



Planning Commission

# AGENDA

## REGULAR MEETING OF THE PLANNING COMMISSION

Wednesday, October 19, 2022  
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/88536315053>. 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: **885 3631 5053**. 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:** Wiblin, Brad, 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  
Kapla, Robb, 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. **Order of Agenda:** The Commission may rearrange the agenda or place items on the Consent Calendar.
3. **Public Comment:** Comments on subjects not included on the agenda. Speakers may comment on agenda items when the Commission hears those items. (See “*Public Testimony Guidelines*” below):
4. **Planning Staff Report including Future Agenda Items:** In addition to the items below, additional matters may be reported at the meeting.
5. **Chairperson’s Report:** Report by Planning Commission Chair.
6. **Committee Reports:** Reports by Commission committees or liaisons. In addition to the items below, additional matters may be reported at the meeting.
7. **Approval of Minutes:** Approval of Draft Minutes from the meeting on **September 7, 2022.**
8. **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:** **Discussion: Bird Safe Berkeley Requirements Referral**  
**Recommendation:** Receive a report and provide direction to staff to prepare Zoning Ordinance amendments.  
**Written Materials:** [Linked](#)  
**Presentation:** N/A
10. **Action:** **Public Hearing: Zoning Ordinance Amendments that Address Technical Edits and Corrections to Berkeley Municipal Code (BMC) Title 23 – Package #4**  
**Recommendation:** Conduct a public hearing on technical edits and corrections to the new Zoning Ordinance and make a recommendation to City Council.  
**Written Materials:** [Linked](#)  
**Presentation:** N/A
11. **Action:** **Public Hearing: Demolition Ordinance Amendments**  
**Recommendation:** Conduct a public hearing and make a recommendation to City Council to adopt amendments to the demolition ordinance portion to the Berkeley Municipal Code.  
**Written Materials:** [Linked](#)  
**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:**

- October 14, 2022 – City/UC/Student Relations Committee Presentation on Residential Objective Standards: Southside. <https://berkeleyca.gov/your-government/city-council/council-committees/cityucstudent-relations-committee>
- October 11, 2022 – City Council Report on Amendments to the Zoning Ordinance to clarify and streamline the permit process for Amusement Device Arcades. (40 pages) <https://berkeleyca.gov/sites/default/files/documents/2022-10-11%20Item%2020%20Referral%20Response%20%20Amendments%20to%20the%20Zoning.pdf>
- September 20, 2022 – City Council Worksession Report on Residential Objective Standards: Middle Housing and Southside. (487 pages) <https://berkeleyca.gov/sites/default/files/documents/2022-09-20%20WS%20Item%2001%20Residential%20Objective%20Standards.pdf>
- August 30, 2022 – Housing Element Draft Environmental Impact Report. (441 pages) <https://berkeleyca.gov/sites/default/files/documents/Berkeley%202023-2031%20Housing%20Element%20Update%20Draft%20EIR.pdf>

**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](mailto: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.

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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 **October 13, 2022.**

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Grace Wu  
Planning Commission Secretary





Planning Commission

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

3 The meeting was called to order at 7:01 p.m.

4 **Location:** Virtual meeting via Zoom

5 **1. ROLL CALL:**

6       **Commissioners Present:** Barnali Ghosh, Savlan Hauser, Robb Kapla, Chip Moore,  
7       Christina Oatfield, Alfred Twu, Jeff Vincent, and Brad Wiblin.

8  
9       **Commissioner Absent:** Elisa Mikiten.

10  
11       **Staff Present:** Secretary Grace Wu, Clerk Zoe Covello, Justin Horner, and City Attorney  
12       Sara Stephens.

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

14 **3. PUBLIC COMMENT PERIOD:** 0.

15 **4. PLANNING STAFF REPORT:**

- 16       • The draft Housing Element Update (HEU) was submitted to HCD on Wednesday,  
17       August 10, 2022. HCD will have 90 days to review and formal comments will be  
18       shared with the City on Tuesday, November 8, 2022.
- 19       • The draft Environmental Impact Review (EIR) for the HEU was published last  
20       Tuesday, August 30, 2022. Public comments are being accepted until Monday,  
21       October 17, 2022.
- 22       • On Tuesday, September 20, 2022 Council is hosting a worksession to discuss  
23       objective standards for middle housing and Southside. It is open to the public and  
24       begins at 4 pm.
- 25       • Staff will be conducting outreach regarding the proposed Southside objective zoning  
26       standards this fall. Stay tuned for opportunities to engage with staff at events.
- 27       • The next Planning Commission meeting will be held on Wednesday, October 19,  
28       2022. As of right now, two items will be on the agenda:
  - 29           ○ Draft bird safe ordinance
  - 30           ○ Draft demolition ordinance

31 **Information Items:**

- 32       • *Upcoming:* September 20 – City Council Middle Housing and Southside Worksession

34 **Communications:**

- 35 • General.

36 **Late Communications:** *See agenda for links.*

- 37 • None.

38 **5. CHAIR REPORT:**

- 39 • None.

40 **6. COMMITTEE REPORT:** Reports by Commission committees or liaisons. In addition to the  
41 items below, additional matters may be reported at the meeting/  
42

- 43 • None.

44 **7. APPROVAL OF MINUTES:**

45 Motion/Second/Carried (Wiblin/Moore) to approve the Planning Commission Meeting Minutes  
46 from July 6, 2022.

47  
48 Ayes: Ghosh, Hauser, Moore, Oatfield, Twu, Vincent, and Wiblin. Noes: None. Abstain: Kapla.  
49 Absent: Mikiten. (7-0-1-1)

50

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

- 52 • None.

53 **AGENDA ITEMS**

54 **9. Public Hearing: Draft Environmental Impact Report Housing Element Update Project**

55 Associate Planner Justin Horner and consultant Karly Kaufman presented on the Draft  
56 Environmental Impact Report (EIR), took public testimony, and asked Commissioners to provide  
57 comments.

58 Motion/Second/Carried (Twu/Vincent) to close the public hearing at 7:35 p.m.

59  
60 Ayes: Ghosh, Hauser, Kapla, Moore, Oatfield, Twu, Vincent, and Wiblin. Noes: None. Abstain:  
61 None. Absent: Mikiten. (8-0-0-1)  
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63 **Public Comments: 1**

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Motion/Second/Carried (Wiblin/Vincent) to adjourn the meeting at 8:06 p.m.

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Ayes: Ghosh, Hauser, Moore, Oatfield, Twu, Vincent, and Wiblin. Noes: None. Abstain: None.

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Absent: Mikiten and Kapla. (7-0-0-2)

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**Members in the public in attendance: 5**

72

**Public Speakers: 1**

73

**Length of the meeting: 1 hr 5 minutes**





Planning and Development Department  
Land Use Planning Division

## STAFF REPORT

DATE: October 19, 2022  
TO: Members of the Planning Commission  
FROM: Justin Horner, Associate Planner  
SUBJECT: Bird Safe Berkeley Requirements Referral

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### SUMMARY

At their meeting on March 2, 2022, the Planning Commission, in response to a referral from the Community Environmental Advisory Commission (CEAC) and City Council, provided direction for amendments to the Berkeley Municipal Code (BMC) establishing bird safety requirements for new construction and significant renovations. This report presents a more specific set of policy questions for the Planning Commission's consideration, based on staff's additional research and feedback from the Design Review Committee (DRC) and Golden Gate Audubon.

The policy questions pertain to:

- What types of projects should be required to comply?
- For projects that are subject to the requirements, how much glazing should be required to be bird safe?
- For the purposes of compliance, what materials are considered bird safe?

Staff seeks Planning Commission's direction in order to return to the Commission for a public hearing on December 7, 2022 with specific Zoning Ordinance amendments.

### BACKGROUND

At their meeting on March 2, 2022, the Planning Commission received a report and presentation on the referral from the CEAC, the studied effects of built environments on bird populations, a brief discussion of how Berkeley's particular geography relates to bird populations, and a review of existing regulatory efforts in Bay Area cities regarding bird safety (*Attachment 1*).

After hearing public comment, the Planning Commission provided direction to staff to return with bird safety regulations that are:

- Included in the Berkeley Municipal Code/Zoning Ordinance<sup>1</sup>;
- Applicable to new buildings and major renovations *citywide*; and
- Based on the most up-to-date science with respect to birds and the built environment.

Accordingly, Commissioners asked staff to analyze recently-adopted bird safe regulations from New York City and Mountain View, and to consult with the Golden Gate Audubon Society.

On September 15, 2022, staff provided an informational presentation on proposed bird safe regulations to the DRC, which provided the following feedback:

- **Costs and feasibility for smaller residential projects.** The DRC expressed concern about the cost of bird safe glass for single family homeowners and builders of smaller residential projects (e.g. 2-4 units) . Committee members also questioned whether bird safe glass was sufficiently available for smaller residential projects. One Committee member contacted three local window retailers, none of whom had experience with requests for bird safe glass. It was noted that bird safe glass could potentially double the cost of a glass order for a smaller project.
- **Phased approach to bird safe requirements.** Given concerns about the availability and cost of bird safe glass for smaller residential projects, DRC members recommended phasing in bird safe requirements. New construction of commercial projects and larger-scale residential and mixed-use projects would be subject to bird safe requirements, while new smaller-scale residential and residential rehabilitation projects would be covered at a later date as the costs and benefits become clearer. The DRC noted that larger projects would be in a better position to absorb any increase in per window cost because the project as a whole is better financed. In addition, larger window orders that would come from larger projects may result in less per-unit costs.
- **Tiered approach to bird safe requirements.** DRC members suggested that bird safe requirements could be tiered to include more features as project size increases. i.e. larger projects could be subject to more comprehensive requirements while smaller residential projects or rehabs could be subject to fewer requirements. For instance, larger projects could be required to use bird safe glass throughout the project while smaller projects could be permitted to use alternative methods or use them on specific portions of the project.
- **Point-of-Sale Requirement:** Existing residences could be required to comply with bird safe requirements at point of sale.

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<sup>1</sup> Other options considered and dismissed included adopting bird safe regulations through CEQA review mitigation measures, project conditions of approval, design guidelines, or local building code.

- **Historical Landmarks:** DRC members supported provisions that would require a minimally intrusive compliance option—or exemption—for designated historical landmarks.
- **Public Education:** DRC members recommended a public information campaign to introduce residents to the concept of bird safe building strategies and to raise awareness of future regulations. This would not only include bird safe glass, but lighting, landscaping and other project design elements that encourage bird safety. Golden Gate Audubon is exploring how they could coordinate such an effort.

Given Planning Commission’s direction in March 2022, and feedback from the DRC, community members, and Golden Gate Audubon, the development of a bird safe ordinance will be informed by answers to the following questions:

- What types of projects should be required to comply?
- For projects that are subject to the requirements, how much glazing should be required to be bird safe?
- For the purposes of compliance, what materials are considered bird safe?

To provide parameters for the Planning Commission’s discussion, Table 1 summarizes the Bird Safety Ordinance recommended by the CEAC and City Council in its referral and the American Bird Conservancy’s (ABC) Model Bird Friendly Ordinance.<sup>2</sup> CEAC’s suggested ordinance was presented in 2019 and was based on the City of Alameda’s regulations. ABC’s Model Bird Friendly Ordinance constitutes a more expansive policy approach which it characterizes as “the leading edge of creating a bird-friendly bird environment.” That said, ABC itself suggests that jurisdictions may feel the need to soften some of its provisions to meet local conditions.

*Table 1. Bird Safe Ordinance Summaries*

	<b>CEAC’s Proposed Ordinance</b>	<b>ABC’s Model Ordinance</b>
<b>What types of projects are covered?</b>	<ul style="list-style-type: none"> <li>• For new construction, windows on a façade of a building with 2 or more stories where glass constitutes 50% or more of the façade’s area.</li> <li>• Replacement of existing windows on a façade of a building with 2 or more stories where glass</li> </ul>	<ul style="list-style-type: none"> <li>• 100% of all new projects</li> <li>• Replacement of at least 50% of existing glass on existing structures</li> <li>• Any new glass on an existing building</li> <li>• All high-risk building features.<sup>3</sup></li> </ul>

<sup>2</sup> <https://abcbirds.org/wp-content/uploads/2020/12/American-Bird-Conservancy-Model-Bird-Friendly-Building-Ordinance.docx>

<sup>3</sup> “High-risk building features” include skyways/walkways and building connectors, transparent outside building corners, areas with parallel glass, courtyards, atria and areas above green roofs.

	<p>constitutes 50% or more of the façade’s area.</p> <ul style="list-style-type: none"> <li>Any new or replaced glass structure (e.g. greenhouse) with any transparent walls 24 sq ft or more in size</li> </ul>	
<b>Exemptions</b>	<ul style="list-style-type: none"> <li>Replacement of existing glass on historic structures</li> <li>Glazing on ground floor of commercial storefronts directly fronting a public street, alley or sidewalk</li> <li>Windows that are smaller than 2ft x 4ft (8 sq ft)</li> </ul>	<ul style="list-style-type: none"> <li>None</li> </ul>
<b>How much glazing is to be bird safe?</b>	<ul style="list-style-type: none"> <li>90% of eligible glazing on any regulated façade or free-standing structure</li> </ul>	<ul style="list-style-type: none"> <li>100% of glazing within 100 ft from grade</li> <li>100% of glazing within three floors adjacent to or above a green roof</li> </ul>
<b>What materials are considered bird safe?</b>	<ul style="list-style-type: none"> <li>Opaque glass or film</li> <li>Paneled glass</li> <li>Glass covered with patterns</li> <li>UV reflective glass</li> <li>External screens</li> <li>Light colored blinds or curtains</li> <li>Other treatments approved by the Planning Director</li> </ul>	<ul style="list-style-type: none"> <li>Products with an ABC Threat Factor Rating of 30 or less</li> <li>Glass with obstructions no larger than 12” in any direction</li> <li>Untinted glass with less than 15% reflectance and contains visual markers</li> </ul>

**What types of projects should be covered?**

Table 1. Bird Safe Ordinance Summaries provides parameters for the types of projects that could be covered by a bird safe ordinance. While ABC’s model ordinance covers nearly all glazing on all new buildings, CEAC’s proposed ordinance applies only to buildings of 2 or more stories, and only to each building façade that meets a minimum requirement, and then only to windows on that façade that meet minimum size requirements.

As noted above, the DRC was concerned about the feasibility of requiring bird safe glass for single family homes and smaller residential developments. An exemption for projects of only one story could partially address that concern, but it is likely, particularly with proposed implementation programs in the Housing Element Update to encourage residential development including Middle Housing, that a large proportion of future smaller-scale residential development will be at least two stories.

The Planning Commission may want to consider exempting projects by type, as opposed to, or in addition to, by size. For example, the City of Evanston's (Illinois) recent Bird Friendly Building Design Ordinance<sup>4</sup> exempts detached one- and two-family dwelling and multiple single-family dwellings (townhouses) altogether, as well as residential buildings of three stories or less.

It should be noted that a not insignificant proportion of bird strikes on buildings occur at lower levels, as strikes are common at buildings adjacent to bird habitat, such as street trees and bushes. At the DRC meeting, Berkeley Parks, Recreation and Waterfront Commissioner Erin Diehm noted that approximately 44% of collisions occur at 1-2 story buildings, while 56% occur at 3-11 stories.

An additional option is to limit the applicability of the bird safe requirements to glazing of a certain size, regardless of, or in addition to, overall provisions regarding project size. CEAC's ordinance, for example, applies bird safe requirements only to glazing that is larger than 2 ft by 4 ft, or 8 sq ft. At the DRC meeting, testimony from Golden Gate Audubon's Executive Director identified 1 square meter, or 3.3 ft by 3.3 ft (roughly 11 sq ft), as a common size threshold for glazing.

*Exemption for Historic Resources.* An exemption from, or reduction in, bird safe requirements was included in CEAC's ordinance and noted by the DRC. The Planning Commission may consider a similar exemption, or recommend less stringent requirements for the replacement of windows on such structures. CEAC's ordinance distinguished between replacing existing windows on an historic structure and new construction associated with an historic structure.

*Phasing In Regulations.* A number of DRC members recommended only subjecting new commercial and larger-scale residential projects to bird safe regulations in the short term, while eventually phasing-in smaller-scale residential projects. This would provide time for Berkeley homeowners to learn about and prepare for the introduction of bird safe requirements, while also providing time for the bird safe glass market to ramp up to better serve smaller-scale users. Some members suggested including a specific phase-in date in the ordinance, for predictability and to aid in moving the bird safe window market, while other members suggested expanding the applicability of the ordinance through future amendments.

### **How much glazing should be bird safe?**

ABC's Model Bird Safety Ordinance is "based on a 100/100/100 framework: 100% of all glass and other building materials should be bird friendly in the first 100 feet of 100% of buildings." Many existing ordinances, as well as CEAC's proposed ordinance, however, require 90% of eligible glazing to be bird safe. It is not uncommon to exempt some percentage of otherwise eligible glass (the Leadership in Energy and Environmental Design (LEED) Bird Collision Deterrence credit, for example, exempts up to 5% of

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<sup>4</sup> <https://www.cityofevanston.org/home/showpublisheddocument/74672/637993547035470000>

eligible glass). The primary reason for these small exemptions is to address concerns some retailers have of the impact of bird safe glass on the look and feel of store frontages. A 10% exemption of eligible glass on a ten-story building, for instance, could exempt the entire ground floor. There may also be other, as yet unforeseen reasons to create some flexibility in requirements.

An additional threshold relates to the height at which bird safe glass is required. ABC's Model Bird Safety Ordinance calls for bird safe glass in the first 100 feet above grade and three stories above or adjacent to any green roof. The City of Evanston's ordinance requires a more stringent safety standard in the first 60 feet above grade and a lower standard for building surfaces above 60 feet. LEED's credit distinguishes between the first 40 feet above grade, and building surfaces between 40 feet and 100 feet above grade.

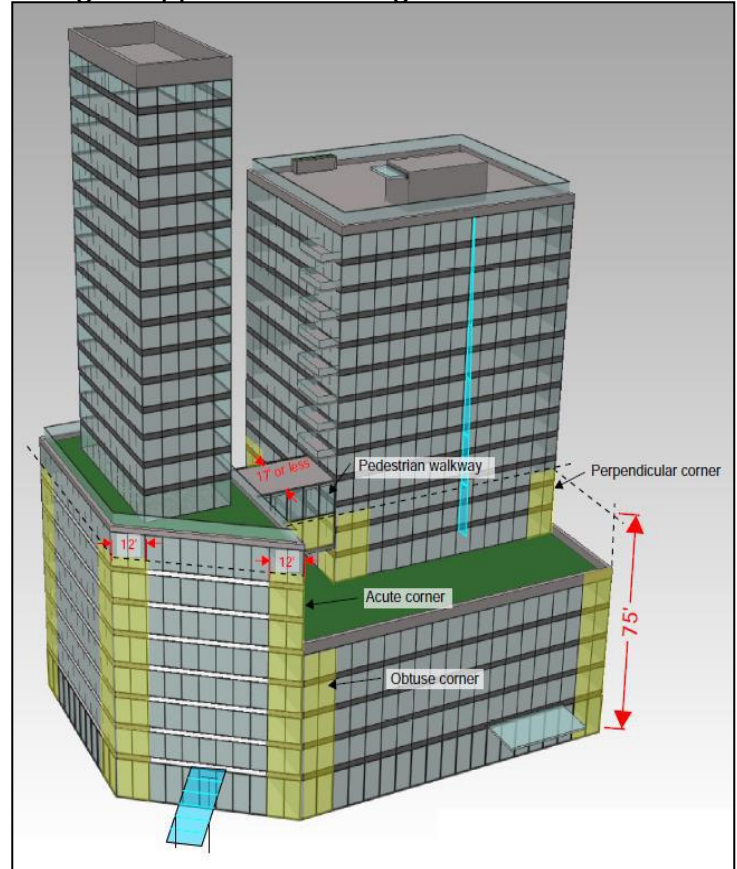
It is also common for ordinances to require bird safe glass on surfaces or building features regardless of their distance from grade. For example, glazing above or adjacent to green roofs in new buildings are often required to be bird safe, as are building corners and other potential "fly through" features.

Common building features that are subject to bird safe requirements include:

- Elevated pedestrian building connections, such as skyways or skybridges;
- Parallel glass walls;
- Glass atriums; and
- Architectural projections, such as railings, balconies, louvers, or noise or wind barriers.

New York City's Bird Friendly Building Design Guidance Document<sup>5</sup> includes a figure (Figure 1) which illustrates how their regulations apply to specific building features. However, this may be difficult to enforce; New York City does not retroactively require retrofitting of windows adjacent to newly—or subsequently—created applicable building features.

*Figure 1. New York City Bird Friendly Building Design - Applicable Building Features*



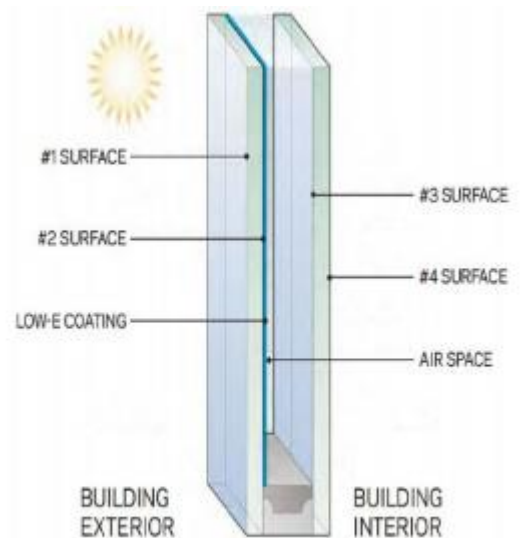
<sup>5</sup> [www1.nyc.gov/assets/buildings/bldgs\\_bulletins/bird\\_friendly\\_guidance\\_document.pdf](http://www1.nyc.gov/assets/buildings/bldgs_bulletins/bird_friendly_guidance_document.pdf)



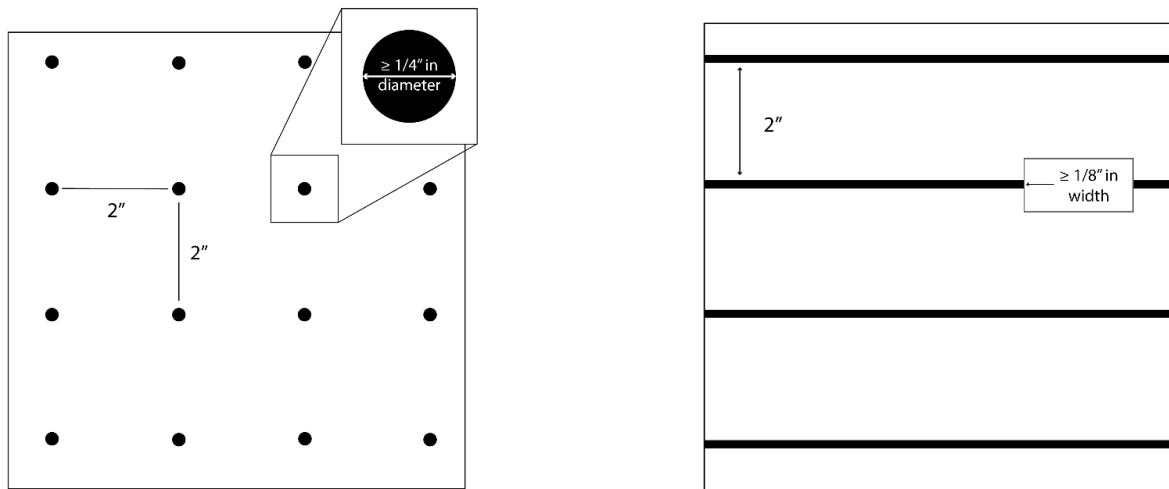
## What materials are considered bird safe?

The American Bird Conservancy's Model Ordinance provides the following definition for bird safe glass.

- A product with an American Bird Conservancy Material Threat Factor Rating of 30 or less<sup>6</sup>;
- Glass with an exterior surface (surface 1, right) obstructed and effectively covered by building-integrated structures that do not have gaps larger than 12 in. in any dimension, including non-glass double-skin facades, metal screens, fixed solar shading, exterior insect or solar screens, and other features as determined by the Zoning Officer that meet these conditions; or
- Un-tinted glass with an outer total reflectance of no more than 15% that contains a pattern of visual markers that are on the exterior surface (surface 1, right) or the interior surface of a pane of glass on the building exterior (surface 2, right) that conforms to the following rules:
  1. Dots or other isolated solid shapes that are at least a ¼" in diameter and are no more than 2' apart in any direction (below, left); or
  2. Lines that are at least ⅛" in width and spaced no more than 2" apart (below, right).



<sup>6</sup> ABC's Material Threat Factor (TF) rating system tests, assesses and classifies materials on a scale of 0 to 100 to provide a relative measure of birds' ability to see and avoid patterned glass and other materials. The lower the TF, the more effective the material will be at reducing collisions. For more information, see ABC's Threat Factor page: <https://tinyurl.com/4k2v2stb>. For ABC's regularly updated database of materials, which include TF ratings, see: <https://abcbirds.org/glass-collisions/products-database/>.



ABC's Threat Factor Rating is used by the City of Evanston and LEED's Bird Collision Deterrence Credit, and CEAC's ordinance recommends visual markers consistent with 1), above.

It should be noted that most of these requirements can be met either by specific bird safe glass and window assemblies or by film or adhesives that can be added to existing windows or to newly purchased windows that are not specifically bird-safe. Film can be a more cost-effective compliance path, although there could be instances where the application of a film could affect, or even void, a window's warranty.

Some bird safe regulations also permit the use of blinds or curtains to reduce window transparency. These approaches are considered sub-optimal, however, as they depend on the efforts of individual building users to be effective.

**The Planning Commission is asked to review the Discussion topics above and provide feedback and direction to staff on the preparation of a Bird Safe Ordinance. Specifically, staff requests feedback on the following questions:**

1. *What types of projects should be covered by bird safe requirements?*
  - Should there be provisions made for project size or for small-scale residential projects? What would be the threshold (e.g. above a certain number of units or square footage)?
  - Should certain projects (e.g. designated landmarks) be exempt?
  - Should there be a phase-in period for certain projects within the ordinance or should staff return with amendments to expand requirements, when appropriate?
2. *How much glazing should be bird safe?*
  - To what height should bird safe glazing be required?
  - Should requirements be on a whole-building or per-façade basis?
  - Should bird safe requirements only apply to glass panes of a minimum size?

- What other building features (e.g. elevated pedestrian building connections, glass walls, glass atriums; and architectural projections, such as railings, balconies, louvers, or noise or wind barriers) should be subject to bird safety requirements?
- 3. *What materials qualify as bird safe?*
  - Should the ordinance include specific requirements, per ABC's Model Ordinance, or should there be more discretion given to staff to ascertain compliance?

### **NEXT STEPS**

Based on direction provided by the Planning Commission, staff will prepare Zoning Ordinance amendments for a public hearing at the Commission's meeting on December 7, 2022, consistent with BMC Chapter 23.412 Zoning Ordinance Amendments.

### **ATTACHMENTS**

1. March 2, 2022, Bird Safe Berkeley Requirements Referral. Planning Commission Report.





Planning and Development Department  
Land Use Planning Division

## STAFF REPORT

DATE: March 2, 2022  
TO: Members of the Planning Commission  
FROM: Zoe Covello, Assistant Planner  
SUBJECT: Bird Safe Berkeley Requirements Referral

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### SUMMARY

On November 12, 2019, the Community Environmental Advisory Commission presented an action item to the City Council, recommending that the City of Berkeley amend the Berkeley Municipal Code (BMC) to include a new Chapter establishing bird safety requirements for new construction and significant renovations, as well as a new Chapter establishing a Dark Skies Ordinance. City Council unanimously adopted the Bird Safe Berkeley Requirements Referral (see Attachment 1) requesting the City Manager develop a response. This report provides background on bird safety requirements and recommends next steps for Planning Commission's consideration.

### BACKGROUND

Birds do not have the same depth perception or contrast sensitivity as humans; as such they cannot see glass. And at night, which is when most birds migrate, guided by magnetic sensors in their retinas that pick up on red and warm-white light, light distracts and disorients them, often leading to collisions.<sup>1</sup> It's estimated that between one hundred million and one billion birds die every year in collisions with manmade structures.<sup>2</sup> According to the Audubon Society, bird collisions with windows are a leading cause of human-induced bird deaths in the United States, second only to outdoor house cats.

#### Why is it relevant to Berkeley?

Berkeley is located within the Pacific Flyway, a major migratory route for birds. When birds encounter unfamiliar urban areas along the migratory path, they are at particular risk for collisions and death. The City is also adjacent to the San Francisco Bay, one of North America's most ecologically important estuaries and an international biodiversity hotspot because of the large number of birds, animals, and plants found there, many of

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<sup>1</sup> <https://www.audubon.org/news/building-collisions-are-greater-danger-some-birds-others>

<sup>2</sup> [http://nas-national-prod.s3.amazonaws.com/documents/loss\\_et\\_al\\_bird-building\\_collisions\\_condor\\_2014.pdf](http://nas-national-prod.s3.amazonaws.com/documents/loss_et_al_bird-building_collisions_condor_2014.pdf)

which are found nowhere else. The region is also recognized as a site of “Hemispheric Importance” for shorebirds by the Western Hemisphere Shorebird Reserve Network.<sup>3</sup> Alameda County has recorded 407 species of resident and migratory bird species, including Least Terns, Ridgway’s Rails, and a variety of other uniquely local and/or threatened species.

As pointed out in the CEAC report, new buildings can be designed to reduce bird deaths from collisions without compromising cost or aesthetics. Many compliance methods can be incorporated into design or construction with no additional cost or effort for architects or engineers, and in some cases, bird safe measures help achieve other desirable environmental goals -- like improved building energy efficiency.

#### Existing bird safety regulations in Berkeley

There are currently no bird safety measures required for newly constructed or renovated buildings in Berkeley. There are some zoning regulations providing guidance or limitations on outdoor lighting (see BMC [23.304.100\(E\)](#) [Site Features in Residential Districts], BMC [23.304.130\(C\)\(2\)](#) [Non-residential Districts Abutting a Residential District], as well as the City of Berkeley’s Downtown Area Plan and the Southside zoning regulations (BMC [23.204.100\(B\)\(5\)\(c\)\(vii\)](#))), but there is no citywide policy preventing excessive light pollution.

#### What do bird safe requirements look like?

In an effort to mitigate these deaths, municipalities around the country have started adopting bird safety requirements – which primarily take the form of requiring bird safe glass and reducing light pollution at night.

Glass and façade treatments are the most common methods of prevention, and include solutions such as fritted and frosted glass, angled glass, ultra-violet glass, and film and art treatment of glass. The “2 by 4 rule” - patterns of 1/4-inch dots or stripes 4 inches apart horizontally or 1/8-inch dots or stripes 2 inches apart vertically - and other patterns that meet that rule, were found to greatly reduce bird-glass collisions.

Other primary methods of prevention include, but are not limited to:

- Installing exterior screens or netting
- Reducing large areas of transparent or reflective glass
- Keeping curtains or shades drawn
- Turning non-emergency lighting off at night (particularly during migration in February-May and August-November)<sup>4</sup>
- Putting lights on timers or photo-sensitive switches
- Cleaning buildings in the daytime
- Locating greenery away from clear glass
- Site design measures like fine-grained ventilation grates and gardens without mirrors

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<sup>3</sup> <https://ca.audubon.org/conservation/conservation/seas-shores/san-francisco-bay>

<sup>4</sup> <https://www.bloomberg.com/news/features/2022-01-04/how-to-design-buildings-to-prevent-bird-crashes>

### How are municipalities implementing requirements?

There are a variety of ways these regulations can be implemented. The referral suggests creating a new chapter in the Zoning Ordinance. Here are some other options, as well as the pros and cons of each option, as identified by the City of Emeryville:

- CEQA Review – The city could develop and apply general standards to mitigate potential impacts on migratory wildlife, which is part of the standard CEQA checklist for projects requiring environmental review.
- Project Conditions of Approval – Standard Conditions of Approval for projects could be amended to include new enforceable standards for bird safe measures for applicable projects.
- Design Guidelines – The Design Guidelines could be modified to include a section that would include standards that apply to applicable projects during Design Review. This would provide some flexibility in enforcement, as guidelines are not regulations and projects that bypass discretion are not subject to review or compliance.
- Planning Regulations – The Berkeley Municipal code could be amended to include new standards (as proposed by CEAC), providing consistent application to all projects.

Building Regulations – The Berkeley Municipal Code could be amended to include new standards under a local building code amendment, which would apply to all projects requiring a building permit.

### Existing ordinances in Bay Area cities

San Francisco adopted the first bird-safe building ordinance in the United States in 2011, requiring glass façade treatment be applied to the lower 60 feet of buildings within a 300-foot buffer of two-acre open spaces. Oakland followed San Francisco, adopting measures applicable to buildings adjacent to one-acre open spaces. Similarly, Richmond adopted an ordinance in 2016 requiring the treatment of the lower 60 feet of glass adjacent to one-acre open spaces and panes with areas of 24 feet or more.

Alameda has also developed a bird safety ordinance, adopted in 2018, which applies to new construction and window replacements, as well as lighting. Both Emeryville's 2020 building standards ordinance and CEAC's recommended amendments to the zoning ordinances are modeled after Alameda's. A table detailing bird safe requirements in Alameda, Emeryville, Oakland, and CEAC's recommended ordinance is attached (see Attachment 2).

## **DISCUSSION**

The referral includes two draft ordinances for Planning Commission's consideration. Staff proposes the following approach to this referral:

1. *Identify Implementation Opportunities and Challenges:* As stated above, draft language in the referral is similar to ordinances adopted in Emeryville and

Alameda a few years ago. Staff will reach out to planning staff in Emeryville and Alameda regarding lessons learned from ordinance implementation and suggest any necessary modifications.

2. *Confirm Consistency with California Building Code:* Since California Building Code is amended on a three-year cycle, staff will check with the Berkeley Building Official to ensure there are no conflicts in proposed zoning language and local or California Building Code.
3. *Confirm Consistency with Design Guidelines:* The Design Review Committee (DRC) has reviewed this referral and expressed an interest in seeing it move forward. Staff will work with the Secretary of the DRC to ensure the Committee's comments are addressed and that the Committee is informed of the referrals' progress as it makes its way through the public review.
4. *Redraft Zoning Language According to the BZO Style Guide:* The Baseline Zoning Ordinance or BZO – now referred to as the Zoning Ordinance – included a style guide. Since this referral predated adoption of the BZO, the draft ordinances will need to be modified to follow the style guide.
5. Finally, staff requests that the Commissioners consider the following questions:
  - Does the Commission suggest modifications to staff's proposed approach?
  - Should the standards apply citywide, or near large open spaces with vegetation and/or water?
  - Should the standards apply to the lower 60 feet of buildings or to the entire building?
  - Does the Commission have any other suggestions to inform the drafting of bird safe building standards in Berkeley?

After receiving this information, staff will draft a new ordinance or ordinances that follow the BZO style guide. This draft ordinance will then be shared with Planning Commission for consideration and development of a recommendation to City Council.

## **ATTACHMENTS**

1. CEAC Report / City Council Referral
2. Local Ordinance Comparison Table





Community Environmental Advisory Commission

ACTION CALENDAR  
November 12, 2019

To: Honorable Mayor and Members of the City Council  
From: Community Environmental Advisory Commission (CEAC)  
Submitted by: Ben Gould, Chairperson, CEAC  
Subject: Bird Safe Berkeley Requirements

RECOMMENDATION:

Refer to the Planning Commission and the City Attorney the attached ordinance amending Berkeley Municipal Code Title 23C, adding a new Chapter 23C.27 establishing bird safety requirements for new construction and significant renovations and a new Chapter 23C.28 establishing a dark skies ordinance, for review and approval.

FISCAL IMPACTS OF RECOMMENDATION:

Potential for small additional ongoing costs associated with slightly increased requirements for staff review of new construction proposals to ensure compliance.

CURRENT SITUATION AND ITS EFFECTS

Bird safety is aligned with the City of Berkeley's Strategic Plan, advancing our goal to be a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

According to the Audubon Society, bird collisions with windows is a leading cause of human-induced bird deaths (second only to outdoor house cats). Berkeley is located in the midst of the Pacific Flyway, a major migratory route for birds including hummingbirds, robins, blackbirds, numerous shorebirds, raptors, and more. When these birds encounter unfamiliar urban areas along the migratory path, they are at particular risk for collisions and death.

At present, there are no bird safety measures required for new construction or renovations. As a result, it is possible that new and existing buildings may incorporate features which pose preventable hazards to local and migratory birds.

Unfettered outdoor lighting also poses known risks to birds, as well as generating unwanted light pollution. The City of Berkeley's Downtown Area Plan<sup>1</sup>, as well as

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<sup>1</sup> Lighting, City of Berkeley Downtown Area Plan. Accessed August 2019:  
[https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_DAP/Chapter%2012%20Lighting.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_DAP/Chapter%2012%20Lighting.pdf)

Southside zoning regulations (BMC 23E.52.070.F.7), provide guidance or limitations on outdoor lighting, but no general policy exists citywide to prevent excessive light pollution from outdoor lighting.

At its September 12, 2019 meeting, the Community Environmental Advisory Commission voted to recommend the adoption of Bird Safe Berkeley requirements. Moved by Goldhaber, second by Hetzel, carried 6-0-0-2 (Ayes: Simmons, Ticconi, Hetzel, De Leon, Goldhaber, Gould. Noes: None. Abstained: None. Absent: Varnhagen, De Leon).

### BACKGROUND

Berkeley is in the midst of the Pacific Flyway, a major migratory route for birds. The city is also adjacent to San Francisco Bay, one of North America's most ecologically important estuaries and a site of Western Hemispheric importance for shorebirds and waterfowl. Alameda County has recorded 407 species of resident and migratory bird species, including least terns, Ridgway's rails, and a variety of other uniquely local and/or threatened species.

New buildings can be designed to reduce bird deaths from collisions without compromising cost or aesthetics – in fact, many of the compliance methods in the attached ordinance can be incorporated into design or construction with virtually no additional cost or difficulty for architects or engineers, and in some cases facilitate achieving other environmental goals (like improved building energy efficiency).

Several other Bay Area cities have adopted bird safety ordinances, including San Francisco, Oakland, Alameda, and Richmond. The attached proposed ordinance is developed from the City of Alameda's adopted ordinance.

In addition, birds are drawn to light, whether from the moon or artificial lights, and lights affixed to buildings or structures pose a risk that birds may crash into them. A special danger comes from very bright lights, as well as lights aimed upward.

### ENVIRONMENTAL SUSTAINABILITY

Implementing the Bird Safe Berkeley ordinance will ensure new construction does not pose undue hazards to local and migratory birds, thereby reducing human impact and benefiting the environment.

### CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The proposed amendment to BMC Title 23C is categorically exempt from CEQA under CEQA Guidelines Sections 15061(b)(3), 15307, and 15308.

### RATIONALE FOR RECOMMENDATION

Berkeley's strategic plan calls for being a global leader in protecting the environment. The bird-safe glazing design standards contained within have been found to be effective at reducing or eliminating bird deaths, and can be implemented with little or no additional costs. The window size threshold for requiring implementation is the most stringent in the nation, and as a result adopting this policy strongly aligns with Berkeley's strategic plan. The dark skies ordinance is straightforward and simple, yet effective at reducing excessive and unwanted light pollution while conserving energy.

#### ALTERNATIVE ACTIONS CONSIDERED

CEAC considered taking no action on bird safety standards, but concluded that the environmental benefits substantially outweighed the burden imposed. CEAC also considered a less stringent window size requirement (of twenty-four (24) square feet instead of eight (8) square feet), but determined that window size was not a significant factor in either bird safety or cost or ease of compliance.

CEAC considered taking no action on dark skies, but concluded that the environmental benefits outweighed the burden imposed. CEAC also considered a more stringent dark skies ordinance, but concluded it would be unnecessarily difficult to enforce with minimal additional benefits.

#### CITY MANAGER

The City Manager takes no position on the content and recommendations of the Commission's Report.

#### CONTACT PERSON

Ben Gould, Chairperson, CEAC, 510-725-9176

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE TITLE 23C TO ESTABLISH GENERAL REQUIREMENTS FOR BIRD SAFETY IN BUILDINGS AND EXTERIOR LIGHTING FIXTURES; ADDING CHAPTER 23C.27 AND CHAPTER 23C.28

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

Section 1. That the Berkeley Municipal Code Chapter 23C.27 is added to read as follows:

**Chapter 23C.27  
BIRD SAFETY**

**Sections:**

- 23C.27.010 Purpose**
- 23C.27.020 Applicability**
- 23C.27.030 Exemptions**
- 23C.27.040 Standards**

23C.27.010 Purpose

The purposes of the Bird Safety related regulations contained in this Chapter is to reduce bird mortality from windows or other specific building features known to increase the risk of bird collisions.

23C.27.020 Applicability

The bird-safe building standards apply to the following types of projects when such projects require a building permit:

A. New Construction. New buildings with two (2) or more stories, and one or more façades in which glass constitutes fifty percent (50%) or more of the area of the individual façade. The bird-safe glazing requirement must be met on any window with dimensions of at least two (2) feet by four (4) feet, or an area of eight (8) square feet or more, located on such façade.

B. Window Replacement. On buildings with two (2) or more stories, and one or more facades in which glass constitutes fifty percent (50%) or more of the area of the individual façade, replacement of any window or other rigid transparent material with dimensions of at least two (2) feet by four (4) feet, or an area of eight (8) square feet or more. The requirement does not apply on existing windows that are not proposed to be replaced.

C. New or Replaced Glass Structures. Any structure that has transparent glass walls twenty-four (24) square feet or more in size, including but not limited to freestanding glass walls, wind barriers, skywalks, balconies, greenhouses, and rooftop appurtenances.

#### 23C.27.030 Exemptions

The bird-safe building standards shall not apply to the following:

A. The replacement of existing glass on historic structures. However, the standards shall apply to new exterior additions to historic structures, and new construction on the site of historic structures, that are differentiated from the historic structures, if determined by the Planning Director to be consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties.

B. Glazing on the ground floor of commercial storefronts directly fronting a public street, alley, or sidewalk.

#### 23C.27.040 Standards

A. Bird-Safe Glazing Requirement. At least ninety percent (90%) of the glazing on any building façade or freestanding glass structure shall include features that enable birds to perceive the glass as a solid object. The requirement can be satisfied by using one or more of the following treatments to be determined by the Planning Director as part of an application for a building permit:

1. External screens installed permanently over glass windows such that the windows do not appear reflective.
2. Light-colored blinds or curtains.
3. Opaque glass, translucent glass, or opaque or translucent window film.
4. Paned glass with mullions on the exterior of the glass.
5. Glass covered with patterns (e.g., dots, stripes, images, abstract patterns, lettering). Such patterns may be etched, fritted, stenciled, silk-screened, applied to the glass on films or decals, or another method of permanently incorporating the patterns into or onto the glass. Elements of the patterns must be at least one-eighth (1/8) inch tall and separated no more than two (2) inches vertically, at least one-quarter (1/4) inch wide and separated by no more than four (4) inches horizontally, or both (the "two-by-four rule").
6. Ultraviolet (UV)-pattern reflective glass, laminated glass with a patterned UV-reflective coating, or UV-absorbing and UV-reflecting film that is permanently applied to the glass. Where patterns are used, they shall meet the two-by-four rule.
7. Other glazing treatments providing an equivalent level of bird safety and approved by the Planning Director as part of building plan review.

B. Alternative Glazing Compliance. As an alternative to meeting subsection 4(a), Bird-Safe Glazing Requirement, an applicant may propose building and fenestration designs and/or operational measures that will minimize bird collisions and achieve an equivalent level of bird safety. The applicant shall submit a bird collision reduction plan along with the application for design review or other discretionary permit required for the project. The bird collision reduction plan shall be prepared by a qualified biologist. Design and operational solutions may include but need not be limited to the following techniques, singularly or in combination:

1. Layering and recessing glazed surfaces.
2. Angled or faceted glazing that minimizes reflectivity and transparency.
3. Louvres.
4. Overhangs and awnings.
5. Glass block.
6. Bird netting with openings one (1) square centimeter or smaller.
7. Decorative grilles that allow birds to perceive the grilles, together with the glass behind them, as solid.
8. Glass embedded with photovoltaic cells.
9. Placement of landscaping in such a way as to minimize bird collisions.

Section 2. That the Berkeley Municipal Code Chapter 23C.28 is added to read as follows:

**Chapter 23C.28  
DARK SKIES**

**Sections:**

- 23C.28.010 Purpose**
- 23C.28.020 Applicability**
- 23C.28.030 Exemptions**
- 23C.28.040 Standards**

**23C.28.010 Purpose**

The purpose of the Dark Skies ordinance is to ensure exterior light fixtures are pointed downwards and turn off whenever possible, minimizing light pollution, sky glow, and hazardous risks to birds, while ensuring adequate illumination for safety, security, and the enjoyment of outdoor areas, including travel on public roads.

**23C.28.020 Applicability**

The dark skies ordinance applies to any project that requires a building permit or electrical permit for:

A. New exterior lighting, including lighting fixtures attached to buildings, structures, poles, or self-supporting structures; or

B. Additions or replacements of existing exterior light fixtures, including upgrades and replacements of damaged or destroyed fixtures.

#### 23C.28.030 Exemptions

The following types of lighting are exempt from the requirements of this subsection:

A. Emergency lighting. Temporary emergency lighting used by law enforcement or emergency services personnel, a public utility, or in conjunction with any other emergency service.

B. Construction lighting. Temporary lighting used for construction or repair of roadways, utilities, and other public infrastructure.

C. Lighting Required by Building Code or Other Regulations. Lighting for exit signs, stairs, ramps, points of ingress/egress to buildings, and all other illumination required for building codes, OSHA standards, and other permitting requirements imposed by state, or federal agencies.

D. Signs. Signs and sign lighting.

E. Athletic Field Lights. Athletic field lights used within a school campus or public or private park.

F. Neon, Argon, and Krypton. All fixtures illuminated solely by neon, argon, or krypton.

G. Water Features. Lighting used in or for purposes of lighting swimming pools, hot tubs, decorative fountains, and other water features.

H. Flag Lighting. Lighting used to illuminate a properly displayed United States flag and/or State of California flag.

I. Holiday Displays. Seasonal and holiday lighting.

J. Temporary Lighting. Temporary lighting allowed under a permit.

K. Historic Fixtures. Historic lighting fixtures or fixtures that exhibit a historical period appearance, as determined by the Planning Director.

L. Architecture, Historic Structures, and Public Art. Lighting on historic structures, special architectural features, public art, monuments, and other similar objects of

interest shall be exempt if the lamps emit less than one thousand six hundred (1600) lumens per fixture and together draw less than one hundred (100) watts. However, the standards shall apply to new exterior additions to historic structures, and new construction on the site of historic structures, that are differentiated from the historic structures, if determined by the Planning Director to be consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties.

M. Low-Voltage Landscape Lighting. Low-voltage landscape lighting such as that used to illuminate fountains, shrubbery, trees, and walkways, provided that it uses no more than sixty (60) watts and no more than seven hundred and fifty (750) lumens per fixture.

#### 23C.28.040 Standards

To minimize the harmful effects of light pollution, new construction and major renovation projects shall meet the following standards:

- A. Outdoor lighting shall be no brighter than 3000 Kelvin.
- B. Outdoor lighting shall be shielded and directed, with a full cut off fixture of no more than 2.5% of lamp lumens at or above 90°, and no more than 10% of lamp lumens at or above 80°.
- C. Wherever feasible, require motion sensors or timers to prevent unnecessary energy use and light pollution.
- D. Light shows and beams of light are not permitted during spring or fall migration seasons, roughly February 15 to May 31, and August 15 to November 30, respectively.



Bird Safety Berkeley Referral - Local Ordinance Comparison Table

Sections					
Jurisdiction	Form of Standard	Purpose	Applicability	Exemptions	Standards
Berkeley	Proposed Planning Regulations (amendment to municipal code) – as recommended by CEAC)	<b>Purpose of Bird Safety Ordinance:</b> To reduce bird mortality from windows or other specific building features known to increase the risk of bird collisions.	Standards that apply to projects that require a building permit: <b>a) New Construction.</b> New buildings with two (2) or more stories, and one or more façades in which glass constitutes fifty percent (50%) or more of the area of the individual façade. The bird-safe glazing requirement must be met on any window with dimensions of at least two (2) feet by four (4) feet, or an area of eight (8) square feet or more, located on such façade. <b>b) Window Replacement.</b> On buildings with two (2) or more stories, and one or more facades in which glass constitutes fifty percent (50%) or more of the area of the individual façade, replacement of any window or other rigid transparent material with dimensions of at least two (2) feet by four (4) feet, or an area of eight (8) square feet or more. The requirement does not apply on existing windows that are not proposed to be replaced. <b>c) New or Replaced Glass Structures.</b> New or Replaced Glass Structures. Any structure that has transparent glass walls twenty-four (24) square feet or more in size, including but not limited to freestanding glass walls, wind barriers, skywalks, balconies, greenhouses, and rooftop appurtenances.	Standards shall not apply to the following: <b>A. The replacement of existing glass on historic structures.</b> However, the standards shall apply to new exterior additions to historic structures, and new construction on the site of historic structures, that are differentiated from the historic structures, if determined by the Planning Director to be consistent with the Secretary of the Interior’s Standards for the Treatment of Historic Properties. <b>B. Glazing on the ground floor of commercial storefronts</b> directly fronting a public street, alley, or sidewalk.	<b>A. Bird-Safe Glazing Requirement.</b> At least ninety percent (90%) of the glazing on any building façade or freestanding glass structure shall include features that enable birds to perceive the glass as a solid object. The requirement can be satisfied by using one or more of the following treatments to be determined by the Planning Director as part of an application for a building permit: <ol style="list-style-type: none"> <li>External screens installed permanently over glass windows such that the windows do not appear reflective.</li> <li>Light-colored blinds or curtains.</li> <li>Opaque glass, translucent glass, or opaque or translucent window film.</li> <li>Paned glass with mullions on the exterior of the glass.</li> <li>Glass covered with patterns (e.g., dots, stripes, images, abstract patterns, lettering). Such patterns may be etched, fritted, stenciled, silk- screened, applied to the glass on films or decals, or another method of permanently incorporating the patterns into or onto the glass. Elements of the patterns must be at least one eighth (1/8) inch tall and separated no more than two (2) inches vertically, at least one-quarter (1/4) inch wide and separated by no more than four (4) inches horizontally, or both (the “two-by-four rule”).</li> <li>Ultraviolet (UV)-pattern reflective glass, laminated glass with a patterned UV reflective coating, or UV-absorbing and UV-reflecting film that is permanently applied to the glass. Where patterns are used, they shall meet the two-by-four rule.</li> <li>Other glazing treatments providing an equivalent level of bird safety and approved by the Planning Director as part of building plan review.</li> </ol> <b>B. Alternative Glazing Compliance.</b> As an alternative to meeting the above Bird Safe Glazing Requirement, an applicant may propose building and fenestration designs and/or operational measures that will minimize bird collisions and achieve an equivalent level of bird safety. The applicant shall submit a bird collision reduction plan along with the application for design review or other discretionary permit required for the project. The bird collision reduction plan shall be prepared by a qualified biologist. Design and operational solutions may include but need not be limited to the following techniques, singularly or in combination: <ol style="list-style-type: none"> <li>Layering and recessing glazed surfaces.</li> <li>Angled or faceted glazing that minimizes reflectivity and transparency.</li> <li>Louvres.</li> <li>Overhangs and awnings.</li> <li>Glass block.</li> <li>Bird netting with openings 1 square centimeter or smaller</li> <li>Decorative grilles that allow birds to perceive the grilles, together with the glass behind them, as solid.</li> <li>Glass embedded with photovoltaic cells</li> </ol>

					<p>9. Placement of landscaping in such a way as to minimize bird collisions.</p>
		<p><b>Purpose of Dark Skies Ordinance:</b> To ensure exterior light fixtures are pointed downwards and turned off whenever possible, minimizing light pollution, sky glow, and hazardous risks to birds while ensuring adequate illumination for safety, security, and enjoyment of outdoor areas, including travel on public roads.</p>	<p>The dark skies ordinance applies to any project that requires a building permit or electrical permit for:</p> <ul style="list-style-type: none"> <li>a) <b>New exterior lighting</b>, including lighting fixtures attached to buildings, structures, poles, or self-supporting structures; or</li> <li>b) <b>Additions or replacements of existing exterior light fixtures</b>, including upgrades and replacements of damaged or destroyed fixtures.</li> </ul>	<p>The following types of lighting are exempt from the requirements of this subsection:</p> <ul style="list-style-type: none"> <li>A. <b>Emergency Lighting.</b> Temporary emergency lighting used by law enforcement or emergency services personnel, a public utility, or in conjunction with any other emergency service.</li> <li>B. <b>Construction Lighting.</b> Temporary lighting used for construction or repair of roadways, utilities, and other public infrastructure.</li> <li>C. <b>Lighting Required by Building Code or Other Regulations.</b> Lighting for exit signs, stairs, ramps, points of ingress/egress to buildings, and all other illumination required for building codes, OSHA standards, and other permitting requirements imposed by state, or federal agencies.</li> <li>D. <b>Signs.</b> Signs and sign lighting.</li> <li>E. <b>Athletic Field Lights.</b> Athletic field lights used within a school campus or public or private park.</li> <li>F. <b>Neon, Argon, and Krypton.</b> All fixtures illuminated solely by neon, argon, or krypton.</li> <li>G. <b>Water Features.</b> Lighting used in or for purposes of lighting swimming pools, hot tubs, decorative fountains, and other water features.</li> <li>H. <b>Flag Lighting.</b> Lighting used to illuminate a properly displayed United States flag and/or State of California flag.</li> <li>I. <b>Holiday Displays.</b> Seasonal and holiday lighting.</li> <li>J. <b>Temporary Lighting.</b> Temporary lighting allowed under a permit.</li> <li>K. <b>Historic Fixtures.</b> Historic lighting fixtures or fixtures that exhibit a historical period appearance, as determined by the Planning Director.</li> <li>L. <b>Architecture, Historic Structures, and Public Art.</b> Lighting on historic structures, interest shall be exempt if the lamps emit less than one thousand six hundred (1600) lumens per fixture and together draw less than one hundred (100) watts. However, the standards shall apply to new exterior additions to historic structures, and new construction on the site of historic structures, that are differentiated from the historic structures, if determined by the Planning Director to be consistent with the Secretary of the Interior’s Standards for the Treatment of Historic Properties.</li> <li>M. <b>Low-Voltage Landscape Lighting.</b> Low-voltage landscape lighting such as that used to illuminate fountains, shrubbery, trees, and walkways, provided that it uses no</li> </ul>	<p>To minimize the harmful effects of light pollution, new construction and major renovation projects shall meet the following standards:</p> <ul style="list-style-type: none"> <li>A. Outdoor lighting shall be no brighter than 3000 Kelvin.</li> <li>B. Outdoor lighting shall be shielded and directed, with a full cut off fixture of no more than 2.5% of lamp lumens at or above 90°, and no more than 10% of lamp lumens at or above 80°.</li> <li>C. Wherever feasible, require motion sensors or timers to prevent unnecessary energy use and light pollution.</li> <li>D. Light shows and beams of light are not permitted during spring or fall migration seasons, roughly February 15 to May 31, and August 15 to November 30, respectively.</li> </ul>

Bird Safety Berkeley Referral - Local Ordinance Comparison Table

				<p>more than sixty (60) watts and no more than seven hundred and fifty (750) lumens per fixture.</p>	
<p><a href="#">Mountain View</a></p>	<p>Amendment to the Green Building Code</p> <p>Also developed Bird Safe Design Standards and Guidelines and Nesting Bird Protection Standards and Guidelines for the North Bayshore Precise Plan</p>	<p><b>Purpose of the Bird Safe Design Standards:</b> To minimize adverse effects on native and migratory birds, new construction and major renovations will incorporate design measures to promote bird safety. These measures will help reduce the likelihood of building collision fatalities through façade treatments and light pollution reduction. These measures apply to both residential and non-residential land uses except where specified.</p>	<p><b>Per the Green Building Code:</b>                  Bird-safe glass shall be installed on the exterior of the structure where:</p> <p><b>a)</b> The structure is equal to or greater than ten thousand (10,000) square feet; or  <b>b)</b> The applicable precise plan requires it.</p> <p>Additionally, the mandatory new construction green building requirements requires bird-safe glass installed in:</p> <p><b>a)</b> Mixed-use buildings greater than or equal to 10,000 sf  <b>b)</b> Hotels greater than or equal to 10,000 sf  <b>c)</b> Commercial buildings greater or equal to 10,000 sf</p> <p><b>Design standards are applicable in the North Bayshore neighborhood.</b></p> <p>Nesting bird protection standards are applicable to all new construction, building additions, building alterations, and tree/shrub removal.</p>	<p>Per the Design Standards as outlined in the North Bayshore Precise Plan:</p> <p><b>Exceptions to the design requirements.</b> The City may waive or reduce any of this chapter’s bird safe design requirements based on analysis by a qualified biologist indicating that proposed construction will not pose a collision hazard to birds.</p>	<p>Per the Design Standards as outlined in the North Bayshore Precise Plan:</p> <p><b>Bird Safe Design Standards</b></p> <p><b>A. All new construction, building additions, and/or building alterations</b> shall adhere to the Bird Safe Design standards in the North Bayshore Precise Plan.</p> <p><b>B. Façade treatments.</b> No more than 10% of the surface area of a building’s total exterior façade shall have untreated glazing between the ground and 60’ above ground. (Ex. Opaque glass, covering clear glass surface with patterns, using paned glass with fenestration patterns, using external screens over non-reflective glass)</p> <p><b>C. Occupancy Sensors.</b> For non-residential development, occupancy sensors or other switch control devices shall be installed on non-emergency lights. The lights should be programmed to shut off during non-work hours and between 10pm and sunrise.</p> <p><b>D. Funneling of flight paths.</b> New construction shall avoid funneling of flight paths along buildings or trees toward a building façade.</p> <p><b>E. Skyways/Walkways/or Glass Walls.</b> New construction and building additions shall avoid building glass skyways, walkways, freestanding glass walls, transparent building corners. New construction and building additions should reduce glass at the tops of buildings, especially when incorporating a green roof into the design.</p> <p><b>Guidelines</b></p> <p><b>A. Bird collision best management practices</b> to promote bird safety.</p> <ol style="list-style-type: none"> <li>1. Collision monitoring</li> <li>2. window covering</li> <li>3. Work station lighting and window coverings</li> <li>4. Daytime maintenance</li> </ol> <p><b>B. Handling of food waste</b> (to avoid attracting wildlife)</p> <p><b>Nesting Bird Protection Standards</b></p> <p><b>A. Pre-activity surveys.</b> If construction, building additions, or removal of trees and shrubs occurs between February 1 and August 31, pre-activity surveys for nesting birds shall be conducted by a qualified biologist.</p> <p><b>B. Nest buffers.</b> If an active nest is found sufficiently close to work areas to be disturbed by these activities, the biologist in coordination with the California Department of Fish and Wildlife, shall determine the extent of a disturbance-free buffer zone to be established around the nest. Typical buffer zones are 300 feet for raptors and 100 feet for non-raptors.</p> <p><b>Guidelines</b></p> <p><b>Avoidance of nesting season.</b> If construction, building additions, or removal of trees and shrubs is scheduled to take place outside the nesting season, impacts to protected nesting birds would be avoided.</p>

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<p>Emeryville <i>(looked to Alameda as basis for their ordinance)</i></p>	<p>Building standards (ordinance amendment to zoning code) <a href="#">Article 8. Bird Safe Buildings.</a></p>	<p>The purpose of the Bird Safe Buildings Ordinance: To reduce the risk of bird-to-building collisions.</p>	<p>Standards are applied to projects that require a building permit:  <b>a) New Construction.</b> New buildings, additions, and renovations involving new glass or other rigid transparent material.  <b>b) Window replacement.</b> Any replacement window, glass door, or other rigid transparent material.  <b>c) Glass structures.</b> Any new or replacement structure that has transparent glass or rigid transparent walls, including but not limited to freestanding glass walls, wind barriers, skywalks, balconies, greenhouses, gazebos, pavilions, passageways, and rooftop appurtenances.</p> <p>The bird-safe glazing requirement must be met on any window or contiguous glazed segment (area with mullions and/or frames) with an area of 12 sf or more.</p>	<p>N/A</p>	<p><b>A. Bird-Safe Glazing Requirement.</b> At least 90% of the glazing on any building facade or glass structure, and all glass near plants or water features shall include features that enable birds to perceive the glass as a solid object. The requirement can be satisfied using one or more of the following treatments:</p> <ol style="list-style-type: none"> <li>External screens installed permanently over glass such that the glass does not appear reflective.</li> <li>Translucent or opaque glass or film applied to glass.</li> <li>Glass covered with patterns such as dots, stripes, images, art, or abstract patterns. Such patterns may be etched, fritted, stenciled, silk-screened, or applied to the glass as films or decals, or other method of permanently incorporating the patterns into or onto the glass. Elements of the pattern must meet the 2x4 rule.</li> <li>Weatherproof grates, netting or cords mounted outside of the glass, near but not touching the glass, meeting the 2x4 rule.</li> <li>Grooved glass block.</li> <li>Other glazing treatments providing an equivalent level of bird safety and approved by the Planning Director.</li> </ol> <p><b>B. Alternative Compliance.</b> An applicant may propose building and fenestration designs that will minimize bird collisions and achieve an equivalent level of bird safety. The applicant shall submit a bird collision reduction plan along with their project application. Shall be prepared by a qualified biologist. Design solution may include, but need not be limited to:</p> <ol style="list-style-type: none"> <li>Layering and recessing of glazed surfaces</li> <li>Angled or faceted glazing that minimizes reflectivity and transparency</li> <li>Louvre or grates not meeting the 2x4 rule</li> <li>Overhangs or awnings</li> <li>Clear (non-grooved) glass block</li> <li>Grilles that allow birds to perceive them</li> <li>Glass embedded with photovoltaic cells</li> <li>Placement of landscaping in such a way as to minimize bird collisions, including but not limited to placing outdoor plants directly against windows</li> </ol> <p><b>C. Interior Lighting</b></p> <ol style="list-style-type: none"> <li>Nonresidential spaces shall have automatic light shutoff systems using timers, photo sensors, motion sensors, or a combo thereof</li> <li>Shades, blinds, curtains, or other window coverings for all windows shall be included as part of the construction project for which the building permit is issued</li> </ol> <p><b>D. Site Design</b></p> <ol style="list-style-type: none"> <li>No mirrors shall be placed in or near planted areas or water features or in locations where they would reflect trees, plants, or water</li> <li>Vent grates shall meet the 2x4 rule</li> </ol>
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Bird Safety Berkeley Referral - Local Ordinance Comparison Table

<p><b>Alameda</b></p>	<p>Building standards (ordinance amendment to zoning code)</p>	<p><b>Bird Safe Glass</b>                   To reduce bird mortality from windows or other specific building features known to increase the risk of bird collisions.</p>	<p>Apply to the following types of projects when applying for a building permit:  <b>a) New Construction.</b> New buildings that are greater than 35' in height and have one or more façade in which glass constitutes 50% or more of the area of an individual façade. The req must be met on any window or unbroken glazed segment with an area of 12 sf or more  <b>b) Window Replacement.</b> On buildings that meet the 35'/50%, the replacement of any window or other rigid transparent material with 12 sf or more. Does not apply to existing windows that are not proposed to be replaced.  <b>c) New or Replaced Glass Structures.</b> Any structure with transparent glass walls or any unbroken glazed segment 24sf or more in size, including but not limited to freestanding glass walls, wind barriers, skywalks balconies, greenhouses and rooftop appurtenances.</p>	<p>Shall not apply to the following:  <b>A. Historic Structures.</b> The replacement of existing glass on historic structures. However, the standards shall apply to new exterior additions to historic structures and new construction on the site of historic structures that are differentiated from the historic structures  <b>B. Glazing on Commercial Storefronts.</b> The ground floor of commercial storefronts directly fronting a public street, alley, or sidewalk.</p>	<p><b>A. Bird Safe Glazing Requirements.</b> At least 90% of the glazing on any building façade or freestanding glass structure shall include features that enable birds to perceive the glass as a solid object. The requirement can be satisfied using one or more of the following treatments to be determined by the Planning Director as part of an application for a building permit:                  1. External screens installed permanently over glass windows such that the windows do not appear reflective.                  2. Light colored blinds or curtains.                  3. Opaque glass, translucent glass, or opaque or translucent window film.                  4. Paned glass with mullions on the exterior of the glass.                  5. Glass covered with patterns (e.g., dots, stripes, images, abstract patterns, lettering). Such patterns may be etched, fritted, stenciled, silk-screened, applied to the glass on films or decals, or another method of permanently incorporating the patterns into or onto the glass. Elements of the patterns must meet the 2x4 rule.                  6. UV-pattern reflective glass, laminated glass with a patterned UV-coating, or UV-absorbing and UV-reflecting film that is permanently applied to the glass. Where patterns used, must meet 2x4 rule                  7. Other glazing treatments providing an equivalent level of bird safety and approved by the Planning Director as part of the building plan review.   <b>B. Alternative Compliance.</b> Alternative to meeting 4a, must present a bird collision reduction plan prepared by a biologist. Design/solutions may include the following:                  1. Layering and recessing glazed surfaces                  2. Angled or faceted glazing that minimizes reflectivity/transparency                  3. Louvres                  4. Overhangs/awnings                  5. Glass block                  6. Bird netting                  7. Decorative grilles                  8. Glass embedded with photovoltaic cells                  9. Placement of landscaping in such a way as to minimize bird collisions</p>
		<p><b>Dark Skies Ordinance</b>                   A. Allow adequate illumination for safety, security, utility, and the enjoyment of outdoor areas.                  B. Prevent excessive light and glare on public roadways</p>	<p>Unless otherwise expressly stated, the standards of this subsection (c), Outdoor Lighting, apply to any project that requires a building permit or electrical permit for:  <b>a) New exterior lighting</b>, including lighting fixtures attached to buildings, structures, poles, or self-supporting structures; or  <b>b) Additions or replacements of existing exterior light fixtures</b>, including upgrades and replacements of damaged or destroyed fixtures</p>	<p><b>Exemptions.</b> The following types of lighting are exempt from the requirements of this subsection (c), Outdoor Lighting:  <b>A. Emergency Lighting.</b> Temporary emergency lighting used by law enforcement or emergency services personnel, a public utility, or in conjunction with any other emergency service.  <b>B. Construction Lighting.</b> Temporary lighting used for the construction or repair of roadways, utilities, and other public infrastructure.  <b>C. Airport Lighting.</b> Lighting for public and private airports and any other uses that are regulated by the Federal Aviation Administration.</p>	<p><b>Standards.</b> Exterior lighting shall be consistent with these standards:  <b>A. Shielding.</b> All exterior lighting fixtures shall be fully shielded, and lighting shall be directed downward, with the following exceptions:                  1. <b>Low-voltage Landscape Lighting.</b> Low-voltage landscape lighting such as that used to illuminate fountains, shrubbery, trees, and walkways, may be unshielded provided that it uses no more than sixty (60) watts, or twelve (12) watt equivalent LED, and emits no more than seven hundred fifty (750) lumens per fixture.                  2. <b>Architecture and Public Art.</b> Uplighting may be used to highlight special architectural features, historic structures, public art and monuments, and similar objects of interest.</p>

		<p>and private properties.</p> <p>C. Minimize artificial outdoor light that can have a detrimental effect on human health, the environment, astronomical research, amateur astronomy, and enjoyment of the night sky.</p> <p>D. Minimize light that can be attractive disorienting, and hazardous to migrating and local birds.</p>		<p><b>D. Lighting Required by Building Codes or Other Regulations.</b> Lighting for communication towers, exit signs, stairs/ramps, points of ingress/egress to buildings, and all other illumination required by building codes, OSHA standards, and other permitting requirements imposed by state or federal agencies.</p> <p><b>E. Signs.</b> Signs and sign lighting. (See Section 30-6.6, Illumination of Signs, for sign lighting standards.)</p> <p><b>F. Athletic Field Lights.</b> Athletic field lights used within a school campus or public or private park, provided, however, that athletic field lights shall be selected and installed so as to minimize glare and light trespass outside the playing area. Athletic field lights shall be turned off no later than 11:00 p.m. or where an event requires extended time, no later than thirty (30) minutes after conclusion of the event.</p> <p><b>G. Neon, Argon, and Krypton.</b> All fixtures illuminated solely by neon, argon, or krypton.</p> <p><b>H. Fossil Fuel Light.</b> All outdoor light fixtures producing light directly through the combustion of fossil fuels, such as kerosene lanterns, and gas lamps.</p> <p><b>I. Water Features.</b> Lighting used in or for the purpose of lighting swimming pools, hot tubs, decorative fountains, and other water features.</p> <p><b>J. Flag Lighting.</b> Lighting used to illuminate a properly displayed United States flag and/or State of California flag.</p> <p><b>K. Holiday Displays.</b> Seasonal and holiday lighting</p> <p><b>L. Temporary Lighting.</b> Temporary lighting allowed under a Special Events Permit or Film/Photography Permit</p>	<p>Lamps used for such uplighting shall use less than one hundred (100) watts, or twenty (20) watt equivalent LED, and emit less than one thousand six hundred (1,600) lumens per fixture.</p> <p>3. <b>Historic Lighting Fixtures.</b> Lighting fixtures that are historic or that exhibit a historical period appearance, as determined by the Planning Director, need not be fully shielded.</p> <p><b>B. Light Trespass.</b> Exterior lighting shall be directed downward and away from property lines to prevent excessive glare beyond the subject property. No light, combination of lights, or activity shall cast light exceeding one (1) foot-candle onto an adjacent or nearby property, with the illumination level measured at the property line between the lot on which the light is located and the adjacent lot, at the point nearest to the light source.</p> <p><b>C. Correlated Color Temperature for Light-Emitting Diode (LED) Lighting.</b> All LED light sources shall have a maintained correlated color temperature of less than or within the range of two thousand seven hundred to three thousand (2,700—3,000) Kelvins.</p> <p><b>D. Security Lighting.</b> Adequate lighting shall be provided to protect persons and property and to allow for the proper functioning of surveillance equipment.</p> <ol style="list-style-type: none"> <li>1. Security lighting shall consist of shielded fixtures that are directed downward. Floodlights shall not be permitted.</li> <li>2. Vertical features, such as walls of a building, may be illuminated for security to a height of eight (8) feet above grade.</li> <li>3. Security lights intended to illuminate a perimeter, such as a fence line, are allowed only if regulated by a programmable motion detection system and compliant with the light trespass limitations in subsection (b).</li> <li>4. Security lighting fixtures that utilize one hundred (100) or more watts, or twenty (20) watt equivalent LED, or emit one thousand six hundred (1,600) or more lumens shall be controlled by a programmable motion-sensor device, except where continuous lighting is required by the California Building Standards Code.</li> </ol> <p><b>E. Parking Lot Lighting.</b> Parking lot lighting shall be consistent with the standards of Section 30-7.17, Illumination of Parking Areas.</p> <p><b>F. Service Station Canopies.</b> Service station canopies are subject to the following standards:</p> <ol style="list-style-type: none"> <li>1. Lighting fixtures in the ceiling of canopies shall be fully recessed in the canopy.</li> <li>2. Light fixtures shall not be mounted on the top or fascia of such canopies.</li> <li>3. The fascia of such canopies shall not be illuminated, except for approved signage.</li> </ol> <p><b>G. Street and Park Lighting.</b> Lighting installed within a public or private right-of-way or easement for the purpose of illuminating streets or roadways and lighting in City parks shall be in accordance to lighting</p>
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Bird Safety Berkeley Referral - Local Ordinance Comparison Table

					<p>standards of the Public Works Department and Alameda Recreation and Parks Departments, except all LED lighting shall have a maintained correlated color temperature of less than or within the range of two thousand seven hundred to three thousand (2,700—3,000) Kelvins.</p> <p><b>Code Compliance.</b> All exterior lighting shall be consistent with all applicable parts of the California Building Standards Code. In the case of any conflict between the standards of this section and the California Building Standards Code, the later shall prevail.</p>
<b>Oakland</b>	Bird Safety Measures added to Building Permit Requirements	N/A	<p>Applies to all construction projects which include glass as part of the building’s exterior and at least one of the following:</p> <ul style="list-style-type: none"> <li><b>a)</b> The project is located immediately adjacent to a substantial water body (e.g. Oakland Estuary, SF Bay, Lake Merritt)</li> <li><b>b)</b> The project is located immediately adjacent to rec area or park larger than 1 acre which contains substantial vegetation</li> <li><b>c)</b> The project includes a substantial vegetated or green roof but excluding container gardens</li> <li><b>d)</b> The project includes an existing or proposed substantial vegetated area (generally contiguous one acre in size or larger) located directly adjacent to project buildings.</li> <li><b>e)</b> The structure contains an atrium which will contain vegetation.</li> </ul>	N/A	<p><b>A. Bird Collision Reduction Measures</b>  <b>Requirement: Project applicant shall submit a Bird Collision Reduction Plan for City review and approval to reduce potential bird collisions to the max feasible extent.</b> The Plan shall include all of the following mandatory measures, as well as applicable and specific project Best Management Practice (BMP) strategies to reduce bird strike impacts to the maximum feasible extent. The Project applicant shall implement the approved Plan.  <i>Mandatory measures include all of the following:</i></p> <ol style="list-style-type: none"> <li>1. Comply with federal aviation safety regulations for large buildings by installing minimum intensity white strobe lighting with three second flash instead of solid red or rotating lights.</li> <li>2. Minimize the number of and co-locate rooftop-antennas and other rooftop structures.</li> <li>3. Monopole structures or antennas shall not include guy wires.</li> <li>4. Avoid the use of mirrors in landscape design.</li> <li>5. Avoid placement of bird-friendly attractants (i.e. landscaped areas, vegetated roofs, water features) near glass unless shielded by architectural features taller than the attractant that incorporate the bird friendly treatments no more than two inches horizontally, four inches vertically, or both (the “two-by-four” rule).</li> </ol> <p><b>B. Glazing Treatments</b>                  Apply bird friendly glazing treatments to no less than 90 percent of all windows and glass between the ground and 60 feet above ground or to the height of existing adjacent landscape or the height of the proposed landscape. Examples of bird friendly glazing treatments include the following:</p> <ol style="list-style-type: none"> <li>1. Use of opaque glass in window panes instead of reflective glass.</li> <li>2. Uniformly cover the interior or exterior of clear glass surface with patterns (e.g., dots, stripes, decals, images, abstract patterns). Patterns can be etched, fritted, or on films and shall have a density of no more than two inches horizontally, four inches vertically, or both (the “two-by-four” rule).</li> <li>3. Install paned glass with fenestration patterns with vertical and horizontal mullions no more than two inches horizontally, four inches vertically, or both (the “two-by-four” rule).</li> <li>4. Install external screens over non-reflective glass (as close to the glass as possible) for birds to perceive windows as solid objects.</li> </ol>

					<p>5. Install UV-pattern reflective glass, laminated glass with a patterned UV reflective coating, or UV-absorbing and UV-reflecting film on the glass since most birds can see ultraviolet light, which is invisible to humans.</p> <p>6. Install decorative grilles, screens, netting or louvers, with openings no more than two inches horizontally, four inches vertically, or both (the “two-by-four” rule).</p> <p>7. Install awnings, overhangs, sunshades, or light shelves directly adjacent to clear glass which is recessed on all sides. Another option is to use louvers with 2” x 4” spacing.</p> <p>8. Install opaque window film or window film with a pattern or design or marketing message which also adheres to the 2” x 4” rule for coverage.</p> <p><b>C. Reduce Light Pollution</b>          Examples include the following:</p> <ol style="list-style-type: none"> <li>1. Extinguish nighttime architectural illumination treatments during bird migration season (February 15 to May 31 and August 1 to November 30).</li> <li>2. Install time switch control devices or occupancy sensors on non-emergency interior lights that can be programmed to turn off during non-work hours and between 11:00 p.m. and sunrise.</li> <li>3. Reduce perimeter lighting whenever possible.</li> <li>4. Install full cut off, shielded or directional lighting to minimize light spillage, glare or light trespass.</li> <li>5. Do not use beams of lights during the spring (February 15 to May 31 or fall migration (Aug 15 to November 30).</li> </ol> <p><b>D. Bird Safety</b>          B.M.P.s to include the implementation of a building operation and management manual that promotes bird safety. Example measures in the manual include the following:</p> <ol style="list-style-type: none"> <li>1. Donation of discovered dead bird specimens to an authorized bird conservation organization or museum (i.e. U.C. Berkeley Museum of Vertebrate Zoology) to aid in species identification and to benefit scientific study, as per all federal, state and local laws.</li> <li>2. Distribution of educational materials on bird-safe practices for the building occupants. Contact Golden Gate Audubon or American Bird Conservancy for materials.</li> <li>3. Asking employees to turn off task lighting at their work stations and draw office blinds, shades, curtains or other window coverings at end of work day.</li> <li>4. Install interior blinds, shades, or other window coverings in windows above the ground floor visible from the exterior as part of the construction contract, lease agreement, or CC&amp;Rs.</li> <li>5. Schedule nightly maintenance during the day or to conclude before 11 p.m., if possible.</li> </ol> <p>When Required: Prior to approval of construction-related permit          Initial Approval: Planning and Zoning Division          Monitoring/Inspection: Building Services Division</p>
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Bird Safety Berkeley Referral - Local Ordinance Comparison Table

					<p><b>E. Implementation of Bird Collision Reduction Plan After Construction Requirement:</b> The project applicant shall continue to implement the approved Bird Collision Reduction Plan following construction of the project. When Required: Ongoing Initial Approval: N/A Monitoring/Inspection: Building Services Division</p>
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**Planning and Development Department**  
Land Use Planning Division

## STAFF REPORT

DATE: October 19, 2022

TO: Members of the Planning Commission

FROM: Justin Horner, Associate Planner

SUBJECT: Public Hearing on Zoning Ordinance Amendments that Address Technical Edits and Corrections to Berkeley Municipal Code (BMC) Title 23 – Package #4

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### **RECOMMENDATION:**

Conduct a public hearing to discuss amendments to the following sections of the Berkeley Municipal Code (BMC) and make a recommendation to City Council to approve the amendments.

- BMC Section 23.108.020 (Zoning Districts)
- BMC Section 23.202.020 (Allowed Land Uses)
- BMC Section 23.202.140 (R-SMU District)
- BMC Section 23.204.150 (R-BMU District)
- BMC Section 23.204.020 (Allowed Land Uses)
- BMC Section 23.204.060 (C-U District)
- BMC Section 23.204.080 (C-E District)
- BMC Section 23.204.100 (C-SA District)
- BMC Section 23.206.040 (Use-Specific Regulations)
- BMC Section 23.406.050 (Variances)

### **BACKGROUND**

On October 12, 2021, the City Council passed Ordinance No. 7,787-NS, which repealed the then-existing Title 23 of the Berkeley Municipal Code and zoning maps (“the old Zoning Ordinance”) and adopted a new Title 23 of the Berkeley Municipal Code and zoning maps (“the new Zoning Ordinance”). The new Zoning Ordinance became effective December 1, 2021.

The new Zoning Ordinance was created as a customer service improvement and was limited in scope to changes that reorganized and reformatted Title 23 to make the City’s zoning code easier to understand and administer. Minor “consent changes” were approved by City Council where changes were needed to bring the Ordinance into compliance with State law or to codify prior zoning interpretations (*Attachment 2*). Other than the “consent changes”, no substantive changes were intended by City Council.

As part of City Council's approval action, staff was directed to regularly return to the Planning Commission and City Council with amendments necessary to maintain the integrity of the new Zoning Ordinance. Amendments presented under this direction should be for the purposes of clarifying the new Zoning Ordinance, fixing mistakes in transcription and correcting unintentional errors. Substantive changes in planning policy are not to be included in this set of routine amendments, but should be presented as separate Zoning Ordinance amendments, consistent with BMC Chapter 23.412 (Zoning Ordinance Amendments).

On June 28, 2022, the City Council adopted Ordinance No. 7,815-NS, which established the Residential BART Mixed Use (R-BMU) District. In the process of codifying the adopted ordinance, a few technical errors were identified. These are also included in this report, as they are corrections of unintentional errors and do not constitute substantive policy changes, similar to the technical edits identified within the new Zoning Ordinance.

## **PROPOSED ZONING ORDINANCE AMENDMENTS**

Since the new Zoning Ordinance came into effect on December 1, 2021, a number of clean-up amendments have been identified. The project team anticipated technical edits and corrections during the roll-out of the new Zoning Ordinance and was prepared with an efficient process and schedule for addressing these requests. This report is the product of that process and is labeled "Package #4" because it is the fourth set of edits to come before Planning Commission.

The proposed Zoning Ordinance amendments are presented in two categories. The first category includes an amendment that requires an explanation or justification. This amendment is presented below with information on what was in the old Zoning Ordinance, what is in the new Zoning Ordinance, and a recommended amendment. The second category includes technical edits such as spelling, punctuation or grammatical errors, simple corrections or inaccurate references. These amendments are summarized in *Table 1: Text Edits and Other Routine Amendments*.

This will be the last package of clean-up amendments the Planning Commission will be asked to consider. Future technical edits will be bundled with subsequent zoning ordinance amendments to streamline the use of City resources and reduce the likelihood of errors resulting from a high volume of concurrent changes.

### **Category One Zoning Ordinance Amendment**

#### **1. BMC Section 23.204.100 (C-SA Zoning District)**

**Old Zoning Ordinance:** Section 23E.52.070.D.5 of the old Zoning Ordinance included provisions to modify development standards in the C-SA with a Use Permit. These standards included height, lot coverage and setbacks. However, there was no provision to modify Floor Area Ratio (FAR).

**New Zoning Ordinance:** Section 23.204.100.D.2 includes the following language:

2. *Modification for Mixed Use and Residential Projects.* The ZAB may modify development standards in Table 23.204-27, Table 23.204-28, and Table 23.204-29, and Table 23.204-30 for a mixed-use or residential-only project with a Use Permit.

Table 23.204-27 (C-SA Development Standards) includes a maximum Floor Area Ratio standard. The inclusion of Table 23.204-27 implies that maximum FAR can be modified.

**Proposed Amendment:** Amend Section 23.204.100.D.2 as follows:

2. *Modification for Mixed Use and Residential Projects.* The ZAB may modify development standards in Table 23.204-27, Table 23.204-28, and Table 23.204-29, and Table 23.204-30—**excluding Floor Area Ratio (FAR)**--for a mixed-use or residential-only project with a Use Permit.

**Category Two Zoning Ordinance Amendments**

The following table includes minor text edits, along with a rationale for each edit.

**Table 1: Text Edits and Other Routine Amendments**

Zoning Ordinance Section	Proposed Amendment	Rationale																					
23.108.020 (Zoning Districts)	<p>Add back the following text:</p> <p><b>B. Undesignated Areas.</b> Any area not specifically designated as a district on the Zoning Map is subject to the Unclassified (U) district requirements.</p> <p><b>C. Overlay Zones.</b></p> <ol style="list-style-type: none"> <li>5. The Zoning Ordinance and Zoning Map include the overlay zones shown in <b>Error! Reference source not found.</b> Overlay zones impose additional regulations on properties beyond what is required by the underlying district.</li> <li>3. As shown in <b>Error! Reference source not found.</b>, provisions for overlay zones that apply to two or more districts are located in Chapter 23.210 (<b>Error! Reference source not found.</b>). Provisions for overlay zones that apply only in one district are located in the Zoning Ordinance chapter for that district.</li> </ol> <p><b>Table Error! No text of specified style in document.-1: Overlay Zones</b></p> <table border="1" data-bbox="440 1367 1276 1734"> <thead> <tr> <th>OVERLAY ZONE SYMBOL</th> <th>NAME OF OVERLAY ZONE</th> <th>LOCATION IN ZONING ORDINANCE</th> </tr> </thead> <tbody> <tr> <td colspan="3"><b>Overlay Zones that Apply in Two or More Districts</b></td> </tr> <tr> <td>H</td> <td>Hillside</td> <td><b>Error! Reference source not found.</b><b>Error! Reference source not found.</b></td> </tr> <tr> <td>C</td> <td>Civic Center</td> <td><b>Error! Reference source not found.</b><b>Error! Reference source not found.</b></td> </tr> <tr> <td colspan="3"><b>Overlay Zones that Apply in One District</b></td> </tr> <tr> <td>D</td> <td>Dealership</td> <td><b>Error! Reference source not found.</b>.B.5<b>Error! Reference source not found.</b> (Automobile/Motorcycle Sales)</td> </tr> <tr> <td>DA</td> <td>Downtown Arts</td> <td><b>Error! Reference source not found.</b><b>Error! Reference source not found.</b> (Arts Overlay District)</td> </tr> </tbody> </table> <ol style="list-style-type: none"> <li>4. If the overlay zone applies a standard to a property that conflicts with the underlying district, the overlay zone standard governs. If the overlay zone is silent on a standard in the underlying district, the underlying district standard applies.</li> </ol>	OVERLAY ZONE SYMBOL	NAME OF OVERLAY ZONE	LOCATION IN ZONING ORDINANCE	<b>Overlay Zones that Apply in Two or More Districts</b>			H	Hillside	<b>Error! Reference source not found.</b> <b>Error! Reference source not found.</b>	C	Civic Center	<b>Error! Reference source not found.</b> <b>Error! Reference source not found.</b>	<b>Overlay Zones that Apply in One District</b>			D	Dealership	<b>Error! Reference source not found.</b> .B.5 <b>Error! Reference source not found.</b> (Automobile/Motorcycle Sales)	DA	Downtown Arts	<b>Error! Reference source not found.</b> <b>Error! Reference source not found.</b> (Arts Overlay District)	Inadvertent deletion in previous zoning amendment package.
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	<p><b>D. Vacated Streets.</b> Where a public street or alley is officially vacated or abandoned, the land area of the street or alley acquires the district classification of the property to which it reverts.</p>						
23.202.020 (Allowed Land Uses – Residential)	<p>Add back the following text:</p> <p><b>C. Use-Specific Regulations.</b> Uses subject to supplemental regulations are shown in <b>Error! Reference source not found.</b> with an asterisk (*) following the permit requirement (e.g., UP*). The Use-Specific Regulations column in <b>Error! Reference source not found.</b> identifies the location of these regulations in the Zoning Ordinance.</p>	Inadvertent deletion in previous zoning amendment package.					
23.202.140 (R-SMU District)	<p>Revise title to read:</p> <p>23.202.140 R-SMU Residential Southside <u>Mixed-Use</u> District</p>	Correction					
23.202.150.B.1 (R-BMU District -- Definitions)	<p>Revise as follows:</p> <p>1. <i>Dwelling Units per Acre:</i> The quotient resulting from the total number of dwelling units on a site <b>divided</b> by the Lot Area.</p>	Clarification					
23.202.150.C.1 (R-BMU District -- Allowed Land Uses)	<p>Revise to read as follows:</p> <p><b>C. Allowed Land Uses.</b></p> <p>1. <i>General.</i> See Section 23.202.020 (Allowed Land Uses), which indicates identified allowed land uses and which are prohibited.</p> <p>(a) The initial establishment of a land use in a new building will follow the R-BMU Master Development Plan process outlined in Section 23.202.150.<u>G</u> below.</p> <p>(b) The change of use of an existing building or portion of a building will require the permits indicated in Section 23.202.020 and Table 23.202-1 for the R-BMU District.</p> <p>(c) Any use not listed in Table 23.202-1 for the R-BMU District can be approved through the Master Development Plan process outlined in Section 23.202.150.<u>G</u> below for the initial establishment of a land use in a new building.</p> <p>(d) Uses subject to supplemental regulations are shown in Table 23.202-1 with an asterisk (*) following the permit requirement (e.g., ZC*). The Use-Specific Regulations column in Table 23.202-1 identifies the location of these regulations in the Zoning Ordinance.</p>	Incorrect references					
23.202.150.F Table 23.202-28 (R-BMU District – Development Standards)	<p>Revise table 23.202-287 to read:</p> <p><b>Table 23.202-28: R-BMU Development Standards</b></p> <table border="1"> <thead> <tr> <th colspan="2"></th> <th>Supplemental Standards</th> </tr> </thead> <tbody> <tr> <td>Lot Area, Minimum</td> <td>No Minimum</td> <td>23.304.020</td> </tr> </tbody> </table>				Supplemental Standards	Lot Area, Minimum	No Minimum
		Supplemental Standards					
Lot Area, Minimum	No Minimum	23.304.020					

	Private Usable Open Space, Minimum [1][2]		23.304.090	
	Per Dwelling Unit	40 sf/DU	23.304.090	
	Per Group Living Accommodation Resident	15 sf/resident	23.304.090	
	Public Open Space, Minimum			
	Per Dwelling Unit	35 sf/DU		
	Per Group Living Accommodation Resident	18 sf/resident		
	Floor Area Ratio (FAR), Maximum	4.2		
	Main Building height, Maximum [3]	80 feet and 7 stories	32.304.050	
	Residential Density, Minimum	75 dwelling units per acre		
	<p><b>[1]</b> Private Usable Open Space may be provided as any combination of personal and common private space.</p> <p><b>[2]</b> 50% of the Private Usable Open Space requirement may be fulfilled through the provision of an equal amount of additional Public Open Space.</p> <p><b>[3]</b> Building Height Measurement: In the case of a roof with a parapet wall, building height shall be measured to the top of the roof and parapets may exceed the height limits by up to five feet by right.</p>			
23.202.150.F.3.b.iv (R-BMU District – Public Space Design)	<p>Revise the subsection to read:</p> <p>iv. Adjacent publicly owned space may contribute to the minimum public space requirement for the project, if it is designed, integrated and maintained as part of the project and complies with all other requirements for public space design identified in this section 23.202.150(F)3(b).</p>			
23.202.150.F.3.c (R-BMU District – Public Space Design)	<p>Revise the subsection to read:</p> <p>(c) <i>Rooftop Open Space</i>. Rooftops may be utilized as Private Usable Open Space or Public Open Space meeting the requirements of 23.202.150.F.3 (Additional Open Space Requirements--Definitions). Rooftop space designated Public Open Space must also meet the requirements of 23.202.150.F.3.B (Public Space Design). No more than 25% of Public Open Space requirements can be met with Rooftop Open Space, and such Public Open Space must be independently accessible from the public circulation network.</p>			
23.202.150.G.4.c (R-BMU District – Preliminary Development Plan)	<p>Revise the subsection to read:</p> <p>(c) The Board shall determine whether the proposal conforms to the permit criteria set forth in Section 23.202.150.G.8, and may approve or disapprove the application and the accompanying Preliminary Development Plan or require such changes therein or impose such reasonable conditions of approval as are in its judgment necessary to ensure conformity to said criteria and regulations. In so doing, the Board may, in its discretion, authorize submission of the Final Development Plan in stages corresponding to different units or elements of the development. It may do so only upon evidence assuring completion of the entire development in accordance with the Preliminary Development Plan and staged development schedule.</p>			Incorrect references
23.202.150.G.5.b	<p>Revise the subsection to read:</p>			

(R-BMU District – Final Development Plan)	(b) The public notice and hearing process for a Final Development Plan shall be the same as for Use Permits as defined in BMC Section <a href="#">23.406.040</a> , except that notice shall be mailed or delivered to all businesses, residents and owners of property located within five hundred (500) feet of the subject property.																					
23.202.150.G.7 (R-BMU District – Final Development Plan)	Revise the subsection to read:  <i>7. Appeal to Council.</i> The process for appeal to Council for a Master Development Permit, Preliminary Development Plan and/or Final Development Plan shall be the same as for Use Permits as defined in BMC Section <a href="#">23.410</a> .	Incorrect reference																				
23.204.020 Table 23.204-1 (Allowed Uses Table – Commercial Districts)	In the C-C, residential uses are permitted with a UP(PH)	Missing letter																				
	Add reference for Emergency Shelters: " <a href="#">See 23.308 – Emergency Shelters</a> "	Missing reference																				
	Revise table to indicate that users should see <a href="#">23.302.070.E</a> for regulations regarding Food Service Establishments	Incorrect reference																				
	Amend table to reflect that Short-Term Rentals are Not Permitted (NP) in the C-N district.	Correction																				
23.204.060.D.5 Table 23.204-12 (C-U District – Setback Standards)	Revise table to indicate that lots on <del>south</del> north side of University Avenue are subject to Solar Access standards.	Corrections																				
23.204.080.B Table 23.204-20 (C-E District – C-E Land Use Number and Size Limitation)	Revise table to read:																					
	<table border="1"> <thead> <tr> <th>Use</th> <th>Number Limit</th> <th>Maximum Size</th> <th>Permit Required</th> </tr> </thead> <tbody> <tr> <td>Art Craft Shops, Gift/Novelty Shops, Jewelry/Watch Shops</td> <td>No limit</td> <td>1,500 sq ft</td> <td>ZC</td> </tr> <tr> <td>Bookstores, Periodical Stands</td> <td>No limit</td> <td>2,000 sq ft</td> <td>ZC</td> </tr> <tr> <td>Food Service Establishments [1]</td> <td>25 total</td> <td>No max.</td> <td>No permit required AUP</td> </tr> <tr> <td>Photocopy Stores, Printing, Fax, Magnetic Disk Reproduction Services</td> <td>No limit</td> <td>1,000 sq ft</td> <td>ZC</td> </tr> </tbody> </table>		Use	Number Limit	Maximum Size	Permit Required	Art Craft Shops, Gift/Novelty Shops, Jewelry/Watch Shops	No limit	1,500 sq ft	ZC	Bookstores, Periodical Stands	No limit	2,000 sq ft	ZC	Food Service Establishments [1]	25 total	No max.	No permit required AUP	Photocopy Stores, Printing, Fax, Magnetic Disk Reproduction Services	No limit	1,000 sq ft	ZC
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Photocopy Stores, Printing, Fax, Magnetic Disk Reproduction Services	No limit	1,000 sq ft	ZC																			
23.206.040.A (Art/Craft Studios in the M and MU-LI Districts)	Revise section to read:  <i>A. Art/Craft Studios in the M and <del>MU-LI</del> MM Districts.</i> Art/craft studios are allowed in the M and <del>MU-LI</del> MM districts only as workspaces. Live/work is not permitted.																					
23.406.050.F.2 (Variances – Findings for Approval)	Revise subsection to read:  <i>2. The ZAB shall deny a <del>Use Permit application Variance</del> if it determines that it is unable to make any of the required findings. (Ord. 7787-NS § 2 (Exh. A), 2021)</i>	Correction																				

**NEXT STEPS**

Staff recommends that the Planning Commission hold a public hearing, receive public testimony, and recommend to City Council adoption of the proposed Zoning Ordinance amendments. Adoption of the proposed Zoning Ordinance amendments would also constitute a closing of a City Council referral from January 26, 2016 (*Attachment 4*).

**ATTACHMENTS**

1. Ordinance – Zoning Ordinance Amendments
2. Consent Changes Matrix



3. Public Hearing Notice
4. January 26, 2016. Berkeley City Council Referral. *Customer Service Improvements to Land Use Permit Process.*



ORDINANCE NO. -N.S.

AMENDING TITLE 23 OF THE BERKELEY MUNICIPAL CODE TO CORRECT ERRORS AND MAKE NON-SUBSTANTIVE, TECHNICAL EDITS TO THE ZONING ORDINANCE

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

Section 1. That Berkeley Municipal Code Section 23.108.020 Table 23.204-8 is amended as follows:

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

Table 23.108-1. ZONING DISTRICTS

DISTRICT SYMBOL	NAME OF DISTRICT
<b>Residential Districts</b>	
R-1	Single-Family Residential
R-1A	Limited Two-family Residential
ES-R	Environmental Safety Residential
R-2	Restricted Two-family Residential
R-2A	Restricted Multiple-family Residential
R-3	Multiple-family Residential
R-4	Multi-family Residential
R-5	High Density Residential
R-S	Residential Southside

<b>DISTRICT SYMBOL</b>	<b>NAME OF DISTRICT</b>
R-SMU	Residential Southside Mixed Use
R-BMU	Residential BART Mixed Use
<b>Commercial Districts</b>	
C-C	Corridor Commercial
C-U	University Avenue Commercial
C-N	Neighborhood Commercial
C-E	Elmwood Commercial
C-NS	North Shattuck Commercial
C-SA	South Area Commercial
C-T	Telegraph Avenue Commercial
C-SO	Solano Avenue Commercial
C-DMU	Downtown Mixed-Use
C-W	West Berkeley Commercial
C-AC	Adeline Corridor Commercial
<b>Manufacturing Districts</b>	
M	Manufacturing
MM	Mixed Manufacturing
MU-LI	Mixed Use-Light Industrial

DISTRICT SYMBOL	NAME OF DISTRICT
MU-R	Mixed Use-Residential
<b>Special Districts</b>	
SP	Specific Plan
U	Unclassified

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

C. Overlay Zones.

1. The Zoning Ordinance and Zoning Map include the overlay zones shown in

2. Table Error! No text of specified style in document.-1: Overlay Zones. Overlay zones impose additional regulations on properties beyond what is required by the underlying district.

3. As shown in

4. Table Error! No text of specified style in document.-1: Overlay Zones, provisions for overlay zones that apply to two or more districts are located in Chapter 23.210 (Error! Reference source not found.). Provisions for overlay zones that apply only in one district are located in the Zoning Ordinance chapter for that district.

TABLE Error! NO TEXT OF SPECIFIED STYLE IN DOCUMENT.-1: OVERLAY ZONES

<u>OVERLAY ZONE SYMBOL</u>	<u>NAME OF OVERLAY ZONE</u>	<u>LOCATION IN ZONING ORDINANCE</u>
<u>Overlay Zones that Apply in Two or More Districts</u>		
<u>H</u>	<u>Hillside</u>	Error! Reference source not found.Error! Reference source not found.

<u>C</u>	<u>Civic Center</u>	Error! Reference source not found. Error! Reference source not found.
<b><u>Overlay Zones that Apply in One District</u></b>		
<u>D</u>	<u>Dealership</u>	Error! Reference source not found. <u>B.5</u> Error! Reference source not found. <u>(Automobile/Motorcycle Sales)</u>
<u>DA</u>	<u>Downtown Arts</u>	Error! Reference source not found. Error! Reference source not found. <u>(Arts Overlay District)</u>

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

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

Section 2. That Berkeley Municipal Code Section 23.202.020 is amended to add the following:

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

Section 3. That the title of Berkeley Municipal Code 23.202.140 is amended as follows:

23.202.140 R-SMU Residential Southside Mixed Use District

Section 4. That the Berkeley Municipal Code 23.202.150.B.1 is amended as follows:

1. *Dwelling Units per Acre*: The quotient resulting from the total number of dwelling units on a site divided by the Lot Area.

Section 5. That Berkeley Municipal Code 23.202.150.C.1 is amended as follows:

1. *General*. See Section 23.202.020 (Allowed Land Uses), which indicates identified allowed land uses and which are prohibited.

(a) The initial establishment of a land use in a new building will follow the R-BMU Master Development Plan process outlined in Section 23.202.150.~~D-G~~ below.

(b) The change of use of an existing building or portion of a building will require the permits indicated in Section 23.202.020 and Table 23.202-1 for the R-BMU District.

(c) Any use not listed in Table 23.202-1 for the R-BMU District can be approved through the Master Development Plan process outlined in Section 23.202.150.~~D-G~~ below for the initial establishment of a land use in a new building.

(d) Uses subject to supplemental regulations are shown in Table 23.202-1 with an asterisk (\*) following the permit requirement (e.g., ZC\*). The Use-Specific Regulations column in Table 23.~~204202~~-1 identifies the location of these regulations in the Zoning Ordinance.

Section 6. That Berkeley Municipal Code Section 23.304.150.F Table 23.202-28 is amended as follows:

		<b>Supplemental Standards</b>
Lot Area, Minimum	No Minimum	23.304.020
Private Usable Open Space, Minimum [1][2]		23. <del>302304</del> .090
Per Dwelling Unit	40 sf/DU	23. <del>302304</del> .090
Per Group Living Accommodation Resident	15 sf/resident	23. <del>302304</del> .090

Public Open Space, Minimum		
Per Dwelling Unit	35 sf/DU	
Per Group Living Accommodation Resident	18 sf/resident	
Floor Area Ratio (FAR), Maximum	4.2	
Main Building height, Maximum [3]	80 feet and 7 stories	32.304.050
Residential Density, Minimum	75 dwelling units per acre	
<p><b>[1]</b> Private Usable Open Space may be provided as any combination of personal and common private space.</p> <p><b>[2]</b> 50% of the Private Usable Open Space requirement may be fulfilled through the provision of an equal amount of additional Public Open Space.</p> <p><b>[3]</b> Building Height Measurement: In the case of a roof with a parapet wall, building height shall be measured to the top of the roof and parapets may exceed the height limits by up to five feet by right.</p>		

Section 7. That Berkeley Municipal Code Section 23.202.150.F.3.b.iv is amended as follows:

- iv. Adjacent publicly owned space may contribute to the minimum public space requirement for the project, if it is designed, integrated and maintained as part of the project and complies with all other requirements for public space design identified in this section 23.202.150(~~DE~~)3(b).

Section 8. That Berkeley Municipal Code Section 23.202.150.F.3.c is amended as follows:

- (c) *Rooftop Open Space.* Rooftops may be utilized as Private Usable Open Space or Public Open Space meeting the requirements of 23.202.150.~~AE~~.3 (Additional Open Space Requirements--Definitions). Rooftop space



designated Public Open Space must also meet the requirements of 23.202.150.AE.3.B (Public Space Design). No more than 25% of Public Open Space requirements can be met with Rooftop Open Space, and such Public Open Space must be independently accessible from the public circulation network.

Section 9. That Berkeley Municipal Code Section 23.202.150.G.4.c is amended as follows:

(c) The Board shall determine whether the proposal conforms to the permit criteria set forth in Section 23.202.150.DG.8, and may approve or disapprove the application and the accompanying Preliminary Development Plan or require such changes therein or impose such reasonable conditions of approval as are in its judgment necessary to ensure conformity to said criteria and regulations. In so doing, the Board may, in its discretion, authorize submission of the Final Development Plan in stages corresponding to different units or elements of the development. It may do so only upon evidence assuring completion of the entire development in accordance with the Preliminary Development Plan and staged development schedule.

Section 10. That Berkeley Municipal Code Section 23.202.150.G.5.b is amended as follows:

(b) The public notice and hearing process for a Final Development Plan shall be the same as for Use Permits as defined in BMC Section ~~23B.3223.406.040~~, except that notice shall be mailed or delivered to all businesses, residents and owners of property located within five hundred (500) feet of the subject property.

Section 11. That Berkeley Municipal Code Section 23.202.150.G.7 is amended as follows:

7. *Appeal to Council.* The process for appeal to Council for a Master Development Permit, Preliminary Development Plan and/or Final Development Plan shall be the same as for Use Permits as defined in BMC Section ~~23B.3223.410~~.

Section 12. That Berkeley Municipal Code Section 23.204.020 Table 23.204-1 is amended as follows:

Table 23.204-1 . Allowed Uses in Commercial Districts

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.020(B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	COMMERCIAL DISTRICTS											USE-SPECIFIC REGULATIONS
	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
<b>Residential Uses</b>												
Accessory Dwelling Unit	See 23.306--Accessory Dwelling Units											
Dwellings												
Single-Family	UP(PH)	UP(PH)*	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	23.204.060.B.3
Two-Family	UP(PH)	UP(PH)*	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	23.204.060.B.3
Multi-Family	UP(PH)	UP(PH)*	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	23.204.060.B.3
Group Living Accommodation	UP(PH)	UP(PH)*	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	23.204.060.B.3
Hotel, Residential	UP(PH)	UP(PH)*	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	23.204.060.B.3
Mixed-Use Residential	UP(PH)	UP(PH)*	UP(PH)	UP(PH)	UP(PH)	UP(PH)*	UP(PH)	UP(PH)	UP(PH)	See Table 23.204- 41	UP(PH)	23.204.060.B.3; 23.204.100.B.4
Senior Congregate Housing	See 23.302.070.H											
<b>Public and Quasi-Public Uses</b>												
Child Care Center	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Cemetery/Crematory/Mausoleum	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	
Club/Lodge	UP(PH)	UP(PH)	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	UP(PH)	

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.020(B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	COMMERCIAL DISTRICTS											USE-SPECIFIC REGULATIONS
	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
Columbaria	See 23.302.070.C											
Community Care Facility	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	ZC	AUP	
Community Center	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Emergency Shelter	See <del>23.308</del> – <a href="#">Emergency Shelters</a>		–	–	See <a href="#">23.308 – Emergency Shelters</a>							
Family Day Care Home, Large	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	
Family Day Care Home, Small	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	
Hospital	UP(PH)	UP(PH)	NP	NP	NP	NP	NP	NP	UP(PH)	UP(PH)	NP	
Library	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Mortuaries and Crematories	UP(PH)	UP(PH)	NP	NP	NP	NP	NP	NP	NP	UP(PH)	NP	
Municipal Animal Shelter	–	–	–	–	–	–	–	–	–	–	--	
Nursing Home	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Park/Playground	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	AUP	ZC	
Public Safety and Emergency Service	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Public Utility Substation/Tank	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Religious Assembly	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	AUP	UP(PH)	

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.020(B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	COMMERCIAL DISTRICTS											USE-SPECIFIC REGULATIONS
	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
School	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
School, Vocational	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	UP(PH)	AUP	
<b>Retail Uses</b>												
Alcoholic Beverage Retail Sale	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	NP	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	23.204.060.B.2; 23.310
Cannabis Retailer	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	23.320; 12.21; and 12.22
Cannabis Retailer, Delivery Only	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	--	23.320; 12.21; and 12.22
Firearm/Munitions Business	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	NP	UP(PH)	UP(PH)*	23.302.070.D
Industrial and Mining Products	-	-	-	-	-	-	-	-	-	-	--	
Pawn Shop/Auction House	UP(PH)	-	NP	NP	NP	NP	NP	NP	UP(PH)	UP(PH)	NP	
Pet Store	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	ZC [3]	UP(PH)	
Retail, General	ZC [1]	ZC [1]	ZC* [2]	ZC* [2]	ZC* [2]	ZC [1]	ZC	ZC* [2]	ZC	ZC* [3]	ZC*	23.204.040.E (for department stores) 23.204.040.F (for drug stores)
Smoke Shop	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	NP	UP(PH)*	UP(PH)*	23.302.070.I
<b>Personal and Household Service Uses</b>												

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

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	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
Office, Business and Professional	ZC [1]	ZC [1]	AUP*	AUP*	AUP*	ZC [1]	AUP*	AUP*	ZC*	ZC [5]	ZC [6]	23.204.040.B; 23.204.110.B.6; 23.204.130.D.3
<b>Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses</b>												
Adult-oriented Business	UP(PH)*	UP(PH)*	NP	NP	NP	NP	NP	NP	UP(PH)*	UP(PH)*	NP	23.302.070.A
Amusement Device Arcade	UP(PH)*	UP(PH)*	NP	NP	NP	UP(PH)*	NP	NP	UP(PH)*	UP(PH)*	UP(PH)	23.302.070.B
Bar/Cocktail Lounge/Tavern	UP(PH)*	UP(PH)*	UP(PH)*	–	NP	UP(PH)*	UP(PH)*	NP	UP(PH)*	UP(PH)*	UP(PH)	23.204.100.B.3; 23.204.110.B.2; 23.310
Commercial Recreation Center	See 23.204.040.A											
Dance/Exercise/Martial Arts/Music Studio	ZC [1]	ZC [1]	ZC [2]	AUP	AUP [4]	ZC [1]	ZC	AUP	ZC	ZC [7]	ZC	
Entertainment Establishment	UP(PH)	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Food Service Establishment	See 23.204.040.E											
Group Class Instruction	ZC [1]	ZC [1]	AUP	AUP	AUP*	ZC [1]	ZC*	AUP	ZC*	ZC	ZC	23.204.040.B
Gym/Health Club	See 23.204.040.C											
Hotels, Tourist	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Motels, Tourist	UP(PH)	UP(PH)	NP	NP	NP	NP	NP	NP	UP(PH)	UP(PH)	NP	
Theater	UP(PH)	UP(PH)	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	NP	AUP	UP(PH)	UP(PH)	



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



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

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	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
Columbaria	See 23.302.070.C											
Food and Beverage for Immediate Consumption	ZC	ZC	AUP	UP(PH)	UP(PH)	ZC	AUP	UP(PH)	ZC	ZC	ZC	
Food Service Establishment	See 23.302.070.E											
Live Entertainment	See 23.302.020.D											
Manufacturing	AUP	AUP	UP(PH)	UP(PH)	NP	UP(PH)	AUP	AUP	AUP	AUP	AUP	
Retail Sale of Goods Manufactured On-Site	ZC [1]	ZC [1]	ZC [2]	ZC [2]	ZC [2]	ZC [1]	ZC	ZC [2]	ZC	AUP	ZC	
Storage of Goods (>25% gross floor area)	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP	23.302.020.C
Wholesale Activities	AUP*	AUP*	UP(PH)*	UP(PH)*	NP	AUP*	AUP*	AUP*	AUP*	AUP	AUP	23.204.080.B.3
<b>Other Miscellaneous Uses</b>												
Art/Craft Studio	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	ZC [6]	
ATM, Exterior and Attached to Bank	AUP	AUP	AUP	UP(PH)	AUP	AUP	AUP	AUP*	AUP	AUP	AUP	23.204.120.B.2
ATM, Interior or Exterior and Not With Bank	UP(PH)	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	UP(PH)	NP	UP(PH)*	AUP	UP(PH)	23.204.130.B.2
Circus/Carnival	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Drive-in Uses	UP(PH)	NP	NP	NP	UP(PH)	UP(PH)	NP	UP(PH)	NP	NP	UP(PH)	

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	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
Home Occupations	See 23.302.040											
Live/Work	See 23.312											
Parking Lot/Structure	See 23.302.070.G											
Public Market, Open Air	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	UP(PH)	AUP	
Public Market, Enclosed	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP [9]	AUP	
Short-Term Rental	See 23.314		NP	NP	See 23.314			NP	See 23.314		NP	
Urban Agriculture, Low-Impact	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC	ZC	23.318
Urban Agriculture, High-Impact	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP	AUP	23.318
Wireless Telecommunication Facility	See 23.332--Wireless Communication Facilities											

Notes:

- [1] Change of use of floor area over 3,000 square feet requires an AUP.
- [2] Change of use of floor area over 2,000 square feet requires an AUP.
- [3] Requires an AUP for uses 3,500 sq. ft. to 7,500 square feet. Requires a Use Permit for uses more than 7,500 sq. ft.
- [4] Requires a Use Permit if 5,000 sq. ft. or more.
- [5] Requires an AUP for uses 3,000 sq. ft. to 5,000 square feet. Requires a Use Permit for uses more than 5,000 sq. ft.
- [6] Requires an AUP for uses 2,500 sq. ft. or greater or 50 ft. wide or greater on Shattuck, between Ward and Russell; Adeline between Russell and the City boundary; on Ashby, east of Adeline; or on the north side of Ashby, west of Adeline.
- [7] Requires a Use Permit if 7,500 square feet or more.
- [8] Requires a Use Permit if either 5,000 sq. ft. or more of floor area or 10,000 square feet or more of lot area.
- [9] Requires a Use Permit if more than 10,000 sq. ft.

**Section 13.** That Berkeley Municipal Code Section 23.204.060.D.5 Table 23.204-12 is amended as follows:

Table 23.204-12. C-U SETBACK STANDARDS

LOT LINE & PROJECT CONDITIONS	REQUIRED SETBACK
Front	
Ground-floor non-residential uses fronting University Avenue	Average 2 ft. 2 ft. at all sidewalk pedestrian entries
Ground-floor residential uses fronting University Avenue	Average 2 ft. Maximum 10 ft.[1]
Fronting a street other than University Avenue and confronting a non-residential district	No min.
Rear	
Lots on south side of University Avenue abutting lot in residential district	Average 20 ft. [2] [3]
Lots on <del>south</del> -north side of University Avenue	See <a href="#">23.204.060.D.5</a> [WG1]--C-U University Commercial District (Solar Access)
All other lots	10 ft. or 10% of lot depth, whichever is greater
Interior Side	No minimum
Street Side	2 ft. average
All setbacks for lots on South Side of University Avenue fronting a street other than University Avenue	As required by <a href="#">23.304.030.C.2</a> --Setbacks (Lots Adjacent to Residential Districts) [4]

Notes:

- [1] A maximum setback of 10 feet is only permitted for landscaping that enhances the streetscape and provides privacy for residential units on the first floor.
- [2] Rear setback area must be greater than or equal to the width of the lot in feet multiplied by 20 feet.
- [3] See [23.304.030.C.2.b](#) for allowed reductions.
- [4] If a lot fronting a side street is consolidated into a single project with the adjacent University Avenue-fronting lot, the project must conform to the setback standards in this table.

27 Section 14. That Berkeley Municipal Code Section 23.204.080.B Table 23.204-20 is  
 28 amended as follows:  
 29

30 Table 23.204-20. C-E LAND USE NUMBER AND SIZE LIMITATIONS

USE	NUMBER LIMIT	MAXIMUM SIZE	PERMIT REQUIRED
Art/Craft Shops, Gift/Novelty Shops, Jewelry/Watch Shops	No limit	1,500 sq. ft.	ZC
Bookstores, Periodical Stands	No limit	2,000 sq. ft.	ZC
Food Service Establishments [1]	25 total	No max.	No permit required AUP
Photocopy Stores, Printing, Fax, Magnetic Disk Reproduction Services	No limit	1,000 sq. ft.	ZC

31 Notes:

32 [1] Excludes food service uses accessory to a food product store. Secondary food service uses  
 33 associated with all other principal uses are subject to limitations in Table 23.204-20.

34 [2] Change of use of over 3,000 square feet requires Use Permit.  
 35

36 Section 14. That Berkeley Municipal Code Section 23.204.100.D.2 is amended as  
 37 follows:  
 38

39 2. Modification for Mixed Use and Residential Projects. The ZAB may modify  
 40 development standards in Table 23.204-27, Table 23.204-28, and Table 23.204-  
 41 29, and Table 23.204-30 – excluding FAR – for a mixed-use or residential-only  
 42 project with a Use Permit, upon making one of the following findings:

43 (a) The project encourages utilization of public transit and existing off-  
 44 street parking facilities in the area of the proposed building;

45 (b) The modification allows consistency with the building setbacks  
 46 existing in the immediate area where a residential building setback would  
 47 not serve a useful purpose;

48 (c) The modification facilitates the construction of affordable housing as  
 49 defined by the U.S. Department of Housing and Urban Development  
 50 (HUD) Guidelines; or

51 (d) The modification provides consistency with the purposes of the district  
 52 as listed in Section 23.204.100.A (District Purpose).

53 Section 15. That Berkeley Municipal Code Section 23.206.040.A is amended as  
 54 follows:  
 55

56 A. *Art/Craft Studios in the M and ~~MU-LIMM~~ Districts.* Art/craft studios are  
57 allowed in the M and ~~MU-LIMM~~ districts only as workspaces. Live/work is not  
58 permitted.  
59

60 Section 16. That Berkeley Municipal Code Section 23.406.050.F.2 is amended as  
61 follows:  
62

63 2. The ZAB shall deny a ~~Use-Permit-application~~Variance if it determines that it is  
64 unable to make any of the required findings.  
65

66 Section 17: Copies of this Ordinance shall be posted for two days prior to adoption in the  
67 display case located near the walkway in front of the Maudelle Shirek Building, 2134  
68 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be  
69 filed at each branch of the Berkeley Public Library and the title shall be published in a  
70 newspaper of general circulation.

ORDINANCE NO. -N.S.

AMENDING TITLE 23 OF THE BERKELEY MUNICIPAL CODE TO CORRECT ERRORS AND MAKE NON-SUBSTANTIVE, TECHNICAL EDITS TO THE ZONING ORDINANCE

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

Section 1. That Berkeley Municipal Code Section 23.108.020 Table 23.204-8 is amended as follows:

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

Table 23.108-1. ZONING DISTRICTS

<b>DISTRICT SYMBOL</b>	<b>NAME OF DISTRICT</b>
<b>Residential Districts</b>	
R-1	Single-Family Residential
R-1A	Limited Two-family Residential
ES-R	Environmental Safety Residential
R-2	Restricted Two-family Residential
R-2A	Restricted Multiple-family Residential
R-3	Multiple-family Residential
R-4	Multi-family Residential
R-5	High Density Residential
R-S	Residential Southside

<b>DISTRICT SYMBOL</b>	<b>NAME OF DISTRICT</b>
R-SMU	Residential Southside Mixed Use
R-BMU	Residential BART Mixed Use
<b>Commercial Districts</b>	
C-C	Corridor Commercial
C-U	University Avenue Commercial
C-N	Neighborhood Commercial
C-E	Elmwood Commercial
C-NS	North Shattuck Commercial
C-SA	South Area Commercial
C-T	Telegraph Avenue Commercial
C-SO	Solano Avenue Commercial
C-DMU	Downtown Mixed-Use
C-W	West Berkeley Commercial
C-AC	Adeline Corridor Commercial
<b>Manufacturing Districts</b>	
M	Manufacturing
MM	Mixed Manufacturing
MU-LI	Mixed Use-Light Industrial



DISTRICT SYMBOL	NAME OF DISTRICT
MU-R	Mixed Use-Residential
<b>Special Districts</b>	
SP	Specific Plan
U	Unclassified

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

C. Overlay Zones.

1. The Zoning Ordinance and Zoning Map include the overlay zones shown in

2. Table Error! No text of specified style in document.-1: Overlay Zones. Overlay zones impose additional regulations on properties beyond what is required by the underlying district.

3. As shown in

4. Table Error! No text of specified style in document.-1: Overlay Zones, provisions for overlay zones that apply to two or more districts are located in Chapter 23.210 (Error! Reference source not found.). Provisions for overlay zones that apply only in one district are located in the Zoning Ordinance chapter for that district.

**TABLE Error! NO TEXT OF SPECIFIED STYLE IN DOCUMENT.-1: OVERLAY ZONES**

<u>OVERLAY ZONE SYMBOL</u>	<u>NAME OF OVERLAY ZONE</u>	<u>LOCATION IN ZONING ORDINANCE</u>
<b><u>Overlay Zones that Apply in Two or More Districts</u></b>		
<u>H</u>	<u>Hillside</u>	<b>Error! Reference source not found.Error! Reference source not found.</b>

<u>C</u>	<u>Civic Center</u>	Error! Reference source not found. Error! Reference source not found.
<b><u>Overlay Zones that Apply in One District</u></b>		
<u>D</u>	<u>Dealership</u>	Error! Reference source not found. <u>B.5</u> Error! Reference source not found. <u>(Automobile/Motorcycle Sales)</u>
<u>DA</u>	<u>Downtown Arts</u>	Error! Reference source not found. Error! Reference source not found. <u>(Arts Overlay District)</u>

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

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

Section 2. That Berkeley Municipal Code Section 23.202.020 is amended to add the following:

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

Section 3. That the title of Berkeley Municipal Code 23.202.140 is amended as follows:

23.202.140 R-SMU Residential Southside Mixed Use District

Section 4. That the Berkeley Municipal Code 23.202.150.B.1 is amended as follows:

1. *Dwelling Units per Acre*: The quotient resulting from the total number of dwelling units on a site divided by the Lot Area.

Section 5. That Berkeley Municipal Code 23.202.150.C.1 is amended as follows:

1. *General*. See Section 23.202.020 (Allowed Land Uses), which indicates identified allowed land uses and which are prohibited.

(a) The initial establishment of a land use in a new building will follow the R-BMU Master Development Plan process outlined in Section 23.202.150.~~D-G~~ below.

(b) The change of use of an existing building or portion of a building will require the permits indicated in Section 23.202.020 and Table 23.202-1 for the R-BMU District.

(c) Any use not listed in Table 23.202-1 for the R-BMU District can be approved through the Master Development Plan process outlined in Section 23.202.150.~~D-G~~ below for the initial establishment of a land use in a new building.

(d) Uses subject to supplemental regulations are shown in Table 23.202-1 with an asterisk (\*) following the permit requirement (e.g., ZC\*). The Use-Specific Regulations column in Table 23.~~204202~~-1 identifies the location of these regulations in the Zoning Ordinance.

Section 6. That Berkeley Municipal Code Section 23.304.150.F Table 23.202-28 is amended as follows:

		<b>Supplemental Standards</b>
Lot Area, Minimum	No Minimum	23.304.020
Private Usable Open Space, Minimum [1][2]		23. <del>302304</del> .090
Per Dwelling Unit	40 sf/DU	23. <del>302304</del> .090
Per Group Living Accommodation Resident	15 sf/resident	23. <del>302304</del> .090

Public Open Space, Minimum		
Per Dwelling Unit	35 sf/DU	
Per Group Living Accommodation Resident	18 sf/resident	
Floor Area Ratio (FAR), Maximum	4.2	
Main Building height, Maximum [3]	80 feet and 7 stories	32.304.050
Residential Density, Minimum	75 dwelling units per acre	
<p><b>[1]</b> Private Usable Open Space may be provided as any combination of personal and common private space.</p> <p><b>[2]</b> 50% of the Private Usable Open Space requirement may be fulfilled through the provision of an equal amount of additional Public Open Space.</p> <p><b>[3]</b> Building Height Measurement: In the case of a roof with a parapet wall, building height shall be measured to the top of the roof and parapets may exceed the height limits by up to five feet by right.</p>		

Section 7. That Berkeley Municipal Code Section 23.202.150.F.3.b.iv is amended as follows:

- iv. Adjacent publicly owned space may contribute to the minimum public space requirement for the project, if it is designed, integrated and maintained as part of the project and complies with all other requirements for public space design identified in this section 23.202.150(~~DE~~)3(b).

Section 8. That Berkeley Municipal Code Section 23.202.150.F.3.c is amended as follows:

- (c) *Rooftop Open Space.* Rooftops may be utilized as Private Usable Open Space or Public Open Space meeting the requirements of 23.202.150.~~AE~~.3 (Additional Open Space Requirements--Definitions). Rooftop space

designated Public Open Space must also meet the requirements of 23.202.150.AE.3.B (Public Space Design). No more than 25% of Public Open Space requirements can be met with Rooftop Open Space, and such Public Open Space must be independently accessible from the public circulation network.

Section 9. That Berkeley Municipal Code Section 23.202.150.G.4.c is amended as follows:

(c) The Board shall determine whether the proposal conforms to the permit criteria set forth in Section 23.202.150.DG.8, and may approve or disapprove the application and the accompanying Preliminary Development Plan or require such changes therein or impose such reasonable conditions of approval as are in its judgment necessary to ensure conformity to said criteria and regulations. In so doing, the Board may, in its discretion, authorize submission of the Final Development Plan in stages corresponding to different units or elements of the development. It may do so only upon evidence assuring completion of the entire development in accordance with the Preliminary Development Plan and staged development schedule.

Section 10. That Berkeley Municipal Code Section 23.202.150.G.5.b is amended as follows:

(b) The public notice and hearing process for a Final Development Plan shall be the same as for Use Permits as defined in BMC Section ~~23B.3223.406.040~~, except that notice shall be mailed or delivered to all businesses, residents and owners of property located within five hundred (500) feet of the subject property.

Section 11. That Berkeley Municipal Code Section 23.202.150.G.7 is amended as follows:

7. *Appeal to Council.* The process for appeal to Council for a Master Development Permit, Preliminary Development Plan and/or Final Development Plan shall be the same as for Use Permits as defined in BMC Section ~~23B.3223.410~~.

Section 12. That Berkeley Municipal Code Section 23.204.020 Table 23.204-1 is amended as follows:

Table 23.204-1 . Allowed Uses in Commercial Districts

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.020(B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	COMMERCIAL DISTRICTS											USE-SPECIFIC REGULATIONS
	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
<b>Residential Uses</b>												
Accessory Dwelling Unit	See 23.306--Accessory Dwelling Units											
Dwellings												
Single-Family	UP(PH)	UP(PH)*	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	23.204.060.B.3
Two-Family	UP(PH)	UP(PH)*	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	23.204.060.B.3
Multi-Family	UP(PH)	UP(PH)*	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	23.204.060.B.3
Group Living Accommodation	UP(PH)	UP(PH)*	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	23.204.060.B.3
Hotel, Residential	UP(PH)	UP(PH)*	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	23.204.060.B.3
Mixed-Use Residential	UP(PH)	UP(PH)*	UP(PH)	UP(PH)	UP(PH)	UP(PH)*	UP(PH)	UP(PH)	UP(PH)	See Table 23.204- 41	UP(PH)	23.204.060.B.3; 23.204.100.B.4
Senior Congregate Housing	See 23.302.070.H											
<b>Public and Quasi-Public Uses</b>												
Child Care Center	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Cemetery/Crematory/Mausoleum	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	
Club/Lodge	UP(PH)	UP(PH)	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	UP(PH)	

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.020(B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	COMMERCIAL DISTRICTS											USE-SPECIFIC REGULATIONS
	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
Columbaria	See 23.302.070.C											
Community Care Facility	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	ZC	AUP	
Community Center	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Emergency Shelter	See <del>023.308</del> – <a href="#">Emergency Shelters</a>		–	–	See <a href="#">23.308 – Emergency Shelters</a>							
Family Day Care Home, Large	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	
Family Day Care Home, Small	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	
Hospital	UP(PH)	UP(PH)	NP	NP	NP	NP	NP	NP	UP(PH)	UP(PH)	NP	
Library	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Mortuaries and Crematories	UP(PH)	UP(PH)	NP	NP	NP	NP	NP	NP	NP	UP(PH)	NP	
Municipal Animal Shelter	–	–	–	–	–	–	–	–	–	–	--	
Nursing Home	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Park/Playground	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	AUP	ZC	
Public Safety and Emergency Service	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Public Utility Substation/Tank	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Religious Assembly	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	AUP	UP(PH)	

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.020(B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	COMMERCIAL DISTRICTS											USE-SPECIFIC REGULATIONS
	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
School	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
School, Vocational	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	UP(PH)	AUP	
<b>Retail Uses</b>												
Alcoholic Beverage Retail Sale	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	NP	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	23.204.060.B.2; 23.310
Cannabis Retailer	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	23.320; 12.21; and 12.22
Cannabis Retailer, Delivery Only	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	--	23.320; 12.21; and 12.22
Firearm/Munitions Business	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	NP	UP(PH)	UP(PH)*	23.302.070.D
Industrial and Mining Products	-	-	-	-	-	-	-	-	-	-	--	
Pawn Shop/Auction House	UP(PH)	-	NP	NP	NP	NP	NP	NP	UP(PH)	UP(PH)	NP	
Pet Store	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	ZC [3]	UP(PH)	
Retail, General	ZC [1]	ZC [1]	ZC* [2]	ZC* [2]	ZC* [2]	ZC [1]	ZC	ZC* [2]	ZC	ZC* [3]	ZC*	23.204.040.E (for department stores) 23.204.040.F (for drug stores)
Smoke Shop	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	NP	UP(PH)*	UP(PH)*	23.302.070.I
<b>Personal and Household Service Uses</b>												



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

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	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
Office, Business and Professional	ZC [1]	ZC [1]	AUP*	AUP*	AUP*	ZC [1]	AUP*	AUP*	ZC*	ZC [5]	ZC [6]	23.204.040.B; 23.204.110.B.6; 23.204.130.D.3
<b>Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses</b>												
Adult-oriented Business	UP(PH)*	UP(PH)*	NP	NP	NP	NP	NP	NP	UP(PH)*	UP(PH)*	NP	23.302.070.A
Amusement Device Arcade	UP(PH)*	UP(PH)*	NP	NP	NP	UP(PH)*	NP	NP	UP(PH)*	UP(PH)*	UP(PH)	23.302.070.B
Bar/Cocktail Lounge/Tavern	UP(PH)*	UP(PH)*	UP(PH)*	–	NP	UP(PH)*	UP(PH)*	NP	UP(PH)*	UP(PH)*	UP(PH)	23.204.100.B.3; 23.204.110.B.2; 23.310
Commercial Recreation Center	See 23.204.040.A											
Dance/Exercise/Martial Arts/Music Studio	ZC [1]	ZC [1]	ZC [2]	AUP	AUP [4]	ZC [1]	ZC	AUP	ZC	ZC [7]	ZC	
Entertainment Establishment	UP(PH)	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Food Service Establishment	See 23.204.040.E											
Group Class Instruction	ZC [1]	ZC [1]	AUP	AUP	AUP*	ZC [1]	ZC*	AUP	ZC*	ZC	ZC	23.204.040.B
Gym/Health Club	See 23.204.040.C											
Hotels, Tourist	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Motels, Tourist	UP(PH)	UP(PH)	NP	NP	NP	NP	NP	NP	UP(PH)	UP(PH)	NP	
Theater	UP(PH)	UP(PH)	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	NP	AUP	UP(PH)	UP(PH)	



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

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

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.020(B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	COMMERCIAL DISTRICTS											USE-SPECIFIC REGULATIONS
	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
Columbaria	See 23.302.070.C											
Food and Beverage for Immediate Consumption	ZC	ZC	AUP	UP(PH)	UP(PH)	ZC	AUP	UP(PH)	ZC	ZC	ZC	
Food Service Establishment	See 23.302.070.E											
Live Entertainment	See 23.302.020.D											
Manufacturing	AUP	AUP	UP(PH)	UP(PH)	NP	UP(PH)	AUP	AUP	AUP	AUP	AUP	
Retail Sale of Goods Manufactured On-Site	ZC [1]	ZC [1]	ZC [2]	ZC [2]	ZC [2]	ZC [1]	ZC	ZC [2]	ZC	AUP	ZC	
Storage of Goods (>25% gross floor area)	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP	23.302.020.C
Wholesale Activities	AUP*	AUP*	UP(PH)*	UP(PH)*	NP	AUP*	AUP*	AUP*	AUP*	AUP	AUP	23.204.080.B.3
<b>Other Miscellaneous Uses</b>												
Art/Craft Studio	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	ZC [6]	
ATM, Exterior and Attached to Bank	AUP	AUP	AUP	UP(PH)	AUP	AUP	AUP	AUP*	AUP	AUP	AUP	23.204.120.B.2
ATM, Interior or Exterior and Not With Bank	UP(PH)	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	UP(PH)	NP	UP(PH)*	AUP	UP(PH)	23.204.130.B.2
Circus/Carnival	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Drive-in Uses	UP(PH)	NP	NP	NP	UP(PH)	UP(PH)	NP	UP(PH)	NP	NP	UP(PH)	

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	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
Home Occupations	See 23.302.040											
Live/Work	See 23.312											
Parking Lot/Structure	See 23.302.070.G											
Public Market, Open Air	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	UP(PH)	AUP	
Public Market, Enclosed	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP [9]	AUP	
Short-Term Rental	See 23.314		NP	NP	See 23.314			NP	See 23.314		NP	
Urban Agriculture, Low-Impact	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC	ZC	23.318
Urban Agriculture, High-Impact	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP	AUP	23.318
Wireless Telecommunication Facility	See 23.332--Wireless Communication Facilities											

Notes:

- [1] Change of use of floor area over 3,000 square feet requires an AUP.
- [2] Change of use of floor area over 2,000 square feet requires an AUP.
- [3] Requires an AUP for uses 3,500 sq. ft. to 7,500 square feet. Requires a Use Permit for uses more than 7,500 sq. ft.
- [4] Requires a Use Permit if 5,000 sq. ft. or more.
- [5] Requires an AUP for uses 3,000 sq. ft. to 5,000 square feet. Requires a Use Permit for uses more than 5,000 sq. ft.
- [6] Requires an AUP for uses 2,500 sq. ft. or greater or 50 ft. wide or greater on Shattuck, between Ward and Russell; Adeline between Russell and the City boundary; on Ashby, east of Adeline; or on the north side of Ashby, west of Adeline.
- [7] Requires a Use Permit if 7,500 square feet or more.
- [8] Requires a Use Permit if either 5,000 sq. ft. or more of floor area or 10,000 square feet or more of lot area.
- [9] Requires a Use Permit if more than 10,000 sq. ft.

**Section 13.** That Berkeley Municipal Code Section 23.204.060.D.5 Table 23.204-12 is amended as follows:

Table 23.204-12. C-U SETBACK STANDARDS

LOT LINE & PROJECT CONDITIONS	REQUIRED SETBACK
Front	
Ground-floor non-residential uses fronting University Avenue	Average 2 ft. 2 ft. at all sidewalk pedestrian entries
Ground-floor residential uses fronting University Avenue	Average 2 ft. Maximum 10 ft.[1]
Fronting a street other than University Avenue and confronting a non-residential district	No min.
Rear	
Lots on south side of University Avenue abutting lot in residential district	Average 20 ft. [2] [3]
Lots on <del>south</del> -north side of University Avenue	See <a href="#">23.204.060.D.5</a> [WG1]--C-U University Commercial District (Solar Access)
All other lots	10 ft. or 10% of lot depth, whichever is greater
Interior Side	No minimum
Street Side	2 ft. average
All setbacks for lots on South Side of University Avenue fronting a street other than University Avenue	As required by <a href="#">23.304.030.C.2</a> --Setbacks (Lots Adjacent to Residential Districts) [4]

Notes:

- [1] A maximum setback of 10 feet is only permitted for landscaping that enhances the streetscape and provides privacy for residential units on the first floor.
- [2] Rear setback area must be greater than or equal to the width of the lot in feet multiplied by 20 feet.
- [3] See [23.304.030.C.2.b](#) for allowed reductions.
- [4] If a lot fronting a side street is consolidated into a single project with the adjacent University Avenue-fronting lot, the project must conform to the setback standards in this table.



27 Section 14. That Berkeley Municipal Code Section 23.204.080.B Table 23.204-20 is  
 28 amended as follows:  
 29

30 Table 23.204-20. C-E LAND USE NUMBER AND SIZE LIMITATIONS

USE	NUMBER LIMIT	MAXIMUM SIZE	PERMIT REQUIRED
Art/Craft Shops, Gift/Novelty Shops, Jewelry/Watch Shops	No limit	1,500 sq. ft.	ZC
Bookstores, Periodical Stands	No limit	2,000 sq. ft.	ZC
Food Service Establishments [1]	25 total	No max.	No permit required AUP
Photocopy Stores, Printing, Fax, Magnetic Disk Reproduction Services	No limit	1,000 sq. ft.	ZC

31 Notes:

32 [1] Excludes food service uses accessory to a food product store. Secondary food service uses  
 33 associated with all other principal uses are subject to limitations in Table 23.204-20.

34 [2] Change of use of over 3,000 square feet requires Use Permit.

35  
 36 Section 14. That Berkeley Municipal Code Section 23.204.100.D.2 is amended as  
 37 follows:  
 38

39 2. Modification for Mixed Use and Residential Projects. The ZAB may modify  
 40 development standards in Table 23.204-27, Table 23.204-28, and Table 23.204-  
 41 29, and Table 23.204-30 – excluding FAR – for a mixed-use or residential-only  
 42 project with a Use Permit, upon making one of the following findings:

43 (a) The project encourages utilization of public transit and existing off-  
 44 street parking facilities in the area of the proposed building;

45 (b) The modification allows consistency with the building setbacks  
 46 existing in the immediate area where a residential building setback would  
 47 not serve a useful purpose;

48 (c) The modification facilitates the construction of affordable housing as  
 49 defined by the U.S. Department of Housing and Urban Development  
 50 (HUD) Guidelines; or

51 (d) The modification provides consistency with the purposes of the district  
 52 as listed in Section 23.204.100.A (District Purpose).

53 Section 15. That Berkeley Municipal Code Section 23.206.040.A is amended as  
 54 follows:  
 55

56 A. *Art/Craft Studios in the M and ~~MU-LIMM~~ Districts.* Art/craft studios are  
57 allowed in the M and ~~MU-LIMM~~ districts only as workspaces. Live/work is not  
58 permitted.  
59

60 Section 16. That Berkeley Municipal Code Section 23.406.050.F.2 is amended as  
61 follows:  
62

63 2. The ZAB shall deny a ~~Use-Permit-application~~Variance if it determines that it is  
64 unable to make any of the required findings.  
65

66 Section 17: Copies of this Ordinance shall be posted for two days prior to adoption in the  
67 display case located near the walkway in front of the Maudelle Shirek Building, 2134  
68 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be  
69 filed at each branch of the Berkeley Public Library and the title shall be published in a  
70 newspaper of general circulation.

**BASELINE ZONING ORDINANCE CONSENT CHANGES MATRIX**

<b>Topic</b>	<b>Description</b>	<b>BZO Location</b>	<b>Existing Location</b>	<b>Rationale for Change</b>
<b>23.102 – Introductory Provisions</b>				
Effective Date	Statement of when the Ordinance becomes effective	23.102.020	NEW	Provide effective date
Authority	States that if state law referenced in Zoning Ordinance is amended, the Zoning Ordinance is deemed amended to reference the amended state law	23.102.030	NEW	Added for clarity
Laws of Other Agencies	Removes statement that uses and structures must comply with regulations and laws of other governmental agencies.	N/A	23B.56.040	It is unnecessary to state that uses and structures must comply with the law. Removed for clarity
Approvals Required	Describes approvals required for land uses and development	23.102.050 D	NEW	Expands on existing Section 23A.12.010 to reflect current practice
Conflict with State or Federal Regulations	Explains how to handle conflicts with State and Fed law	23.102.070	NEW	Consistent with the Supremacy Clause of the United States Constitution and Article XI, Section 5(a) of the California Constitution
Conflicts with Other City Regulations	New language: “Where the Zoning Ordinance conflicts with other ordinances, resolutions, or regulations of the City of Berkeley, the more restrictive controls.”	23.102.070.B	NEW	Clarity needed on how to handle conflicting requirements. The Zoning Ordinance does not supersede other City regulations.

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Topic	Description	BZO Location	Existing Location	Rationale for Change
Conflicts with Private Agreements	Adds statement that the City is not responsible for monitoring or enforcing private agreements.	23.102.070.C	NEW	Clarifies City role in neighbor disputes involving private agreements
Pending Applications	Clarifies status of applications submitted during transition from ZO to BZO	23.102.080 C	NEW	Necessary to inform status of applications submitted during transition to BZO
Nonconformities	Defines what is considered nonconforming at the time of BZO adoption	23.102.080 E	NEW	Adds up-front reference to nonconformity chapter alongside other transitional provisions
<b>23.104 – Interpreting the Zoning Ordinance</b>				
Purpose	States purpose of chapter	23.104.010	NEW	BZO standard includes purpose statement for each chapter
Authority	Clarifies existing Zoning Officer authority	23.104.020	NEW see 23B.12.020	More accurately state ZO's authority
Rules of Interpretation	New rules of interpretation relating to: meaning and intent; harmonious construction; lists and examples; references to other regulations, publications, and documents; technical and non-technical terms; terms not defined; public officials and agencies; tenses and plurals. New harmonious construction language replaces existing language: "In case of conflict between any of the provisions of this Ordinance, the most restrictive shall apply."	23.104.030	23A.080.010	Provides for consistent application of rules

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Topic	Description	BZO Location	Existing Location	Rationale for Change
Zoning Map	Clarifies intention to follow city limits	23.104.050 A 3	NEW	Greater clarity to resolve uncertainty in zoning district boundaries
<b>23.106 Rules and Measurement</b>				
Chapter Purpose	States chapter purpose	23.106.010	NEW	BZO standard includes purpose statement for each chapter
Building Separation	Defines method of building separation measurement (outer wall to outer wall)	23.106.080 A	NEW	Codifies existing practice and increases clarity
<b>23.108 –Zoning Districts and Map</b>				
Chapter Purpose	States chapter purpose	23.108.010	NEW	BZO standard includes purpose statement for each chapter
C-C and C-U Districts	C-1 zone split into two zones: Corridor Commercial (C-C) and University Avenue Commercial (C-U) district. C-U includes University Avenue Strategic Plan Overlay standards.	23.108.020.A	23A.16.020.A	Simplifies and clarifies C-1 rules inside and outside of University Avenue Strategic Plan area
Purpose of Overlay Zones	Explains purpose of overlay zones	23.108.020.C.1	NEW	Provide definition; explains that Overlay Zone regulations are in addition to regulations of underlying zone (not a replacement)

Topic	Description	BZO Location	Existing Location	Rationale for Change
Applicability of Overlay Zone Standards	<p><u>Existing language</u>: “the height, coverage, parking and usable open space shall comply with the provisions of the underlying district.”</p> <p><u>BZO language</u>: “If the overlay zone applies a standard to a property that conflicts with the underlying district, the overlay zone standard governs. If the overlay zone is silent on a standard in the underlying district, the underlying district standard applies.”</p>	23.108.020.C.3	23A.16.030.C	Corrects statement inconsistent with existing use of overlay zones
<b>23.202 – Residential Districts</b>				
Allowed Land Uses	In Residential Districts, unlisted uses are prohibited	23.202.020.B	NEW	Codifies existing practice, making explicit that if a use is not listed in the Allowed Uses Table for Residential Districts, the use is prohibited.
Open Space for ADUs in R-1 District	Removes requirement for ADUs to include usable open space. All standards for ADUs will be addressed in updated ADU chapter.	Table 23.202-2	23D.16.070.F	Codifies existing practice consistent with <a href="#">Gov’t Code Section 65852.2</a>
<b>23.206 – Manufacturing Districts</b>				
Industrial Performance Standards	Removes statements allowing City Manager to establish industrial performance standards.	23.206.040.F	23E.64.070.E 23E.72.070.E 23E.76.070.E 23E.80.D 23E.84.070.H	Language is unnecessary and implies authorization is required for other similar requirements.

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Topic	Description	BZO Location	Existing Location	Rationale for Change
<b>23.302 – Supplemental Use Regulations</b>				
Warehouse Storage for Retail Use	Allows on-site storage of goods as an accessory use to a primary retail use in all districts where retail is permitted	23.302.070.J	NEW	Codifies existing practice of allowing retail establishments to store their goods on-site if retail is permitted.
<b>23.304 – General Development Standards</b>				
Setback Projections – Disabled Access	Allows projections into setbacks to accommodate the disabled with a reasonable accommodations request.	23.304.030.B.4	23D.04.030.A2	Confirm with The Americans with Disabilities Act, and the California Fair Employment and Housing Act
Building Height Projections – Public Buildings in Residential Districts	Deletes “the height limit for schools, buildings for religious assembly use, hospitals and other public buildings shall not exceed the height limit permitted for that district. This is true for all uses.”	23.304.050.A	23D.04.020.A; 23E.04.020.A	Removal of extraneous language.  Calling out these uses implies other uses may exceed height limit, which is not true.
Adeline Corridor Plan	States that projects in the Adeline Plan Area are subject to mitigation measures in the Adeline Plan FEIR	23.304.140.D	NEW	Adds Adeline Corridor Plan to list of existing plans

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Topic	Description	BZO Location	Existing Location	Rationale for Change
<b>23.310 – Alcohol Beverage Sales and Service</b>				
Chapter Purpose	States purpose of chapter	23.310.010	NEW	BZO standard includes purpose statement for each chapter
<b>23.320 – Cannabis Uses</b>				
Chapter Purpose	States purpose of chapter	23.320.010	NEW	BZO standard includes purpose statement for each chapter
<b>23.324 – Nonconforming Uses, Structures and Buildings</b>				
Chapter Purpose	States purpose of chapter	23.324.010	NEW	BZO standard includes purpose statement for each chapter
<b>23.326 – Demolition and Dwelling Unit Control</b>				
Chapter Purpose	States purpose of chapter	23.326.010	NEW	BZO standard includes purpose statement for each chapter
<b>23.328 – Inclusionary Housing</b>				
Required Inclusionary Units in Avenues Plan Area	Deletes “Except as provided in this chapter” from 23C.12.080E, which conflicts with 23C.12.080B: “Within this area, the provisions of this section superseded any inconsistent provisions of this chapter.”	23.328.070.D.1	23C.12.080.E	Maintain internal consistency
<b>23.402 – Administrative Responsibility</b>				
Chapter Purpose	States purpose of chapter	23.402.010	NEW	BZO standard includes purpose statement for each chapter



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Topic	Description	BZO Location	Existing Location	Rationale for Change
Review and Decision-Making Authority	Describes purpose of summary table	23.402.020.A	NEW	Description of table
Review and Decision-Making Authority	Defines authority roles (Recommend, Decision, Appeal)	23.402.020.B	NEW	Explains notation meaning
Planning and Development Department	Defines duties of Planning and Development Department	23.402.030	NEW	Codifies existing role and summarizes responsibilities
Landmarks Preservation Commission	Refers reader to BMC Chapter 3.24 for roles and responsibilities of Landmarks Preservation Commission	23.402.050.B	NEW	Provides clarity on LPC role
ZAB Responsibilities and Powers	Provides that City Council may assign additional responsibilities to ZAB	23.402.070.C.2	NEW	Codifies existing Council authority
City Council	Provides that City Council has authority to take actions related to the Zoning Ordinance consistent with existing law	23.402.090.C	NEW	Codifies existing Council authority
<b>23.404 – Common Permit Requirements</b>				
Purpose and Applicability	States purpose of chapter; clarifies that the chapter applies to all discretionary permits, not just use permits and variances	23.404.010	NEW	BZO standard includes purpose statement for each chapter. Clarifies existing practice
Multiple Permit Applications	Clarifies how applications are handled when they require more than one discretionary permit	23.402.020.F	NEW	Codifies existing practice
Review Timeline	Adds statement that City will abide by Permit Streamlining Act	23.404.030.A.3	NEW	Codifies existing practice. Recognizes

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Topic	Description	BZO Location	Existing Location	Rationale for Change
				compliance with state law is required
Project Evaluation and Staff Reports	Describes role of staff in reviewing, analyzing and presenting project applications	23.404.030.D	NEW	Codifies existing practice
CEQA	Add statement that City will review projects for CEQA compliance	23.404.030.E	NEW	Codifies existing practice. Recognizes that compliance with state law is required
Timing of Notice	Permits PC or CC to extend notice periods for applications of major significance	23.404.040.C.3	NEW	Best practice in compliance with <a href="#">Gov't Code Section 65091</a>
Zoning Ordinance Amendment Noticing	Adds notice requirements for Zoning Ordinance Amendments	23.404.040.C.4	NEW	Adds notice requirement for Zoning Ordinance Amendments. New requirement here is the same as for discretionary permits
Additional Notice	Adds "The Zoning Officer, Planning Commission or City Council may require additional public notice as determined necessary or desirable."	23.404.040.C.7	NEW	Codifies existing practice
Public Notice for Design Review	States that there is no requirement to mail or post notices in advance of a Design Review Committee meeting	23.404.040.D.2.b	NEW	Codifies existing practice
Public Hearings	Clarifies that hearings will be conducted consistent with procedures developed by the review authority	23.404.050.A	NEW	Codifies existing practice and recognizes that review authorities are empowered to create their own procedures.

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Topic	Description	BZO Location	Existing Location	Rationale for Change
Time and Place of Hearings	Clarifies that meetings will be held at time and place for which notice was given unless there is not a quorum	23.404.050.B	NEW	Codifies legal requirement consistent with <a href="#">Gov't Code Section 65091</a>
CEQA Action	Adds that action on a permit's CEQA determination must be taken before a permit is approved	23.404.050.G	NEW	Codifies CEQA Guidelines Sections <a href="#">15074</a> and <a href="#">15090</a>
Exceptions to Protect Constitutional Rights	Allows the City Council as well as ZAB to make exceptions to protect constitutional rights and clarifies that the exception can be made when acting on any permit and is not tied to a Variance	23.404.050.I	23B.44.050	Best practice. Council needs this ability in addition to ZAB to protect City from legal challenge
Payment for Service	Adds that applicant shall pay for mediation or conflict resolution services	23.040.050.J.7	NEW	Codifies existing practice
Effective Dates	Adds effective dates of Council actions on Zoning Ordinance amendments and legislative matters, and permits, appeals and non-legislative matters.  Adds effective dates of actions by the Zoning Officer, Design Review Committee or ZAB	23.404.060.A	NEW	Codifies current practice and legal requirements consistent with Gov't Code Section 65853-65857
Expiration of Permit	Adds that if a permit is not exercised after one year, it will not lapse if the applicant has made a substantial good faith effort to obtain a building permit and begin construction.	23.404.060.C.2. b	23B.56.100.C &D	Best practice
Expiration of Permit	Defines a lapsed permit as "void and of no further force and effect," and that a new permit application must be submitted to establish a use or structure.	23.404.060.C.3	NEW	Provides explicit definition of what a lapsed permit means and makes explicit the

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Topic	Description	BZO Location	Existing Location	Rationale for Change
				requirement to reapply.
Permit Revocation - City Council Hearing	Removes requirement for the City Council hearing must occur within 30 days after the ZAB issued its recommendation.	23.404.080.D.2	23B.60.050.B	CC hearing within 30 days of ZAB decision is frequently infeasible. Council can hold hearing “at its discretion.”
<b>23.406 – Specific Permit Requirements</b>				
Variances - Eligibility	<p><u>Existing Language:</u> “The Board may grant Variances to vary or modify the strict application of any of the regulations or provisions of this Ordinance with reference to the use of property, the height of buildings, the yard setbacks of buildings, the percentage of lot coverage, the lot area requirements, or the parking space requirements of this Ordinance.”</p> <p><u>BZO Language:</u> “The ZAB may grant a Variance to allow for deviation from any provision in the Zoning Ordinance related allowed land uses, use-related standards, and development standards.”</p>	23.406.050.B.1	23B.44.010	ZAB should have authority to grant a variance to any use or development-related standard, not just uses, heights, yard setbacks, lot coverage, lot area, or parking
Variances – Not Allowed	Adds: “A Variance may not be granted to allow deviation from a requirement of the General Plan.”	23.406.050.C	N/A	Codifies state law consistent with <a href="#">Gov’t Code Section 65906</a> .
Design Review – Changes to Approved Projects	Describes features of minor changes to approved projects that may be approved administratively: “A change that does not involve a feature of the project that was: 1) a specific consideration by the review authority in granting the approval; 2) a condition of approval; or 3) a basis for a finding in the project CEQA determination.	23.406.070.N	N/A	Codifies current practice
Reasonable Accommodations – Review Procedure	<u>Existing Language:</u> “If an application under this chapter is filed without any accompanying application for another approval, permit or entitlement under this title or Title 21, it shall be heard and acted upon at the same time and in the	23.406.090.E.1	23B.52.040.B	The Americans with Disabilities Act, and the California Fair

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	<p>same manner, and be subject to the same procedures, as the application that would normally be required to modify the provision which is the application seeks to modify, as determined by the Zoning Officer.”</p> <p><u>BZO Language</u>: “For a Reasonable Accommodation application submitted independently from any other planning permit application, the Zoning Officer shall take action within 45 days of receiving the application.”</p>			<p>Employment and Housing Act</p> <p>Existing language requires the application to be reviewed in the same manner as a Variance. This conflicts with state and federal law.</p>
<b>23.410 – Appeals</b>				
Appeals – Remanded Matters	Removes option for prior review authority to reconsider application without a public hearing.	23.410.040.G	23B.32.060.D	Remanded matters require public hearing
<b>23.412 – Zoning Ordinance Amendments</b>				
Zoning Ordinance Amendments – Initiation	Deletes language to allow for amendments initiated without a public hearing.	23.412.020	23A.20.020.C	Existing language conflicts with <a href="#">Gov’t Code Section 65853-65857</a>
Zoning Ordinance Amendments – Planning Commission Hearing	Removes requirement to hold Planning Commission hearing within 30 days of initiation.	23.412.040.A	23A.20.030.A	CC hearing within 30 days of PC decision is frequently infeasible. Council can hold hearing consistent with Public Notice section.
Zoning Ordinance Amendments – Effect of Planning	Deletes language that uses or structures not yet established must conform to Planning Commission recommendation before Council approval, when amendments become effective only after Council adoption.	23.412.040.C	23A.20.050.B	New regulations can only take effect after Council adoption.

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Topic	Description	BZO Location	Existing Location	Rationale for Change
Commission Recommendation				
Zoning Ordinance Amendments – City Council Hearing	Removes language requiring the Planning Commission recommendation to be forwarded to the Council within 30 days and consideration by Council within 60 days for Commission decision.	23.412.050.A	23A.20.040	CC hearing within 60 days of PC decision is frequently -infeasible. Council can hold hearing consistent with Public Hearings and Decision section.
Zoning Ordinance Amendments – City Council Action	Removes option for Council to act on amendment without a public hearing.	23.412.050.A	23A.20.060.A &B	Conflicts with <a href="#">Gov't Code Section 65853-65857</a>
Zoning Ordinance Amendments – Effective Date	Removes language about “more restrictive” amendments going into effective immediately upon adoption of ordinance.	23.412.050.C	23A.20.070	Conflicts with <a href="#">Gov't Code Section 65853-65857</a>
Zoning Ordinance Amendments – Findings	Adds findings for Zoning Ordinance amendments	23.412.060	N/A	Best Practice.
<b>23.502 – Glossary</b>				
Defined Terms	Adds definitions to undefined terms in existing Zoning Ordinance	23.502	23F.04	Best practice.



# PLANNING COMMISSION

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## Notice of Public Hearing

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### Wednesday, October 19, 2022

**Zoning Ordinance Amendments that Address Technical Edits and Corrections to the Berkeley Municipal Code Sections 23.108.020 (Zoning Districts); 23.202.020 (Allowed Land Uses); 23.202.140 (R-SMU District); 23.202.150 (R-BMU District); 23.204.020 (Allowed Uses); 23.204.060 (C-U District); 23.204.080 (C-E District); 23.204.100 (C-SA District); 23.206.040 (Use-Specific Regulations), 23.326.070 (Demolitions of Non-Residential Buildings); and 23.406.050 (Variances)**

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, October 19, 2022 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 Friday, October 14, 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:** On October 12, 2021, the City Council passed Ordinance No. 7,787-NS, which repealed the then-existing Title 23 of the Berkeley Municipal Code and zoning maps (“the old Zoning Ordinance”) and adopted a new Title 23 of the Berkeley Municipal Code and zoning maps (“the new Zoning Ordinance”). The new Zoning Ordinance became effective December 1, 2021.

As part of City Council’s approval action, staff was directed to regularly return to City Council with any required amendments to the new Zoning Ordinance to aid in clarity, fix mistakes in transcription, or correct unintentional errors discovered as part of the transition from the old to the new Zoning Ordinance. The public hearing will consider a set of amendments to the new Zoning Ordinance that address these errors. No substantive changes to planning policy are included in this set of amendments.

#### **PUBLIC COMMENT & FURTHER INFORMATION**

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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](mailto:zcovello@CityofBerkeley.info)

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

Correspondence received by **12 pm on Monday, October 10th, 2022**, 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 Tuesday, October 18<sup>th</sup>, 2022** 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**

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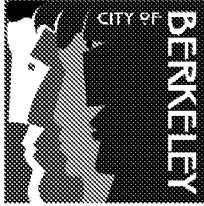
To request a meeting agenda in large print, Braille, or on audiocassette, or to request a sign language interpreter for the meeting, call (510) 981-7410 (voice) or 981-6903 (TDD). Notice of at least five (5) business days will ensure availability. All materials will be made available via the Planning Commission agenda page online at <https://www.cityofberkeley.info/PC/>.

### **FURTHER INFORMATION**

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Questions should be directed to Justin Horner, at (510) 981-7476 or [jhorner@cityofberkeley.info](mailto:jhorner@cityofberkeley.info). Current and past agendas are available on the City of Berkeley website at: <https://www.cityofberkeley.info/PC/>





Office of the City Manager

ACTION CALENDAR  
January 26, 2016

To: Honorable Mayor and Members of the City Council  
From: *DWR* Dee Williams-Ridley, Interim City Manager  
Submitted by: Eric Angstadt, Director, Planning & Development  
Subject: Customer Service Improvements to Land Use Permit Process

RECOMMENDATION

Direct staff to make structural improvements to the Zoning Ordinance, communication improvements to better explain complex technical and procedural elements to the public, and organizational improvements to the Land Use Planning Division; and authorize the issuance of a request for proposals (RFP) for the selection of consultants to make structural improvements to the Zoning Ordinance and develop graphic communication elements in an amount not to exceed \$300,000.

SUMMARY

This staff report describes the impact of the City of Berkeley's Zoning Ordinance and practices on land use applications, including the staffing and processing time required to conform to existing City regulations, and makes recommendations for future revisions with the goal of streamlining the process and better configuring City resources for the benefit of the public.

FISCAL IMPACTS OF RECOMMENDATION

If authorized, the hiring of a consultant to make structural improvements to the Zoning Ordinance and develop graphic communication elements would be a one-time cost of \$300,000 which would come from the Permit Service Center fund balance.

Budget Code:  
833-8502-463.30-38..... \$300,000

In the event that future contract awards exceed the existing budget for Planning contracts in the current fiscal year, a request for additional appropriations will be submitted as part of a subsequent amendment to the Annual Appropriations Ordinance.

## CURRENT SITUATION AND ITS EFFECTS

### LAND USE PERMIT PROCESS

The Berkeley Zoning Ordinance is extremely complex and requires some type of discretionary review for most land use related activities, whether new construction, expansion or alteration of existing buildings, or establishment or change of land use. The complexity lies in the various requirements that trigger discretionary review being located in discrete sections of the Ordinance that are frequently not identified by applicants, and only discovered once staff has conducted a detailed review of the application.

This general complexity makes it difficult for staff to apply land use regulations consistently over time, which is especially true given the number of new personnel. As a result of vacancies and the addition of new positions, over 50% of the planners in the Land Use Division have a tenure of less than two years. It is also difficult to effectively educate the public regarding the many unique aspects of the Ordinance that result in more extensive submittal requirements and longer approval procedures than comparable cities.

Berkeley is a unique city. However, the Zoning Ordinance takes a "one size fits all" approach in regard to the prescribed processes for making discretionary decisions. There is also no differentiation between the operational impacts associated with a use from the environmental impacts associated with design. As a result, the establishment of a new use or change of an existing use must be processed the same way as the construction of a new building. Despite the numerous and complicated provisions in the Ordinance that trigger discretionary review, there are only two processes, Use Permit and Administrative Use Permit, to address the entire range of land use activities. The current structure of the Ordinance does not allow for any deviation from these two processes if the associated triggers are met.

The impact of having only two processes is that the level of review is often disproportionate to the potential land use impacts, and substantial time is added to the application review and approval process, with lead time required for public noticing and statutory timelines for appeals. Highly discretionary processes are also labor intensive, with staff required to prepare mailings, post properties, review and analyze applications, and document the analysis supporting the decision or recommendation. All of this translates into higher fees and longer timelines for applicants.

### COMMUNICATION

There is an ongoing effort to update the entire City of Berkeley website; however, there is an urgency to update web-based information for the Land Use Planning Division due to the need to provide more self-service options for the general public. The existing web pages for the Land Use Planning Division are excessively text-based and poorly organized. In addition, the lack of clarity in the Zoning Ordinance makes it very difficult

for the general public to look up information on their own, and this generates an extremely high volume of inquiries in all forms, whether in person, by telephone, or via email.

**STAFFING**

The current organization of the Land Use Planning Division is very flat and lacks positions at the paraprofessional level (such as a Planning Technician) and project manager level (Senior Planner). In addition, customer service duties, including staffing the Zoning Counter, answering phone calls, and responding to email inquiries, are distributed among all staff from the Land Use Planning Manager to Office Specialist II. While it is beneficial for all staff to be cross-trained in all aspects of the Division, requiring that all staff participate in every function is not efficient and results in delayed and sometimes inconsistent responses to customers, and disrupts the review of land use applications.

**BACKGROUND**

**LAND USE PERMIT PROCESS**

The following table compares the number of discretionary permits and associated appeals during 2015 in the City of Berkeley with those in other local cities. Permits are grouped into minor (similar to an Administrative Use Permit) and major (similar to a Use Permit) categories. Other than Piedmont and Oakland, which are significantly different in size, no other municipalities approached Berkeley in the number of discretionary permits and associated appeals.

<b>Land Use Application Comparison for 2015</b>		
<b>City</b>	<b>Result</b>	<b>Population*</b>
Berkeley	75 Major (UPs)/4 appeals 161 Minor (AUPs)/3 appeals  Historically – 62.5 UPs/5 appeals 160.75 AUPs/8.5 appeals	118,853 0.002 permits/capita
Albany	13 Major/2 appeals (both withdrawn) 1 Minor Historically – 1 to 2 appeals/year Fee: \$577	19,488 0.0007 permits/capita
Dublin	3 Major 3 Minor No appeals Fee: \$200 general public, time and materials for applicant	54,695 0.0001 permits/capita
Fremont	11 Major/1 Appeal	228,758

	29 Minor Fee: Full cost recovery by appellant (typically \$5,900)	0.0002 permits/capita
Oakland	89 Major (variance, design review, conditional use permit issued by Planning Commission)/5 appeals 275 Minor (variance, design review, conditional use permit issued by Zoning Administrator)/4 appeals	413,775 0.0009 permits/capita
Piedmont	400 Applications (all Single-Family)/3 Appeals Historically – 1 to 2 appeals/yr Fee: \$630	11,236 0.004 permits/capita
*American Community Survey estimate, 7/1/14		

Additional analysis of land use decisions shows that of the last four Fiscal Years (FY), FY2012 through FY2015, there were 274 Use Permits (UPs) acted upon. Of those, 25 were appealed of which two were withdrawn resulting in an appeal rate of 8.3%. For those appeals that went to hearing, the staff recommendation was affirmed 84% of the time by ZAB and 89% by City Council. Looking at the total number of UPs processed over the last four fiscal years, the City Council disagreed with the staff recommendation only twice (0.73%).

The UP project types most frequently appealed were new dwellings in the R-1H, R-2A and R-3 districts (25%), and new mixed use buildings in the C-DMU Buffer, C-DMU Core, and R-SMU districts (13%). The zoning districts with the most appealed UPs were R-1H (17%), followed by the R-3 district (13%). The most frequent appeal claims were: Failure to make required findings (13%), Failure to comply with procedural requirements (13%), Loss of sunlight and/or views (12%) and Traffic (10%).

Similar analysis was conducted for Administrative Use Permits (AUPs). In the last four fiscal years, 532 AUPs were processed. Of those, 33 appeals were filed; however, eight were withdrawn, resulting in an appeal rate of 4.7%. Of the remaining 25 appeals that went to hearing, ZAB upheld the staff recommendation 95% of the time. Eight ZAB decisions were appealed to City Council, and in those cases the staff recommendation was upheld 100% of the time. When analyzing all of the 532 AUPs processed over the last four fiscal years, the staff recommendation was overturned only once (0.2%).

The AUP project type most frequently appealed was major residential addition (33%). The zoning districts with the most appealed AUPs were R-1H (33%), followed by R-2 (24%). The most frequent appeal claims were: Shadow impacts and/or loss of sunlight/views (27%), Parking (15%), and Noise (12%).

Cross-referencing the zoning district with type of project and basis for appeal demonstrates that the majority of appeals are related to the design of new residences or major residential additions in the R-1H zoning district. The R-1 zone is a single-family zoning district which requires a minimum lot size of 5,000 square feet. As such, the use

of property for single-family residential purposes is not in question. Rather, the question is one of the design of new or modified homes, and whether the purposes of the district are met by a proposed design. This would suggest that a design review process based on design guidelines developed specifically for single-family homes is the more appropriate mechanism to assure that the purposes of the district are met.

#### COMMUNICATION

Graphically enhanced FAQ sheets and user guides are commonly used to help educate the general public regarding complex and/or technical subject areas, such as land use regulation. Many zoning related topics, such as how to measure building height, are often difficult to describe with text alone.

Complex land use topics are more easily understood when presented in a combination of text and graphics. Processes can be better understood when described in an annotated flow chart. Most zoning definitions can also benefit from figures and diagrams to more clearly convey complex and technical issues.

#### STAFFING

The Land Use Planning Division is currently comprised of 17 planners, four administrative staff, and six interns. The planners are distributed among the follow job classifications: 1 Land Use Planning Manager, 5 Principal Planners, 1 Senior Planner, 6 Associate Planners, and 4 Assistant Planners. With the exception of the Land Use Planning Manager and Principal Planners, all planners participate in the staffing of the Zoning Counter and respond to emails and phone calls from the general public. All planners with the exception of the Land Use Planning Manager and two Principal Planners in the Policy and Special Projects Team also serve as project planners.

Similar to the "one size fits all" approach which describes the existing land use processes, the historic practice of requiring planners to be a master of all disciplines does not allow the development of special skills. Land use regulation is a rapidly evolving field that is very sensitive to changes in technology. In addition, federal and state regulations are constantly changing and can dictate how local jurisdiction may or must regulate certain uses. The continuing education required to stay abreast of the full range of such changes is often beyond the ability of any one individual. The organization of the Land Use Planning Division should be modified in acknowledgement of these requirements.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

## RATIONALE FOR RECOMMENDATION

### LAND USE PERMIT PROCESS

The analyses of land use application data support the proposal to make changes to existing processes, such as introducing a minor use permit and staff-level single-family residential design review. Such structural modifications to the Zoning Ordinance would more closely align the regulation of land use with historic trends, and result in a level of discretionary review more commensurate with the documented concerns of the community. Right-sizing processes would also save the public time and money.

### COMMUNICATION

Providing illustrations in addition to text assures more consistent interpretation of complicated regulations. Processes also benefit from graphics, such as flow charts, that highlight the various actors, decision-making bodies, and timing of critical decision points. These graphic communication tools can be developed in advance of the city-wide website update, and then used in conjunction with that project.

### STAFFING

The requirements and expectations for responding to customer inquiries and managing projects are often in conflict, and staff struggle to achieve an appropriate balance. Reorganizing the Division by adding Senior Planner positions devoted to project management and creating a Planning Technician job classification that would be primarily responsible for responding to customer inquiries would significantly reduce the current conflicts. Planners would have more time to focus on increasingly complex land use applications, and the general public would receive more timely responses to their questions. Staff specialized in communications and whose focus is customer service would be more effective at explaining the proposed structural changes to the Zoning Ordinance, how they are applied, and how the public is involved.

### ALTERNATIVE ACTIONS CONSIDERED

The Council may affirm, modify or decline to provide direction to staff.

### CONTACT PERSON

Eric Angstadt, Director, Planning and Development, 981-7410



Planning and Development Department  
Land Use Planning Division

## STAFF REPORT

DATE: October 19, 2022

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]

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### BACKGROUND

The Planning Commission is asked to make a recommendation to the City Council regarding amendments to the demolition ordinance. The existing and proposed ordinance are presented in Attachments 1a and 1b, respectively. A comparison of the two versions is provided in Attachment 1c.

On November 18, 2020, the Planning Commission considered proposed amendments to Berkeley Municipal Code (BMC) Chapter 23C.08 [Demolition and Dwelling Unit Controls]<sup>1</sup> (“the Demolition Ordinance”), and made recommendations for further refinements. (See Attachments 2 and 3).

Since then, staff has continued work on the ordinance and conducted outreach through several meetings with the 4x4 Joint Task Force Committee on Housing of the City Council and Rent Stabilization Board, as well as with staff in the Housing and Community Services Division and the Rent Stabilization Board. The 4x4 Committee made final recommendations on April 18, 2022 (see Attachments 4 and 5). The staff report for that meeting provides extensive background materials from the prior hearings. This includes the existing ordinance, various draft versions, and staff analysis, as well as excerpts of applicable State law.

The draft ordinance for consideration by the Planning Commission includes revisions reflecting the direction of the 4x4 Committee and additional technical and administrative edits recommended by staff. Specific areas for further consideration are identified below.

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<sup>1</sup> The ordinance has since been recodified as Chapter 23.326 of the new Zoning Ordinance.

## **Summary of Existing Demolition Ordinance Provisions**

The Demolition Ordinance (BMC Chapter 23.326, previously codified as Chapter 23C.08) requires a use permit to be issued prior to the demolition of a dwelling unit. The ordinance also addresses situations where units are combined (for example, when a duplex is converted to a single-family home) and conversions to other uses such as daycare centers and nursing homes. The provisions related to non-residential structures are not addressed in this ordinance revision.

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.” In addition, 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, though in modified form.

## **Draft Amendments to the Demolition Ordinance**

In 2019, the California state legislature adopted Senate Bill 330 (SB330), “the Housing Crisis Act of 2019”, which established new statewide provisions for housing unit demolition and replacement. The proposed updates to BMC 23.326 are intended to bring Berkeley’s zoning ordinance into alignment with the state provisions, while retaining some local features as well. In particular, the local ordinance applies to units constructed prior to, and therefore subject to, local rent control. The proposed ordinance amendments also respond to feedback provided by the Planning Commission and the 4x4 committee, who asked that staff craft the ordinance to ensure fair and equitable treatment of tenants and prevent displacement, to the greatest extent allowable by law and without compromising project feasibility. The proposed ordinance also includes amendments to address various technical and administrative issues.

Some of the central provisions of the Demolition Ordinance, and proposed changes, include the following:



- **Replacement units.** SB 330 imposes a requirement that any housing development project that requires the demolition of dwelling units must “create at least as many residential dwelling units as will be demolished.” This provision allows (and requires) the City to condition demolition on the provision of replacement units when units are demolished for the purpose of constructing a new residential development. SB 330 also requires that any “protected units” (including rent control or units occupied by low or very-low income households) must be replaced in kind if a new housing development project is being built. The proposed ordinance amends the City’s existing provisions to also require replacement units in every case, and to specifically require that replacement units meet the City’s affordability requirements.
- **Rights of sitting tenants.** The current ordinance establishes the right of sitting tenants to return to new units by requiring the developer to offer equivalent below-market-rate units at prior rent levels regardless of income. The proposed revision clarifies that tenants who do not qualify for below-market-rate (BMR) units due to income limits must still be provided a market-rate replacement unit at their prior rent, in addition to any required BMR units, and caps rent increases consistent with standard rent control provisions. The ordinance further establishes that tenants shall have until the date that the new units are ready for occupancy to decide whether to move into the newly constructed building.
- **Applicability to legally established units.** The ordinance as written applies to legally established units. There are many units throughout the City that have been created without proper land use or building permits. Many are registered with the Rent Stabilization Board, have addresses, and have sitting tenants. However, they are not recognized in other circumstances, may not comply with zoning standards, and may present some hazards to the tenants. In these unwarranted units tenant protections generally apply. The City provides property owners an opportunity to correct violations rather than remove the units, particularly when there is a sitting tenant. If units are ultimately removed to correct the violation, then they would not be replaced under this ordinance.
- **Relocation Assistance.** The current ordinance includes provisions for tenants that may be temporarily displaced during the period when units are demolished and replaced. The ordinance requires that the applicant subsidize the rent differential for a comparable replacement unit, in the same neighborhood if feasible, until new units are ready for occupancy; and that those benefits be guaranteed in a manner acceptable to the City. Those existing provisions are carried forward in the draft ordinance revisions.
- **Other Housing Types.** The proposed ordinance removes provisions related to single-room-occupancy hotels (SROs) and adds Live/Work units and Group Living Accommodations to the housing types covered by the ordinance.

### **Next Steps and Recommendation**

Staff recommends that the Planning Commission conduct a Public Hearing, take 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.

The Planning Commission could consider the following issues in formulating its recommendation to City Council:

- Should applicability of the ordinance be expanded to include units that are not legally established?
- Should the ordinance retain controls on single-family units?
- Any other issues raised during public comment and deliberation.

### **ATTACHMENTS**

- 1a. Existing Ordinance
- 1b. Draft Ordinance
- 1c. Compare Versions
2. Staff Report to Planning Commission, November 18, 2020
3. Minutes of Planning Commission, November 18, 2020
4. Staff Report to 4x4 Committee, March 30, 2022
5. Minutes, 4x4 Committee, April 18, 2022
6. 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. (Ord. 7787-NS § 2 (Exh. A), 2021)

### 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. (Ord. 7787-NS § 2 (Exh. A), 2021)

### 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. (Ord. 7810-NS § 1, 2022; Ord. 7787-NS § 2 (Exh. A), 2021)

## 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.

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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. (Ord. 7787-NS § 2 (Exh. A), 2021)

### 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



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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. (Ord. 7787-NS § 2 (Exh. A), 2021)

### 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. (Ord. 7787-NS § 2 (Exh. A), 2021)

### 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.  
(Ord. 7787-NS § 2 (Exh. A), 2021)

### 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.  
(Ord. 7787-NS § 2 (Exh. A), 2021)

### 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](#)). (Ord. 7787-NS § 2 (Exh. A), 2021)

**The Berkeley Municipal Code is current through Ordinance 7830-NS, passed July 26, 2022.**

Disclaimer: The City Clerk's Office has the official version of the Berkeley Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

[City Website: www.berkeleyca.gov](http://www.berkeleyca.gov)  
[Code Publishing Company](#)

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<sup>[1]</sup><sub>SEP</sub> 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.

No residential unit or units may be eliminated or demolished except as authorized by this chapter. For purposes of this Chapter, “residential unit” includes any lawfully-created Dwelling Unit, any bedroom or sleeping quarters in a Group Living Accommodation, and/or any Live/Work Unit.

23.326.030 Demolition of Residential Units.

A. *Applicability.* This subsection only applies to properties with two or more residential units constructed before June 30, 1980. For purposes of this subsection, “constructed before June 30, 1980” shall mean that the unit was first certified for occupancy before June 30, 1980.

B. *Limitation.*

1. Demolition is not allowed if:

- (a). The unit (or units) was removed from the rental market under the Ellis Act during the preceding five years; or
- (b). There is 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. The Rent Board Hearing Examiner will provide an assessment of the evidence and all available documentation to the Zoning Adjustments Board (ZAB). The ZAB shall determine whether harassment or threatened or actual illegal eviction occurred during a public hearing on the matter, conducted according to Use Permit procedures.

2. *Procedure and Findings.* A Use Permit is required to demolish one or more residential units constructed before June 1980 on a property containing two or more residential units. The ZAB shall approve the Use Permit if one of the following is true:

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

(b) 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).

(c) The demolition is necessary to permit construction of special needs facilities such as, but not limited to, childcare centers and affordable housing developments that serve the greater good of the entire community. Any conversion to childcare center, nursing home, or other permitted use is conditioned on returning the units to residential use if the other use is ever vacated.

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

3. *Conditions of Approval.* Any protected unit(s) that will be demolished shall be replaced with units of equivalent size and comply with applicable affordability requirements in Chapter 22.20, Chapter 23.328, and Chapter 23.330 as they may be amended from time to time.

4. *Requirements for Occupied Units.*

(a) *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.

(b) *Notice.* The applicant shall provide all sitting tenants 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).

(c) *General Requirements.*

i. 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. Notwithstanding the requirements of Chapter 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).

ii. *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. Any tenant of a unit that is permitted to be demolished under this section shall have the right of first refusal to rent a comparable unit at the same rent in effect at the time the unit was vacated, subject to any applicable eligibility requirements for affordable units.

ii. Income restrictions do not apply to displaced tenants; in the event that a displaced household is ineligible for Below-Market Rent replacement units, a market rate unit shall be made available to that household.

iii. Any increase in rent of an affordable unit offered for rent shall be no greater than 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 30 but not to exceed 65% of the corresponding increase in AMI for the same calendar year.



iv. *Exception.*

(1) An applicant who proposes to construct a 100 percent affordable housing project is not required to comply with [23.326.030.A.4.a](#), [b](#), and [c](#), but must comply with the following requirement.

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

23.326.040 Eliminating Dwelling Units through Combination With Other Units.

A. *General.* A Use Permit is required to eliminate one or more residential units. The ZAB may approve a Use Permit for the elimination of one or more residential units by combining with another dwelling unit if it finds that:

1. The existing number of dwelling 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 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.* Combination is not allowed if:

1. The building was removed from the rental market under the Ellis Act during the preceding five years; or
2. There have been verified cases 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. The Rent Board Hearing Examiner will provide an assessment of the evidence and all available documentation to the Zoning Adjustments Board (ZAB). The ZAB shall determine whether harassment or threatened or actual illegal eviction occurred at a public hearing according to Use Permit procedures.

*C. Two-Year Occupancy Requirement Following Elimination*

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 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.

*D. Effect of Eliminating a Dwelling Unit.* 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.

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-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 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 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 may recover reasonable attorney's fees.

#### 23.326.070 Demolition 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*. For non-residential lots, 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 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 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 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 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 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. 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](#)).

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<sup>[SEP]</sup> 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.

This chapter establishes demolition and dwelling unit control standards that promote the affordable housing, ~~aesthetic~~, and safety goals of the City. (~~Ord. 7787 NS § 2 (Exh. A), 2021~~)

23.326.020 General Requirements.

~~A. *Applicability.*~~ No ~~dwelling~~residential 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~~ For purposes of this Chapter, “residential 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. (~~Ord. 7787 NS § 2 (Exh. A), 2021~~)

~~23.326.030—Eliminating” includes any lawfully-created Dwelling Units through Unit, any bedroom or sleeping quarters in a Group Living Accommodation, and/or any Live/Work Unit.~~

23.326.030 Demolition of Residential Units.

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

~~1. *Applicability.*~~ This subsection only applies to ~~building~~properties with two or more residential units constructed before June 30, 1980. For purposes of this subsection, “constructed before June 30, 1980,” shall mean that the unit was first certified for occupancy before June 30, 1980.

~~2. *B. Limitation.*~~

~~(a) 1.~~ Demolition is not allowed if:

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

~~(b). ii.~~ There ~~have been verified cases~~is 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. The Rent Board Hearing Examiner will provide an assessment of the evidence and all available documentation to the

~~(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. Zoning Adjustments Board (ZAB). The ZAB shall determine whether harassment or threatened or actual illegal eviction occurred during a public hearing on the matter, conducted according to Use Permit procedures.~~

~~3.2. Procedure and Findings. The ZAB may approve a~~ A Use Permit is required to demolish a building one or more residential units constructed before June 1980 on a property containing two or more dwelling residential units. The ZAB shall approve the Use Permit if any one of the following are is true:

- (a) -The building containing the units is hazardous or unusable and is infeasible to repair.
- (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).
- (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. Any conversion to childcare center, nursing home, or other permitted use is conditioned on returning the units to residential use if the other use is ever vacated.
- (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.~~

~~5.3. Conditions of Approval. Any protected unit(s) that will be demolished shall be replaced with units of equivalent size and comply with applicable affordability requirements in Chapter 22.20, Chapter 23.328, and Chapter 23.330 as they may be amended from time to time.~~

4. Requirements for Occupied Units.

(a) *-Applicability.*

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

~~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.

(b) *-Notice.* The applicant shall provide all sitting tenants 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 13.76~~Chapter 13.76 (Rent Stabilization and Eviction for Good Cause Program).

(c) *-General Requirements.*

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

~~ii. The~~or Government Code section 66300(d)(2)(D)(i), whichever requires greater relocation assistance to displaced tenants. Notwithstanding the

requirements of Chapter 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).~~

~~ii. 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~~Any tenant of demolition shall be provided ~~the right of first refusal to move into the new building.~~

~~ii. -Tenants of units~~a unit that ~~are~~is permitted to be demolished ~~under this section~~ shall have the right of first refusal to rent ~~new below-market rate units designated to replace the units that were demolished,~~a comparable unit at the same rent that would have applied if they had remained in place, as long as their tenancy continueseffect at the time the unit was vacated, subject to any applicable eligibility requirements for affordable units.

~~ii. -~~Income restrictions do not apply to displaced tenants; in the event that a displaced household is ineligible for Below-Market Rent replacement units, a market rate unit shall be made available to that household.

iii. Any increase in rent of an affordable unit offered for rent shall be no greater than 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 30 but not to exceed 65% of the corresponding increase in AMI for the same calendar year.

iv. *-Exception.*

(1) -An applicant who proposes to construct a 100 percent affordable housing project is not required to comply with [23.326.030.A.4.a](#), [b](#), and [c](#), but must comply with the following requirement.

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

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

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

~~2. 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. (Ord. 7810 NS § 1, 2022; Ord. 7787 NS § 2 (Exh. A), 2021)~~

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

A. ~~-General.~~ A Use Permit is required to eliminate one or more residential units. The ZAB may approve a Use Permit for the elimination of ~~a dwelling unit in combination~~one or more residential units by combining with another dwelling unit ~~used for occupancy by a single household~~ if it finds that:

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. ~~-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.~~ Combination is not allowed if:

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) ~~2.~~ 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 Zoning Adjustments Board (ZAB). The ZAB shall determine whether harassment or threatened or actual illegal eviction occurred at a public hearing according to Use Permit procedures.

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

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 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 ~~if~~ there is 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 of [23.326.040.A.1](#) and [2](#) and [23.326.040.B](#) and [C](#)[BS1].

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~~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](#) 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 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 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~~



~~(e) 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. (Ord. 7787 NS § 2 (Exh. A), 2021)~~

### 23.326.070 ~~Demolitions~~Demolition 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.* For non-residential lots, 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 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 or Zoning Officer its comments on the application.
3. -The ZAB or Zoning Officer 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~~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 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](#)).





Planning and Development Department  
Land Use Planning Division

## STAFF REPORT

DATE: November 18, 2020

TO: Members of the Planning Commission

FROM: Steve Buckley, Land Use Manager  
Alene Pearson, Principal Planner

SUBJECT: Zoning Ordinance Amendments to Berkeley Municipal Code Chapter 23C.08 [Demolition and Dwelling Unit Controls]

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### BACKGROUND

Berkeley Municipal Code (BMC) Chapter 23C.08 [Demolition and Dwelling Unit Controls] is often referred to as the “Demolition Ordinance.” Although this ordinance does regulate demolitions, Chapter 23C.08 also establishes rental unit protections and regulates elimination of units that occurs through modifications to existing housing stock (e.g. removing kitchens, combining units).

Over the past decade, State legislation and court cases have influenced the City’s ability to require inclusionary housing or in lieu fees for new housing projects. These laws have also affected the City’s ability to administer Chapter 23C.08. Some of this history is provided below:

The Neighborhood Preservation Ordinance (1973): In response to unchecked demolition of single family homes and construction of “ticky-tacky” apartment buildings in the 1950s through the early 1970s, Berkeley residents voted into law restrictions on housing demolition. The Neighborhood Preservation Ordinance (NPO) only allows demolition of housing when replacement housing is included in new projects.

Rent Control (1980): Berkeley voters passed the Rent Stabilization and Eviction for Good Cause Ordinance in 1980, which instituted rent control. This ordinance established baseline rents and guidelines for rent increases necessary to cover operating expenses, property maintenance, and landlord profit. This ordinance provided vacancy control rent stabilization -- meaning that rent levels stayed the same even after tenants moved out. Note that the applicability of the ordinance was modified by the Costa Hawkins Rental Housing Act (see below) in 1995.

Rental Removal Ordinance (1984): To prevent demolition of rent stabilized housing, the Rental Removal Ordinance was enacted in Berkeley in 1984. This

ordinance prohibited demolitions of rental units if an applicant was able to make a fair return on their property without demolishing.

Costa Hawkins: The Costa Hawkins Rental Housing Act (Costa Hawkins), passed in 1995, allows local governments to enact and use rent control, except on (a) housing that was first occupied after February 1, 1995, and (b) certain classes of housing units, such as condominiums, townhouses, and single-family homes. Costa Hawkins allows landlords to increase rent to market rates when a tenant vacates a unit. This is called vacancy decontrol.

Ellis Act and Measure Y: The Ellis Act is a state law which gives landlords the right to evict tenants if they need to "go out of business." For an Ellis eviction, the landlord must remove all of the units in the building from the rental market. When a landlord invokes the Ellis Act, the apartments cannot be re-rented, except at the same rent the evicted tenant was paying, for five years following evictions. While there are restrictions on ever re-renting the units, there are no restrictions on conversion to ownership units (e.g., tenancies in common or condos).

In response to an increased number of owner-move-in evictions, Berkeley voters adopted Measure Y as an amendment to the Rent Stabilization and Eviction for Good Cause Ordinance in 2000. Measure Y allowed property owners to evict tenants if the owner or a qualifying relative intended to move in<sup>1</sup>. Property owners who evicted low income tenants were required to pay relocation assistance and required to reset the cost of the rental to the previous rent-control rate when/if the unit were to come back onto the market. Furthermore, evicted tenants would have the opportunity move back into the unit if it came back onto the market.

Palmer Decision: The 2009 Palmer Decision (*Palmer/Sixth Street Properties vs City of Los Angeles*) invalidated ordinances that imposed inclusionary affordable housing requirements on residential projects due to conflict with Costa Hawkins' vacancy decontrol provisions (e.g. limiting a landlord's ability to establish the initial rental rate of a unit).

Berkeley's Ordinance: In March 2016, the City Council adopted an ordinance which modified BMC Chapter 23C.08 to account for the loss of rent-stabilized housing that can occur with building demolition. That ordinance established the City's authority to set and collect a fee for each rent-stabilized unit that would be demolished. It also allowed for projects to provide one-for-one replacement units in lieu of fee payment as long as the units were restricted in perpetuity as below market rate. Unfortunately, a fee was never established by resolution, so no fees were ever collected.

The "Palmer Fix": In 2017, the California legislature passed Assembly Bill (AB) 1505 in response to the Palmer Decision. AB 1505 authorizes cities to adopt inclusionary housing ordinances that require development to include a certain

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<sup>1</sup> An owner could evict a tenant so that the owner, or his/her spouse, child, or parent could move in; however, the owner-relative must live in the unit for 36 continuous months. Additionally, with few exceptions, property owners could not evict seniors or disabled tenants who have occupied their rental units for five years or more in buildings with four or more units.

percentage of affordable residential rental units. AB 1505 also requires cities provide an alternate means of compliance, such as in-lieu fees, land dedication, off-site construction, or acquisition and rehabilitation of existing units.

Senate Bill 330: Senate Bill (SB) 330, passed in 2019, requires that cities only approve housing projects that include demolition of residential units if the project replaces existing units. Furthermore, if the project involves demolition of rent-controlled or below market rate units, the project will only be approved if the following criteria are met:

1. The project will replace all existing or demolished protected units (which would also count towards meeting inclusionary housing requirements).
2. The 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.
3. Existing residents, if any, are allowed to occupy their units until six months before the start of construction.
4. The developer agrees to provide relocation benefits and a right of first refusal for units available in the new housing development at an affordable rent for the household.

The City's Rent Stabilization Board (RSB) provides an annual summary of rental housing stock which includes the total number of units registered in the City and the number of new tenancies. The table below summarizes this information at three points over the last twenty years:

	1999			2009			2019		
	all units	new tenancies	percent turnover	all units	new tenancies	percent turnover	all units	new tenancies	percent turnover
studio	3,840	1,145	29.8%	3,740	1,081	28.9%	4,145	956	23.1%
1 BR	8,145	1,927	23.7%	7,945	1,887	23.8%	8,044	1,520	18.9%
2 BR	5,659	1,245	22.0%	5,721	1,406	24.6%	6,045	1,101	18.2%
3 BR	831	172	20.7%	887	254	28.6%	1,047	198	18.9%
TOTAL	18,475	4,489	24.3%	18,293	4,628	25.3%	19,281	3,775	19.6%

In 2013, the RSB published a report that summarized the benefits of Berkeley's rent stabilization program<sup>2</sup>. At that time, affordability was provided to approximately 3,300 pre-1999 tenants whose apartments have never qualified for a vacancy decontrol increase. Approximately 2,200 of those tenants were low income, and 1,200 were elderly or disabled. Since 2013, the number of pre-1999 tenants has declined to 1,903 (as of October 1, 2020) as tenants have aged and/or moved out. Additional support of

<sup>2</sup> Rent Stabilization and the Berkeley Housing Market 15 Years after Vacancy Decontrol (January 28, 2013) [https://www.cityofberkeley.info/uploadedFiles/Rent\\_Stabilization\\_Board/Level\\_3\\_-\\_General/Summary%20of%20Economic%20Studies%20Part%20I.pdf](https://www.cityofberkeley.info/uploadedFiles/Rent_Stabilization_Board/Level_3_-_General/Summary%20of%20Economic%20Studies%20Part%20I.pdf)

housing affordability is provided through deed restricted, below market rate inclusionary and density bonus units, subsidized housing developments and monthly rental assistance (Housing Vouchers and Shelter + Care). The demolition and dwelling unit controls regulated in BMC Chapter 23C.08 are integral to the preservation of affordable housing in the City of Berkeley – especially as the number of pre-1999 tenants declines.

## PROPOSED AMENDMENTS

The goal of updating BMC Chapter 23C.08 is to protect existing housing stock and ensure that Berkeley's Zoning Ordinance leverages and complies with State regulations. As illustrated above, State law and case law have and will continue to evolve over time. The proposed amendments, explained below, will reference State law where possible, as opposed to restating State law, so that the City can maintain compliance over time and the ordinance will be more straightforward to understand and enforce.

Draft Zoning Ordinance amendments can be found in Attachment 1. Amendments strike current regulations that are no longer enforceable due to the information presented above. More specifically, the proposed amendments do the following:

1. Reference State Law

New code directly references Government Code sections in order to comply with new regulations and avoid conflicts as State legislation evolves.

2. Ensure Compliance with the BMC

Amendments explicitly require compliance with other BMC chapters in order to preserve and protect affordable housing in Berkeley. Issuance of Demolition Permits must be contingent upon the following:

- Chapter 22.20 [Mitigation and Fees - Conditions for Approval of Development Projects]
- Chapter 23C.12 [Inclusionary Housing Requirements]
- Section 23E.20.080 [Low Income Inclusionary Live / Work Units]
- Chapter 13.76 [Rent Stabilization]

***Rationale: Proposed amendments will cross-reference other sections of the BMC. These references are necessary to clearly list regulations required for administering demolition and unit controls. The ordinances listed above are currently under review and will update related topics such as fee structures and inclusionary housing requirements. The overall goal of these dual efforts is to protect and preserve affordable housing in the City.***

3. Clarify Use Permit Conditions that Pertain to Tenants

Applicant responsibilities to tenants in terms of noticing, relocation assistance and right of first refusal for new replacement units are provided in Section 23C.08.010.E [Demolition or Elimination of Residential Units] and refer to BMC Chapters 13.76 [Rent Stabilization and Eviction dor Good Cause Program] and BMC 13.84 [Relocation Services and Payments for Residential Tenant Households] and applicable Government Code Sections.



4. Extend the definition of “dwelling unit”

Government Code Section 66300 applies to “dwelling units.” The proposed amendment clarifies the definition of “dwelling unit” to reflect definitions within the California Building Code, including shared and independent living, sleeping, eating, cooking and sanitation facilities. This includes, but is not limited to, Group Living Accommodations (GLAs), Live/Work Units, and Residential Hotel Rooms.

***Rationale: Dwelling Unit under the existing ordinance is narrowly defined and inconsistent with State law and other sections of the BMC. Using a broadly established definition of “dwelling unit” will provide internal and external consistency and will also accommodate the City’s unique household characteristics and diversity of housing models and living situations.***

5. Clarify Permit Thresholds for Demolition of Non-residential Buildings

New code would clearly outlines permits required for demolition of non-residential buildings, when zoning district-specific regulations do not apply (e.g. protected uses in the MU-LI district). The table below summarizes the proposed regulations:

Non-residential Building Type	Size Threshold	Demolition Permit Required
Main Building	<5,000 ft <sup>2</sup>	ZC
	>=5,000 ft <sup>2</sup>	AUP
Accessory Building	<300 ft <sup>2</sup>	AUP
	>=300 ft <sup>2</sup>	UP(PH)

***Rationale: Existing code did not clearly state general thresholds and permits requirement for the demolition of non-residential buildings. The new code provides greater clarity and consistency, although some zoning districts have additional requirements for compliance.***

**NEXT STEPS**

Staff recommends that the Planning Commission hold a Public Hearing, take 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. Ordinance
2. Public Hearing Notice





Planning Commission

## FINAL MINUTES OF THE SPECIAL PLANNING COMMISSION MEETING November 18, 2020

The meeting was called to order at 7:04 p.m.

**Location:** Virtual meeting via Zoom

### 1. ROLL CALL:

**Commissioners Present:** Benjamin Beach, Robb Kapla, Shane Krpata, Steve Martinot, Mary Kay Lacey, Christine Schildt, Jeff Vincent, Brad Wiblin, and Rob Wrenn.

**Commissioners Absent:** None.

**Staff Present:** Secretary Alene Pearson, Katrina Lapira, Leslie Mendez, and Chris Jensen.

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

3. **PUBLIC COMMENT PERIOD:** 0

### 4. PLANNING STAFF REPORT:

- City Council – November 17
  - Adopted General Plan amendment to reflect Vehicle Miles Traveled (VMT) in Transportation Policy T-18 per SB 743
  - Adopted a referral requesting redesignation and rezone of 5 parcels adjacent to the Adeline Corridor Plan Area
- Land Use Planning Positions Available
  - Principal Planner
  - Planning Technician
- City Council – December 1
  - Parking Reform
- Berkeley Considers Survey - coming soon
- Special PC Meeting on December 16

### Information Items:

- None

### Communications:

- October 22 – Memo from the City Manager
- October 11 – Staff, Supplemental Information

**Late Communications:** *See agenda for links.*

- Supplemental Packet One
- Supplemental Packet Two
- Supplemental Packet Three

**5. CHAIR REPORT:**

- None

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

- None

**7. APPROVAL OF MINUTES:**

Motion/Second/Carried (Vincent/Krpata) to approve the Planning Commission Meeting Minutes from October 21, 2020 with noted amendments.

Ayes: Beach, Kapla, Krpata, Lacey, Martinot, Schildt, Vincent, Wrenn, and Wiblin. Noes: None. Abstain: None. Absent: None. (9-0-0-0)

**FUTURE AGENDA ITEMS AND OTHER PLANNING-**

- December 2 PC Meeting
  - BART CAG - EIR Scoping Session
  - Research and Development Referral Discussion

**AGENDA ITEMS**

**9. Discussion:** ***Public Hearing: Bayer Development Agreement Update & SEIR Scoping Meeting***

Staff and the applicant (Bayer) shared information about the update to the Bayer Development Agreement and the timeline for the SEIR. After the presentation, staff received comments from both the public and the commissioners. The deadline to provide public comment on the Notice of Preparation is December 3, 2020. Please direct all comments to staff planner, Leslie Mendez, via email at [lmendez@cityofberkeley.info](mailto:lmendez@cityofberkeley.info).

Motion/Second/Carried (Wrenn/Vincent) to close the public hearing on the Bayer Development Agreement Update & SEIR Scoping Meeting at 9:35pm.

Ayes: Beach, Kapla, Krpata, Lacey, Martinot, Schildt, Vincent, Wrenn, and Wiblin. Noes: None. Abstain: None. Absent: None. (9-0-0-0)

**Public Comments: 11**

**10. Discussion:                    *Public Hearing: Demolition Ordinance***

Staff shared proposed amendments to BMC Chapter 23C.08 Demolition and Dwelling unit Controls in response to recent changes in State law. After receiving public comment and providing initial feedback on proposed amendments, the Planning Commission continued the public hearing for the Demolition Ordinance. The 4x4 Committee will meet on November 24 to discuss the proposed amendments and provide feedback to the Planning Commission.

**Public Comments: 11**

**Members in the public in attendance: 51**

**Public Speakers: 20 speakers**

**Length of the meeting: 4 hours and 7 minutes**



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Alene Pearson  
Planning Commission Secretary





Planning & Development Department  
Land Use Planning Division

DATE: March 30, 2022

TO: Members of the City Council and Rent Stabilization Board 4x4 Joint Task Force Committee on Housing

FROM: Jordan Klein, Director, Planning & Development Department  
Steven Buckley, Land Use Planning Manager

SUBJECT: Berkeley Municipal Code Chapter 23.326 Demolition and Dwelling Unit Control

This memorandum provides a summary of provisions of the existing City of Berkeley Municipal Code (BMC) Chapter 23.326 Demolition and Dwelling Unit Control, commonly known as the Demolition Ordinance, relating to the demolition of dwelling units,<sup>1</sup> and potential revisions in response to Council referrals and prior discussion at the 4X4 Committee. It also discusses the effect of recent legislation (Senate Bill (SB) 330), which intersects with Density Bonus law and Ellis Act provisions that could affect the City's approach to demolition controls where replacement units are to be provided.

## 1. Summary of Existing Demolition Ordinance Provisions

The Demolition Ordinance (BMC Chapter 23.326, previously codified as Chapter 23C.08<sup>2</sup>) requires a use permit to be issued prior to the demolition of a dwelling unit. (BMC § 23C.08.010.B.) Under section 23C.08.020, the Zoning Adjustments Board (ZAB) may issue a use permit for the demolition of a dwelling unit for specific

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<sup>1</sup> The Demolition Ordinance also includes provisions regulating the demolition of non-residential structures and residential hotels. Those provisions are outside the scope of this report.

<sup>2</sup> Code references in this report are to the BMC as it was codified in 2021. Recent reorganization of the code has renumbered code sections, but has not resulted in any changes to the text. A copy of the prior code is attached to this report. The renumbered code sections are found at BMC Section 23.326 and are available online: [Ch. 23.326 Demolition and Dwelling Unit Control | Berkeley Municipal Code](#). The proposed ordinance modifications will be updated to reflect the current Zoning Ordinance numbering and structure when this item is brought to the Planning Commission.

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.” (BMC § 23C.08.20.A.)<sup>3</sup> 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.” (BMC § 23C.08.010.B.) In addition, section 23C.08.020.A requires applicants to either provide below market rent replacement units to “qualifying household[s]” or pay an in lieu fee, but the fee has never been set. (BMC § 23C.08.020.A.)

Chapter 23C.08 prohibits demolition of dwelling units where a building has been removed from the rental market under the Ellis Act during the preceding five years or “there have been verified cases of harassment or threatened or actual illegal eviction during the immediately preceding three years.” (BMC § 23C.08.020.B.) Applicants are generally required to provide relocation benefits, including moving expenses and differential rent payments. (BMC § 23C.08.020.C.1.)<sup>4</sup> In addition, displaced tenants are provided a right of first refusal to rent new units. (BMC § 23C.08.020.C.3.)

## **2. Impact of SB 330 on Local Demolition Controls**

SB 330 amends California Government Code section 66300 to impose specific requirements on the demolition of dwelling units and expands local jurisdictions’ ability to regulate certain aspects of demolition, while limiting other aspects of local discretion. The statute includes specific language that expands the City’s ability to legally require replacement units and to provide for comprehensive relocation benefits. These amendments do not directly modify the provisions of the Ellis Act, which also restricts a local agency’s ability to regulate the removal of rental units from the marketplace.

First, SB 330 imposes a requirement that any housing development project that requires the demolition of dwelling units must “create at least as many residential dwelling units as will be demolished.” (Gov. Code, § 66300(d)(1).) This provision allows (and requires) the City to condition demolition on the provision of replacement units, when units are demolished for the purpose of constructing a new residential development.

Second, SB 330 requires that any “protected units” (including rent control or units occupied by low or very low income households) must be replaced if a new housing

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<sup>3</sup> The Demolition Ordinance also allows demolition of dwelling units where (a) “[t]he building containing the units will be moved to a different location within the City of Berkeley with no net loss of units and no change in the affordability levels of the units”; and (b) “[t]he 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.” (BMC § 23C.08.20.A.) The occurrence of those conditions is relatively rare and is not addressed in this report.

<sup>4</sup> “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.” (BMC § 23C.08.20.C.1.c.)



development project is being built.<sup>5</sup> (Gov. Code, § 66300(d)(2)(A).) Where a unit is occupied by a lower-income household, the requirements for providing replacement units are the same as those in the State Density Bonus Law. (See Gov. Code, § 66300(d)(2)(E)(iii).) Generally speaking, the State Density Bonus Law requires that a proposed housing development must “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.” (Gov. Code, § 65915(c)(3)(B)(i).) This general rule is subject to somewhat complicated provisions for setting replacement unit rent or housing costs where units are vacant and/or the income of previous residents is unknown. (Gov. Code, § 65915(c)(3)(B)(i)–(ii).) However, the basic requirement ensures that units occupied by lower-income households must be replaced with equivalently sized income-restricted, below-market rate (BMR) units.

With respect to the replacement of any rent controlled unit that “is or was occupied by persons or families above lower income,” the City can elect whether to (1) “[r]equire that the replacement units be made available at affordable rent or affordable housing cost to, and occupied by, low-income persons or families,” or to (2) “[r]equire that the units be replaced in compliance with the jurisdiction’s rent or price control ordinance.” (Gov. Code, § 66300(d)(2)(A)(iii) (emphasis added).)

Under either of the above provisions, any BMR units provided as replacement units must also be counted as BMR units for purposes of State Density Bonus Law and the City’s local affordable housing requirements. (Gov. Code, § 66300(d)(2)(A)(ii).)

Subjecting replacement units for moderate and higher-income households to rent control instead of requiring such units to be income-restricted has several advantages. First, it would allow moderate- and higher-income tenants who would not qualify for BMR units to move into replacement units. Second, any increase in rents would be limited under the Rent Stabilization Ordinance to a rate that has in recent years been less than the increase in Area Mean Income (“AMI”) that is used to set BMR rents under the City’s BMR Program Guidelines and certain state and federal programs.

Note, however, that applying rent control to newly constructed replacements units is currently not permitted under the Berkeley Municipal Code and would require a ballot measure to amend the voter-approved Rent Stabilization Ordinance. Additionally, while SB 330 allows a local jurisdiction to subject replacement units to rent control, it does not address the vacancy decontrol provisions of the Costa-Hawkins Act, which would likely restrict the ability of the Rent Board to set initial rents for replacement units.<sup>6</sup>

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<sup>5</sup> Protected units also include units that were withdrawn from the rental market under the Ellis Act within the past 10 years. (Gov. Code, § 66300(d)(2)(E)(ii).)

<sup>6</sup> The Costa Hawkins-Act includes an exception that allows the imposition of rent control where the property owner has agreed by contract with a public entity in consideration for a direct financial contribution or any other forms of assistance specified in Chapter 4.3. . . of the Government Code [section 65915 *et seq.*]. (Civ. Code, § 1954.52(b).)

Requiring that all replacement units charge below-market rate rents has the advantage of creating deeper and longer-term affordability (55 years under state law, and permanently under City ordinances). While rent control may be the most effective and established means of limiting rents for existing tenants, it is unlikely that the City has authority to establish initial rents for replacement units, and subsequent tenants will similarly be subject to vacancy decontrol unless the Costa-Hawkins Act is repealed.

It may also be possible to address the impact of AMI-related rent increases on existing BMR tenants through modifications to the City's BMR housing program, assuming state and federal law, regulations, and program guidelines allow rent increases to be limited to the CPI or a similar metric. HUD regulations expressly preempt any local rent regulation of certain federally subsidized and insured projects. (24 C.F.R. §§ 246.20–246.21.) In contrast, the Housing Choice Voucher program (Section 8) explicitly preserves the ability to regulate rental charges through rent control or “other limits under local, state, or federal law.” (24 C.F.R. §§ 982.509, 983.305) These provisions appear to allow the City to contractually limit increase in rents for units receiving Section 8 funding through its BMR program. Ultimately, the ability to limit rent increases through a BMR regulatory agreement must be evaluated on a case-by-case basis, given the diversity of funding sources available for affordable housing development in the City.<sup>7</sup>

Third, SB 330 creates statewide tenant protections. Existing residents will be allowed to occupy their units until six months before the start of construction activities. (Gov. Code, § 66300(d)(2)(C).) In addition, residents of protected units must be provided relocation benefits under Government Code section 7260 *et seq.* (generally, actual and reasonable moving expenses) and a right of first refusal for lower income households to a comparable unit available in the new housing development affordable to the household at an affordable rent or housing cost. (Gov. Code, § 66300(d)(2)(D).)

Fourth, SB 330 includes a savings clause that expressly preserves the validity of “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 [1] more protective of lower income households, [2] requires the provision of a greater number of units affordable to lower income households, or [3] that requires greater relocation assistance to displaced households.” (Gov. Code, § 66300(d)(3).)

### **3. Draft Amendments to Demolition Ordinance**

The 4x4 Committee met and discussed a draft revision to the demolition ordinance in November of 2020 (see Attachment 3). That version of the revisions was a streamlined amendment that referred to other State law and local ordinances and regulations, relying on those generally-applicable provisions for the more detailed requirements related to tenant protections (such as notice, relocation assistance, and right to return), rent control and below-market-rent, and replacement unit standards. The Planning

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<sup>7</sup> For example, the state Housing and Community Development Department website currently lists 29 different “active” affordable housing programs. (See <https://www.hcd.ca.gov/grants-funding/active-funding/index.shtml>.)

Commission also took up the topic in November of 2020, as did the Rent Stabilization Board in December of 2020.

Feedback included a desire to make the local ordinance more robust than State law wherever possible, including to enhance tenant protections and relocation assistance, to explore means of applying rent control as well as below-market-rent provisions to replacement units, and to ensure that the provisions based in SB330 carry forward if that law expires.

A revised ordinance amendment has been prepared that responds to the previous feedback and addresses some aspects of State law described above (see Attachment 2). Options are provided where policy decisions are needed.

Alternative A requires replacement units as BMRs. Alternative B allows the applicant to request continuation of rent control on units occupied by households who are not lower income, including at the existing rent level, subject to rent control regulations, and that tenants who would not otherwise qualify for a BMR unit would have the right of first refusal.

BMC Section 13.77.040.D also incorporates and expands upon the Ellis Act provisions related to removal of rental units from the market. It requires that, where units are demolished and replaced, the newly constructed accommodations shall be subject to rent control notwithstanding any provision of law which otherwise exempts newly constructed units.

Also subject to discussion is the method of calculating the rent differential for displaced tenants. While several factors are provided, no fixed amount or explicit formula is provided in this draft. BMC Section 13.84 offers some guidance. That section addresses situations where code enforcement requires temporary displacement. The draft demolition ordinance makes that provision applicable to tenants that are involuntarily displaced due to demolition.

Finally, the provisions of SB330 are incorporated by reference, and those provisions are intended to be carried forward even if the law sunsets. It may also be prudent to include reference to possible future amendments to the pertinent Government Code to the extent they are more protective or extend the provisions of the law.

Note, in no case is a mitigation fee required. This is because State law now provides, in several scenarios, that replacement units are required with no option to instead pay a fee. The City needs to maintain consistency with state law and avoid duplication of mitigation efforts, and prior efforts to establish a fee have not been successful.

The State law also has several provisions that address projects that include demolition of existing units, construction of replacement units, qualification for a density bonus, and satisfaction of local inclusionary requirements. The law generally requires that local agencies recognize proposed BMR units as satisfying all of these requirements. It may

be possible that a local ordinance could require additional inclusionary units for projects that demolish existing units, but any such requirement would have to be subjected to careful legal and economic review to ensure that it does not reduce the development capacity of the parcel or otherwise render infeasible the construction of new housing. As noted above, the Costa Hawkins Act also limits how the City can regulate any newly constructed units that might be voluntarily brought under rent-control; i.e., they would likely be subject to vacancy decontrol, so the long-term affordability of those units would be limited.

### **Next Steps**

Staff requests that the committee discuss and provide feedback on the issues identified in this report and proposed draft ordinance. Subsequently, staff can advance the draft ordinance to the Planning Commission, Housing Advisory Committee, and others for input.

### **ATTACHMENTS:**

1. Excerpts of State Law  
Govt. Code 66300 (SB-330)  
Govt. Code 65915 (Density Bonus)  
Govt. Code 7060 (Ellis Act)
2. Revised Draft Demolition Ordinance (2022)
3. Previous 4x4 Committee Meeting Packet (November 2020)
4. Existing Demolition Ordinance

## ATTACHMENT 1 – STATE LAW EXCERPTS

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

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(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 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 rerent 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.

1 **ATTACHMENT 2 – REVISED DRAFT DEMOLITION ORDINANCE**

2 **BMC Chapter 23C.08**  
3 **Demolition and Dwelling Unit Controls**

4 **Sections:**

5 **23C.08.010 Demolition or Elimination of Residential Units**

6 **23C.08.020 Demolition of Accessory Buildings and Buildings Used for**  
7 **Commercial, Manufacturing, Community, Institutional or Other Non-**  
8 **Residential Uses**

9 **23C.08.030 Building Relocations**

10 **23C.08.040 Imminent Hazards**

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11 **23C.08.010 Demolition or Elimination of Residential Units**

12 A. No residential unit may be eliminated or demolished except as authorized by the  
13 provisions of the chapter and State law, including but not limited to Government Code  
14 section 66300 *et seq.* For purposes of this Chapter, “residential unit” includes any  
15 Dwelling Unit, bedroom or sleeping quarters in a Group Living Accommodation,  
16 Live/Work Unit, or Residential Hotel Room.

17 **[Alternative A]**

18 B. A Use Permit for the demolition of one or more residential units in connection with a  
19 housing development project shall be issued only if the project complies with the  
20 requirements of Government Code sections 65915(c)(3) and 66300(d), as applicable,  
21 and the Board makes the findings required under Section 23B.32.040.A. Any protected  
22 units shall be replaced with units of equivalent size that comply with applicable  
23 affordability requirements in Chapter 22.20, Chapter 23C.12, and Section 23E.20.080.

24 **[Alternative B]**

25 B. A Use Permit for the demolition of one or more residential units in connection with a  
26 housing development project shall be issued only if the project complies with the  
27 requirements of Government Code sections 65915(c)(3) and 66300(d), as applicable,  
28 and the Board makes the findings required under Section 23B.32.040.A. Any protected  
29 units shall be replaced with units of equivalent size that comply with applicable  
30 affordability requirements in Chapter 22.20, Chapter 23C.12, and Section 23E.20.080;

31 provided, however, the applicant may request that any protected unit occupied at the  
32 time the application is filed by a tenant who is not eligible to occupy an affordable unit  
33 under Chapter 22.20, Chapter 23C.12, or Section 23E.20.080 be replaced with a unit  
34 that complies with the requirements of the Rent Stabilization Ordinance, Chapter 13.76  
35 *et seq.* The Board shall condition the approval on the requirements that (1) the rent for  
36 the replacement unit may not exceed the rent that would what have been charged if the  
37 tenancy had continued uninterrupted, and (2) a written restriction requiring compliance  
38 with the Rent Stabilization Ordinance be recorded against the title to the property.

39 C. A Use Permit for the demolition of one or more residential units that is not subject  
40 to Section 23C.08.010.B shall issue if the Board makes the findings required by Section  
41 23B.32.040.A, and:

42 1. The building containing the unit(s) is hazardous or unusable and is  
43 infeasible to repair as determined by the Chief Building Official and Zoning  
44 Officer;

45 2. The demolition will result in no net loss in protected units, as defined in  
46 Government Code section 66300(d)(2)(E)(ii);

47 3. The demolition would not be materially detrimental to the public interest of  
48 the affected neighborhood and the City, taking into the account the housing  
49 needs of the neighborhood, the City, and the region; or

50 4. Denial of the demolition permit would conflict with state law applicable to  
51 the City of Berkeley, as a charter city, including but not limited to the Ellis Act  
52 (Government Code section 7060 *et seq.*).

53 D. Notwithstanding Subdivision (C), demolition will not be allowed if the building was  
54 removed from the rental market under the Ellis Act during the preceding five (5) years or  
55 there have been verified cases of harassment or threatened or actual illegal eviction  
56 during the immediately preceding three years. Where allegations of harassment or  
57 threatened or actual illegal eviction are in dispute, either party may request a hearing  
58 before a Rent Board Hearing Examiner, who will provide an assessment of the evidence  
59 and all available documentation to the Zoning Adjustments Board, which shall  
60 determine whether harassment or threatened or actual illegal eviction occurred.

61 E. A Use Permit issued pursuant to this Section must comply with Chapter 3.24,  
62 except where enforcement of that Chapter would conflict with state law.

63 F. A Use Permit issued pursuant to this Section shall require the applicant to  
64 comply with the following conditions:

65 1. The applicant shall provide all tenants with notice of the application to  
66 demolish the building no later than the date it is submitted to the City, including  
67 notice of their rights under Chapter [13.76](#). Any existing residents must be allowed  
68 to occupy their units until six months before the start of construction activities.

69 2. The applicant shall provide assistance with moving and relocation  
70 assistance equivalent to the requirements set forth in Chapter [13.84](#) or  
71 Government Code section 66300(d)(2)(D)(i), whichever requires greater  
72 relocation assistance to displaced households. Notwithstanding the requirements  
73 of Chapter 13.84, the applicant shall subsidize the rent differential for a  
74 comparable replacement unit, in the same neighborhood if feasible, until new  
75 units are ready for occupancy. Funding for the rent differential shall be  
76 guaranteed in a manner approved by the City; provided, however, that any  
77 project that is carried out or funded by the state or federal government shall be  
78 subject to applicable provisions of the California Relocation Act (Government  
79 Code section 7260 *et seq.*) and/or the Uniform Relocation Assistance and Real  
80 Property Acquisition Policies Act of 1970, as amended (42 U.S.C. sections 4601-  
81 4655). [Need an objective formula for determining rent differential]

82 3. Any tenant of a protected unit that is demolished shall have the right of  
83 first refusal to rent any new protected units designated to replace the units that  
84 were demolished, consistent with the requirements of Government Code section  
85 66300(d)(2)(D)(ii), if applicable, and subject to any applicable eligibility  
86 requirements for affordable units.

87 G. The provisions of Government Code section 66300 incorporated herein shall  
88 remain effective and enforceable under this Chapter to the maximum extent permitted  
89 by law, notwithstanding the subsequent repeal of those provisions under Government  
90 Code section 66301 or otherwise.

91 **23C.08.020 Demolition of Accessory Buildings and Buildings Used for**  
92 **Commercial, Manufacturing, Community, Institutional, or Other Non-Residential**  
93 **Uses**

94 A. The demolition of any structure in any general, community, retail, and  
95 neighborhood commercial districts shall comply with all applicable requirements of  
96 Chapter 22.12.

97 B. Notwithstanding any other provision of Title 23, a Main Building used for non-  
98 residential purposes containing less than 5,000 square feet of floor area may be  
99 demolished subject to issuance of an AUP; a Main Building containing 5,000 square  
100 feet or more of floor area may be demolished subject to issuance of Use Permit.

101 C. A demolition of an Accessory Building other than an Accessory Dwelling Unit  
102 containing less than 300 square feet of floor area is permitted subject to the issuance of  
103 a Zoning Certificate; an Accessory Building other than an Accessory Dwelling Unit  
104 containing 300 square feet or more of floor area may be demolished subject to the  
105 issuance of an AUP.

106 D. Any application for a Use Permit or AUP to demolish a non-residential building or  
107 structure which is 40 or more years old shall be forwarded to the Landmarks  
108 Preservation Commission (LPC) for review prior to consideration of the Use Permit or  
109 AUP. The LPC may initiate a landmark or structure-of-merit designation or may choose  
110 solely to forward to the Board or Zoning Officer its comments on the application. The  
111 Board or Zoning Officer shall consider the recommendations of the LPC in considering  
112 its action on the application.

113 E. A Use Permit or an AUP for demolition of an Accessory Building other than an  
114 Accessory Dwelling Unit or for the demolition of a non-residential building or structure  
115 shall issue if the Board or Zoning Officer if the application complies with the  
116 requirements of Chapter 3.24; the Board or Zoning Officer makes the findings required  
117 under Section 23B.32.040.A.; and one of the following findings is made:

118 1. The demolition is required to allow the construction of a new building or other  
119 new Use approved by the Board or Zoning Officer;

120 2. The demolition will remove a building that is unusable for activities  
121 compatible with the purposes of the District in which it is located or that is  
122 infeasible to modify for such uses;

123 3. The demolition will remove a structure which represents an unabatable  
124 nuisance; or

125 4. The demolition is required for the furtherance of specific plans or projects  
126 sponsored by the City or other local district or authority. In such cases, it shall be  
127 demonstrated that it is infeasible to obtain prior or concurrent approval for the  
128 new construction or new use which is contemplated by such specific plans or  
129 projects and that adhering to such a requirement would threaten the viability of  
130 the plan or project.

131 **23C.08.030 Building Relocations**

132 A. The relocation of a building from a lot is considered a demolition for purposes of  
133 this Ordinance.

134 B. The relocation of a building to a lot is considered new construction and shall be  
135 subject to all requirements applicable to new construction.

136 C. When a building is relocated to a different lot within the City, the lot from which the  
137 building is being removed shall be known as the source lot and the lot on which the  
138 building is to be sited shall be known as the receiving lot.

139 D. The removal of a building from the source lot shall require be approved if it meets  
140 the requirements for issuance of demolition permit under this Chapter.

141 E. The relocation of a building onto the receiving lot shall be approved if it meets the  
142 requirements for construction of a new structure on the receiving lot. Nothing in this  
143 Section shall be interpreted to require the Building Official to issue a certificate of  
144 occupancy upon relocation of a building.

145 **23C.08.035 Private Right of Action**

146 Any affected tenant may bring a private action for injunctive and/or compensatory relief  
147 against any applicant and/or owner to prevent or remedy a violation of Sections  
148 23C.08.020 or 23C.08.030. In any such action a prevailing plaintiff may recover  
149 reasonable attorneys' fees.

150 **23C.08.040 Imminent Hazards**

151 Notwithstanding anything to the contrary, if a building or structure is unsafe, presents a  
152 public hazard and is not securable and/or is in imminent danger of collapse so as to  
153 endanger persons or property, as determined the City's Building Official, it may be  
154 demolished without a Use Permit. The Building Official's determination in this matter  
155 shall be governed by the standards and criteria set forth in the most recent edition of the  
156 [California Building Code](#) that is in effect in the City.

157



4x4 Committee on Housing  
City Council and Rent Board

**4 X 4 JOINT COMMITTEE ON HOUSING  
CITY COUNCIL/RENT STABILIZATION BOARD**

**Tuesday, November 24, 2020 – 3:00 p.m.**

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

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the City Council and Rent Stabilization Board's **4 x 4 Joint Committee on Housing** (Committee) will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, **there will not be a physical meeting location available.**

**To access this meeting remotely:** Join from a PC, Mac, iPad, iPhone, or Android device by clicking on this URL: <https://zoom.us/j/93330024842?pwd=QVVwQ0sxU2M5cU00RzdXMnN4aytaZz09>. 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 Webinar ID: 933 3002 4842 and Passcode: 094373. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Committee Chair.

To submit an e-mail comment to be read aloud during public comment, email [btran@cityofberkeley.info](mailto:btran@cityofberkeley.info) with the Subject Line in this format: "PUBLIC COMMENT ITEM FOR 4 X 4 COMMITTEE". Please observe a 150-word limit. Time limits on public comments will apply. Written comments will be entered into the public record. **Email comments must be submitted to the email address above by 1:00 p.m. on the day of the Committee meeting in order to be included.**

Please be mindful that this will be a public meeting and all rules of procedure and decorum will apply for meetings conducted by teleconference or videoconference.

This meeting will be conducted in accordance with Government Code Section 54953 and all current state and local requirements allowing public participation in meetings of legislative bodies. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Matt Brown, Acting Executive Director of the Rent Board, at (510) 981-7368 (981-RENT). The Committee may take action related to any subject listed on the Agenda.





4x4 Committee on Housing  
City Council and Rent Board

## AGENDA

### **4 X 4 JOINT COMMITTEE ON HOUSING CITY COUNCIL/RENT STABILIZATION BOARD**

**Tuesday, November 24, 2020 – 3:00 p.m.**

1. Roll Call
2. Approval of the Agenda
3. Public Comment on Non-Agenda Matters
4. Approval of October 28, 2020 Committee Meeting Minutes
5. Presentation on Berkeley Housing Authority (BHA) and Affordable Housing Berkeley, Inc. by BHA Acting Executive Director Rachel Gonzales-Levine
6. Discussion and Possible Action on Amendments to Demolition Ordinance (Planning Department)
7. Habitability Plans Modeled After the City of Los Angeles' Practice (RBC Simon-Weisberg)
8. Update on Amendments to the Relocation Ordinance (Mayor Arreguín)
9. Quick Updates on Previously Discussed Items
  - a. UC Acquisition of 1921 Walnut Street
10. Discussion of Possible Future Agenda Items
11. Adjournment

#### COMMITTEE MEMBERS:

Mayor Jesse Arreguín  
City Council Member Cheryl Davila  
City Council Member Kate Harrison  
City Council Member Rigel Robinson

Rent Board Chairperson Paola Laverde  
Rent Board Vice-Chairperson Leah Simon-Weisberg  
Rent Board Commissioner Mari Mendonca  
Rent Board Commissioner Igor Tregub



4x4 Committee on Housing  
City Council and Rent Board

## Minutes - Unapproved

### 4 X 4 JOINT COMMITTEE ON HOUSING CITY COUNCIL/RENT STABILIZATION BOARD

Wednesday, October 28, 2020 – 3:00 p.m.

1. Roll Call: Mayor Arreguín called the meeting to order at 3:04 p.m.  
Present: Mayor Jesse Arreguín, CM Cheryl Davila, CM Rigel Robinson, RB Chair Paola Laverde, RBC Leah Simon-Weisberg, RBC Mari Mendonca (signed off at 4:06 p.m.), RBC Igor Tregub.  
Absent: CM Kate Harrison.  
Staff Present: Matt Brown, Ruscal Cayangyang, Bren Darrow, Stefan Elgstrand, Jen Fabish, Matthew Siegel, Be Tran, Kelly Wallace, Lisa Warhuus, Lynn Wu
2. Approval of the Agenda: M/S/C (Arreguín/Laverde) Approve the agenda with the following change: hear Item 6 after approval of the minutes. **Friendly amendment by Simon-Weisberg (accepted)**: Continue Item 7 until the next meeting. Roll call vote. YES: Arreguín, Davila, Robinson, Laverde, Simon-Weisberg, Mendonca, Tregub; NO: None; ABSTAIN: None; ABSENT: Harrison. Carried: 7-0-0-1.
3. Public Comment on Non-Agenda Matters: There were no speakers. Be Tran read aloud one written comment.
4. Approval of September 23, 2020 Committee Meeting Minutes: M/S/C (Davila/Robinson) Approve the minutes as written. Roll call vote. YES: Arreguín, Davila, Robinson, Laverde, Simon-Weisberg, Mendonca, Tregub; NO: None; ABSTAIN: None; ABSENT: Harrison. Carried: 7-0-0-1.
5. Update on Amendments to the Relocation Ordinance (Mayor Arreguín or HHCS staff): Mayor Arreguín provided an update. He will set up a meeting with HHCS, the Rent Board, the City Attorney's Office and the Mayor's Office to discuss more robust policy changes, and staffing and funding needs.
6. Urgency Ordinance: Updates to the COVID-19 Emergency Response Ordinance (CM Davila): Bren Darrow reviewed changes proposed by the City Attorney's office, and the committee engaged in an extensive discussion. Three members of the public spoke, one of whom also read aloud a letter from another member of the public. Be Tran read aloud a written comment on the item.

M/S/C (Arreguín/ Laverde) Recommend to Council the revised ordinance containing the City Attorney's proposed changes that the committee received at the meeting except to strike the following language from section 13.110.050(C) "...not offering a rental agreement for a different unit or offering one on less favourable [sic] terms than they would otherwise offer, or taking action(s) or inaction(s) which hurts the tenant's or other resident credit rating or causes

October 28, 2020 4x4 Committee Meeting Minutes

other landlords to not offer them a rental agreement or to offer them a rental agreement on less favourable [sic] terms than they would otherwise offer.” **Friendly amendments by Tregub (accepted):** (1) Request that the author consult with Rent Board staff before the item goes before Council; (2) Recommend that the author provide in the staff report an analysis on how the item mirrors and exceeds the protections in Alameda County’s Urgency Ordinance; and (3) strike the language that indicates the Chapter does not apply to Ellis Act evictions. Roll call vote. YES: Arreguín, Davila, Robinson, Laverde, Simon-Weisberg, Tregub; NO: None; ABSTAIN: None; ABSENT: Harrison, Mendonca. Carried: 6-0-0-2.

CM Davila will obtain clarification on whether any modifications to section 13.110.040(B)(2) are necessary.

7. Habitability Plans modeled after the City of Los Angeles’ practice (RBC Simon-Weisberg): Continued to the next meeting by a prior vote of the committee.
8. Discussion of Possible Future Agenda Items: Habitability Plans (Simon-Weisberg), an update on the Relocation Ordinance (Mayor Arreguín), discussion on the new nonprofit housing authority and buildings not available for rent (RB Chair Laverde). On the latter item, Mayor Arreguín would also like to discuss a boarder strategy around vacant buildings, including regulatory and other tools for acquisition.
9. Adjournment: M/S/C (Davila/Tregub) Motion to adjourn the meeting. Roll call vote. YES: Arreguín, Davila, Robinson, Laverde, Simon-Weisberg, Tregub; NO: None; ABSTAIN: None; ABSENT: Harrison, Mendonca. Carried: 6-0-0-2. The meeting adjourned at 5:15 p.m.

COMMITTEE MEMBERS:

Mayor Jesse Arreguín  
City Council Member Cheryl Davila  
City Council Member Kate Harrison  
City Council Member Rigel Robinson

Rent Board Chairperson Paola Laverde  
Rent Board Vice-Chairperson Leah Simon-Weisberg  
Rent Board Commissioner Mari Mendonca  
Rent Board Commissioner Igor Tregub



Planning and Development Department  
Land Use Planning Division

## STAFF REPORT

DATE: November 18, 2020

TO: Members of the Planning Commission

FROM: Steve Buckley, Land Use Manager  
Alene Pearson, Principal Planner

SUBJECT: Zoning Ordinance Amendments to Berkeley Municipal Code Chapter 23C.08 [Demolition and Dwelling Unit Controls]

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### BACKGROUND

Berkeley Municipal Code (BMC) Chapter 23C.08 [Demolition and Dwelling Unit Controls] is often referred to as the “Demolition Ordinance.” Although this ordinance does regulate demolitions, Chapter 23C.08 also establishes rental unit protections and regulates elimination of units that occurs through modifications to existing housing stock (e.g. removing kitchens, combining units).

Over the past decade, State legislation and court cases have influenced the City’s ability to require inclusionary housing or in lieu fees for new housing projects. These laws have also affected the City’s ability to administer Chapter 23C.08. Some of this history is provided below:

The Neighborhood Preservation Ordinance (1973): In response to unchecked demolition of single family homes and construction of “ticky-tacky” apartment buildings in the 1950s through the early 1970s, Berkeley residents voted into law restrictions on housing demolition. The Neighborhood Preservation Ordinance (NPO) only allows demolition of housing when replacement housing is included in new projects.

Rent Control (1980): Berkeley voters passed the Rent Stabilization and Eviction for Good Cause Ordinance in 1980, which instituted rent control. This ordinance established baseline rents and guidelines for rent increases necessary to cover operating expenses, property maintenance, and landlord profit. This ordinance provided vacancy control rent stabilization -- meaning that rent levels stayed the same even after tenants moved out. Note that the applicability of the ordinance was modified by the Costa Hawkins Rental Housing Act (see below) in 1995.

Demolition Ordinance

Rental Removal Ordinance (1984): To prevent demolition of rent stabilized housing, the Rental Removal Ordinance was enacted in Berkeley in 1984. This ordinance prohibited demolitions of rental units if an applicant was able to make a fair return on their property without demolishing.

Costa Hawkins: The Costa Hawkins Rental Housing Act (Costa Hawkins), passed in 1995, allows local governments to enact and use rent control, except on (a) housing that was first occupied after February 1, 1995, and (b) certain classes of housing units, such as condominiums, townhouses, and single-family homes. Costa Hawkins allows landlords to increase rent to market rates when a tenant vacates a unit. This is called vacancy decontrol.

Ellis Act and Measure Y: The Ellis Act is a state law which gives landlords the right to evict tenants if they need to "go out of business." For an Ellis eviction, the landlord must remove all of the units in the building from the rental market. When a landlord invokes the Ellis Act, the apartments cannot be re-rented, except at the same rent the evicted tenant was paying, for five years following evictions. While there are restrictions on ever re-renting the units, there are no restrictions on conversion to ownership units (e.g., tenancies in common or condos).

In response to an increased number of owner-move-in evictions, Berkeley voters adopted Measure Y as an amendment to the Rent Stabilization and Eviction for Good Cause Ordinance in 2000. Measure Y allowed property owners to evict tenants if the owner or a qualifying relative intended to move in<sup>1</sup>. Property owners who evicted low income tenants were required to pay relocation assistance and required to reset the cost of the rental to the previous rent-control rate when/if the unit were to come back onto the market. Furthermore, evicted tenants would have the opportunity move back into the unit if it came back onto the market.

Palmer Decision: The 2009 Palmer Decision (*Palmer/Sixth Street Properties vs City of Los Angeles*) invalidated ordinances that imposed inclusionary affordable housing requirements on residential projects due to conflict with Costa Hawkins' vacancy decontrol provisions (e.g. limiting a landlord's ability to establish the initial rental rate of a unit).

Berkeley's Ordinance: In March 2016, the City Council adopted an ordinance which modified BMC Chapter 23C.08 to account for the loss of rent-stabilized housing that can occur with building demolition. That ordinance established the City's authority to set and collect a fee for each rent-stabilized unit that would be demolished. It also allowed for projects to provide one-for-one replacement units in lieu of fee payment as long as the units were restricted in perpetuity as below market rate. Unfortunately, a fee was never established by resolution, so no fees were ever collected.

The "Palmer Fix": In 2017, the California legislature passed Assembly Bill (AB) 1505 in response to the Palmer Decision. AB 1505 authorizes cities to adopt

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<sup>1</sup> An owner could evict a tenant so that the owner, or his/her spouse, child, or parent could move in; however, the owner-relative must live in the unit for 36 continuous months. Additionally, with few exceptions, property owners could not evict seniors or disabled tenants who have occupied their rental units for five years or more in buildings with four or more units.

Demolition Ordinance

inclusionary housing ordinances that require development to include a certain percentage of affordable residential rental units. AB 1505 also requires cities provide an alternate means of compliance, such as in-lieu fees, land dedication, off-site construction, or acquisition and rehabilitation of existing units.

Senate Bill 330: Senate Bill (SB) 330, passed in 2019, requires that cities only approve housing projects that include demolition of residential units if the project replaces existing units. Furthermore, if the project involves demolition of rent-controlled or below market rate units, the project will only be approved if the following criteria are met:

1. The project will replace all existing or demolished protected units (which would also count towards meeting inclusionary housing requirements).
2. The 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.
3. Existing residents, if any, are allowed to occupy their units until six months before the start of construction.
4. The developer agrees to provide relocation benefits and a right of first refusal for units available in the new housing development at an affordable rent for the household.

The City's Rent Stabilization Board (RSB) provides an annual summary of rental housing stock which includes the total number of units registered in the City and the number of new tenancies. The table below summarizes this information at three points over the last twenty years:

	1999			2009			2019		
	all units	new tenancies	percent turnover	all units	new tenancies	percent turnover	all units	new tenancies	percent turnover
studio	3,840	1,145	29.8%	3,740	1,081	28.9%	4,145	956	23.1%
1 BR	8,145	1,927	23.7%	7,945	1,887	23.8%	8,044	1,520	18.9%
2 BR	5,659	1,245	22.0%	5,721	1,406	24.6%	6,045	1,101	18.2%
3 BR	831	172	20.7%	887	254	28.6%	1,047	198	18.9%
TOTAL	18,475	4,489	24.3%	18,293	4,628	25.3%	19,281	3,775	19.6%

In 2013, the RSB published a report that summarized the benefits of Berkeley's rent stabilization program<sup>2</sup>. At that time, affordability was provided to approximately 3,300 pre-1999 tenants whose apartments have never qualified for a vacancy decontrol increase. Approximately 2,200 of those tenants were low income, and 1,200 were elderly or disabled. Since 2013, the number of pre-1999 tenants has declined to 1,903 (as of October 1, 2020) as tenants have aged and/or moved out. Additional support of

<sup>2</sup> Rent Stabilization and the Berkeley Housing Market 15 Years after Vacancy Decontrol (January 28, 2013) [https://www.cityofberkeley.info/uploadedFiles/Rent\\_Stabilization\\_Board/Level\\_3\\_-\\_General/Summary%20of%20Economic%20Studies%20Part%20I.pdf](https://www.cityofberkeley.info/uploadedFiles/Rent_Stabilization_Board/Level_3_-_General/Summary%20of%20Economic%20Studies%20Part%20I.pdf)

Demolition Ordinance

housing affordability is provided through deed restricted, below market rate inclusionary and density bonus units, subsidized housing developments and monthly rental assistance (Housing Vouchers and Shelter + Care). The demolition and dwelling unit controls regulated in BMC Chapter 23C.08 are integral to the preservation of affordable housing in the City of Berkeley – especially as the number of pre-1999 tenants declines.

## PROPOSED AMENDMENTS

The goal of updating BMC Chapter 23C.08 is to protect existing housing stock and ensure that Berkeley's Zoning Ordinance leverages and complies with State regulations. As illustrated above, State law and case law have and will continue to evolve over time. The proposed amendments, explained below, will reference State law where possible, as opposed to restating State law, so that the City can maintain compliance over time and the ordinance will be more straightforward to understand and enforce.

Draft Zoning Ordinance amendments can be found in Attachment 1. Amendments strike current regulations that are no longer enforceable due to the information presented above. More specifically, the proposed amendments do the following:

1. Reference State Law

New code directly references Government Code sections in order to comply with new regulations and avoid conflicts as State legislation evolves.

2. Ensure Compliance with the BMC

Amendments explicitly require compliance with other BMC chapters in order to preserve and protect affordable housing in Berkeley. Issuance of Demolition Permits must be contingent upon the following:

- Chapter 22.20 [Mitigation and Fees - Conditions for Approval of Development Projects]
- Chapter 23C.12 [Inclusionary Housing Requirements]
- Section 23E.20.080 [Low Income Inclusionary Live / Work Units]
- Chapter 13.76 [Rent Stabilization]

***Rationale: Proposed amendments will cross-reference other sections of the BMC. These references are necessary to clearly list regulations required for administering demolition and unit controls. The ordinances listed above are currently under review and will update related topics such as fee structures and inclusionary housing requirements. The overall goal of these dual efforts is to protect and preserve affordable housing in the City.***

3. Clarify Use Permit Conditions that Pertain to Tenants

Applicant responsibilities to tenants in terms of noticing, relocation assistance and right of first refusal for new replacement units are provided in Section 23C.08.010.E [Demolition or Elimination of Residential Units] and refer to BMC Chapters 13.76 [Rent Stabilization and Eviction dor Good Cause Program] and BMC 13.84 [Relocation Services and Payments for Residential Tenant Households] and applicable Government Code Sections.

Demolition Ordinance

4. Extend the definition of “dwelling unit”

Government Code Section 66300 applies to “dwelling units.” The proposed amendment clarifies the definition of “dwelling unit” to reflect definitions within the California Building Code, including shared and independent living, sleeping, eating, cooking and sanitation facilities. This includes, but is not limited to, Group Living Accommodations (GLAs), Live/Work Units, and Residential Hotel Rooms.

***Rationale: Dwelling Unit under the existing ordinance is narrowly defined and inconsistent with State law and other sections of the BMC. Using a broadly established definition of “dwelling unit” will provide internal and external consistency and will also accommodate the City’s unique household characteristics and diversity of housing models and living situations.***

5. Clarify Permit Thresholds for Demolition of Non-residential Buildings

New code would clearly outlines permits required for demolition of non-residential buildings, when zoning district-specific regulations do not apply (e.g. protected uses in the MU-LI district). The table below summarizes the proposed regulations:

Non-residential Building Type	Size Threshold	Demolition Permit Required
Main Building	<5,000 ft <sup>2</sup>	ZC
	>=5,000 ft <sup>2</sup>	AUP
Accessory Building	<300 ft <sup>2</sup>	AUP
	>=300 ft <sup>2</sup>	UP(PH)

***Rationale: Existing code did not clearly state general thresholds and permits requirement for the demolition of non-residential buildings. The new code provides greater clarity and consistency, although some zoning districts have additional requirements for compliance.***

**NEXT STEPS**

Staff recommends that the Planning Commission hold a Public Hearing, take 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. Ordinance
2. Public Hearing Notice





1 **Clean Copy**

2  
3 **BMC Chapter 23C.08**  
4 **Demolition and Dwelling Unit Controls**

5 Sections:

6 [23C.08.010](#) Demolition or Elimination of Residential Units

7 [23C.08.020](#) Demolition of Accessory Buildings and Buildings Used for  
8 Commercial, Manufacturing, Community, Institutional or Other  
9 Non-Residential Uses

10 [23C.08.030](#) Building Relocations

11 [23C.08.040](#) Imminent Hazards

12 **23C.08.010 Demolition or Elimination of Residential Units**

13 A. No residential unit may be eliminated or demolished except as authorized by the  
14 provisions of the chapter and State law, including but not limited to Government Code  
15 section 66300 *et seq.* For purposes of this Chapter, “residential unit” includes any  
16 Dwelling Unit, bedroom or sleeping quarters in a Group Living Accommodation,  
17 Live/Work Unit, or Residential Hotel Room.

18 B. A Use Permit for the demolition of one or more residential units in connection with a  
19 housing development project shall be issued only if the project complies with the  
20 requirements of Government Code section 66300(d), as applicable. In addition, the  
21 Board may in its discretion choose from one of the following requirements:

22 1. That the replacement units comply with Chapter 22.20 and/or Chapter  
23 23C.12 and/or Section 23E.20.080; and/or

24 2. That the demolition and replacement units comply with the requirements  
25 of the Rent Stabilization Ordinance, Chapter 13.76 *et seq.*

26 C. A Use Permit for the demolition of one or more residential units that is not subject  
27 to Section 23C.08.010.B shall issue if the Board makes the findings required by Section  
28 23B.32.040.A, and:

- 29 1. The building containing the unit(s) is hazardous or unusable and is  
30 infeasible to repair as determined by the Chief Building Official and Zoning  
31 Officer;
- 32 2. The demolition will result in no net loss in protected units, as defined in  
33 Government Code section 66300(d)(2)(E)(ii);
- 34 3. The demolition would not be materially detrimental to the public interest of  
35 the affected neighborhood and the City, taking into the account the housing  
36 needs of the neighborhood, the City, and the region; or
- 37 4. Denial of the demolition permit would conflict with state law applicable to  
38 the City of Berkeley, as a charter city, including but not limited to the Ellis Act  
39 (Government Code section 7060 *et seq.*).
- 40 D A Use Permit issued pursuant to this Section must comply with Chapter 3.24,  
41 except where enforcement of that Chapter would conflict with state law.
- 42 E. A Use Permit issued pursuant to this Section shall require the applicant to comply  
43 with the following conditions:
- 44 1. The applicant shall provide all tenants with notice of the application to  
45 demolish the building no later than the date it is submitted to the City, including  
46 notice of their rights under Chapter [13.76](#). Any existing residents must be allowed  
47 to occupy their units until six months before the start of construction activities.
- 48 2. The applicant shall provide assistance with moving and relocation  
49 assistance equivalent to the requirements set forth in Chapter [13.84](#) or  
50 Government Code section 66300(d)(2)(D)(i), whichever requires greater  
51 relocation assistance to displaced households; provided, however, that any  
52 project that is carried out or funded by the state or federal government shall be  
53 subject to applicable provisions of the California Relocation Act (Government  
54 Code section 7260 *et seq.*) and/or the Uniform Relocation Assistance and Real  
55 Property Acquisition Policies Act of 1970, as amended (42 U.S.C. sections 4601-  
56 4655).
- 57 3. Any tenant of a protected unit that is demolished shall have the right of  
58 first refusal to rent any new protected units designated to replace the units that  
59 were demolished, consistent with the requirements of Government Code section  
60 66300(d)(2)(D)(ii), if applicable, and subject to any applicable eligibility  
61 requirements for affordable units.

62 **23C.08.020 Demolition of Accessory Buildings and Buildings Used for**  
63 **Commercial, Manufacturing, Community, Institutional, or Other Non-Residential**  
64 **Uses**

65 A. Notwithstanding any other provision of Title 23, a Main Building used for non-  
66 residential purposes containing less than 5,000 square feet of floor area may be  
67 demolished subject to issuance of an AUP; a Main Building containing 5,000 square  
68 feet or more of floor area may be demolished subject to issuance of Use Permit.

69 B. A demolition of an Accessory Building other than an Accessory Dwelling Unit  
70 containing less than 300 square feet of floor area is permitted subject to the issuance of  
71 a Zoning Certificate; an Accessory Building other than an Accessory Dwelling Unit  
72 containing 300 square feet or more of floor area may be demolished subject to the  
73 issuance of an AUP.

74 C. Any application for a Use Permit or AUP to demolish a non-residential building or  
75 structure which is 40 or more years old shall be forwarded to the Landmarks  
76 Preservation Commission (LPC) for review prior to consideration of the Use Permit or  
77 AUP. The LPC may initiate a landmark or structure-of-merit designation or may choose  
78 solely to forward to the Board or Zoning Officer its comments on the application. The  
79 Board or Zoning Officer shall consider the recommendations of the LPC in considering  
80 its action on the application.

81 D. A Use Permit or an AUP for demolition of an Accessory Building other than an  
82 Accessory Dwelling Unit or for the demolition of a non-residential building or structure  
83 shall issue if the Board or Zoning Officer if the application complies with the  
84 requirements of Chapter 3.24, and one of the following findings is made:

85 1. The demolition is required to allow the construction of a new building or other  
86 new Use approved by the Board or Zoning Officer;

87 2. The demolition will remove a building that is unusable for activities  
88 compatible with the purposes of the District in which it is located or that is  
89 infeasible to modify for such uses;

90 3. The demolition will remove a structure which represents an unabatable  
91 nuisance; or

92 4. The demolition is required for the furtherance of specific plans or projects  
93 sponsored by the City or other local district or authority. In such cases, it shall be  
94 demonstrated that it is infeasible to obtain prior or concurrent approval for the

95 new construction or new use which is contemplated by such specific plans or  
96 projects and that adhering to such a requirement would threaten the viability of  
97 the plan or project.

98 **23C.08.030 Building Relocations**

99 A. The relocation of a building from a lot is considered a demolition for purposes of  
100 this Ordinance.

101 B. The relocation of a building to a lot is considered new construction and shall be  
102 subject to all requirements applicable to new construction.

103 C. When a building is relocated to a different lot within the City, the lot from which the  
104 building is being removed shall be known as the source lot and the lot on which the  
105 building is to be sited shall be known as the receiving lot.

106 D. The removal of a building from the source lot shall require be approved if it meets  
107 the requirements for issuance of demolition permit under this Chapter.

108 E. The relocation of a building onto the receiving lot shall be approved if it meets the  
109 requirements for construction of a new structure on the receiving lot.

110 **23C.08.040 Imminent Hazards**

111 Notwithstanding anything to the contrary, if a building or structure is unsafe, presents a  
112 public hazard and is not securable and/or is in imminent danger of collapse so as to  
113 endanger persons or property, as determined the City's Building Official, it may be  
114 demolished without a Use Permit. The Building Official's determination in this matter  
115 shall be governed by the standards and criteria set forth in the most recent edition of the  
116 [California Building Code](#) that is in effect in the City.

117

118

***Red-Lined Version***

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120

121

122

**BMC Chapter 23C.08  
Demolition and Dwelling Unit Controls**

123 Sections:

124

23C.08.010 Demolition or Elimination of ~~Dwelling Residential~~ Units

125

~~—General Requirement~~

126

~~23C.08.020—Elimination of Dwelling Units through Demolition~~

127

~~23C.08.030—Elimination of Dwelling Units and Accessory Dwelling Units  
through Conversion and Change of Use~~

128

129

~~23C.08.035—Private Right of Action~~

130

~~23C.08.040—Elimination of Residential Hotel Rooms~~

131

~~23C.08.050—23C.08.020~~ Demolitions of Accessory Buildings and Buildings

132

Used for Commercial, Manufacturing, ~~or~~ Community, Institutional

133

or Other ~~Non-residential~~ Residential Uses

134

~~23C.08.060—23C.08.030~~ Building Relocations

135

~~23C.08.070—23C.08.040~~ Limitations/Imminent Hazards

136

**23C.08.010 Demolition or Elimination of Dwelling Residential Units—~~General~~**

137

**Requirement**

138

~~A. A.~~ A. No ~~Dwelling Unit or units~~ residential unit may be eliminated or demolished

139

except as authorized by the provisions of the chapter and State law, including but not

140

limited to Government Code section 66300 et seq. For purposes of this Chapter,

141

“residential unit” includes any Dwelling Unit, bedroom or sleeping quarters in a Group

142

Living Accommodation, Live/Work Unit, or Residential Hotel Room.

143

~~B. The Board may approve a Use Permit for the elimination or demolition of dwelling~~

144

~~units only if, in addition to any other findings required by this Ordinance, it finds that the~~

145

~~elimination of the dwelling units would not be materially detrimental to the housing~~

146 ~~needs and public interest of the affected neighborhood and the City.~~ A Use Permit for  
147 the demolition of one or more residential units in connection with a housing  
148 development project shall be issued only if the project complies with the requirements of  
149 Government Code section 66300(d), as applicable. In addition, the Board may in its  
150 discretion choose from one of the following requirements:

151 1. That the replacement units comply with Chapter 22.20 and/or Chapter  
152 23C.12 and/or Section 23E.20.080; and/or

153 2. That the demolition and replacement units comply with the requirements  
154 of the Rent Stabilization Ordinance, Chapter 13.76 et seq.

155 C. A Use Permit for the demolition of one or more residential units that is not subject  
156 to Section 23C.08.010.B shall issue if the Board makes the findings required by Section  
157 23B.32.040.A, and:

158 ~~C.—Demolition of buildings containing a single dwelling unit and buildings constructed~~  
159 ~~after June 1980 shall not be subject to the findings set forth in Section 23C.08.020.A but~~  
160 ~~shall be subject to subdivisions B, C, and D of Section 23C.08.020. (Ord. 7458-NS § 1,~~  
161 ~~2016)~~

### 162 ~~23C.08.020 Elimination of Dwelling Units through Demolition~~

163 ~~A.—The Board may approve a Use Permit to demolish a building constructed prior to~~  
164 ~~June 1980 on a property containing two or more dwelling units if it makes the findings~~  
165 ~~required by the foregoing section, and either:~~

166 ~~1. The building containing the unit(s) is hazardous or unusable and is~~  
167 ~~infeasible to repair as determined by the Chief Building Official and Zoning~~  
168 ~~Officer; or~~

169  
170 ~~2. The building containing the unit(s) will be moved to a different location~~  
171 ~~within the City of Berkeley with no net loss of units and no change in the~~  
172 ~~affordability levels of the units. The demolition will result in no net loss in protected~~  
173 ~~units, as defined in Government Code section 66300(d)(2)(E)(ii);~~

174 ~~3. The demolition would not be materially detrimental to the public interest of~~  
175 ~~the affected neighborhood and the City, taking into the account the housing~~  
176 ~~needs of the neighborhood, the City, and the region; or~~

177 4. Denial of the demolition permit would conflict with state law applicable to  
178 the City of Berkeley, as a charter city, including but not limited to the Ellis Act  
179 (Government Code section 7060 et seq.); or

180 ~~3. The demolition is necessary to permit construction of special housing needs~~  
181 ~~facilities such as, but not limited to, childcare centers and affordable housing~~  
182 ~~developments that serve the greater good of the entire community; or~~

183 ~~4. The demolition is necessary to permit construction approved pursuant to this~~  
184 ~~Chapter of at least the same number of dwelling units. No such demolition shall~~  
185 ~~occur prior to the issuance of a building permit for the replacement units.~~

186 D A Use Permit issued pursuant to this Section must comply with Chapter 3.24,  
187 except where enforcement of that Chapter would conflict with state law.

188 ~~—When a project is approved under this paragraph, the project applicant shall be~~  
189 ~~required to pay a fee for each unit demolished to mitigate the impact of the loss of~~  
190 ~~affordable housing in the City of Berkeley. The amount of the fee shall be set by~~  
191 ~~resolution of the City Council.~~

192 ~~—In the case of a unit with a tenant at the time of demolition, the provisions of Section~~  
193 ~~23C.08.020.C apply and the impact fee is due when that tenant vacates the unit.~~

194 ~~—In lieu of paying the impact fee, the project applicant may provide a designated unit in~~  
195 ~~the new project at a below market rate to a qualifying household in perpetuity. The~~  
196 ~~affordability level of the below market rent and the income level of the qualifying~~  
197 ~~household shall be set by resolution of the City Council. The project applicant shall~~  
198 ~~enter a regulatory agreement with the City of Berkeley to provide for the provision of any~~  
199 ~~such in lieu units.~~

200 ~~B. Notwithstanding Subdivision (A), demolition will not be allowed if the~~  
201 ~~building was removed from the rental market under the Ellis Act during the~~  
202 ~~preceding five (5) years or there have been verified cases of harassment or~~  
203 ~~threatened or actual illegal eviction during the immediately preceding three years.~~

204 ~~—Where allegations of harassment or threatened or actual illegal eviction are in~~  
205 ~~dispute, either party may request a hearing before a Rent Board Hearing Examiner, who~~  
206 ~~will provide an assessment of the evidence and all available documentation to the~~  
207 ~~Zoning Adjustments Board, which shall determine whether harassment or threatened or~~  
208 ~~actual illegal eviction occurred.~~



209 ~~GE.~~ If the units in a building to be demolished under subdivision (A) are occupied, the  
210 following requirements shall apply. A - Use Permit issued pursuant to this Section shall  
211 require the applicant to comply with the following conditions:

212 ~~1. Except as set forth in paragraph (2) below:~~ 1. \_\_\_\_\_

213 ~~a.~~ The applicant shall provide all ~~sitting~~ tenants with notice of the application to  
214 demolish the building no later than the date it is submitted to the City, including  
215 notice of their rights under Chapter 13.76. Any existing residents must be allowed  
216 to occupy their units until six months before the start of construction activities.

217  
218 ~~2. b.~~ The applicant shall provide assistance with moving ~~expenses and~~  
219 ~~relocation assistance~~ equivalent to ~~those the requirements~~ set forth in Chapter  
220 13.84 or Government Code section 66300(d)(2)(D)(i), whichever requires  
221 greater relocation assistance to displaced households; provided, however, that  
222 any project that is carried out or funded by the state or federal government shall  
223 be subject to applicable provisions of the California Relocation Act (Government  
224 Code section 7260 et seq.) and/or the Uniform Relocation Assistance and Real  
225 Property Acquisition Policies Act of 1970, as amended (42 U.S.C. sections 4601-  
226 4655).

227 ~~c.~~ The applicant shall subsidize the rent differential for a comparable replacement unit,  
228 in the same neighborhood if feasible, until new units are ready for occupancy. Funding  
229 for the rent differential shall be guaranteed in a manner approved by the City.

230 ~~2.~~ An applicant under this Chapter who proposes to construct a 100% affordable  
231 housing project shall provide relocation benefits that conform to the Uniform Relocation  
232 Assistance and Real Property Acquisition Policies Act of 1970, as amended and the  
233 California Relocation Act (Government Code sections 7260 et seq.).

234  
235 ~~3.~~ Except as set forth in paragraph (4) below, sitting tenants who are  
236 displaced as a result of demolition shall be provided the right of refusal to move  
237 into the new building; ~~Any~~ and tenants of a protected units that are ~~is~~ demolished  
238 shall have the right of first refusal to rent any new ~~below market rate~~ protected  
239 units designated to replace the units that were demolished, ~~at the rent that would~~  
240 ~~have applied if they had remained in place, as long as their tenancy continues.~~  
241 Income restrictions shall not apply to displaced tenants, consistent with the

242 requirements of Government Code section 66300(d)(2)(D)(ii), if applicable, and  
243 subject to any applicable eligibility requirements for affordable units.

244  
245 ~~4.—In cases where an applicant under this Chapter has constructed a 100% affordable~~  
246 ~~housing project, sitting tenants who are displaced as a result of demolition and who~~  
247 ~~desire to return to the newly constructed building will be granted a right of first refusal~~  
248 ~~subject to their ability to meet income qualifications and other applicable eligibility~~  
249 ~~requirements when the new units are ready for occupancy.~~

250 ~~5.—The provisions of this section shall not apply to tenants who move in after the~~  
251 ~~application for demolition is submitted to the City provided that the owner informs each~~  
252 ~~prospective tenant about the proposed demolition and that demolition constitutes good~~  
253 ~~cause for eviction.~~

254 ~~D.—Notwithstanding anything in Title 23 to the contrary, but subject to any applicable~~  
255 ~~requirements of the Landmarks Preservation Ordinance (BMC Chapter 3.24), accessory~~  
256 ~~buildings of any size, including, but not limited to, garages, carports and sheds, but not~~  
257 ~~including any structure containing a lawfully established dwelling unit, which serves and~~  
258 ~~is located on the same lot as a lawful residential use, may be demolished by right. (Ord.~~  
259 ~~7458-NS § 2, 2016)~~

260 ~~**23C.08.030 Elimination of Dwelling Units and Accessory Dwelling Units through**~~  
261 ~~**Conversion and Change of Use**~~

262 ~~A.—The Board may approve a Use Permit for the elimination of a dwelling unit through~~  
263 ~~combination with another dwelling unit for purposes of occupancy by a single household~~  
264 ~~if it finds that:~~

265 ~~1.—The existing number of dwelling units exceeds the number permitted by the~~  
266 ~~maximum residential density applicable to the District where the subject building is~~  
267 ~~located; and~~

268 ~~2.—One of the affected dwelling units has been occupied by the applicant's household~~  
269 ~~as its principal place of residence for no less than two years prior to the date of the~~  
270 ~~application and none of the affected units is currently occupied by a tenant, or all~~  
271 ~~dwelling units that would be affected by the elimination are being sold by an estate and~~  
272 ~~the decedent occupied the units as their principal residence for no less than two years~~  
273 ~~prior to the date of their death.~~

274 ~~B.—Notwithstanding Subdivision (A), demolition will not be allowed if the building was~~  
275 ~~removed from the rental market under the Ellis Act during the preceding five (5) years or~~  
276 ~~there have been verified cases of harassment or threatened or actual illegal eviction~~  
277 ~~during the immediately preceding three years. Where allegations of harassment or~~  
278 ~~threatened or actual illegal eviction are in dispute, either party may request a hearing~~  
279 ~~before a Rent Board Hearing Examiner, who will provide an assessment of the evidence~~  
280 ~~and all available documentation to the Zoning Officer or Zoning Adjustments Board,~~  
281 ~~which shall determine whether harassment or threatened or actual illegal eviction~~  
282 ~~occurred.~~

283 ~~C.—In the event a unit eliminated pursuant to subdivision (A) is not occupied by the~~  
284 ~~applicant's household for at least two consecutive years from the date of elimination, the~~  
285 ~~affected unit must be restored to separate status. This requirement shall be~~  
286 ~~implemented by a condition of approval and a notice of limitation on the property,~~  
287 ~~acceptable to the City, which provides that if the owner's household does not occupy~~  
288 ~~the unit for at least two years from the date of elimination the affected units must either~~  
289 ~~be restored as separate dwelling units and the vacant unit(s) offered for rent within six~~  
290 ~~months or the owner must pay a fee of \$75,000 in 2013 dollars, adjusted in May of each~~  
291 ~~year according to the Consumer Price Index for the San Francisco Bay Area, which~~  
292 ~~shall be deposited into the City's Housing Trust Fund. The City may exempt an~~  
293 ~~applicant from the two year residency requirement in the event of an unforeseeable life~~  
294 ~~change that requires relocation.~~

295 ~~D.—In cases where elimination of a dwelling unit reduces the number of units in a~~  
296 ~~building to four (4), the applicant shall record a notice of limitation against the subject~~  
297 ~~property that the limitation on eviction of tenants under Section 13.76.130.A.9.i(iii) shall~~  
298 ~~continue to apply until such time as the building is demolished or sufficient units are~~  
299 ~~added or restored such that the building contains at least five (5) units.~~

300 ~~E.—Alternatively, the Zoning Officer may issue an AUP for a conversion which~~  
301 ~~eliminates a dwelling unit if they find that the conversion of the building will restore or~~  
302 ~~brings the building closer to the original number of dwelling units that was present at the~~  
303 ~~time it was first constructed, provided the conversion meets the requirements of A.2., B.,~~  
304 ~~C. and D. of this section.~~

305 ~~F.—The Board may approve a Use Permit for a change of use to a community care or a~~  
306 ~~child care facility which eliminates a dwelling unit if it finds that such use is in~~  
307 ~~conformance with the regulations of the District in which it is located.~~

~~G.—The Board may approve a Use Permit for the elimination of 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 (SRO) Rooms in residential developments undergoing a publicly-funded rehabilitation.~~

~~H.—Notwithstanding the general Use Permit requirement under 23C.08.010, a lawfully established accessory dwelling unit that is not a controlled rental unit may be eliminated subject to the issuance of a Zoning Certificate when the re-conversion restores the original single family use of the main building or lot, provided that no tenant is evicted. (Ord. 7458 NS § 3, 2016)~~

### ~~**23C.08.035 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 23C.08.020 or 23C.08.030. In any such action a prevailing plaintiff may recover reasonable attorney's fees. (Ord. 7458 NS § 4, 2016)~~

### ~~**23C.08.040 Elimination of Residential Hotel Rooms**~~

~~A.—The Board may approve a Use Permit to remove a Residential Hotel Room if it finds that, prior to the removal of any Residential Hotel Rooms, the Residential Hotel owner will 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; and~~

~~1.—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;~~

~~2.—Prior to 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; or~~

~~3.—Residential Hotel Rooms being 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).~~

340 ~~B.— For purposes of this section, replacement rooms must be substantially comparable~~  
341 ~~in size, location, quality and amenities, and available at comparable rents and total~~  
342 ~~monthly or weekly charges to those being removed. The replacement rooms must also~~  
343 ~~be subject to rent and eviction controls substantially equivalent to those provided by the~~  
344 ~~Rent Stabilization Ordinance or those that applied to the original rooms which are being~~  
345 ~~replaced. Comparable rooms may be provided by:~~

346 ~~1.— Offering the existing tenants of the affected rooms the right of first-~~  
347 ~~refusal to occupy the replacement rooms;~~

348 ~~2.— Making available comparable rooms, which are not already classified~~  
349 ~~as Residential Hotel Rooms to replace each of the rooms to be removed; or~~

350 ~~3.— Paying to the City’s Housing Trust Fund an amount sufficient to provide~~  
351 ~~replacement rooms. The amount to be paid to the City shall be the~~  
352 ~~difference between the replacement cost, including land cost, for the rooms~~  
353 ~~and the amount which the City can obtain by getting a mortgage on the~~  
354 ~~anticipated rents from the newly constructed rooms. The calculations shall~~  
355 ~~assume that rents in the newly constructed rooms shall not exceed the~~  
356 ~~greater of either a level comparable to the weekly or monthly charges for~~  
357 ~~the replaced rooms or the level which would be charged if no current tenant~~  
358 ~~paid more than 30% of such tenant’s gross income for rent.~~

359 ~~C.— In a Residential Hotel owned and operated by a non-profit organization,~~  
360 ~~recognized as tax-exempt by either the Franchise Tax Board and/or the~~  
361 ~~Internal Revenue Service, Residential Hotel Rooms may be changed to~~  
362 ~~non-residential hotel room uses providing that the average number of~~  
363 ~~Residential Hotel Rooms per day in each calendar year is at least 95% of~~  
364 ~~Residential Hotel Rooms established for that particular Residential Hotel.~~  
365 ~~(Ord. 6478-NS § 4 (part), 1999)~~

366 **23C.08.050-020 Demolitions of Accessory Buildings and Buildings Used for**  
367 **Commercial, Manufacturing, ~~or~~ Community, Institutional, ~~or~~ Other Non-**  
368 **Residential Uses**

369 A. Notwithstanding any other provision of Title 23, Aa Mmain Bbuilding used for non-  
370 residential purposes containing less than 5,000 square feet of floor area may be  
371 demolished subject to issuance of an AUPUse

372 Permit; a Mmain Bbuilding containing 5,000 square feet or more of floor area may be  
373 demolished subject to issuance of Use Permit.-

374 B. A demolition of an ~~accessory~~Accessory Bbuilding other than an Accessory  
375 Dwelling Unit containing less than 300 square feet of floor area is permitted ~~as of right~~  
376 subject to the issuance of a Zoning Certificate; an ~~A~~Accessory Bbuilding other than an  
377 Accessory Dwelling Unit containing 300 square feet or more of floor area may be  
378 demolished subject to the issuance of an AUP.

379 C. Any application for a Use Permit or AUP to demolish a non-residential building or  
380 structure which is 40 or more years old shall be forwarded to the Landmarks  
381 Preservation Commission (LPC) for review prior to consideration of the Use Permit or  
382 AUP. The LPC may initiate a landmark or structure-of-merit designation or may choose  
383 solely to forward to the Board or Zoning Officer its comments on the application. The  
384 Board or Zoning Officer shall consider the recommendations of the LPC in considering  
385 its action on the application.

386 D. A Use Permit or an AUP for demolition of an Accessory Building other than an  
387 Accessory Dwelling Unit or for the demolition of a non-residential building or structure  
388 ~~may be approved only shall issue~~ if the Board or Zoning Officer ~~finds that the demolition~~  
389 ~~will not be materially detrimental to the commercial needs and public interest of any~~  
390 ~~affected neighborhood or the City, and one of the following findings that the demolition if~~  
391 the application complies with the requirements of Chapter 3.24, and one of the following  
392 findings is made:

- 393 1. ~~Is The demolition is~~ required to allow ~~a proposed the construction of a~~ new  
394 building or other ~~proposed~~ new Use approved by the Board or Zoning Officer; ~~or~~
- 395 2. The demolition will ~~Will~~ remove a building ~~which that~~ is unusable for activities  
396 ~~which are~~ compatible with the purposes of the District in which it is located or  
397 ~~which that~~ is infeasible to modify for such uses; ~~or~~
- 398 3. ~~Will~~ The demolition will remove a structure which represents an unabatable  
399 ~~attractive nuisance to the public~~; or
- 400 4. ~~Is The demolition is~~ required for the furtherance of specific plans or projects  
401 sponsored by the City or other local district or authority. In such cases, it shall be  
402 demonstrated that it is infeasible to obtain prior or concurrent approval for the  
403 new construction or new use which is contemplated by such specific plans or  
404 projects and that adhering to such a requirement would threaten the viability of  
405 the plan or project. ~~(Ord. 6478 NS § 4 (part), 1999)~~

406 **23C.08.~~060~~ 030 Building Relocations**

407 A. The relocation of a building from a lot is considered a demolition for purposes of  
408 this Ordinance.

409 B. The relocation of a building to a lot is considered new construction and shall be  
410 subject to all requirements applicable to new construction.

411 C. When a building is relocated to a different lot within the City, the lot from which the  
412 building is being removed shall be known as the source lot and the lot on which the  
413 building is to be sited shall be known as the receiving lot. ~~In such cases all notification~~  
414 ~~requirements apply to both the source and receiving lots.~~

415 D. The removal of a building from the source lot shall require be approved if it meets  
416 the requirements for issuance of demolition permit under this Chapter.

417 E. The relocation of a building onto the receiving lot shall be approved if it meets the  
418 requirements for construction of a new structure on the receiving lot.

419 ~~The Board may approve a Use Permit for relocation to a lot if it finds that the building at~~  
420 ~~proposed to be relocated is not in conflict with the architectural character, or the building~~  
421 ~~scale of the neighborhood or area in which such building is to be located, and the~~  
422 ~~receiving lot provides adequate separation of buildings, privacy, yards and Usable Open~~  
423 ~~Space. (Ord. 6478-NS § 4 (part), 1999)~~

424 **23C.08.~~070~~ 040 Limitations Imminent Hazards**

425 ~~A.~~—Notwithstanding anything to the contrary, if a building or structure is unsafe,  
426 presents a public hazard and is not securable and/or is in imminent danger of collapse  
427 so as to endanger persons or property, as determined the City's Building Official, it may  
428 be demolished without a Use Permit. The Building Official's determination in this matter  
429 shall be governed by the standards and criteria set forth in the most recent edition of the  
430 California Building Code that is in effect in the City.

431 ~~B.~~—~~This chapter shall be applied only to the extent permitted by state law as to~~  
432 ~~buildings which have been entirely withdrawn from the rental market pursuant to the~~  
433 ~~state statute known as the Ellis Act. (Ord. 6478-NS § 4 (part), 1999)~~



# PLANNING COMMISSION

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## NOTICE OF PUBLIC HEARING

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### NOVEMBER 18, 2020

#### **Amendment to Berkeley Municipal Code Chapter 23C.08 Demolition and Dwelling Unit Controls**

The Planning Commission of the City of Berkeley will hold a Public Hearing on the above matter, pursuant to Zoning Ordinance Section 23A.20.30, on **Wednesday, November 18, 2020**, beginning at 7:00 PM. **The hearing will be conducted via Zoom** – see the Agenda for details, which can be found here: <https://www.cityofberkeley.info/PC/>

**PUBLIC ADVISORY:** This meeting will be conducted exclusively through videoconference and teleconference. Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

**AMENDMENT DESCRIPTION:** Amend Berkeley Municipal Code (BMC) Chapter 23C.08 to ensure Berkeley's regulations pertaining to Demolitions and Dwelling Unit Controls are enforceable, comply with State regulations, correctly provide cross-references to other chapters of the BMC, and are written clearly and concisely.

**LOCATION:** Citywide.

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

#### **PUBLIC COMMENT**

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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 Secretary at the Land Use Planning Division (Attn: Planning Commission Secretary), 1947 Center Street, Second Floor, Berkeley CA 94704, or via e-mail to: [apearson@cityofberkeley.info](mailto:apearson@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, eight days before this public hearing, 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 hearing, 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**

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

### **FURTHER INFORMATION**

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Questions should be directed to Alene Pearson, at 510-981-7489, or [apearson@cityofberkeley.info](mailto:apearson@cityofberkeley.info)

Current and past agendas are available on the City of Berkeley website at: <https://www.cityofberkeley.info/PC/>

**ATTACHMENT 4 - EXISTING DEMOLITION ORDINANCE**

**[RECODIFIED IN THE BASELINE ZONING ORDINANCE AS SECTION 23.326]**

**Sections:**

**23C.08.010 Demolition or Elimination of Dwelling Units--General Requirement**

**23C.08.020 Elimination of Dwelling Units through Demolition**

**23C.08.030 Elimination of Dwelling Units and Accessory Dwelling Units through Conversion and Change of Use**

**23C.08.035 Private Right of Action**

**23C.08.040 Elimination of Residential Hotel Rooms**

**23C.08.050 Demolitions of Buildings Used for Commercial, Manufacturing or Community, Institutional or Other Non-residential Uses**

**23C.08.060 Building Relocations**

**23C.08.070 Limitations Section**

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**23C.08.010 Demolition or Elimination of Dwelling Units--General Requirement**

A. No Dwelling Unit or units may be eliminated or demolished except as authorized by the provisions of the chapter.

B. The Board may approve a Use Permit for the elimination or demolition of dwelling units only if, in addition to any other findings required by this Ordinance, it finds 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.

C. Demolition of buildings containing a single dwelling unit and buildings constructed after June 1980 shall not be subject to the findings set forth in Section 23C.08.020.A but shall be subject to subdivisions B, C, and D of Section 23C.08.020.

**Section 23C.08.020 Elimination of Dwelling Units through Demolition**

A. The Board may approve a Use Permit to demolish a building constructed prior to June 1980 on a property containing two or more dwelling units if it makes the findings required by the foregoing section, and either:

1. The building containing the units is hazardous or unusable and is infeasible to repair; or

2. The building containing the units will be moved to a different location within the City of Berkeley with no net loss of units and no change in the affordability levels of the units; or

3. 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; or

4. The demolition is necessary to permit construction approved pursuant to this Chapter of at least the same number of dwelling units. When a project is approved under this paragraph, the project applicant shall be required to pay a fee for each unit demolished to mitigate the impact of the loss of affordable housing in the City of Berkeley. The amount of the fee shall be set by resolution of the City Council. In the case of a unit with a tenant at the time of demolition, the provisions of Section 23C.08.020.C apply and the impact fee is due when that tenant vacates the unit. In lieu of paying the impact fee, the project applicant may provide a designated unit in the new project at a below market rate to a qualifying household in perpetuity. 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. The project applicant shall enter a regulatory agreement with the City of Berkeley to provide for the provision of any such in lieu units.

B. Notwithstanding Subdivision (A), demolition will not be allowed if the building was removed from the rental market under the Ellis Act during the preceding five (5) years or there have been verified cases 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, who will provide an assessment of the evidence and all available documentation to the Zoning Adjustments Board, which shall determine whether harassment or threatened or actual illegal eviction occurred.

C. If the units in a building to be demolished under subdivision (A) are occupied, the following requirements shall apply.

1. Except as set forth in paragraph (2) below:

a. 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 Chapter 13.76.

b. The applicant shall provide assistance with moving expenses equivalent to those set forth in Chapter 13.84.

c. 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.

2. An applicant under this Chapter who proposes to construct a 100% affordable housing project shall provide relocation benefits that conform to 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.).

3. Except as set forth in paragraph (4) below, sitting tenants who are displaced as a result of demolition shall be provided the right of refusal to move into the new building; and 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. Income restrictions shall not apply to displaced tenants.

4. In cases where an applicant under this Chapter has constructed a 100% affordable housing project, 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.

5. The provisions of this section shall not apply to tenants who move in after the application for demolition is submitted to the City provided that the owner informs each prospective tenant about the proposed demolition and that demolition constitutes good cause for eviction.

D. Notwithstanding anything in Title 23 to the contrary, but subject to any applicable requirements of the Landmarks Preservation Ordinance (BMC Chapter 3.24), 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.

#### **Section 23C.08.030 Elimination of Dwelling Units and Accessory Dwelling Units through Conversion and Change of Use**

A. The Board may approve a Use Permit for the elimination of a dwelling unit through combination with another dwelling unit for purposes of occupancy by a single household if it finds that:

1. The existing number of dwelling units exceeds the number permitted by the maximum residential density applicable to the District where the subject building is located; and

2. 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 prior to the date of the application and none of the affected units is currently occupied by a tenant, or all dwelling units that would be affected by the elimination are being sold by an estate and the decedent occupied the units as their principal residence for no less than two years prior to the date of their death.

B. Notwithstanding Subdivision (A), demolition will not be allowed if the building was removed from the rental market under the Ellis Act during the preceding five (5) years or there have been verified cases 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, who will provide an assessment of the evidence and all available documentation to the Zoning Officer or Zoning Adjustments Board, which shall determine whether harassment or threatened or actual illegal eviction occurred.

C. In the event a unit eliminated pursuant to subdivision (A) 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. This requirement shall be implemented by a condition of approval and a notice of limitation on the property, acceptable to the City, which provides 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, which shall be deposited into the City's Housing Trust Fund. The City may exempt an applicant from the two year residency requirement in the event of an unforeseeable life change that requires relocation.

D. In cases where elimination of a dwelling unit reduces the number of units in a building to four (4), the applicant shall record a notice of limitation against the subject property that the limitation on eviction of tenants under Section 13.76.130.A.9.i(iii) shall continue to apply until such time as the building is demolished or sufficient units are added or restored such that the building contains at least five (5) units.

E. Alternatively, the Zoning Officer may issue an AUP for a conversion which eliminates a dwelling unit if they find that the conversion of the building will restore or brings 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 A.2., B., C. and D. of this section.

F. The Board 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.

G. The Board may approve a Use Permit for the elimination of 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 (SRO) Rooms in residential developments undergoing a publicly-funded rehabilitation.

H. Notwithstanding the general Use Permit requirement under 23C.08.010, a lawfully established accessory dwelling unit that is not a controlled rental unit may be eliminated subject to the issuance of a Zoning Certificate when the re-conversion restores the original single family use of the main building or lot, provided that no tenant is evicted.

### **Section 23C.08.035 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 23C.08.020 or 23C.08.030. In any such action a prevailing plaintiff may recover reasonable attorney's fees.

### **Section 23C.08.040 Elimination of Residential Hotel Rooms**

A. The Board may approve a Use Permit to remove a Residential Hotel Room if it finds that, prior to the removal of any Residential Hotel Rooms, the Residential Hotel owner will 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; and

1. 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;
2. Prior to 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; or
3. Residential Hotel Rooms being 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. For purposes of this section, replacement rooms must be substantially comparable in size, location, quality and amenities, and available at comparable rents and total monthly or weekly charges to those being removed. The replacement rooms must also be 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. Comparable rooms may be provided by:

1. Offering the existing tenants of the affected rooms the right-of-first-refusal to occupy the replacement rooms;
2. Making available comparable rooms, which are not already classified as Residential Hotel Rooms to replace each of the rooms to be removed; or
3. Paying to the City's Housing Trust Fund an amount sufficient to provide replacement rooms. The amount to be paid to the City shall be the difference between

the replacement cost, including land cost, for the rooms and the amount which the City can obtain by getting a mortgage on the anticipated rents from the newly constructed rooms. 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% of such tenant's gross income for rent.

C. 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 providing that the average number of Residential Hotel Rooms per day in each calendar year is at least 95% of Residential Hotel Rooms established for that particular Residential Hotel.

**Section 23C.08.050 Demolitions of Buildings Used for Commercial, Manufacturing or Community, Institutional or Other Non-residential Uses**

A. A main building used for non-residential purposes may be demolished subject to issuance of a Use Permit.

B. A demolition of an accessory building containing less than 300 square feet of floor area is permitted as of right; an accessory building containing 300 square feet or more of floor area may be demolished subject to an AUP.

C. 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 prior to consideration of the Use Permit or AUP. The LPC may initiate a landmark or structure-of-merit designation or may choose solely to forward to the Board its comments on the application. The Board shall consider the recommendations of the LPC in considering its action on the application.

D. A Use Permit or an AUP for demolition of a non-residential building or structure may be approved only if the Board or Zoning Officer finds that the demolition will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City, and one of the following findings that the demolition:

1. Is required to allow a proposed new building or other proposed new Use;
2. 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;
3. Will remove a structure which represents an unabatable attractive nuisance to the public; or
4. Is required for the furtherance of specific plans or projects sponsored by the City or other local district or authority. In such cases, it shall be demonstrated 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.

**Section 23C.08.060 Building Relocations**

A. The relocation of a building from a lot is considered a demolition for purposes of this Ordinance.

B. The relocation of a building to a lot is considered new construction and shall be subject to all requirements applicable to new construction.

C. When a building is relocated to a different lot within the City, the lot from which the building is being 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.

D. The Board may approve a Use Permit for relocation to a lot if it finds that the building proposed to be relocated is not in conflict with the architectural character, or the building scale of the neighborhood or area in which such building is to be located, and the receiving lot provides adequate separation of buildings, privacy, yards and Usable Open Space.

**Section 23C.08.070 Limitations**

A. 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 the City's Building Official, it may be demolished without a Use Permit. The Building Official's determination in this matter shall be governed by the standards and criteria set forth in the most recent edition of the California Building Code that is in effect in the City.

B. 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 state statute known as the Ellis Act.





4x4 Committee on Housing  
City Council and Rent Board

## **4 X 4 JOINT COMMITTEE ON HOUSING CITY COUNCIL/RENT STABILIZATION BOARD**

**Monday, April 18, 2022 – 3:00 p.m.**

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

Pursuant to Government Code Section 54953(e)(3), City Council Resolution 70,030-N.S., and Rent Board Resolution 21-29, this meeting of the City Council and Rent Stabilization Board's **4 x 4 Joint Committee on Housing** (Committee) will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Resolutions and the findings contained therein that the spread of COVID-19 continues to be a threat to the public health and that holding meetings of City legislative bodies in person would present imminent risks to the health and safety of the public and members of legislative bodies. Therefore, **there will not be a physical meeting location available.**

**To access this meeting remotely:** Join from a PC, Mac, iPad, iPhone, or Android device by clicking on this URL: <https://us06web.zoom.us/j/81166286812?pwd=SmM3Uk94L2dKTHA0T21lVWFBQTVPUT09>. 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 Webinar ID: 811 6628 6812 and Passcode: 458408. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Committee Chair.

To submit an e-mail comment to be read aloud during Public Comment, email [btran@cityofberkeley.info](mailto:btran@cityofberkeley.info) with the Subject line in this format: "PUBLIC COMMENT ITEM FOR 4 X 4 COMMITTEE". Please observe a 150-word limit. Time limits on public comments will apply. Written comments will be entered into the public record. **Email comments must be submitted to the email address above by 1:00 p.m. on the day of the Committee meeting in order to be included.**

Please be mindful that this will be a public meeting and all rules of procedure and decorum will apply for meetings conducted by teleconference or videoconference.

This meeting will be conducted in accordance with Government Code Section 54953 and all current state and local requirements allowing public participation in meetings of legislative bodies. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to DéSeana Williams, Executive Director of the Rent Board, at (510) 981-7368 (981-RENT). The Committee may take action related to any subject listed on the Agenda.



4x4 Committee on Housing  
City Council and Rent Board

**4 X 4 JOINT COMMITTEE ON HOUSING  
CITY COUNCIL/RENT STABILIZATION BOARD**

**Monday, April 18, 2022 – 3:00 p.m.**

**Approved Minutes**

1. Roll call: Mayor Arreguín called the meeting to order at 3:04 p.m.  
Present: RBC Alpert, Mayor Arreguín, CM Harrison (logged in at 3:17 p.m., logged off at 4:52 p.m.), RBC Kelley, CM Robinson, RB Chair Simon-Weisberg, CM Taplin (logged in at 3:15 p.m., logged off at 4:59 p.m.)  
Absent: RBC Johnson  
Staff present: Matt Brown, Steven Buckley, Nate Dahl, Amy Davidson, Stefan Elstrand, Margot Ernst, Jen Fabish, Matthew Siegel, Be Tran, and DéSeana Williams.
2. Land Acknowledgment Statement: *The Berkeley Rent Stabilization Board recognizes that the rental housing units we regulate are built on the territory of xučyun (Huchiun-(Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's landlords and tenants have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878 and since the Rent Stabilization Board's creation in 1980. As stewards of the laws regulating rental housing, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today.*

The Committee acknowledged the statement.

3. Approval of the agenda: M/S/C (Arreguín/Robinson) Approve the agenda with the following changes: Table item 8 to the next meeting and continue with the balance of the agenda. Roll call vote. YES: Alpert, Arreguín, Kelley, Robinson, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: Harrison, Johnson, Taplin. Carried: 5-0-0-3.

There were no public speakers.

4. Public comment on non-agenda matters: There was one speaker.
5. Approval of February 23, 2022 Committee meeting minutes: M/S/C (Robinson/Arreguín) Approve the minutes as written. Roll call vote. YES: Alpert, Arreguín, Kelley, Robinson, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: Harrison, Johnson, Taplin. Carried: 5-0-0-3.

6. Discussion and possible action on the proposed revisions to the Demolition Ordinance (Planning Department, see attachment): Steven Buckley of the Planning Department presented. Mayor Arreguín presented his proposed amendments.

M/S/C (Arreguín/Harrison) Recommend to the City Council and Planning Commission the proposed amendments to the Demolition Ordinance as proposed by the Mayor with the following additions:

1. Require that applicants must provide below market rate replacement units (Option A) and set the base rent and have further rent increases be regulated.
2. To recommend that a rent differential be modeled after the criteria in the City's Relocation Ordinance (Chapter 13.84).
3. That rent increases for new BMR units created and existing BMR units be tied to 65% of the increase in the CPI.
4. Recommend consideration of applying just cause eviction protections to BMR units in the future.
5. Refer to staff/Planning Commission to consider if there are situations where flexibility on rent replacement requirements and an option for rent controlled replacement units should be considered instead, for example in the Southside Plan Area or considerations based on the length of tenancies of current tenants.

Roll call vote. YES: Alpert, Arreguín, Harrison, Kelley, Robinson, Simon-Weisberg, Taplin;  
NO: None; ABSTAIN: None; ABSENT: Johnson. Carried: 7-0-0-1.

There was one public speaker.

7. Discussion and possible action on a memorandum regarding the potential for adding more rent controlled units under CA Civil Code Section 1954.52(b) (Vice-Chair Alpert, see attachment): The committee agreed to discuss this item with item 9.
8. Discussion and possible policy recommendation to Council regarding Relocation Ordinance and suggested additions from previous discussion regarding Tenant Habitability Plan Ordinance (requested by Mayor Arreguín and Chair Simon-Weisberg): Tabled to the next meeting by a prior vote of the committee.
9. Discussion and possible action to recommend various amendments to the Rent Stabilization and Eviction for Good Cause Ordinance to be placed on the November 2022 general election ballot (Rent Board staff, see attachment): The committee discussed items 7 and 9. Commissioner Alpert offered proposed Ordinance amendment language related to item 7, and Mayor Arreguín offered to share the language with the City Attorney for vetting. Due to time constraints and because some members of the committee had left the meeting, the committee agreed to take up these items again at a meeting tentatively scheduled for Thursday, May 5 at 3:00 p.m.

There were no public speakers on items 7 or 9.

10. Adjournment: M/S/C (Arreguín/Kelley) Motion to adjourn. Roll call vote. YES: Alpert, Arreguín, Kelley, Robinson, Simon-Weisberg; NO: None; ABSTAIN: None; Absent: Harrison, Johnson, Taplin. Carried: 5-0-0-3. The meeting adjourned at 5:26 p.m.

COMMITTEE MEMBERS:

Mayor Jesse Arreguín  
City Councilmember Kate Harrison  
City Councilmember Rigel Robinson  
City Councilmember Terry Taplin

Rent Board Chairperson Leah Simon-Weisberg  
Rent Board Vice-Chairperson Soli Alpert  
Rent Board Commissioner Xavier Johnson  
Rent Board Commissioner Andy Kelley





# PLANNING COMMISSION

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## Notice of Public Hearing

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### Wednesday, October 19, 2022

### 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, October 19, 2022 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 October 14, 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:** On April 18, 2022, the City Council / Rent Stabilization Board’s 4x4 Joint Task Force on Committee on Housing recommended amendments to the Demolition and Dwelling Unit Controls section of the BMC, relating to the demolition of dwelling units,<sup>1</sup> and potential revisions in response to Council referrals and prior discussion at the 4X4 Committee. It also discussed the effect of recent legislation (Senate Bill (SB) 330), which intersects with Density Bonus law and Ellis Act provisions that could affect the City’s approach to demolition controls where replacement units are to be provided. These amendments are being presented to the Planning Commission for further deliberation and recommendation to the City Council.

### **PUBLIC COMMENT & FURTHER INFORMATION**

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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](mailto:zcovello@CityofBerkeley.info)

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

Correspondence received by **12 pm on Monday, October 10th, 2022**, will be included as a Communication in the agenda packet. Correspondence received after this deadline will be conveyed to

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<sup>1</sup> The Demolition Ordinance also includes provisions regulating the demolition of non-residential structures and residential hotels. Those provisions are outside the scope of this revision.

the Commission and the public in the following manner:

- Correspondence received by **12pm on Tuesday, October 18<sup>th</sup>, 2022** 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**

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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**

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

## Communications

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**From:** Wu, Grace  
**Sent:** Monday, September 19, 2022 2:45 PM  
**To:** Wu, Grace  
**Cc:**  
**Subject:** Follow-up to September 7 PC meeting

Dear Commissioners,

Thank you for the discussion and comments on the Housing Element Draft Environmental Impact Report (DEIR) at the [September 7 Planning Commission meeting](#). As staff mentioned, we would appreciate any additional comments you have on the DEIR in writing. The public comment period for the DEIR ends on **Monday, October 17<sup>th</sup> at 5pm**.

Please send your comments by email or mail to:

- **Email:** Justin Horner ([jhorner@cityofberkeley.info](mailto:jhorner@cityofberkeley.info)), *OR*
- **Mail:** Justin Horner, Associate Planner, Land Use Planning Division, 1947 Center Street, 2<sup>nd</sup> Floor, Berkeley, CA 94704.

All comments will be included in the City's responses to comments on the DEIR.

Also a reminder that the next Planning Commission meeting is **Wednesday, October 19<sup>th</sup> at 7 p.m.** There will not be an October 5<sup>th</sup> meeting due to scheduling around religious holidays.

Happy Monday everyone,

Grace

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**Grace Wu**, AICP, LEED AP (she/her)  
Principal Planner, Land Use Planning Division  
1947 Center St., 2<sup>nd</sup> Floor, Berkeley, CA 94704  
**E:** [gwu@cityofberkeley.info](mailto: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

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**From:** Wu, Grace  
**Sent:** Wednesday, October 5, 2022 12:10 PM  
**To:** Wu, Grace  
**Cc:**  
**Subject:** RE: Follow-up to September 7 PC meeting

Hi Commissioners,

Couple reminders -

1. **There is no Planning Commission tonight.** See you on Zoom on **Wednesday, October 19<sup>th</sup> at 7pm**. The agenda packet will be available the week prior.
2. **Housing Element Draft EIR comments due by 5pm on Monday, October 17<sup>th</sup>.** See September 19<sup>th</sup> email below for more information.

Sincerely,

Grace

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**From:** Wu, Grace  
**Sent:** Monday, September 19, 2022 2:45 PM  
**To:** Wu, Grace <GWu@cityofberkeley.info>  
**Cc:**  
**Subject:** Follow-up to September 7 PC meeting

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Happy Monday everyone,

Grace

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**Grace Wu**, AICP, LEED AP (she/her)  
Principal Planner, Land Use Planning Division  
1947 Center St., 2<sup>nd</sup> Floor, Berkeley, CA 94704  
**E:** [gwu@cityofberkeley.info](mailto:gwu@cityofberkeley.info) | **P:** 415-961-9518  
<https://berkeleyca.gov/construction-development>



## Communications

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**From:** Wu, Grace  
**Sent:** Tuesday, October 11, 2022 9:54 PM  
**To:** Wu, Grace  
**Cc:**  
**Subject:** FW: 1st Annual Achievers Luncheon

Dear Planning Commissioners,

I am forwarding the below invitation as an FYI, per BART's request. There is not an expectation for you to attend.

-Grace

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**From:** Anisa McNack <[AMcNack@bart.gov](mailto:AMcNack@bart.gov)>  
**Sent:** Wednesday, October 5, 2022 8:58 PM  
**To:** Commission <[Commission@cityofberkeley.info](mailto:Commission@cityofberkeley.info)>  
**Subject:** 1st Annual Achievers Luncheon

**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.

Greetings,

I hope this email finds you well. You are cordially invited to The National Organization of Black Law Enforcement Executives - San Francisco Bay Area Chapter 1st Annual Achievers Luncheon on **October 26, 2022, at the Fairview Metropolitan Golf Course, 10051 Doolittle Drive, Oakland CA, from 11:30 AM - 13:30 PM**. The luncheon theme is ***"Leading Reform: Challenging Assumptions"***. We will be honoring leaders with a commitment to our youth and social justice, creating strong police & community relationships, and enhancing transparency and accountability.

Please see the attached flyer.

If you have any questions, do not hesitate to contact me at 510-409-9641.

Sincerely,

Commander Anisa McNack L19

BART Police Department

101 8th Street

Oakland, Ca. 94607

[amcnack@bart.gov](mailto:amcnack@bart.gov)

510-464-7235 (Office)

510-908-3363 (Cell)