improve the operating system of the building can drive rents to \$2.25 NNN [triple net] for these types of facilities.”

⁴² CoStar + JLL Q4 2022 Life Sciences Market Insights Report & personal communication, Grant Yeatman, JLL.

⁴³ Norheim & Yost’s estimate for leasing rates for “smaller creative office spaces in West Berkeley”, January 2023; Colliers’ *Oakland Office 2022 Q3* report shows Berkeley Class A office space (found citywide) leasing at an average of \$4.45 per sq. ft.

⁴⁴ CoStar + conversation with Steve Smith, Norheim & Yost, Q1 2023.

By far, Life Sciences R&D facilities which include a combination of office, lab, and warehousing space plus amenities such as loading docks and reliable, high voltage power command the greatest price. In fact, nationally, CBRE reported that, for Q3 2022, “The average lab asking rent of the top 12 U.S. markets increased by 6.8% quarter-over-quarter to [\$5.02] per sq. ft. NNN.”⁴⁵ According to JLL, in Q4 2022, Berkeley’s average “lab” rents were \$7.44 per sq. ft. per month, above the \$7.15 per sq. ft. average across the Bay Area and \$7.06 per sq. ft. average in neighboring Emeryville.⁴⁶

Trends

In terms of fundraising and new company formation, recent years (2020-2022) have been unprecedented for the life science industry, and this pace may not continue indefinitely, especially as investors and company leaders alike try to conserve capital in anticipation of an economic slowdown ahead. However, the market analysts and East Bay real estate brokers consulted for this report all agreed that Berkeley’s market fundamentals were enduringly strong and projected that the demand for life sciences, climate technologies and other advanced manufacturing industries would continue in the years ahead.

In the Bay Area overall, real estate brokerage firm JLL reported that asking rents for life science facilities at the end of 2022 were 5.8% above 2021 levels, leasing volume continues to exceed pre-pandemic levels, and they expect more than 43 million square feet of life science facilities in the development pipeline (based on projects under development now from both ground-up building and conversions and short and long term proposed projects. Ari Rokeach, Managing Director of Newmark’s Bay Area life science practice, affirms that even with the changing market conditions (including the recent increase in interest rates nationally and venture capital slowdown), there is still “more demand than supply of built-out lab spaces” and the market is “still very healthy from the perspective of there being more companies that want built-out lab space than is readily available today”.⁴⁷

Meanwhile, when asked about leasing trends from manufacturing companies, Steve Smith of Norheim & Yost, whose real estate firm has worked with industrial clients in Berkeley for many decades, reported in January 2023 that, “It’s just dead right now; very few are looking for space and, according to CoStar, nationally sales are slow.” However, he noted that this may be very specific to the current period, which is amidst the holiday season, rising interest rates, and people’s fears of an economic slowdown ahead. Cushman & Wakefield brokers working in West Berkeley, while also noting that there are indicators of a coming economic softening (i.e. a significant reduction in property sales volume, tenants taking longer times to make decisions, requests for shorter lease commitment times, and more subleases becoming available), offered the positive outlook: “Leasing seems super stable with less tenant velocity”. They also expect more industrial space will come on the market in 2023 (due to delayed delivery because of PG&E lag times related to establishing power connections) that will probably increase vacancy rates by “a point or so.” Ultimately, the real estate brokers consulted for this report seemed to be in agreement that, given Berkeley’s limited supply of developable land for R&D and advanced manufacturing uses, and its location within the Bay Area and near major innovation and entrepreneurship engines, Berkeley could only benefit from allowing land to accommodate R&D and advanced manufacturing uses and

⁴⁵ CBRE “Figures, Life Sciences, Q3 2022” <https://www.cbre.com/insights/figures/q3-2022-us-life-sciences-figures>; NNN = triple-net, or a lease agreement on a property whereby the tenant or lessee promises to pay all the expenses of the property, including real estate taxes, building insurance, and maintenance.

⁴⁶ See Appendix 4 for life sciences real estate statistics for Q4 2022 from brokerage firm JLL.

⁴⁷ Ari Rokeach, Managing Director, Newmark Group, Bay Area life science practice, personal communication, Jan. 2023.

users, even if short-term economic downturns and more supply coming online in the years ahead were to increase vacancy rates in these sectors beyond the current levels.

Benefits of the new zoning: M-RD

On April 20, 2021, Berkeley City Council approved a referral requesting that the Pacific Steel Casting property be rezoned from its current designation for Manufacturing (M) land uses to allow mixed-use light-industrial (MU-LI). Subsequently, the September 19, 2022 Council referral, *Keep Innovation in Berkeley*, requested the City to continue efforts to encourage the growth of R&D in Berkeley by allowing R&D uses in select commercial zones citywide. Both of these referrals speak to the importance of this rezoning opportunity, with the *Keep Innovation in Berkeley* referral acknowledging that, if the City's zoning regulations do not provide sufficient opportunities for emerging growth companies, those companies will leave Berkeley for nearby cities that accommodate them with eligible land, such as Oakland, Emeryville, San Leandro, and Alameda.⁴⁸ At present, Berkeley is fortunate to host two major catalyst institutions that produce R&D-intensive businesses seeking suitable real estate to accommodate their growth; *and* to have a number of contiguous underutilized parcels of land in West Berkeley that are well positioned to supply it.

This opportunity did not go unnoticed when the 8-acre Pacific Steel Casting site ceased operations in 2018 (due to bankruptcy) and left significant liabilities on the land to be sorted out by a receivership administered by the courts (including close to \$24M in unpaid steel workers' pensions, and environmental clean-up costs that will likely exceed \$9M). Though well-marketed as the *Gilman Gateway* as a strictly industrial opportunity by Cushman & Wakefield, since 2018, the site has sat vacant with few buyers expressing interest.⁴⁹

In order to engender interest and opportunity in the area, Berkeley City Council passed two legislative items; the *Future of the Pacific Steel Casting (PSC) Site* referral (2018)⁵⁰ and the *Referral to the Planning Commission to Establish a Zoning Overlay at the Pacific Steel Casting Property* (2021).⁵¹ The 2021 referral directed staff to consider a rezone due to "the unique issues of public concern associated with this property... [and to include] allowances to enable all MU-LI uses and override any existing constraints in the Berkeley Municipal Code for Zoning (Title 23)...for the PSC [Pacific Steel Casting] property." In the early spring of 2022, the neighboring Berkeley Forge and Tool site (1.17 acres, two parcels) announced that it would cease operations in December 2022; and the Berkeley City Council ranked the *Referral to the Planning Commission to Establish a Zoning Overlay at the Pacific Steel Casting Property* as its number one priority for implementation.⁵²

On October 25, 2022, SPUR Capital, with the assistance of Rhoades Planning Group ("the applicant"), submitted a zoning map amendment application to the City of Berkeley Planning and Development Department encompassing the former Pacific Steel Casting and Berkeley Forge and Tool sites totaling 15 parcels and approximately 9.3 acres. The area is roughly bounded by Gilman Street to the north, the

⁴⁸ Berkeley City Council, *Referral: Keep Innovation in Berkeley*, adopted September 19, 2022.

⁴⁹ Cushman & Wakefield, Written Communication to District 1 Councilmember R. Kesarwani, *RE: Land Values West Berkeley & Approximate Amounts Needed to Clear All Creditors for the Pacific Steel Castings Buildings*, October 28, 2019. See Appendix 5.

⁵⁰ Berkeley City Council, *Future of the Pacific Steel Casting (PSC) Site*, Item 7, November 13, 2018.

⁵¹ Berkeley City Council, *Referral to the Planning Commission to Establish a Zoning Overlay at the Pacific Steel Casting Property*, Item 35, April 20, 2021.

⁵² Berkeley City Council, Special Meeting, *2022 City Council Referral Prioritization Process Using Re-Weighted Range Voting (RRV)*, Item 1, April 26, 2022.

Union Pacific Railroad right-of-way (3rd Street) to the east, Page Street to the south, and Eastshore Highway to the west, and includes three parcels that are not owned by the applicant. Currently zoned *M-Manufacturing*, the map amendment application seeks a new zoning designation in the M-series: *Manufacturing – Research Development* (M-RD) which would allow for a future development – entitled as Gilman Forge – consisting of R&D, laboratory, business and professional offices, and light manufacturing uses, in roughly 1,000,000 sq. ft. of gross floor area, and a building height up to 105 feet. The M-RD zoning designation would be applicable to the area described above, as well as to the additional three parcels in the zoning district boundary not owned by the applicant (1306 Third Street, 600 Gilman, and 1433 Eastshore Highway).

Allowing R&D uses as part of the proposed M-RD zoning creates more than 10 acres⁵³ of land and nearly 1M sq. ft. of building space to accommodate the needs of growing innovation companies within Berkeley and beyond, at all stages of growth. The project area is the largest set of contiguous parcels citywide that will be able to accommodate R&D uses (with the exception of the Bayer campus at 46 acres, and the UC Berkeley Campus, which is under the jurisdiction of the UC Regents, a statewide agency). For context, the next largest area dedicated to R&D life science uses in Berkeley is the former American Soils site (600 Addison St) at approximately 8 acres. Currently under development as the Berkeley Commons project, that site will offer 263,752 sq. ft. of R&D space within two buildings that are 470,986 sq. ft. in size by 2024, with the remainder of the space approved for light manufacturing.⁵⁴ All other M-prefixed zoned sites in Berkeley in the R&D pipeline are smaller by a considerable factor.

Establishing the M-RD zoning for one of the largest contiguous areas available in West Berkeley in 2023 will provide the conditions necessary to establish an active use on this site and proactively help the City to achieve its Strategic Plan goal of “fostering a dynamic, sustainable, and locally-based economy.”⁵⁵

Economic Impact of re-zone

Maintaining a diversified economy is essential to the economic development goals of the city. In fact, the Office of Economic Development strives to create an environment where businesses of all types can thrive, ranging from family-owned independent retailers to innovative startups creating disruptive technologies to basic and advanced manufacturing industries that create products (and jobs) at scale.

The dimensions of the positive economic impacts include: new direct and indirect jobs, improved neighborhood vitality for both commercial and residential neighbors; general benefits to the community including contributions to the city’s public art, and affordable housing and affordable child care mitigation funds, environmental cleanup, and development of new infrastructure elements including improved bike, pedestrian, and open space facilities where none currently exist.

Direct & Indirect Jobs

This project can take advantage of local talent so that fewer jobs are exported to other Bay Area life science/ R&D hubs like South San Francisco, Alameda, and San Leandro. At project build out, the Gilman Forge project is estimated to create over 2,700 permanent life science related jobs on site, with an additional 15% of jobs (405) supporting and servicing employment, as well as several hundreds of

⁵³ Notice of Preparation (NOP) of a Draft EIR, *Gilman Gateway Rezone Project*, December 21, 2022, State Clearinghouse Number 2022120549, CEQA Net, online: <https://ceqanet.opr.ca.gov/2022120549>.

⁵⁴ See Appendix 5 for Berkeley’s *R&D Facility Development Pipeline*, 2023.

⁵⁵ The City of Berkeley’s Strategic Plan identifies the long-term goals and short-term priorities that the City government will focus on to benefit the Berkeley community. Online: <https://berkeleyca.gov/your-government/our-work/strategic-plan>.

temporary construction jobs during the development phase of 1M sq. ft. of built area which potentially could last through multiple years of phased construction.

The future M-RD zoning will also support the creation of a campus with potential job opportunities for Berkeley residents who currently commute to other places for these same jobs, thereby improving Berkeley's job/housing balance and reducing negative impacts associated with lengthy commute patterns. In addition, the project can offer educational opportunities and career pathways for Berkeley Unified School District, Berkeley City College, and UC Berkeley students engaged in STEAM curriculum (science, technology, engineering, the arts, and mathematics) activities.

In addition, local suppliers of cell cultures, lab glassware, and other materials or equipment needed for R&D activities will also stand to benefit economically from this development.

Neighborhood Vitality & Induced jobs

In addition to the direct and indirect jobs created by the development of this site are the *induced* jobs, or those that will be generated by local spending on goods and services by employees. For example, owners of the Trumer Pils brewery (on 4th & Camelia), retailers in the Fourth Street and South of University (SoU) districts along 4th and 5th Streets, and several artists, restaurateurs, and other Gilman District businesses were delighted to hear that the rezoning of these parcels could enliven the area and increase their proximity to several thousand new customers and patrons.

In this case, zoning changes that set the table for future development will allow the land to be transformed from vacant, contaminated space into an asset for the Berkeley innovation ecosystem and Berkeley's overall economy. Vacant properties provide no jobs for anyone, regardless of education or color. In addition to not being additive, vacant or underutilized properties also take away. In fact, West Berkeley's vacant sites have a direct impact on neighborhood vitality as *the lack of* regular on-site activity provides opportunities for crime, graffiti, violence and other street behaviors that impact nearby businesses both fiscally (i.e. damaged property) and emotionally (i.e. threats to patrons and employees).

Without active, engaged users, vacant properties in West Berkeley provide a ripe environment for long-term, unsanctioned parking, abandoned vehicles, trash buildup, and, in some cases, tent or camper van encampments sheltering individuals with mental health and substance abuse challenges. Included as Appendix 7 is the *After Action Report* on the 2nd Street & Page St encampment closure from November 2022 which details the removal of 5.75 tons (11,500 pounds) of debris from the project area. The Homeless Response Team (led by the Neighborhood Services/Code Enforcement division of the City Manager's Office) documented and repeatedly observed "numerous health and safety violations in the area, including loose and scattered syringes; live and dead rodents and rodent harborage conditions including accumulated trash and debris and open food sources; and debris and belongings, including tents, spilling into the lane of traffic."

Social, Environmental & Infrastructure Benefits

If the proposed M-RD zoning is adopted, future projects, including the conceptual Gilman Forge project, have the potential to spur the following direct environmental and infrastructure benefits:

- Careful environmental cleanup of a contaminated site,
- Making the former steelworkers whole with the funding of their pensions (from the land sale proceeds),
- Adaptive reuse of an existing 10,000 square-foot building at 1330 Second Street, which will feature a repurposing of the Pacific Steel catenary crane as design element, creating a central

gathering place for the community that will both celebrate Berkeley's industrial past and create a draw for future industry professionals to locate in Berkeley,

- A circulation network of sealed roads and improved railroad crossing gates where there currently aren't ones in place,
- New bicycle, pedestrian and open space amenities adjacent to the upgraded Gilman I-80 interchange that will improve the quality of life for commercial and residential neighbors,
- Fee payments (on the order of tens of millions of dollars⁵⁶) to the city's affordable housing, affordable childcare, and public art funds. These payments may constitute some of the single biggest contributions to these funds since their establishments in 2014 and 1999 respectively.

Benefits associated with like catalytic developments in Berkeley

600 Addison/Berkeley Commons

The 470,986 sq. ft. of light manufacturing and R&D space located at 600 Addison Street (Berkeley Commons), which is being developed by Lane Partners and is currently under construction, provides an instructive example of what benefits can be anticipated from future development projects on the former Pacific Steel Casting site. The economic and public benefits realized at the 600 Addison project to date (January 2023) include: payment of the public art, affordable housing and childcare mitigation fees; over \$30,000 in sales tax revenue accrued to the city on the steel purchased for the building frame⁵⁷; significant upgrades to the project-adjacent Bolivar Drive including re-paving, and detailed curb and gutter work; and planned public art installations, including a sculpture garden and trail at the project-adjacent Aquatic Park.⁵⁸

Gilman Gateway - Benefits Realized & Goals Supported

To date, the project sponsor has already committed approximately \$20M in unfunded pensions/land cost, and \$9M in environmental clean-up and infrastructure improvements, with the final amount to be determined by the Department of Toxics and Substance Control (anticipated 2023). Other benefits will include fees paid to the affordable housing and affordable child care mitigation funds for the creation of new commercial space, and fees paid to public art fund and associated city enterprise funds (i.e. stormwater mitigation, building and plan check fees etc.).

As per the economic implications discussed throughout this report, updated zoning for this parcel would also enable the achievement of a number of the goals articulated in the City's General and Strategic Plans. With one single zoning change, this project recasts Pacific Steel and its neighboring parcels into the next century of industrial activity and drives Berkeley's culture of innovation forward.

Adopting new zoning that allows for nearly *one million square feet of new production and R&D space in West Berkeley* will have an incredible cumulative positive economic impact to the city. Making more land permissible for essential R&D and advanced manufacturing industries, especially on an underutilized site, is not only in line with the City's General Plan Objectives, but is a tremendous opportunity for pandemic recovery and the future of the Berkeley economy.

⁵⁶ Affordable housing mitigation fees cost \$5.81 per sq. ft. of developed R&D space (2022 numbers); Affordable childcare mitigation fees cost \$1.03 per sq. ft. for R&D; the Public Art on Private Development ("Percent for Art") policy requires developers to pay 1.75% of construction costs to create on-site publicly accessible artwork or they can pay an in-lieu fee to the Private Percent Art Fund valued at 0.8% of construction costs.

⁵⁷ This does not include subsequent building materials purchased for this project (HVAC equipment etc.), though the slight uptick in "business to business" sales tax transactions in Q3 2022 may be attributable to additional materials purchased in service of this project's development.

⁵⁸ See the recently released, City of Berkeley, [Aquatic Park Call for Artists](#) (\$350,000), Civic Arts Program, 2022.

APPENDIX

Appendix 1: Berkeley Jobs & Wage Analysis

Berkeley (Citywide)	
<i>Employment</i>	
Firms	5,398
Private sector Jobs	45,087
All manufacturing (NAICS 31-33) + R&D (NAICS 5417) Jobs	5,040
All manufacturing (NAICS 31-33) + R&D (NAICS 5417) Firms	281
Manufacturing Jobs (NAICS 31-33)	3,294
Manufacturing Firms (NAICS 31-33)	176
Jobs/Firm in Manufacturing (NAICS 31-33)	19
Traditional Manufacturing* Firms	121
Traditional Manufacturing* Jobs	1,369
Jobs/Firm (Traditional Manufacturing*)	11
R&D-Intensive Manufacturing Firms (NAICS 325-27; 333-336)	55
R&D-Intensive Manufacturing Jobs (NAICS 325-27; 333-336)	1,925
Jobs/Firm (R&D-Intensive Manufacturing Industries)	35
Jobs/Firm (R&D-Intensive Manufacturing Industries)- w/out Bayer	15
R&D Firms (NAICS 5417 only)	105
R&D Jobs (NAICS 5417 only)	1,746
Jobs/Firm in R&D (NAICS 5417)	17
R&D-Intensive Firms combined (325-27, 333-336, 5417)	160
R&D-Intensive Jobs combined (325-27, 333-336, 5417)	3,671
R&D-Intensive Jobs combined (325-27, 333-336, 5417) -w/out Bayer	2,591
Jobs/Firm (R&D-Intensive Industries combined)	23
Jobs/Firm (R&D-Intensive Industries combined)- w/out Bayer	16
<i>Wages (citywide)</i>	
Quarterly payroll	901,873,850
Quarterly payroll - All manufacturing (31-33) + R&D (NAICS 5417)	\$ 148,707,572
Quarterly payroll - All manufacturing (31-33)	\$ 87,547,731
Quarterly payroll - Traditional Manufacturing*	\$ 21,304,416
Quarterly payroll - R&D Intensive Manufacturing*	\$ 66,243,315
Quarterly payroll - R&D only (NAICS 5417)	\$ 61,159,841
Quarterly payroll - R&D-Intensive combined (325-27, 333-336, 5417)	\$ 127,403,156
avg annual salary R&D only (NAICS 5417)	\$ 140,114
avg annual salary (combined R&D-intensive jobs)	\$ 138,821
avg annual salary (all manufacturing NAICS)	\$ 106,312
avg annual salary (traditional manufacturing)	\$ 62,248

Source: State of CA Employment Development Department (EDD) Q1 2022, based on Unemployment Insurance; *see report text (pages 4-7) for discussion.

Appendix 2: West Berkeley Jobs & Wage Analysis

	State of CA Employment Development Department (EDD) Q1 2022, based on Unemployment Insurance
West Berkeley (zip code 94710)	
<i>Employment</i>	
Jobs in WB (zip code 94710)	14,493
Manufacturing Jobs (NAICS 31-33) in WB	2,637
% Manufacturing jobs in WB	80%
R&D-Intensive Manufacturing Jobs (NAICS 325-27; 333-336) in WB	1,638
% R&D-Intensive Manufacturing Jobs (325-27; 333-336) as % of MFG jobs in WB	62%
% R&D-Intensive Manufacturing Jobs (325-27; 333-336) as % of citywide MFG jobs	85%
R&D Jobs (NAICS 5417) in WB	1,016
% R&D (NAICS 5417) jobs in WB	58%
R&D-Intensive jobs combined in WB (NAICS 325-27, 333-336, 5417)	2,654
R&D-Intensive Firms combined in WB (NAICS 325-27, 333-336, 5417)	71
% R&D-Intensive jobs in WB	72%
<i>Wages (West Berkeley)</i>	
Quarterly payroll	\$ 331,500,363
Quarterly payroll - manufacturing (NAICS 31-33)	\$ 87,547,731
Quarterly payroll - traditional manufacturing (NAICS 31-33)	\$ 16,507,989
Quarterly payroll - R&D-Intensive combined (325-27, 333-336, 5417)	\$ 98,329,151

Source: State of CA Employment Development Department (EDD) Q1 2022, based on Unemployment Insurance.

Appendix 3: Commercial properties in West Berkeley (by type & area)

Space Type	Rentable Building Area (RBA) (sq. ft)	% of RBA	Total Available Space (sq. ft)	% of Available Space
Flex	3,486,823	32.9%	685,630	71.0%
Light Distribution	131,303	1.2%		0.0%
Light Manufacturing	346,918	3.3%	4,571	0.5%
R&D	2,555,620	24.1%	645,700	66.8%
(Other)	452,982	4.3%	35,359	3.7%
Industrial	5,239,638	49.5%	128,096	13.3%
Distribution	277,315	2.6%		0.0%
Food Processing	177,563	1.7%	49,997	5.2%
Manufacturing	760,080	7.2%	2,780	0.3%
Service	125,303	1.2%		0.0%
Showroom	52,302	0.5%		0.0%
Truck Terminal	6,000	0.1%		0.0%
Warehouse	3,695,927	34.9%	36,934	3.8%
(Other)	145,148	1.4%	38,385	4.0%
Office	1,867,963	17.6%	152,445	15.8%
Loft/Creative Space	68,854	0.6%	4,400	0.5%
Medical	14,996	0.1%	360	0.0%
Office Building	621,627	5.9%	22,428	2.3%
Office Live/Work Unit	67,894	0.6%	1,000	0.1%
Office/Residential	10,804	0.1%		0.0%
(Other)	1,083,788	10.2%	124,257	12.9%
Grand Total	10,594,424	100.0%	966,171	100.0%

Source: Compiled from CoStar Multiple Listing Service for West Berkeley area (west of San Pablo Ave.), January 2023.

Appendix 4: JLL Bay Area Lab Statistics, Q4 2022

JLL Research Report

Lab Statistics

Bay Area | Q4 2022

	Inventory (s.f.)	Total net absorption (s.f.)	YTD total net absorption (s.f.)	YTD total net absorption (% of stock)	Direct vacancy (%)	Total vacancy (%)	Average direct asking rent (\$ p.s.f.)	Completions (s.f.)	Under Development (s.f.)
Bay Area	32,030,469	177,145	1,221,658	3.8%	4.1%	6.5%	\$7.15	926,135	9,018,186

East Bay | Q4 2022

	Inventory (s.f.)	Total net absorption (s.f.)	YTD total net absorption (s.f.)	YTD total net absorption (% of stock)	Direct vacancy (%)	Total vacancy (%)	Average direct asking rent (\$ p.s.f.)	Completions (s.f.)	Under Development (s.f.)
Hayward	1,075,421	-24,437	22,048	2.1%	15.5%	25.7%	\$3.85	0	0
880 Corridor	1,075,421	-24,437	22,048	2.1%	15.5%	25.7%	\$3.85	0	0
Alameda-North	733,888	0	130,348	17.8%	8.2%	8.2%	\$5.95	0	0
Alameda-South	1,456,556	118,345	409,677	28.1%	9.1%	9.1%	\$5.14	0	48,850
Berkeley	871,017	0	-12,302	-1.4%	0.0%	5.3%	\$7.44	0	560,869
Emeryville	2,486,418	-40,634	-95,793	-3.9%	10.4%	14.7%	\$7.06	558,979	645,240
Oakland	115,000	0	0	0.0%	0.0%	0.0%	\$0.00	0	0
Richmond	1,221,752	-6,955	33,511	2.7%	0.6%	0.6%	\$3.00	0	0
Oakland Metro	6,884,631	70,756	465,441	6.8%	6.7%	8.9%	\$6.99	558,979	1,254,959
Livermore	389,768	0	0	0.0%	0.0%	0.0%	\$0.00	0	0
Pleasanton	618,829	-5,012	-19,236	-3.1%	3.9%	4.7%	\$2.60	0	150,000
San Ramon	96,535	0	0	0.0%	0.0%	0.0%	\$0.00	0	0
South 680 Corridor	1,105,132	-5,012	-19,236	-1.7%	2.2%	2.6%	\$2.60	0	150,000
East Bay	9,065,184	41,307	468,253	5.2%	7.2%	10.1%	\$6.73	558,979	1,404,959

Source: JLL, Q4 2022, *Life Sciences Industry Insight*

Appendix 5: Berkeley's R&D Facility Development Pipeline

Address	Entitlement Date/ Application Date	Square Footage	Status
3100 San Pablo	ZP2019-0055 Approved: 9/16/20	Add 69,800 sq. ft. of R&D space in an existing 402,742 sq.-ft. building.	Building Permit (BP) finalized 11/28/22
600 Addison	ZP2019-0215 Approved: 6/16/21	Construct 263,752 sq. ft. of R&D space within two buildings that are 470,986 sq. ft. in size.	Buildings A and B: Phase II BP issued 4/7/22 (under-slab utility, foundations and superstructure)
Bayer DA Amendment	Approved: 12/14/21	Construct 918,000 sq. ft. (minus 30,000 sq. ft. for parking), total 888,000 sq. ft. to include production, laboratories, maintenance, administration uses	30-year buildout horizon
TheLAB	ZP2021-0096 Approved: 7/20/22	Construct 124,539 sq. ft. of R&D space in 159,143 sq. ft. building at 787 (747) Bancroft	Demo permit issued 8/23/22; building permit currently under review
742 Grayson	ZP2021-0161 Approved: 10/5/22	177,923 square feet of R&D space in a new 213,279 square-foot building	No BP submitted
811 Carleton	ZP2021-0003 Submitted: 1/11/21	178,850 R&D 72,757 manufacturing	Incomplete zoning application as of 8/12/22
Total Constructed: 69,800 sq. ft. Total Entitled, Not Constructed: 566,214 sq. ft. Total Under Review: 178,850 sq. ft. <i>Note: totals do not include Bayer DA, which is an integrated campus where floor area is not designated by separate uses.</i>			

Source: City of Berkeley Planning Department, retrieved January 10, 2023; includes projects for the last 5 years (since 2017).

Appendix 6: Approximate Dollar Amounts Required to Clear All Creditors from Existing Steel Casting site



555 12th Street, Suite 1400 Oakland, CA 94607
D +1 510 465-8000

October 28, 2019

Councilmember Rashi Kesarwani
District 1, City of Berkeley
2180 Milvia Street
Berkeley, CA 94704

Dear Councilmember Resarwani,

Thank you again for your time meeting with the brokerage team and ownership of the Gilman Gateway project. As a follow up to our October 24, 2019 meeting, below is the requested information regarding land values in the various West Berkeley Zoning Districts. Also included are the approximate dollar amounts needed to clear all creditors for the Pacific Steel Casting buildings.

M – Manufacturing Uses:

<https://www.codepublishing.com/CA/Berkeley/html/Berkeley23E/Berkeley23E72/Berkeley23E72030.html#23E.72.030>

Land Value Ranges: \$50 - \$65/SF (\$16,248,000. --\$21,100,000.)*

Under the M – Manufacturing Zoning Districts, most of the approved uses would be classified as heavy, high-impact industrial uses. These uses typically have low employee counts and are rent-sensitive, which limit achievable lease rates (\$0.90 - \$1.00/SF rents). An example West Berkeley project would include the Flint Ink site, owned by ODI, at Fourth/Fifth Streets and Gilman/Camelia Streets.

MULI – Mixed Use Light Industrial Uses:

<https://www.codepublishing.com/CA/Berkeley/html/Berkeley23E/Berkeley23E80/Berkeley23E80030.html#23E.80.030>

Land Value Ranges: \$70 - \$85/SF (\$22,750,000. -- \$27,621,000.)*

Under the MULI – Mixed Use Light Industrial Zoning Districts, most of the approved used would be considered lighter impact Industrial, R&D and Lab type uses. These uses can have higher employee count and a greater office foot print, resulting in higher lease rates (\$1.25 - \$2.25/SF for Light Industrial/R&D and \$4.00/SF for Lab). An example West Berkeley project would include the former Pyramid Alehouse property owned by Read Investments, at Seventh/Eighth Streets and Gilman/Harrison Streets.

C-W – West Berkeley Commercial Uses:

<https://www.codepublishing.com/CA/Berkeley/html/Berkeley23E/Berkeley23E64/Berkeley23E64030.html#23E.64.030>

Land Value Ranges: \$90 – \$150/SF (\$29,250,000. -- \$48,744,000.)*

Under the C-W – West Berkley Commercial Zoning Districts, most of the approved uses would be considered retail/office in nature with accessory industrial uses (warehouse, light-manufacturing). The office uses will have the highest employee counts, require more parking, and demand higher rents (\$2.00/SF - \$3.25/SF). An example West Berkeley project would include the former HJ Heinz/Berkeley Business Center at Ninth Street/San Pablo Ave and Heinz/Ashby Ave. Note that the example property has a split zoning designation between C-W and MULI.

It's worth calling attention to the fact that both the University Ave and Ashby corridors have C-W zoning districts that stretch down to I-80. The C-W district does not start until Ninth Street on the Gilman Street corridor.

** - Pricing above excludes the cost environmental remediation (to "Industrial" standards, MULI and C-W uses may have a different standard) , significant costs for Tenant Improvements (M zoned uses),*



significant costs for demolition (some M uses and full demo. For MULI and C-W), Legal/Brokerage Fees, and Alameda County customary Closing Costs.

This above is an opinion of value and should not be considered an appraisal. Information provided represents an opinion only and is intended for informational purposes. Although all information furnished regarding property for sale is from sources deemed reliable, such information has not been verified, and no express representation is made nor is to be implied as to the accuracy thereof, and it is submitted subject to errors, omissions, change of price, or other conditions.

Estimated Dollar Amounts Needed to satisfy all Creditors with an interest in the Pacific Steel Property:

Closing Costs, Taxes, Legal, Commissions: \$1MM
Loan on Property: \$2MM
Pension Claim: \$24.2MM
Unsecured Creditor's Claim: \$13.4MM

Old Pacific Steel buildings approximate purchase price needed to clear all claims = \$40.6MM

Sincerely,
CUSHMAN & WAKEFIELD, INC.

Handwritten signature of Andrew Schmieder in black ink.

Andrew Schmieder Lic #01828740
Director

Handwritten signature of Theodor Anderson in black ink.

Theodor Anderson Lic #01332000
Managing Director

Handwritten signature of Ted Gallagher in black ink.

Ted Gallagher Lic # 01467047
Director

Handwritten signature of Mitch Hertz in black ink.

Mitch Hertz Lic #01161729
Executive Director – Tenant Advisory Group
Brokerage

cc: Matthew English (Arch + Beam), Howard Bailey (Arch + Beam), Brendan Cronin (Arch + Beam), Michael Lauter (Sheppard Mullin)

Appendix 7: 2nd Street Encampment Closure After Action Report (November 2022)



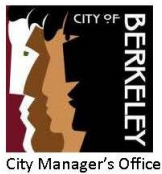
2nd Street & Page St Encampment Closure - After Action Report
11/30/22



2nd Between Page and Camelia - Before



2nd Between Page and Camelia - After



Page St - Before



Page St - After

On Tuesday, August 31, 2022 the Homeless Response Team (HRT) closed the vehicle and tent encampments along 2nd and Page Streets in West Berkeley. Beginning in September, this area has been undergoing major street and sidewalk construction as part of the Gilman/I-80 interchange project. Phase II of this construction project, which includes 2nd St from Camelia to Page and the north side of Page St from 2nd to Eastshore, is scheduled to begin on December 1. To meet this deadline, the scope of the present operation was to remove all tents and vehicles in the construction corridor. This report provides a brief after-action summary of the operation and its outcomes:

- Scope and Reason for the operation:
 - The target area for the operation was the north side of Page St between Eastshore Hwy to 2nd St, and 2nd St from Page St north to Camelia St. Beginning in September, the greater area has been undergoing major street and sidewalk construction as part of the Gilman/I-80 interchange project, with Phase II in the target area beginning on December 1. Neighborhood Services and Public Works have been coordinating closely with CalTrans on construction phasing and timing.
 - The target area was found to be in violation of the City's street and sidewalk policies (BMC sections 14.48.020 and 14.48.120).
 - Growing accumulation of debris, trash, and hazardous materials (syringes, rodent harborage conditions) in the public right of way.
- Brief Site Assessment
 - The Homeless Response Team has performed numerous assessments of the target area alongside outreach efforts. On both November 15 and Nov 12 (date of first and second rounds of written noticing, respectively), staff observed 6 residents and 4 trailers/RVs, and posted 10-12 written notices. On the day of the operation, staff encountered 6 residents and 3 trailers/RVs remaining in the construction area.



City Manager's Office

- The HRT repeatedly observed numerous health and safety violations in the area, including loose and scattered syringes; live and dead rodents and rodent harborage conditions including accumulated trash and debris and open food sources; and debris and belongings, including tents, spilling into the lane of traffic.
- Outreach/Assessment and Notification Efforts:
 - The HRT as well as the City's contracted homeless providers have provided regular outreach to this area for many months, including garbage service and the provision of a port-a-potty and wash station.
 - Beginning in August, once the HRT learned of the timeline for construction in the target area, Neighborhood Services convened a weekly case conference of numerous contracted homeless providers and outreach workers, including representatives from HHCS and Alameda County, to build a robust by-name list of everyone in the area, with the goal of (1) connecting them to as many services and housing opportunities as possible; (2) coordinating their care across multiple agencies; and (3) providing thorough and advance notification of the upcoming construction and City encampment interventions to prepare for it.
 - Two rounds of written notice of the operation were provided to residents in the area (on Nov 15 and 22), providing 2 weeks of formal notice. This was accompanied by outreach to explain the scope and purpose of the operation to residents in the area, along with the distribution of maps to clearly identify the construction zone to be vacated.
 - No Parking/Tow Away signage was posted on November 23, providing more than 72 hours' notice.
- Outcomes:
 - All residents, including those living in vehicles, voluntarily relocated by or before the morning of the operation. Shelter was not offered on the morning of the operation, as the population in the area had been previously offered shelter and had all declined. HRT will continue to collaborate with our nonprofit service providers to assist these residents into permanent housing wherever possible and as outreach resources allow.
 - No vehicles being used as residences were towed, but three passenger vehicles (all unattended and inoperative) were towed to impound, one after having received targeted treatment to abate rodents living in the vehicle.
 - 5.75 tons (11,500 pounds) of debris were removed from the area. As residents were given ample notice to vacate, as well as some time during the morning of the operation to remove a last round of wanted belongings, no storage for belongings was provided.
 - No arrests/citations were issued.

Communications

From: Covello, Zoe
Sent: Wednesday, December 7, 2022 7:00 PM
To: Wu, Grace
Subject: PC Zoom Link

Hi all,

It would seem that a number of commissioners did not receive Zoom links. If you could please join the meeting using the public Zoom link, we will promote you all to panelists: <https://us06web.zoom.us/j/89799598815>

Thank you,
Zoe

Zoe Covello
Assistant Planner
City of Berkeley | Land Use Planning Division
zcovello@cityofberkeley.info

Communications

From: Wu, Grace
Sent: Thursday, December 22, 2022 9:06 AM
Cc:
Subject: Planning Commission - 2 items

Dear Planning Commissioners,

Just a couple items before signing off for the year -

1. **Decision-Maker Training #2 presentation “Producing Housing at a Variety of Affordability Levels”:** The recording is available [here](#). I highly recommend watching for those who couldn't tune in live on 11/29. Panel included David Garcia (Turner Center), Rick Jacobus (Street Level Advisors), Sheryl Klein (Alta Housing), Ann Silverberg (Related), Josh Roden (Brookfield).
2. **Planning Commissioners Academy, March 29-31, 2023**, see below email. Registration due by March 22, 2023. Check with your councilmember for possible reimbursement.

Have a wonderful holidays!

Grace

From: City_clerks <city_clerks-bounces@lists.cacities.org> **On Behalf Of** Isaac Black
Sent: Monday, December 12, 2022 11:58 AM
To: city_clerks@lists.cacities.org; 'hced@lists.cacities.org' <hced@lists.cacities.org>
Subject: [City_clerks] Join us for the Planning Commissioners Academy - Register now!

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Registration Open!

Planning commissioners must navigate the state's most ambitious — and controversial — housing and environmental regulations while also balancing the needs of their community. Navigating these shifting obligations can be challenging, even for the most seasoned planning commissioners.

Scheduled for March 29-31 in Garden Grove, the Planning Commissioners Academy provides city officials with information about the roles and responsibilities of a planning commissioner, including the basic legal and practical framework they operate in.

This year's academy will cover a range of topics, such as key housing legislation, how to run a public meeting effectively, and a planning commission's role and responsibilities. The academy will also include introductory and advanced California Environmental Quality Act educational sessions. Additional information is available in the "schedule at a glance" section of the [conference webpage](#).

[Register now](#)

Session topics

- CEQA
- Tips for Efficient and Effective Public Meetings
- The Nuts and Bolts of Planning
- Planning for the Future
- Housing Laws
- Relationship Between Planning Commission, City Council, and Planning Staff
- Planning Commissioner Jeopardy
- Surplus Land Act
- Planning Commission Roles, Responsibilities, and Restrictions
- Objective Design Standards
- Legislative Update
- Opportunities to complete AB 1234 ethics training and AB 1661 sexual harassment prevention training will be offered.

Conference schedule

Wednesday

Optional Pre-Conference Workshops

10:00 a.m.-noon

AB 1661 Training and AB 1234 Trainings

General Conference Programming

1:00-5:30 p.m.

Educational Sessions

5:30-6:30 p.m.

Networking Reception

Thursday

9:00 a.m.-5:30 p.m.

Educational Sessions

Friday

9:00 a.m.-noon

Educational Sessions

Registration

Registration for the Planning Commissioners Academy starts at \$675 for an elected or career city official of any Cal Cities member city. Registration includes admission to all educational sessions, admission to the Wednesday reception, Thursday breakfast and lunch, Friday breakfast, and access to all program materials. The deadline to register is **March 22**. After the registration deadline has passed, officials must register on-site.

[Register now](#)

Hotels

A limited number of hotel rooms are available at a reduced rate for conference attendees. The discounted hotel rate cut-off is Tuesday, Feb. 28. The hotel is subject to sell out prior to the deadline – reserve early!

Hyatt Regency Orange County

11999 Harbor Blvd

Garden Grove, CA 92840

Step One: [Register for the conference.](#)

Step Two: Book your hotel room.

Once registration is complete, you will receive a confirmation email directing you to the group housing reservations page.

Group Hotel Rate (per night): \$195 – Single/Double Occupancy (plus taxes and fees).

Additional questions?

If you have any questions about registration, please contact Conference Registrar [Megan Dunn](#). Please direct any other questions to Associate Manager, Event Program [Kayla Boutros](#).

For more information, visit the [event webpage](#).



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Isaac Black

Admin. Associate, Member Services

League of California Cities

Office: 916-658-8210

Cell: 916-397-1973

iblack@calcities.org | www.calcities.org



Communications

From: Wu, Grace
Sent: Monday, January 16, 2023 5:18 PM
To: Wu, Grace
Cc:
Subject: A few Planning Commission items

Hi Commissioners,

Just a few items, reminders -

1. **Welcome Commissioner Merker!** Councilmember Kesarwani has appointed Blaine Merker, who is replacing Commissioner Wiblin on the PC.
2. **Reminder - No January 18th PC meeting.** Staff will be presenting the draft 2023-2031 Housing Element at a [City Council Special Meeting on the scheduled January 18th date](#). A notice was sent on Friday, January 6th. The Planning Commission's letter, written by Chair Mikiten, can be found on [page 1387 of 1428 in the agenda packet](#).
3. **Nominations & Election.** Since we won't be meeting in January, we will be holding both the nominations and election for chairperson and vice-chairperson at the February 1st meeting.

Hope you all are enjoying the sun today,

Grace

Grace Wu, AICP, LEED AP (she/her)
Principal Planner, Land Use Planning Division
1947 Center St., 2nd Floor, Berkeley, CA 94704
E: gwu@cityofberkeley.info | **P:** 415-961-9518
<https://berkeleyca.gov/construction-development>
[Zoning](#) | [Permit Forms](#) | [Boards & Commissions](#)

Updated Hours. Permit Service Center is available Monday-Thursday, 8:30am to 2:00pm. Face masks and social distancing are required at the Permit Service Center.

Communications

From: Wu, Grace
Sent: Sunday, January 22, 2023 2:07 PM
Cc:
Subject: Return to In-Person Meetings
Attachments: Memo to Commissioners re In Person Meetings.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Dear Planning Commissioners,

Per the City Clerk's request, I am sharing the attached memo regarding **return to in-person meetings starting March 1, 2023** and it will be agendized as a discussion item at our February 1st meeting.

Sincerely,

Grace

Grace Wu, AICP, LEED AP (she/her)
Principal Planner, Land Use Planning Division
1947 Center St., 2nd Floor, Berkeley, CA 94704
E: gwu@cityofberkeley.info | **P:** 415-961-9518
<https://berkeleyca.gov/construction-development>
[Zoning](#) | [Permit Forms](#) | [Boards & Commissions](#)

Updated Hours. Permit Service Center is available Monday-Thursday, 8:30am to 2:00pm. Face masks and social distancing are required at the Permit Service Center.



City Clerk Department

January 19, 2023

To: Members of Berkeley Boards & Commissioners
From: Mark Numainville, City Clerk
Subject: Update – Return to In-Person Meetings

This memo provides an update on the return to in-person meetings for City boards and commissions.

The Governor stated that the Declaration of Emergency by the State of California for COVID-19 will end on February 28, 2023. The end of the Declaration of Emergency means that the exemptions to the Brown Act that allowed for virtual-only meetings of legislative bodies will also end. Starting on March 1, 2023, all legislative bodies in the State of California must meet in-person. There is no authority for any local jurisdiction to override or appeal this requirement in state law.

The responses from commissioners in the November 2022 survey regarding in-person meetings have been very helpful in determining the primary concerns of commissioners and what the City may be able to do to accommodate them. There was a range of responses and the City will not be able to accommodate every preference.

At this time, the City does not have the technical capabilities for commissions to meet in a hybrid format. All participation will be in-person at a physical meeting location. Information was provided to all commission secretaries regarding meeting locations that have large rooms in order to facilitate distancing and air flow. Larger meeting spaces was one of the top requests in the commissioner survey. Some commissions will have a new meeting location from where they met pre-pandemic. In addition, the North Berkeley Senior Center is serving as a warming center for unhoused persons through April and is not available for commission meetings until May.

More information will be provided at a later date regarding the recommended health and safety protocols for in-person commission meetings. These protocols will take into

Update – Return to In-Person Meetings

account the responses of the survey, the recommendations of the Public Health Officer, and the protocols that have been used for recent in-person meetings of the City Council.

Ad-hoc subcommittees of City commissions are not considered legislative bodies under the Brown Act. Subcommittees do not have noticing requirements and may continue to meet virtually.

We understand that this is a significant change from the temporary virtual meeting format and procedures for commissioners, many of which may have joined commissions during the pandemic. The City will support your commission and your secretary in any manner possible within the constraints of state law and available resources.

cc: Department Directors
Commission Secretaries