

Supplemental Communications (1)

(Received before
12pm October 31)



Planning and Development Department
Land Use Planning Division

SUPPLEMENTAL MEMO

October 31, 2023

TO: Members of the Planning Commission

FROM: Justin Horner, Associate Planner, Planning Commission Secretary

SUBJECT: Middle Housing Staff Report Revision

SUMMARY OF REVISION

The staff report includes revisions of sections describing outreach to City Councilmembers that imply agreement on policy direction.

CONTACT PERSON

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Supplemental Attachment:

1. Middle Housing Staff Report

Item 11

November 1, 2023



Planning and Development Department

Land Use Planning Division

DATE: November 1, 2023
TO: Members of the Planning Commission
FROM: Justin Horner, Associate Planner
SUBJECT: Middle Housing Discussion

INTRODUCTION

Pursuant to City Council referrals and Program 29—Middle Housing, adopted as part of the City’s *2023-2031 Housing Element Update* (“the Housing Element”), the Planning Commission is asked to consider:

1. Objective residential development standards (“zoning changes”) to encourage the development of “middle housing” in the R-1, R-1A, R-2, R-2A and MU-R zoning districts (“low-density residential districts”);
2. Amendments to Berkeley Municipal Code (BMC) Chapter 23.326 Demolition and Dwelling Unit Control (“Demolition Ordinance”) to permit by-right demolition of single-family homes for projects that add density and 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; and
3. Changes to parking maximums for middle housing.

The intent of middle housing policies is to implement the City Council’s direction to eliminate exclusionary zoning and encourage duplexes, triplexes/fourplexes, courtyard apartments and other small-scale multi-family housing types that have historically appeared in Berkeley neighborhoods primarily comprised of single-family homes.

Planning Commission is asked to receive a report and provide feedback on the proposed zoning policy changes. Subsequent to this discussion and further community outreach, staff plans return to present a draft ordinance to the Planning Commission in Spring 2024 for public hearing and recommendation to City Council.

BACKGROUND

City Council Referrals

The proposed zoning changes are presented in response to the City Council referrals and resolutions summarized in Table 1:

Table 1. City Council Referrals and Resolutions

<p>Housing Accountability Act (2017)</p>	<p>On July 11, 2017, the City Council adopted a referral regarding the State Housing Accountability Act (Government Code Section 65589.5) and requested research into a set of objective zoning standards for new development projects in the following four areas: Density and/or building intensity; Public health and safety standards; Design review standards; and Views, shadows, and other impacts that underlie detriment findings.</p>
<p><i>Missing Middle Housing (2019)</i></p>	<p>On April 23, 2019 the City Council directed the City Manager to examine methods to provide for a broader range of housing types in areas of Berkeley with access to parks, schools, employment, transit, and other services. The Council directed the City Manager to explore opportunities to allow “missing middle” housing types in the R-1, R-1A, R-2, and R-2A zoning districts.</p>
<p><i>Eliminating Exclusionary Zoning (2021)</i></p>	<p>On February 23, 2021 the City Council adopted a resolution declaring the intent of the Council to allow multi-family housing in residential neighborhoods throughout Berkeley, and to allow for small-scale multi-family development in the R-1, R-1A, R-2, and R-2A zoning districts. As part of this effort, the resolution calls for the city to also: Protect public safety in all neighborhoods; Allow for new housing that reflects the existing mix of multi-family housing types within neighborhoods; Provide strong anti-displacement and tenant protections; Accommodate families in new and rehabilitated multi-family housing developments; Ensure that new development does not demolish any rent-controlled or below market-rate housing; Explore incentives for projects to contribute to the need for affordable housing; and Carry out a robust community process when developing zoning changes.</p>

Housing Element

The Housing Element includes Program 29—Middle Housing, which calls for the City to amend “the Zoning Code and applicable development standards to encourage and promote a mix of dwelling types and sizes, particularly infill and converted existing housing in high resource areas.” Program 29 includes three specific actions:

1. Amend the Affordable Housing Fee schedule to introduce a sliding scale for projects that are less than 12,000 square feet in size.

Status: This task has been completed. The sliding scale is based on “residential unit floor area,”¹ and includes an exemption for projects with 5,000 square feet or less of residential floor area.

¹ See definition: [BMC Section 23.328.020\(J\)](#)

2. Amend the Berkeley Municipal Code to allow multi-unit development on one lot in lower density residential districts;

Status: This task is a subject of this report and Planning Commission meeting.

3. Consider amending the Demolition Ordinance to provide a by-right pathway for demolition of single-family homes for projects that add density, with provisions to protect tenants.

Status: This task is a subject of this report and Planning Commission meeting.²

Previous Planning Commission and City Council Discussion

As part of the planning and engagement process for the Housing Element Update, staff received feedback pertinent to the proposed zoning changes at three prior Planning Commission and City Council meetings.

At the March 15, 2022 City Council worksession,³ Councilmembers identified the following considerations:

- Permit **higher density** equitably throughout the City, including in high resource, high income neighborhoods, and consider provisions for the Hillside Overlay.
- Create an incentive for **adaptive reuse and smaller, more affordable units**, including allowing for more than four units in lower density districts.
- Consider **treating Residential zones similarly** and adopting the same standards for the R-1, R-1A, R-2 and R-2A districts (i.e., merging zoning districts).
- Embrace climate adaptation and resilience through local power generation, but **solar access should not be a barrier** to creating more housing.

At its June 1, 2022 meeting,⁴ the Planning Commission received an informational report and provided feedback to staff on proposed zoning changes. At the meeting, commissioners identified the following considerations:

- Encourage **smaller unit sizes** and consider **eliminating minimum lot size** requirements.
- **Reduce minimum required open space dimensions.** Currently a minimum width and length of 10 feet is required, or a minimum of six feet for balconies.

² Staff anticipates bringing forward a separate revised Demolition Ordinance for a public hearing at the Planning Commission in the Winter of 2023 that will not contain provisions for by-right demolition of single-family dwellings, which is being considered as part of this subsequent Middle Housing effort.

³ <https://berkeleyca.gov/sites/default/files/2022-04/2022-03-15%20Item%2001%20Housing%20Element.pdf>

⁴ https://berkeleyca.gov/sites/default/files/documents/2022-06-01_PC_Item%209_linked%20.pdf

On September 20, 2022,⁵ the City Council held a worksession to review and discuss proposed zoning changes for middle housing and the Southside. At the meeting, the City Council identified the following additional considerations:

- Consider **potential speculation** and whether increasing development potential in these zones puts homeowners and families in competition with developers.
- **Incentivize more units** by increasing allowed densities while encouraging smaller units.

Outreach to City Councilmembers, Middle Housing Architects, and Community Groups

Due to the prioritization of adopting the Housing Element and zoning amendments for the Southside Plan Area, accessory dwelling units, special needs housing, and bird safe buildings, neither the Planning Commission nor the City Council have discussed middle housing for more than a year. To restart this effort, staff conducted outreach in September and October of 2023 to City Councilmembers, Berkeley architects who specialize in middle housing, and community organizations.⁶ These meetings provided opportunities to reintroduce the proposed zoning changes to important stakeholders and to receive updated feedback to inform the Planning Commission's discussion.

Feedback on individual development standards are mentioned below, as appropriate. The following general considerations are summarized:

Missing Middle Architects. Six local architects were consulted for their feedback on the proposed standards and their views on the feasibility of middle housing projects, generally. They indicated that there was a high demand for middle housing product types in Berkeley, especially for ownership units that are larger than 1,000 square feet and detached homes. In their experience, middle housing projects are most feasible on lots that are vacant or with a relatively low-value existing home, and exempt the City's Inclusionary Housing threshold (currently Residential Unit Floor Area of 5,000 square feet or less). On lots with an existing home that is retained, adding one to three units may be feasible, but it may be easier to add one or two ADUs. Projects with five or more units will likely be uncommon, due to construction costs, code requirements, inclusionary zoning requirements, buyer preferences and typical lot sizes, among other factors.

Community Groups. Staff met with several East Bay and Berkeley community groups who provided feedback on the proposed standards and middle housing, generally.

⁵ <https://berkeleyca.gov/sites/default/files/documents/2022-09-20%20WS%20Item%2001%20Residential%20Objective%20Standards.pdf>

⁶ East Bay for Everyone (10/6/2023), Berkeley Neighborhoods Council (10/14/2023), and Berkeley Design Advocates (11/1/2023)

On October 14, 2023, staff made a presentation to the Berkeley Neighborhoods Council. Attendees expressed concern that the proposed standards, which encourage more density, would lead to a diminishment of open space, increased demand for emergency response services and, through an increase in building and paving, contribute to the urban heat island effect.

Staff is scheduled to meet with the Berkeley Design Advocates on November 1, 2023. Their feedback will be included as part of the presentation to the Planning Commission at the meeting that evening.

PROPOSED MIDDLE HOUSING ZONING CHANGES

Table 2 below provides a summary glance at the proposed standards, the general direction of the recommended changes and the policy rationale for each recommendation. Each standard is further discussed below and the specific development standard changes can be found in **Attachment 1**.

Table 2. Summary of Proposed Standards

Zoning Standard	Recommendation	Policy Goal
Permits and Levels of Discretion	Projects with 2 or more units can be approved with a ZC	Encourage housing development; Streamline process; Increase predictability of approval process; Match typical state law definition of multifamily.
Minimum and Maximum Densities	Set minimum and maximum densities expressed in units per acre	Encourage appropriate densities; Provide predictability; Maintain middle housing scale in low-density residential districts
Maximum Floor Area Ratio (FAR)	Set a maximum FAR that scales up as units increase	Maintain middle housing scale in low-density residential districts; Encourage unit sizes that are “affordable by design”; Comply with SB 478, signed into law by the Governor on September 28, 2021, which prohibits a local agency from imposing a FAR less than 1.0 on a housing project with 3 to 7 units, or less than 1.25 on a housing project with 8 to 10 units.
Minimum Open Space	Set requirement on a per 1,000 square feet basis, rather than per unit	Provide flexibility for varying middle housing typologies and unit sizes.
Maximum Height	Set a maximum height based on meeting objective standards for setbacks; Remove maximum stories standard	Streamline process; Increase predictability of approval process; Maintain consistency for allowable heights in the rear.
Lot Coverage and Setbacks	Increase lot coverage as units increase, and reduce rear setbacks with reduced height	Encourage housing development

Building Separation	Remove building separation requirement based on stories	
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Most of the proposed development standards are the same as those presented to the Planning Commission and City Council last year. Changes or revisions from last year’s proposal are specifically noted and explained under each standard.

ZONING MAP, LAND USE, AND PERMIT AMENDMENTS

The proposed zones and permit requirements have been revised since the Planning Commission and City Council discussed middle housing in 2022. Properties located in the Hillside Overlay would not be subject to these new permit requirements, but would rather continue to be subject to existing permit requirements (Multi-Unit Residential is Not Permitted in the R-1H and R-2H zoning districts, and is permitted with a Use Permit in the R-2AH zoning district).

Current Policy: Table 3 includes the current permit requirements in low-density residential districts for residential projects that include more than one dwelling unit. The proposed standards *do not change* any permit requirements for Single-Family, Group Living Accommodation or Mixed-Use Residential uses in these zones.

Table 3. Current Permit Requirements

	R-1	R-1H	R-1A	R-2	R-2H	R-2A	R-2AH	MU-R
Two-family	NP	NP	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	AUP
Multi-Family	NP	NP	NP	UP(PH)	NP	UP(PH)	UP(PH)	AUP UP(PH)

Proposed Standard: The proposed zoning changes include three changes related to zoning districts, permits and levels of discretion:

1. *Zoning map amendment.* The proposed R-1A and R-2 standards are identical and can be merged to simplify zoning administration. Both R-1A and R-2 are currently in the same General Plan land use designation: Low Medium Density Residential. Accordingly, parcels currently zoned R-1A would be rezoned R-2.
2. *Land use amendment.* Combine two residential land use types (Two-Family and Multi-Family) into one (Multi-Unit Residential) for residential projects that include more than one dwelling unit.
3. *Required permit and level of discretion.* Permit Multi-Unit Residential projects that comply with all objective standards with a Zoning Certificate (ZC); no discretionary permit or public hearing would be required. Table 4 summarizes the recommendation:

Table 4. Proposed Permit Requirements

	R-1	R-1H	R-2	R-2H	R-2A	R-2AH	MU-R
Multi-Unit Residential	ZC	NP	ZC	NP	ZC	UP(PH)	ZC

MINIMUM AND MAXIMUM DENSITIES

The proposed density standards have been revised since the Planning Commission and City Council discussed middle housing last year. These changes include:

- Increasing the maximum densities for all of the lower density residential zoning districts outside of the Hillside Overlay. This would achieve the following potential project types:
 - Ensuring the ability to have at least four units in the R-1 zone on a 4,000 square foot lot;
 - Ensuring the ability to have five units on a 4,000 square foot lot in the R-2 zone, which could allow projects to utilize State Density Bonus and/or add affordable units; and
 - Ensuring the ability to have six units on a 4,000 square foot lot in the relatively higher-density R-2A and MU-R zoning districts.
- Removing properties in the Hillside Overlay from the new density standards. The values included for R-1H, R-2H and R-2AH in Table 5 reflect existing development standards. Staff recommend that zoning modifications for the Hillside Overlay be taken up at a later date so that it can be informed by pending work on an evacuation study, an update to the General Plan Safety Element, and other work to inform wildfire mitigation measures.

Current Policy: The Berkeley Municipal Code does not include any minimum or maximum density standards for low-density residential zones that are expressed in “units per acre”. In the R-1, R-1A, R-2, and R-2A districts, density is limited by requirements for a “minimum lot size per unit” standard and by specific residential land use types (e.g. “Single-Family”, “Two-Family”).

Proposed Standard: Table 5 summarizes the proposed density standards expressed in units per acre, and includes an example of the maximum number of units that may result from each standard on a 4,000 square foot lot in each zone. The proposed density standards *do not include* any eligible Accessory Dwelling Units (ADUs) permitted under the City’s ADU provisions.⁷ There is no minimum density requirement for lots in the Hillside Overlay. Minimum densities would apply for new development on vacant lot or redevelopment and infill of existing nonvacant lots.

⁷ On a lot with one single-family dwelling: 1 ADU and 1 Junior ADU; on a lot with more than one detached dwelling: 1 ADU; on a lot with a duplex or attached multi-family dwelling: 2 ADUs and at least one 1 interior ADU, up to an additional 25% of existing units.

Table 5. Proposed Density Standards

	R-1	R-1H	R-2	R-2H	R-2A	R-2AH	MU-R
Minimum Density (DU/acre)	10	0	10	0	20	0	20
Maximum Density (DU/acre)	40	20	50	20	60	55	60
Resulting units on a 4,000 square foot lot							
Minimum Units	1	0	1	0	2	0	2
Maximum Units	4	2	5	2	6	5	6

In interviews, missing middle architects noted that project densities would more likely be influenced by considerations unrelated to specific density standards, such as construction costs, code requirements, inclusionary zoning requirements, buyer preferences and typical lot sizes, among other factors. They also noted that projects that utilize State Density Bonus are typically feasible only with 11 units or more. To achieve an allowed density of 11 units, projects would need to be located on larger lots in the R-2A (6,300 square feet), MU-R (5,500 square feet), R-2 (8,800 square feet) and R-1 (11,000 square feet) zoning districts.

MAXIMUM FLOOR AREA RATIO (FAR)

The proposed FAR standards have been revised since the Planning Commission and City Council discussed middle housing last year. The changes include:

- The maximum FAR standard in the R-1 and R-2 zoning district for 3-7 units was increased to 1.2. During outreach, both missing middle architects and East Bay for Everyone encouraged FAR standards that would permit units of at least 1,200 square feet when a project includes four units on a 4,000 square foot lot. An FAR of 1.2 in these zones would make that more feasible.
- Properties located in the Hillside Overlay would not be subject to an FAR standard; no change from the existing development standards.

Current Policy: While an effective maximum FAR can be calculated based on existing standards for lot coverage and maximum number of stories, the Berkeley Municipal Code does not include a specific FAR standard in the R-1, R-1A, R-2, and R-2A. The BMC does include a maximum 1.5 FAR in the MU-R district.

Proposed Policy: Table 6 summarizes the proposed maximum FAR standards. No FAR limit is applied if a project is subdividing existing habitable space to create additional dwelling units.

Staff propose scaling the FAR standard to increase as the number of units increase on a site; that is, if a project includes more units, it can be larger. This would have the

potential to incentivize the development of more units, as well as smaller units that may be offered at lower rents than larger units. In addition, state law prohibits a local agency from imposing a FAR less than 1.0 on a housing project with 3 to 7 units, or less than 1.25 on a housing project with 8 to 10 units.

Table 6. Proposed Maximum FAR Standards

	R-1	R-2	R-2A	MU-R
1 unit and nonresidential	1.2	1.2	1.2	1.5
2 units	0.5	0.6	0.6	1.5
3-7 units	1.2	1.2	1.5	1.5
8 + units	1.5	1.5	1.75	1.75

MINIMUM REQUIRED OPEN SPACE

The proposed open space standard has been revised since the Planning Commission and City Council discussed middle housing last year. Properties located in the Hillside Overlay would not be subject to the proposed open space standards and would continue to be evaluated under existing development standards (400 square feet per dwelling unit in the R-1H and R-2H zoning districts and 300 square feet per dwelling unit in the R-2AH zoning district).

Current Policy: Table 7 summarizes minimum open space requirements in low-density residential zones, on a per unit basis.

Table 7. Required Open Space

	R-1	R-1A	R-2	R-2A	MU-R
CURRENT: Per dwelling unit (square feet)	400			300	150
PROPOSED: Per 1,000 square feet of floor area (square feet)	150				

Proposed Policy: The proposed development standard would require 150 square feet of open space for every 1,000 square feet of floor area on a project site, in each of the lower density residential districts. Note that required open space is no longer based on the number of units, but on a project’s total floor area. The proposed open space standard is designed to preserve the requirement to provide residents with usable open space permit while also providing for flexibility in how the open space is arranged and allocated on a lot that may include different housing configurations.

MAXIMUM HEIGHT

The proposed height standard has been revised since the Planning Commission and City Council discussed middle housing last year to keep the Hillside Overlay as-is. The proposed zoning changes largely preserve existing height limits and apply objective height standards by removing discretionary processes to exceed allowable heights. The

proposed standards also include provisions for lower maximum heights near the rear property line in consideration of potential impacts on neighboring properties.

Current Policy: The Berkeley Municipal Code generally limits average building heights for main buildings in most low-density residential districts to 28 feet and three stories, with a possible increase to 35 feet with an AUP. In the MU-R, the maximum height is 35 feet and 3 stories. Current policy also limits the height of residential additions to 14 feet, with a possible increase to 35 feet with an AUP. Accessory buildings and structures are permitted with a maximum average height of 24 feet, although portions of buildings located between 4 feet and 10 feet from a lot line are limited to a 12 foot maximum average height, and portions of buildings and structures less than four feet from a lot line are limited to a 10 foot maximum average height.

Proposed Policy: The proposed development standards for maximum building height include the following:

- The maximum *average* building height in low-density residential districts would be 28 feet, with a maximum height at any one point of 35 feet. This would accommodate three-story residential projects while controlling the overall bulk of a proposed project. The maximum height would be reduced to 22 feet within 15 feet of a rear property line;
- Maximum height would only be measured in feet and the limit on the maximum number of stories would be removed;
- Maximum height standards for main buildings and residential additions would be the same.

Properties located in the Hillside Overlay would not be subject to the proposed height standards and would continue to be evaluated under existing development standards. These include a maximum average height of 28 feet and three stories, with a possible increase to 35 feet with an AUP. Projects in the H overlay would *not* be limited to 22 feet in height within 15 feet of the rear property line, and height regulations unique to residential additions would be preserved.

MAXIMUM LOT COVERAGE

The proposed lot coverage standards have been revised since the Planning Commission and City Council discussed middle housing last year to keep the Hillside Overlay as-is.

Current Policy: Table 7 summarizes existing maximum lot coverage requirements. Current requirements distinguish between interior and corner lots, and reduce maximum lot coverage for taller projects.

Table 7. Current Maximum Lot Coverage Standards

	R-1	R-1A	R-2	R-2A	MU-R
Interior & Through-Lots					

1 story	40%	40%	45%	45%	100%
2 stories	40%	40%	40%	40%	100%
3 stories	40%	40%	35%	35%	100%
Corner Lots					
1 story	40%	50%	50%	50%	100%
2 stories	40%	45%	45%	45%	100%
3 stories	40%	45%	40%	40%	100%

Proposed Policy: The proposed development standards, summarized in Table 8:

- Increase maximum lot coverage in most low-density residential districts;
- Use the total number of units in a project as the controlling factor for the standard, instead of the number of stories; and
- Eliminate the distinction between interior/through lots and corner lots to simplify the standard.

Table 8. Proposed Maximum Lot Coverage Standards

	R-1	R-2	R-2A	MU-R
1-2 units & non-residential	40%	50%	50%	100%
3-7 units	50%	55%	55%	100%
8+ units	55%	55%	60%	100%

Properties located in the H overlay district would not be subject to the proposed lot coverage standards and would continue to be evaluated under existing development standards, which are included in Table 7, above.

MINIMUM SETBACKS

The proposed setback standards have been revised since the Planning Commission and City Council discussed middle housing last year to keep the Hillside Overlay standards as-is.

Current Policy: The Berkeley Municipal Code currently regulates four types of setbacks:

- Front and Rear Setbacks: Front and rear setbacks are 20 feet in the R-1, R-1H, R-1A, R-2 and R-2H zoning districts, and 15 feet in the R-2A and the R-2AH districts.

In the MU-R zoning district, lots adjacent to a non-residential district have no rear setback, unless they abut a street, in which case a 5 foot rear setback is required. A lot in the MU-R adjacent to a residential district must provide a rear setback of either 10 feet or 10 percent of the lot width, whichever is less.

- **Interior Side Setbacks:** Interior side setbacks are based on building height. The interior side setback is 4 feet at the first story for all low-density residential districts, except the MU-R. At the second story, the interior setback increases to 6 feet in the R-2, R-2H, R-2A, and R-2H districts. Interior side setbacks can be reduced to 3 feet (or 5 feet) with a ZC, as the specific setback distance and eligibility depend on the zoning district and the particular story of the building being measured.

In the MU-R district, lots adjacent to a residential district must provide an interior side setback of either 10 feet or 10 percent of the lot width, whichever is less. There are no other interior side setback requirements in the MU-R.

- **Street Side Setbacks:** Street side setbacks are 4 feet in the R-1, R-1H, and R-1A districts, 10 feet in the R-2 and R-2H districts, and vary by height in the R-2A and R-2AH districts (6 feet at first story, 8 feet at second story and 10 feet at third story).

In the MU-R district, lots adjacent to a non-residential district must provide a 5 foot street side setback. Lots adjacent to a residential district must provide a street side setback of either 10 feet or 10 percent of the lot width, whichever is less. There are no other street side setback requirements in the MU-R.

A Zoning Officer may approve an AUP to reduce the minimum setbacks in the H Overlay.

Proposed Policy: The proposed development standards include the following:

- **Front Setbacks:** Front setback standards would be reduced by 5 feet in the R-1 and R-2 zoning districts (from 20 feet to 15 feet), and the R-2A zoning district (from 15 feet to 10 feet). Projects could provide a smaller setback that is the average of the front setback(s) of adjacent structure(s), if that is less than the required setback.
- **Rear Setbacks:** The rear setback in the R-1, R-2, and R-2A zoning districts would be 4 feet; the MU-R would maintain its existing regulations. This is consistent with the required setbacks required for ADUs. As noted above, a building's maximum height is limited to 22 feet within 15 feet of the rear property line.
- **Interior Side Setbacks:** The interior side setback in the R-1, R-2, and R-2A zoning districts would be a consistent 4 feet regardless of height. The MU-R would maintain its existing regulations.
- **Street Side Setbacks:** Street side setbacks in the in the R-1, R-2, R-2A zoning districts would be a consistent 4 feet would be 4 feet. There would be no changes to street side setbacks in the MU-R.

Members of the Berkeley Neighborhoods Council expressed concern that reducing setbacks could impede emergency response and urged consultation with the Berkeley Fire Department before these standards are finalized. The Fire Department noted that a

5-foot rear and side setbacks would provide enough room to place ladders for accessing buildings during a fire or other emergency.

BUILDING SEPARATION

The proposed building separation standards have been revised since the Planning Commission and City Council discussed middle housing last year. The proposed standards would maintain the Hillside Overlay standards as-is, and reduce, but not eliminate, building separation standards in the R-1, R-2, and R-2A zoning districts.

Current Policy: Current building separation requirements are summarized in Table 9:

Table 9. Current Building Separation Standards

	R-1	R-1H	R-1A	R-2	R-2H	R-2A	R-2AH	MU-R
1 story (feet)	No min	No min	8	8	8	8	8	No min
2 stories (feet)	No min	No min	12	12	12	12	12	No min
3 stories (feet)	No min	No min	16	16	16	16	16	No min
Reduce with an AUP	--	--	AUP	AUP	AUP	AUP	AUP	--

Proposed Policy: The proposed development standards would create a 5-foot building separation requirement in the R-1, R-2, R-2A and MU-R zoning districts, consistent with the separation requirements recently adopted for ADUs, and summarized below in Table 10. Building and fire code requirements fire rating and separation would still apply. Members of the Berkeley Neighborhoods Council expressed concern that eliminating building separation standards could impede emergency response and urged consultation with the Berkeley Fire Department before these standards are finalized.

Table 10. Proposed Building Separation Standards

	R-1	R-1H	R-2	R-2H	R-2A	R-2AH	MU-R
Building Separation (feet)	5	No changes. See Table 9	5	No changes. See Table 9	5	No changes. See Table 9	5

BY-RIGHT DEMOLITION OF SINGLE-FAMILY STRUCTURES

The adopted Housing Element commits the City Council to consider permitting the demolition of single-family homes with a Zoning Certificate, with provisions to protect existing tenants, in cases where the proposed project would include a net increase in the number of dwelling units.

Any proposal to demolish a dwelling unit must comply with BMC Chapter 23.326- Demolition and Dwelling Unit Control (“the Demolition Ordinance” -- **Attachment 2**). The Demolition Ordinance includes the following:

- A Use Permit (UP(PH)) is required to demolish a single-family home. To approve a UP, the Zoning Adjustments Board must find that “eliminating the dwelling unit would not be materially detrimental to the housing needs and public interest of the affected neighborhood and Berkeley;” and
- Demolition of a single-family unit is not allowed if it was removed from the rental market under the Ellis Act during the preceding five years or if there have been verified cases of harassment or threatened or actual illegal eviction during the preceding three years.

At its meeting of February 2, 2023, the Planning Commission received a report from staff asking for a recommendation regarding amendments to the Demolition Ordinance. The impetus for these revisions was recent changes in state law that provide additional requirements for new housing development projects that involve the demolition of existing residential units. The 4x4 Joint Task Force Committee on Housing has recommended additional modifications to the Demolition Ordinance, related primarily to replacement unit requirements, tenant protections, and other technical amendments to bring the local ordinance into alignment with state law.

PARKING MAXIMUMS

BMC Section 23.322.070—Off-Street Parking Maximums for Residential Development limits the amount of off-street parking that can be provided for new residential projects of two or more units within 0.25 miles of a major transit stop or transit corridor to one space for every two units. The parking maximum can be exceeded with a discretionary AUP.

Planning staff have noted a trend of smaller, middle housing-scale projects requesting AUPs to exceed the parking maximum, usually to a ratio of one space per unit. Project sponsors, as well as the middle housing architects interviewed as part of community outreach, note that the maximum parking standard discourages middle housing production as builders are concerned about selling or renting units, particularly those that are marketed to first-time homebuyers and families with children. The ZAB has been sympathetic to these concerns for middle housing-scale projects, and has regularly issued AUPs to permit more parking.

The Planning Commission is asked to consider possible revisions to parking maximums. Feedback from community outreach includes the following suggestions:

- Eliminating parking maximums for projects of 9 units or less;
- Adjusting the parking maximum to one space per unit for middle housing projects, with an added requirement that the spaces have chargers for electric vehicles.

ALTERNATIVES CONSIDERED

Unbundled Parking. As part of community outreach, there was a suggestion to require unbundled parking in middle housing projects, particularly for projects that may be permitted to exceed parking maximums.

BMC Section 23.334.030—Transportation Demand Management Requirements states that projects that include ten or more dwelling units must lease or sell parking spaces separately from the rental and purchase of the dwelling units themselves. Middle housing projects would typically include fewer than ten units. In addition, given the relatively small numbers of dwelling units and parking spaces in each middle housing project, applying unbundled parking in these cases would be difficult to enforce and may complicate the marketability of units.

DISCUSSION

The Planning Commission is asked to review the proposed development standards, and the suggested revisions to the Demolition Ordinance and parking maximums, and provide direction to staff for the purposes of preparing a Zoning Ordinance for Planning Commission consideration and recommendation.

ATTACHMENTS

1. Middle Housing Development Standards Comparison Table
2. Demolition Ordinance

ATTACHMENT 1. EXISTING AND PROPOSED DEVELOPMENT STANDARDS TABLES

Table 1. Existing Development Standards – Lower Density Residential Districts

"-" = not applicable; P = Permitted AUP = Administrative Use Permit UPPH = Use Permit Public Hearing NP = Not Permitted		R-1	R-1H	R-1A	R-2	R-2H	R-2A	R-2AH	MU-R
		Single-Family Residential	Ltd. Two-Family Residential	Restricted Two-Family Residential	Restricted Multi-Family Residential	Mixed-Use Residential			
Single-Family		UPPH	UPPH	UPPH	UPPH	UPPH	UPPH	UPPH	AUP [1]
Two-Family		NP	NP	UPPH	UPPH	NP	UPPH	UPPH	AUP
Multi-Family		NP	NP	NP	UPPH	NP	UPPH	UPPH	AUP/ UPPH[7]
Group Living Accommodation		NP	NP	NP	NP	NP	NP	NP	UPPH
Mixed-Use Residential		NP	NP	NP	UPPH	NP	UPPH	UPPH	UPPH
Live/Work		NP	NP	NP	NP	NP	NP	NP	AUP/ UPPH[10]
Max. ADUs		Varies [11]	1	Varies [11]	Varies [11]	1	Varies [11]	1	Varies [11]
Min. Lot Area (sf)	New Lots	5000	5000	5000	5000	5000	5000	5000	No Min.
	Min. Lot Width (ft)	-	-	-	-	-	-	-	40
	Per Unit	No Min.	No Min.	No Min.	2500	2500	1650	1650	1,250
	2 Units	-	-	4500	No Min.	No Min.	No Min.	No Min.	-
Max FAR		No Max.	No Max.	No Max.	No Max.	No Max.	-	-	1.5 [2]
Min. Open Space (sf)	Per Unit	400	400	400	400	400	300	300	150
	Live/Work	-	-	-	-	-	-	-	40
Max. Height, New Bldg. or Non-Res. Addition (ft)	Max. Avg. Height	28	28	28	28	28	28	28	-
	Max. Height w/AUP	35	35	35	35	35	35	35	35
	Increase w/AUP	-	No Max.	-	-	No Max.	-	No Max.	-
	Max. Avg. Height, Rear Main (ft)	-	-	22	-	-	-	-	-
	ADU	20	16	20	20	16	20	16	20
	Max. Height, Res./MU	-	-	-	-	-	-	-	35
	Max. Height, Live-Work	-	-	-	-	-	-	-	28
Max. Avg Height, Res. addition (ft)		14	14	14	14	14	14	14	-
	w/AUP	35	35	35	35	35	35	35	-
Max. Stories, New Bldg. or Non-Res. Addition		3	3	3	3	3	3	3	3
Max. Stories, Rear Main		-	-	2	-	-	-	-	-
Max. Lot Coverage - Interior/Thru Lot (%)	1 Story	40	40	40	45	45	45	45	100
	2 Stories	40	40	40	40	40	40	40	100
	3 Stories	40	40	40	35	35	35	35	100
	Increase w/AUP	-	-	-	-	-	-	-	100
Max. Lot Coverage - Corner Lot (%)	1 Story	40	40	45	50	50	50	50	100
	2 Stories	40	40	45	45	45	45	45	100
	3 Stories	40	40	45	40	40	40	40	100
	Increase w/UPPH	-	-	-	-	-	-	-	-
Min. Setback, Front (ft)	1st-2nd Story	20	20	20	20	20	15	15	-
	3rd Story	20	20	20	20	20	15	15	-
	Adjacent Non-Res. District	-	-	-	-	-	-	-	5
	Adjacent Res. District	-	-	-	-	-	-	-	10
	Reduce w/AUP	-	No Min.	-	-	No Min.	-	No Min.	No Min.
Min. Setback, Rear (ft)	1st-2nd Story	20	20	20	20	20	15	15	-
	3rd Story	20	20	20	20	20	15	15	-
	ADU	4	4	4	4	4	4	4	4
	Adjacent Non-Res. District	-	-	-	-	-	-	-	No Min./5 [8]
	Adjacent Res. District	-	-	-	-	-	-	-	10/10% [9]
	Reduce w/ZC	20% [3]	20% [3]	20% [3]	-	-	-	-	-
	Reduce w/AUP	-	-	12 [6]	-	-	-	-	-
Min. Setback, Interior Side (ft)	1st-2nd Story	4	4	4	4	4	4	4	-
	3rd Story	-	-	-	6	6	6	6	-
	1st-2nd Story w/ZC	3/10% [4]	3/10% [4]	3/10% [4]	3/10% [4]	3/10% [4]	3/10% [4]	3/10% [4]	-
	3rd Story w/ZC	3/10% [4]	3/10% [4]	3/10% [4]	5 [4]	5 [4]	5 [4]	5 [4]	-
	ADU	4	4	4	4	4	4	4	4
	Adjacent Non-Res. District	-	-	-	-	-	-	-	No Min.
	Adjacent Res. District	-	-	-	-	-	-	-	10/10% [9]
Min. Setback, Street Side (ft)	1st Story	4	4	4	10	10	6	6	-
	2nd Story	-	-	-	10	10	8	8	-
	3rd Story	-	-	-	10	10	10	10	-
	Adjacent Non-Res. District	-	-	-	-	-	-	-	5

"-" = not applicable; P = Permitted AUP = Administrative Use Permit UPPH = Use Permit Public Hearing NP = Not Permitted		R-1	R-1H	R-1A	R-2	R-2H	R-2A	R-2AH	MU-R
		Single-Family Residential	Ltd. Two-Family Residential	Restricted Two-Family Residential	Restricted Multi-Family Residential	Mixed-Use Residential			
Adjacent Res. District	-	-	-	-	-	-	-	-	10/10% [9]
Min. Setback, Interior/Street Rear Bldg. (ft)	-	-	6	-	-	-	-	-	-
Min. Building Separation (ft)	1st Story	No Min.	No Min.	8 [6]	8	8	8	8	No Min.
	2nd Story	No Min.	No Min.	12 [6]	12	12	12	12	No Min.
	3rd Story	No Min.	No Min.	16 [6]	16	16	16	16	No Min.
	Reduce w/UP	-	-	P (AUP)	P (AUP)	P (AUP)	P (AUP)	P (AUP)	-
Off-Street Parking (spaces per unit)	Min. Spaces	No Min.	No Min.	No Min.	No Min.	No Min.	No Min.	No Min.	No Min.
	Min. Spaces, Roadway width < 26 ft	-	1	-	-	1	-	1	-
	Max. Spaces, 2+ DU, 0.25 from Transit Hub or Corridor	0.5	0.5	0.5	0.5	0.5	0.5	0.5	-
	Tandem Parking	w/AUP	w/AUP	w/AUP	w/AUP	w/AUP	w/AUP	w/AUP	w/AUP
	Landscaped Buffer (ft)	2/4 [5]	2/4 [5]	2/4 [5]	2/4 [5]	2/4 [5]	2/4 [5]	2/4 [5]	2/4 [5]
	Max. Driveway Width (ft)	20	20	20	20	20	20	20	20
Min. Long-Term Residential Bicycle Parking		1-4 Units: None 5+ Units: 1 per 3 bedrooms GLA: Greater of 2 or 1 per 2.5 bedrooms							
Min. Short-Term Residential Bicycle Parking		1-4 Units: None 5+ Units: Greater of 2 or 1 per 40 bedrooms GLA: Greater of 2 or 1 per 20 bedrooms							

[1] A Use Permit is required to establish a unit that is within 150 feet of an M or MM district; or a construction product manufacturing or primary product manufacturing use. [BMC 23.206.090(B)(8) MU-R Mixed Use-Residential District]

[2] If min 50% of floor area is Residential

[3] On a lot less than 100 ft deep, reduction of rear setback by 20% of lot depth with ZC

[4] On a lot width less than 40 ft, reduction of side setback by 10% of lot width of 3 ft., whichever is greater. Third story is 5 ft. for R-2, R-2A. Not permitted for rear main buildings in R-1A [BMC 23.304.030(B)(2) Setback Reductions]

[5] All paved areas for off-street parking must be separated from adjacent lot lines and the public right-of-way by a landscaped strip. 2 ft for 1-3 parking spaces; 4 ft for 4 or more parking spaces. (BMC 23.322.080(H) Landscape Buffers)

[6] R-1A Separation Standard based on building height, not by story.

[7] 3 to 4 units requires AUP, 5+ units requires UP(PH)

[8] Min 5 ft rear setback if rear of lot abuts a street

[9] 10 ft or 10% of lot width, whichever is less

[10] AUP if meets all development and parking requirements, less than 5,000 SF of GSF is added or changed, less than five live/work units are created, and a dwelling unit is not changed into a live/work unit; otherwise UP required.

[11] If on a lot with a duplex or attached multi-family dwelling, max 2 detached ADUs or up to 25% of the total number of existing units may be converted into ADUs, otherwise max 1 ADU if more than 1 detached dwelling unit on a lot. A maximum of 1 ADU or JADU is permitted in the R-1H, R-2H, and R-2AH.

Table 2. Proposed Development Standards – Lower Density Residential Districts

"-" = not applicable; P = Permitted AUP = Administrative Use Permit UPPH = Use Permit Public Hearing NP = Not Permitted		R-1	R-1H	R-2	R-2H	R-2A	R-2AH	MU-R
		Residential Multi-Unit 1		Residential Multi-Unit 2		Residential Multi-Unit 2A		Mixed-Use Residential
Single-Family		UPPH	UPPH	UPPH	UPPH	UPPH	UPPH	AUP [1]
Multi-Unit Residential		ZC	NP	ZC	NP	ZC	UPPH	ZC [1]
Group Living Accommodation		NP	NP	NP	NP	NP	NP	UPPH
Mixed-Use Residential		NP	NP	UPPH	NP	UPPH	UPPH	UPPH
Live/Work		NP	NP	NP	NP	NP	NP	ZC[1]
Min. Density (DU/acre) - Round to the nearest whole number		10	No Min.	10	No Min.	20	No Min.	20
Max. Density (DU/acre) – Round to the nearest whole number		40	20	50	20	60	55	60
Max. ADUs		Varies [5]	1	Varies [5]	1	Varies [5]	1	Varies [5]
Min. Lot Area (sf)	New Lots	5000	5000	5000	5000	5000	5000	No Min.
Max. FAR	1 Unit and Non-Res. Uses	1.2	No max.	1.2	No max	1.2	--	1.5
	2 Units	0.5	--	0.6	--	0.6	--	1.5
	3-7 Units	1.2	--	1.2	--	1.5	--	1.5
	8+ Units	1.5	--	1.25	--	1.75	--	1.75
Min. Open Space (sf)	Per 1,000 sf Floor Area	150	No changes See Table 1	150	No changes See Table 1	150	No changes See Table 1	150
Max. Height, New Bldg. or Non-Res. Addition (ft)	Max. Avg. Height	28	28	28	28	28	28	-
	Max. Height	35	35 (AUP)	35	35 (AUP)	35	35 (AUP)	35
	Within 15' of Rear Property Line	22	28	22	28	22	28	22
	ADU	20	16	20	16	20	16	20
Max. Lot Coverage (%)	1-2 Units and Non-Res. Uses	40	40	50	No changes See Table 1	50	No changes See Table 1	100
	3-7 Units	50	40	55		55		100
	8+ Units	55	40	55		60		100
Min. Setback, Front (ft)		15 [4]	No changes See Table 1	15 [4]	No changes See Table 1	10 [4]	No changes See Table 1	-
	Adjacent Non-Res. District	-		-		-		5
	Adjacent Res. District	-		-		-		10
	Reduce w/AUP	-		-		-		No Min.
Min. Setback, Rear (ft)		4	No changes See Table 1	4	No changes See Table 1	4	No changes See Table 1	-
	ADU	4		4		4		4
	Adjacent Non-Res. District	-		-		-		No Min./5 [2]
	Adjacent Res. District	-		-		-		10/10% [3]
Min. Setback, Interior Side (ft)		4	No changes See Table 1	4	No changes See Table 1	4	No changes See Table 1	-
	ADU	4		4		4		4
	Adjacent Non-Res. District	-		-		-		0
	Adjacent Res. District	-		-		-		10/10% [3]
Min. Setback, Street Side (ft)		4	4	4	No changes See Table 1	4	No changes See Table 1	-
	Adjacent Non-Res. District	-	-	-		-		5
	Adjacent Res. District	-	-	-		-		10/10% [3]
Min. Building Separation (ft)		5	No Min.	5	No changes See Table 1	5	No changes See Table 1	5
Off-Street Parking (spaces per unit)	Min. Spaces	No Min.	No Min.	No Min.	No Min.	No Min.	No Min.	No Min.
	Min. Spaces if Roadway width < 26 ft	-	1	-	1	-	1	-
	Max. Spaces if 0.25mi from Transit Hub or Corridor	1 du: 0 2+ du: 0.5	1 du: 0 2+ du: 0.5	1 du: 0 2+ du: 0.5	1 du: 0 2+ du: 0.5	1 du: 0 2+ du: 0.5	1 du: 0 2+ du: 0.5	-
	Max. Driveway Width (ft)	20	20	20	20	20	20	20
Min. Long-Term Residential Bicycle Parking		1-4 Units: None 5+ Units: 1 per 3 Bedrooms GLA: Greater of 2 or 1 per 2.5 Bedrooms						
Min. Short-Term Residential Bicycle Parking		1-4 Units: None 5+ Units: Greater of 2 or 1 per 40 Bedrooms GLA: Greater of 2 or 1 per 20 Bedrooms						
Front Façade Elevation, within Front 40' of Lot	Min. % Entries, Glazing, or Railing; Incl. Trim, Exclude Garage Doors	20%	20%	20%	20%	20%	20%	20%

[1] A Use Permit is required to establish a unit that is within 150 feet of an M or MM district; or a construction product manufacturing or primary product manufacturing use. ([BMC 23.206.090\(B\)\(8\)](#)) MU-R Mixed Use-Residential District)
 [2] Min 5 ft rear setback if rear of lot abuts a street
 [3] 10 ft of 10% of lot width, whichever is less
 [4] Or average front setback of adjacent structure(s), whichever is less.
 [5] If on a lot with a duplex or attached multi-family dwelling, max 2 detached ADUs or up to 25% of the total number of existing units may be converted into ADUs, otherwise max 1 ADU if more than 1 detached dwelling unit on a lot. A maximum of 1 ADU or JADU is permitted in the R-1H, R-2H, and R-2AH.

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.

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).

Communications

From: Sylvia Mendez PCAD <sylviamendezpcad@gmail.com>
Sent: Friday, October 27, 2023 11:02 AM
To: Planning Commission
Subject: Help Berkeley Students Thrive

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.

My name is Sophina Jones, I am a counselor at Berkeley Technology Academy. and I'm the parent volunteer leader of PCAD (Parents of Children of African Descent) at Sylvia Mendez Elementary. We've been hosting some amazing events to share about culture to all students at Sylvia Mendez. I'm in charge of the Heritage Months assemblies (and we just kicked off Hispanic Heritage Month on Friday!), Kwanzaa Celebration, Talent Show, and we have our annual Black Graduation.

I've been working hard to convey the importance of culture, especially at a school that celebrates the Spanish language. Sylvia Mendez is the only two-way immersion public elementary school in Berkeley, which teaches Spanish and English to all attending students.

Unfortunately, we're facing the same achievement gap as was recently shared in [Berkeleyside](#). To address that, I'm now attempting to establish a legacy program for our babies so they don't fall behind in Spanish. And that's why I'm writing to you now!

We have the opportunity to bring students to the Dominican Republic in the Spring. However, we have a tight deadline to raise funds that will send our kids to this revolutionary experience. **We need to raise \$25,000 by November 30th or our down payments are at risk.** What could be a great experience will be lost if we're unable to raise these funds in time.

We're thinking that if our community businesses who also share the values of culture, travel, and language could pitch in, we could host an amazing international trip that would impact these students' lives in a profound way.

My ask is this: Is there a way that you can help us get to this goal? A donation of \$500 or more will help us tremendously. I know times are tight, but I'm also eternally optimistic to whatever donation is available!

Do you host fundraising opportunities? Do you have a network of members to connect too? I know we live in an amazing community with people who want to help.

Thanks for your consideration - I'm available for any questions you might have.

Sincerely,
Sophina Jones
Brilliant Black Bilinguals

Communications

From: Shannon Allen <shannonallen.sa@gmail.com>
Sent: Monday, October 30, 2023 9:06 AM
To: Planning Commission
Subject: BMC Quarterly Text Clean-up: Pollinators
Attachments: 4_12_2022_CLK - Resolution_City Council_ 70301_-_ REQUIRING NATIVE & DROUGHT RESISTANT PLANTS IN ALL CITY LANDSCAPING.pdf

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear Planning Commission -

Please consider adding the minor text revisions to your next quarterly BMC text clean up; proposed text is shown in underline, below. The importance of and implementation actions for pollinator plants across Berkeley has already been addressed by the City Council and the Zoning Adjustments Board and the Planning Commission should reflect this in the Berkeley Municipal Code. On April 12, 2022, the City Council adopted Resolution No. 70,301-N.S., requiring Native & Drought Resistant Plants in all City Landscaping, see attached. The guidelines highlight the important role of native plants and pollinators and require these plants in the landscaping of City property where possible. The Zoning Adjustments Board routinely requests that applicants utilize native plants in landscape plans, if an applicant hasn't already done so. Applicants consistently understand the value of pollinator plants and the ease of implementing this request, and agree to this direction.

Update Municipal Code to Incorporate Native Plants

32.304.090 Useable Open Space

B. Standards...

7. Landscaping

- (a) At least 40 percent of the total required usable open space area, exclusive of balconies above the ground floor, shall be landscaped. All landscaping shall consist of native plants as identified by the California Native Plant Society for the City of Berkeley (<https://calscape.org/>)
- (b) A landscaped area may not include off-street parking spaces, driveways, paved walkways and paths, patios and other surfaces covered by concrete or asphalt.
- (c) For multiple dwelling uses, required landscaped areas shall incorporate automatic irrigation and drainage facilities adequate to assure healthy growing conditions for plants.

C. Other Open Space Areas. Areas of the lot which do not qualify as usable open space and which are not designated as driveways, off-street parking spaces or required walkways, shall be retained as landscaped areas. All landscaping shall consist of native plants as identified by the California Native Plant Society for the City of Berkeley (<https://calscape.org/>)

Sincerely,
Shannon Allen
District 2

RESOLUTION NO. 70,301-N.S.

REQUIRING NATIVE & DROUGHT RESISTANT PLANTS IN ALL CITY
LANDSCAPING

WHEREAS, the City of Berkeley and the State of California are facing historic drought conditions that are projected to worsen over the course of the next half century or more, and

WHEREAS, the City of Berkeley must adapt its operations to future climate conditions characterized by excessive dryness, extreme weather, and declining populations of pollinators and other local wildlife, and

WHEREAS, the use of native plants in City landscaping offers an opportunity for less water-intensive landscaping throughout Berkeley, and

WHEREAS, native plants intake and filter toxic water runoff more easily than non-native landscaping, and

WHEREAS, native plants provide critical food and habitat for native animals and pollinators that are at risk under future climate conditions, and

WHEREAS, pollinator-friendly plants provide a natural boost to local biodiversity, and

WHEREAS, the costs of native plant landscaping may reduce overall landscaping costs due to a decreased need for pesticides and fertilizers, and

WHEREAS, Resolution No. 64,376-N.S. can be updated with biodiversity goals.


NOW THEREFORE, BE IT RESOLVED that the guidelines for Native Species/Bay-Friendly Landscaping Policy For Enhanced Biodiversity on City Property described in Exhibit A are hereby be adopted, and Resolution No. 64,376-N.S. is rescinded.

The foregoing Resolution was adopted by the Berkeley City Council on April 12, 2022 by the following vote:

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

Noes: None.

Absent: None.



Jesse Arreguin, Mayor

Attest: 

Mark Numainville, City Clerk

EXHIBIT A

GUIDELINES FOR NATIVE SPECIES/BAY-FRIENDLY
LANDSCAPING POLICY FOR ENHANCED BIODIVERSITY ON CITY PROPERTY

Policy Statement: To combat the critical loss of biodiversity in Berkeley and globally due to modern development and climate change, the City shall use the following guidelines for planning and implementing native plant and Bay-Friendly landscape maintenance and vegetation planting improvements on City property (City parks, open spaces, and Right-of-Way planting strips) in order to enhance biodiversity.

1. Use of native plant species that support bees and other lifeforms and are appropriate to our environment when possible; use a diversity of the flowering shrubs, perennials, herbs, grasses, and small trees that bloom successively to produce the leaves, pollens and nectars that attract bees, other pollinators, insects, birds, and leaf-chewing creatures with an emphasis on those that support local species and ecosystem; and to the greatest extent possible, use plants and trees that are low to moderate in their allergenic properties, low water use and drought-tolerant, and higher in insect and bird habitat potential. No species that are invasive in the Berkeley climate shall be used.
1. Control non-native plants and weeds that crowd out native plants that provide higher habitat value for biodiversity.
2. Strive to plant pollinator-friendly vegetation in areas of lower user density away from children's play area, restrooms, picnic tables, barbeques, refuse containers, and other park facilities where bee sting risk is greater due to normal visitor use patterns.
3. For street trees, the City seeks to plant Bay Area and California native tree species that support other life forms where available growing space and/or native conditions exist, including streets, open space, parks, and Right-of-Way planting areas. In both dense urban areas and park spaces with irrigated turf, where very little native soil and water conditions remain, a diverse range of appropriate tree species shall be used that meet the following requirements: that perform successfully in small planting sites with poor soils and above and below ground constraints; that attain appropriate sizes at maturity; that exhibit safe and manageable growth patterns; that enhance biodiversity; that are drought tolerant; that build climate resilience into the urban forest; and that contribute to the City's Climate Action Goals.

Communications

From: Fiona Baker <fiona.b.baker@gmail.com>
Sent: Tuesday, October 31, 2023 10:32 AM
To: Planning Commission
Subject: Please support "missing middle" housing!

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear Berkeley Planning Commission,

As a Berkeley resident, I urge you to support zoning changes to encourage middle housing in Berkeley's low-density neighborhoods.

As you know, we have a terrible housing crisis and the city needs to be more proactive to ensure there is accessible, affordable housing for all.

Here are a few suggestions, based on the staff report:

- Increase the allowable lot coverage for smaller (3-7 unit) buildings, which is currently limited to 50% of the lot.
- Decrease the front setback from 15' to 10' (as defined on pages 36 and 37 of the agenda).
- Reduce or eliminate the tenant occupancy exclusion for single family homes, but leave the 5 year exclusion for Ellis Act evictions in place along with the existing anti-harassment requirements.

Thank you!

Fiona Baker
1260 Hopkins St, Apt 49, Berkeley, CA

Communications

From: Oren Cheyette <ocheyette@gmail.com>
Sent: Tuesday, October 31, 2023 10:42 AM
To: Planning Commission
Subject: Proposed missing middle rezoning

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear members of the Berkeley Planning Commission,

I am writing as a community member and homeowner in regard to the Nov. 2 agenda item on revising R-1 & R-2 zoning to allow more housing in Berkeley through small scale "middle" housing.

I am strongly in support of action towards the city's stated commitment to reversing the effects of decades of exclusionary zoning policy, culminating in 1970s era policies that effectively barred any further creation of housing at density greater than one home per lot across most of the city.

The staff's proposal for new zoning, while clearly a move in the right direction, does not go far enough and leaves too many constraints on adding infill housing. I urge the Commission to make changes in four areas to make such housing feasible:

1. Increase the maximum floor-area-ratio (FAR) to allow significantly more efficient use of available space
2. Decrease required minimum setbacks
3. Increase maximum allowed building height
4. Eliminate the "prior rental" restrictions on demolition permits, except in case of a recently preceding Ellis Act eviction. Preservation of single-family homes on lots that could house multiple families should not be a deliberate outcome of city policy.

Over the period since 1970 the state's population doubled while available housing capacity in the city pretty much flatlined, with modest addition of smaller apartments in large projects on major corridors more recently. But the "neighborhoods" of single family homes have retained their exclusionary status - at one time racial, now by economic class. The City Council has committed to changing this state of affairs. I urge the recommendation of new zoning that will make the Council's commitment a reality.

Regards,
Oren Cheyette
D5

Communications

From: H. Hernandez <hh@imagists.org>
Sent: Tuesday, October 31, 2023 10:24 AM
To: Planning Commission
Subject: Support middle housing

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear Planning Commission,

Please do everything you can to support duplexes, triplexes/fourplexes, courtyard apartments and other small-scale multi-family housing, including the Berkeley Neighbors for Housing and Climate Action recommendations. I've been a resident of north Berkeley for decades, am a homeowner, and would welcome these changes to increase the availability of "middle housing" in previously single-family-home-only zoned areas.

Thank you!
Heather

Heather Hernandez (she/her)
1825 Vine St Apt 5, Berkeley, CA 94703
hh@imagists.org

Communications

From: Andrea Horbinski <andrea.horbinski@gmail.com>
Sent: Tuesday, October 31, 2023 11:05 AM
To: Planning Commission
Subject: Expand Missing Middle Housing

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.

Hello,

I'm writing to comment on Item 11 of the agenda for the November 1 meeting. I strongly support allowing as much Missing Middle housing in Berkeley as possible, which means putting as few restrictions on it as possible. In particular, I urge the Commission to adopt the following changes:

1. Increasing the allowable lot coverage for these smaller (3-7 unit) buildings, which is currently limited to 50% of the lot.
2. Decreasing the front setback from 15' to 10' (as defined on pages 36 and 37 of the agenda). For a 'typical' Berkeley 6,000sf lot (50x120') zoned R1, the current proposed policy would remove 30% of the buildable area; reducing the setback to 10' would lower that to a 26% unbuildable area.
3. Reducing or eliminating the tenant occupancy exclusion for single family homes (currently proposed to be 5 years), but leave the 5 year exclusion for Ellis Act evictions in place along with the existing anti-harassment requirements. I strongly support tenant protections, but it should be remembered that single-family homes are excluded from actual rent stabilization; while just-cause eviction rules still apply, since the rent can be set to market level at any time, single family homes are not a good source of affordable, stable housing. The primary focus should be on protecting tenants currently in residence, which is best accomplished through the Ellis Act exclusion and the existing anti-harassment requirement.

Please make these changes to allow as much housing and as many new neighbors as possible in Berkeley. Thank you.

sincerely,

Andrea Horbinski, PhD
<https://ahorbinski.com/>

Communications

From: Eric Johnson <johnsoew@gmail.com>
Sent: Tuesday, October 31, 2023 10:17 AM
To: Planning Commission
Subject: Re. Middle Housing Discussion - Weds Nov 1

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.

Planning Commission,

I am a Berkeley resident, homeowner and parent of young children. Please support MORE middle housing in Berkeley. Our community needs more housing of all types in all neighborhoods, especially duplexes, triplexes/fourplexes, courtyard apartments and other small-scale multi-family housing forms that can accommodate so many different people at different life stages, and integrate so well into all of Berkeley's neighborhoods.

Specific improvements to the currently proposed standards would be:

- Increasing the allowable lot coverage for these smaller (3-7 unit) buildings, which is currently limited to 50% of the lot.
- Decreasing the front setback from 15' to 10' (as defined on pages 36 and 37 of the agenda). For a 'typical' Berkeley 6,000sf lot (50x120') zoned R1, the current proposed policy would remove 30% of the buildable area; reducing the setback to 10' would lower that to a 26% unbuildable area.

Regards,

Eric Johnson

Communications

From: Matthew Wadlund <mwadlund@wdsplus.com>
Sent: Tuesday, October 31, 2023 8:43 AM
To: Planning Commission
Subject: Please Improve Middle Housing Policies!

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear Planning Commissioners,

Please Improve Middle Housing Policies!

Duplexes, triplexes/fourplexes, courtyard apartments and other small-scale multi-family housing types were a common feature of housing development in Berkeley up until the 1970s. Restoration of these housing options in all neighborhoods is one part of solving our housing and housing affordability crisis. It will also promote greater economic integration throughout the city and thereby assist with racial, ethnic, and age-based integration.

With that said, Missing Middle can be challenging to develop in an 'infill' location like Berkeley. Generally, even with minimal restrictions, it can be uneconomical to replace an existing building with a new Missing Middle housing. As a result, it's critical to carefully consider all restrictions placed on Missing Middle housing!

Please support zoning changes to encourage middle housing in Berkeley's low-density, affluent residential neighborhoods.

Thank You,

Matthew Wadlund
WADLUND+ Design Studio