



BERKELEY CITY COUNCILMEMBER  
**TERRY TAPLÍN**  
DISTRICT 2

CONSENT CALENDAR  
February 22, 2022

To: Honorable Mayor and Members of the City Council  
From: Councilmember Taplin (Author), Councilmember Hahn (Co-Sponsor),  
Councilmember Bartlett (Co-Sponsor), Mayor Arreguin (Co-Sponsor)  
Subject: Streamlining Toxic Remediation in Manufacturing Districts

RECOMMENDATION

Refer to the City Manager the development of a streamlined process that would allow for one application process, rather than separate application processes for the City’s Planning Department and the Toxics Division; and refer to the Planning Commission several amendments to the zoning code in order to facilitate toxic remediation in manufacturing districts; in addition, refer to expedite consideration of Councilmembers Wozniak and Moore’s 2012 referral<sup>1</sup> to the Planning Commission referenced in Background section, and request it be moved forward as quickly as possible; in addition, refer to the City Manager to consider any and all means to streamline and/or improve the city’s processing of remediation of toxic sites.

POLICY COMMITTEE RECOMMENDATION

On January 20, 2022, the Land Use, Housing & Economic Development Policy Committee took the following action: *M/S/C (Hahn/Robinson) Positive recommendation to refer the item to Council as amended to expand the scope of the referral and specifically request expedited Planning Commission review of the previous 2012 referral. Vote:All Ayes.*

FINANCIAL IMPLICATIONS

Staff time.

CURRENT SITUATION AND ITS EFFECTS

Streamlining toxic remediation in manufacturing districts is a Strategic Plan Priority Project, advancing our goal to be a global leader in addressing climate change, advancing environmental justice, and protecting the environment. Expediting toxic

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<sup>1</sup>[https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-\\_City\\_Council/2012/05May/2012-05-01\\_Item\\_20\\_Amend\\_the\\_Zoning\\_Code\\_to\\_Facilitate\\_Toxic\\_Remediation.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_City_Council/2012/05May/2012-05-01_Item_20_Amend_the_Zoning_Code_to_Facilitate_Toxic_Remediation.pdf)

remediation is also a racial equity issue, in light of research showing that environmental hazards are more likely to be sited in minority neighborhoods.<sup>234</sup>

The current process for toxic remediation in manufacturing districts that require the removal of a building, whether or not it is currently in use, is lengthy and inefficient. There may be some amendments that can be made to the zoning code to make the process much more efficient.

Currently, the City of Berkeley Municipal Code Section 23C.08.050 reads as follows:

**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

<sup>2</sup> Pastor, M., Sadd, J., & Hipp, J. (2001). Which came first? Toxic facilities, minority move-in, and environmental justice. *Journal of urban affairs*, 23(1), 1-21.

<sup>3</sup> Neumann, C. M., Forman, D. L., & Rothlein, J. E. (1998). Hazard screening of chemical releases and environmental equity analysis of populations proximate to toxic release inventory facilities in Oregon. *Environmental Health Perspectives*, 106(4), 217-226.

<sup>4</sup> Bolin, B., Matranga, E., Hackett, E. J., Sadalla, E. K., Pijawka, K. D., Brewer, D., & Sicotte, D. (2000). Environmental equity in a sunbelt city: the spatial distribution of toxic hazards in Phoenix, Arizona. *Global Environmental Change Part B: Environmental Hazards*, 2(1), 11-24.

such a requirement would threaten the viability of the plan or project. (Ord. 6478-NS § 4 (part), 1999)

Prior to any demolition, the project must be granted a Use Permit or an AUP, requiring findings, none of which include toxic remediation under a building.

BMC Section 23E.80.909 Paragraph D states that

D. Except as permitted under 23E.80.045, subdivisions A.1 or A.2, in order to approve a Use Permit under Section 23E.80.045 to change the use of or remove more than 25% of the floor area of a building currently or most recently used for manufacturing, wholesale trade or warehousing, the Zoning Officer or Board must find:

1. Any necessary Use Permits that have been approved to provide comparable quality replacement manufacturing, wholesale trade and/or warehousing space in Berkeley at a comparable rent and that such replacement space will be available before the demolition or change of use of the space; or
2. As a result of lawful business and building activities, there are exceptional physical circumstances (exclusive of the presence of hazardous materials in the building(s), soil or groundwater) found at the building not generally found in industrial buildings in the District which make it financially infeasible to reuse the building for any of the range of manufacturing, wholesale trade or warehouse uses permitted in the District. The analysis of the financial feasibility effects (which shall be verified by the City) of these physical circumstances shall consider those costs necessary to make the building meet current minimum standards for manufacturing, wholesale trade or warehouse buildings; and
3. Appropriate mitigation has been made for loss of the manufacturing, warehousing or wholesale trade space in excess of 25% of that space through providing such space elsewhere in the City, payment into the West Berkeley Building Acquisition Fund, or by other appropriate means.

This requires findings that allow the removal of a building where there are “exceptional physical circumstances,” but such circumstances specifically do not include “presence of hazardous materials in the building(s), soil, or groundwater.”

### BACKGROUND

In order to streamline toxic soil remediation, former Councilmembers Wozniak and Moore recommended adding a fifth provision to Chapter 23C.08.050 Paragraph D stating: “It is required to allow the remediation of toxic soil in conformance with DTSC Clean-up Requirements and a City of Berkeley approved toxic clean-up and monitoring program.”

The councilmembers additionally recommended that Chapter 23E.80.090 Findings should be amended to include a new finding number 4 stating that: “As a result of previous building activities there are hazardous materials that are required to be remediated and monitored which could not otherwise be fully characterized, remediated or monitored without demolition of the building(s).”

The City Council approved this referral<sup>5</sup> to the Planning Commission in 2012, but the Commission failed to address this issue last year. The Commission must be directed to consider the above recommendations to improve the toxic remediation process as soon as possible, with support from city staff as needed.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

As the level of the San Francisco Bay rises in the coming decades due to climate change, the toxic waste that lies in Berkeley's flatland soil will become more dangerous for current and future residents. During highwater storm events, the toxic contents of West Berkeley soils have an increased chance of seeping into homes and businesses.<sup>6</sup> A streamlined toxic soil remediation process will reduce Berkeley's industrial pollution at a fast pace, improving soil and water quality and likely improving the environmental health of those who live in the former manufacturing areas of Berkeley. As is the case with many cities around the world, the residents who live the closest to the polluted soils have historically been people of color. Due to this, this effort will take a major step towards reducing environmental racism in Berkeley. Furthermore, remediating Berkeley's toxic waste in light-industrial zones may encourage the redevelopment of the toxic land into future clean manufacturing uses, an essential plank of the Green New Deal, that Berkeley must encourage in its pursuit of decarbonization.

CONTACT PERSON

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<sup>5</sup>[https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-\\_City\\_Council/2012/05May/2012-05-01\\_Item\\_20\\_Amend\\_the\\_Zoning\\_Code\\_to\\_Facilitate\\_Toxic\\_Remediation.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_City_Council/2012/05May/2012-05-01_Item_20_Amend_the_Zoning_Code_to_Facilitate_Toxic_Remediation.pdf)

<sup>6</sup><https://www.nbcbayarea.com/investigations/toxins-long-buried-may-surface-as-groundwater-rises/2718842/#:~:text=Water%20rising%20beneath%20the%20ground,the%20San%20Francisco%20Bay%20Area.&text=Experts%20tell%20NBC%20Bay%20Area,event%2C%20or%20as%20groundwater%20rises.>



