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SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 3

Meeting Date: October 26, 2021

Item Number: 33

Item Description: Objective Standards Recommendations for Density, Design and Shadows

Submitted by: Councilmembers Sophie Hahn, Susan Wengraf, Kate Harrison, and Mayor Jesse Arreguin

Several amendments are introduced to the Supplemental 1 submission from the above Councilmembers and Mayor including:

1. The first paragraph of the “Background” section (and associated footnotes) was inadvertently deleted from the Supplemental 1 submission, and is restored here.
2. Emphasis throughout to clarify that all objective standards shall conform with State law and shall not reduce development capacity.

ACTION CALENDAR

October 26, 2021

(Continued from September 28, 2021)

To: Members of the City Council

From: Councilmembers Sophie Hahn, Kate Harrison, Susan Wengraf and Mayor Jesse Arreguin

Subject: Supplemental Recommendations on Objective Standards

RECOMMENDATION:

Refer to the City Manager, for review by the Planning Commission and City Attorney ~~and approval by the City Council, recommendations~~ the concepts presented below for regarding codification of objective standards for Commercial Districts and the MU-R for elements of Berkeley's zoning code traditionally addressed through the use permit process. Objective Standards for each District should reflect current patterns and practices of the Zoning Adjustments Board and Zoning Officer, including special consideration for impacts where Commercial and MU-R Districts border each other, or Residential. Objective Standard recommendations should be brought back to the City Council for final action.

Specific recommendations are described more fully below and include:

- Adopting units-per-acre density standards. To conform with State Law, density standards must not reduce the capacity for residential development below what is currently in effect in the General Plan and what can otherwise be built under existing City standards.
- Using a "Daylight Plane" method for shadowing standards. Develop shadowing standards providing an objective, measurable method of calculating shadow impacts, such as a Daylight Plane, that does not reduce a site's residential development capacity. If shadowing standards would reduce building area, other standards should be relaxed to ensure that there is no net loss in residential capacity.
- Developing limited standards regarding building form and elements

The City Manager is requested to prioritize recommendations most urgently needed to address project types subject to state-mandated ministerial review and to support implementation of any rezoning related to the 2023 Housing Element Update. Additional recommendations, if any, should be brought forward as quickly as possible.

All of the recommendations herein and any variations or alternatives which may be proposed by the City Manager, Planning Commission, or City Attorney shall conform and not conflict with State laws.

Funds needed, if any, for additional consulting services to complete objective standards codification should be referred by the City Manager to the budget process.

BACKGROUND:

Berkeley's Zoning Ordinance is made up almost entirely of base objective standards, often coupled with an allowance to exceed those standards with a Use Permit (UP) or Administrative Use Permit (AUP).¹ Every element of the code that provides for allowable height, setbacks, number of units, building separation, lot coverage, open space, and similar is an objective standard. For many elements, a base standard is provided with an allowance to exceed the standard if the Zoning Officer/Staff, who issue AUPs, or the Zoning Adjustments Board (ZAB), that issues UPs, determines that the impact of exceeding the standard is not detrimental.²

AUPs and UPs to exceed base standards are routinely granted. In some cases, on review by Staff or the ZAB, impacts of diverging from an objective standard are found to be excessive, and the applicant is asked to revise their plans to reduce impacts. The back-and-forth between Staff or ZAB and the applicant in almost all cases results in a project that is approved, with impacts on adjacent properties and/or the neighborhood and community having been taken into account.

There are a few areas of Berkeley's Zoning Ordinance where no (or very limited) standards exist, and the evaluation of impacts to adjacent properties, the neighborhood and the community is undertaken by Staff (officially, the Zoning Officer) or ZAB, who apply their judgement with reference, in general, to (1) the circumstances which exist at the time the permit is being issued, (2) the general purposes of the zone/district in which the project is found, and (3) definitions and standards that appear elsewhere in the

¹ Applicants may also seek a Variance to diverge from objective standards, but these are only for extreme divergence, and the bar to receive a Variance is very high. For these reasons, variances are rarely sought or granted in Berkeley.

² The standards for approval of an AUP and UP are the same; the difference is that AUPs are approved by the Zoning Officer/Staff and UPs are approved by the Zoning Board.

code. Because Staff and ZAB routinely make these evaluations, there is significant consistency across applications; while there may be no “objective” standards or binding precedents there are patterns and practices.

While the overwhelming majority of projects in Berkeley that require AUPs or UPs are approved by Staff or ZAB and are not appealed, a small number are appealed, protracting the permitting process. In most cases, the decisions of Staff or ZAB are not overturned on appeal, resulting in permits being upheld, sometimes with modifications. In just a few cases, decisions of Staff or ZAB are overturned by the appeals decision-making body.³

With the advent of State laws that seek to reduce time involved in permitting processes and increase certainty for applicants/developers, mandating “by right” or “ministerial” permitting for projects that conform with base standards, *Berkeley needs to codify standards for elements that have traditionally been left in part or whole to Staff or ZAB’s review.*

Codifying standards for these elements means existing patterns and practices will be quantified and written down (and can be adjusted); *it does not mean new elements are introduced.* Conversely, because State law requires application of written, objective standards, *failure to document standards for these elements - to be “silent” where staff and community standards have long been applied - would represent an affirmative choice to allow unlimited impacts where impacts have long been considered.*

In a by-right/ministerial approvals scenario, base standards, which vary across Districts, are best thought of as *standards that are so unlikely to present unacceptable impacts that automatic approval of applications meeting those standards is warranted across a variety of circumstances.*⁴ Base standards *do not operate as a bar to approval of a zoning application*; applications that exceed base standards in Berkeley can be - and already are - routinely considered and approved.

Base objective standards under a by-right or ministerial review process are thus the standards for *automatic* approvals. Projects with elements and impacts that exceed those standards are still approved through the existing AUP/UP process.⁵ Staff or ZAB take a second look and determine whether exceeding those base standards would be

³ Zoning Officer/Staff decisions are reviewed by ZAB, and ZAB decisions are reviewed by the City Council.

⁴ ‘Circumstances’ might include lot size, shape, topography, proximity to other Districts, overlays, etc.

⁵ See footnote 1

detrimental to adjacent properties, the neighborhood or the community.⁶ The overwhelming outcome of Staff or ZAB review is that projects are approved as originally presented, or as refined via a back-and-forth with the applicant.

The areas of Berkeley's Zoning Ordinance that have limited, if any, base standards in place are density, light/sunlight/shadows, privacy, views, and to some extent, building form and elements. All of these have traditionally been left in part or full to the consideration of Staff or ZAB in the AUP/UP and related Design Review processes.

Berkeley's Zoning Code is unusual in not including specific density limits (units or people per parcel or acre) for all Districts. In Berkeley's C- and MU-R Districts, building height, setbacks, lot coverage, Floor Area Ratio (FAR)⁷ and other elements shape building size and placement, but do not prescribe density of units or individuals. This complicates certain circumstances where State and local laws interact. Providing specific density standards for these Districts will facilitate application of State laws.

Berkeley's relative lack of explicit standards in these areas is not unique; many jurisdictions' zoning codes and practices also address some or all elements of building form, sunlight/shadows, privacy, and views through discretionary/community processes. At the same time, some jurisdictions do have more prescriptive, "objective" standards already in place. Differences among jurisdictions are largely a matter of style; some codes were written in a more prescriptive manner, while others, like Berkeley's, were written with more flexibility.

DISCUSSION & RECOMMENDATIONS:

The recommendations herein provide a structure and some guidelines for Staff and the Consulting team to use in proposing codification of objective standards, for Commercial and MU-R districts, for elements traditionally left to Staff or ZAB review, or where Berkeley's code is currently silent. Where appropriate, standards proposed should include allowances to exceed base standards (with or without caps), as is common throughout Berkeley's Zoning Code.

As with all objective standards, it is likely that standards may differ from District to District, in overlay areas, and where one District, Zone or overlay area borders another. Staff and the consulting team are asked to undertake a segmented review of each

⁶ "Detriment," the crux of the standard by which applications to exceed base objective standards is reviewed, is a much higher standard than a finding of negative impact. Many projects with negative impacts are approved because their impacts, while negative, are found not to rise to the level of detriment.

⁷ [Floor area ratio \(FAR\)](#) is the ratio of a building's total floor area (gross floor area) to the size of the piece of land upon which it is built.

meaningfully different circumstance,⁸ consider current patterns and practices of Staff and ZAB, review zoning codes of similar sized or situated jurisdictions, and propose standards for Berkeley to codify.

DENSITY

DISCUSSION:

Berkeley's current zoning code uses a variety of methods to regulate the intensity of development on a single parcel. Not every zone uses all of the methods, but all use one or more.

- Prescribed number of units per parcel or parcel of a certain size (R-zones)
- Height, Setbacks, Building separations and Lot Coverage/Open Space requirements
- Floor Area Ratio (FAR)

Most of these approaches don't directly equate with density of units or residents. A building with allowed FAR, setbacks, and height, for example, could include only a few large units or a much larger number of small units. Because some elements of State law that interact with Berkeley's Zoning Code assume the presence of explicit density requirements, adopting clear density standards for C- and MU-R Districts will facilitate application of State requirements.

Berkeley's General Plan does provide some guidance on density, but the General Plan is not formally incorporated into the City's Zoning Ordinance, as is typical in other jurisdictions. The General Plan provides the following in the Land Use Element under Land Use Classifications:

Neighborhood & Avenue Commercial: *Population density will generally range from 44 to 88 persons per acre.*

Downtown: *Population density will generally range from 88 to 220 persons per net acre.*

Mixed Use Residential: *Population density will generally range from 22 to 44 persons per acre, where housing is allowed.*

⁸ A chart is provided in Attachment A to illustrate one method of organizing these recommendations.

Area plans may also address density in C- and MU-R Districts; staff and the consultants are requested to review applicable plans for potential guidance.

JSISHL⁹ considered dwelling units per acre as well as form-based code and floor area ratio (FAR) as approaches to regulate lot buildout and development proportions. There was also interest in a units-per-acre approach that assumed average unit sizes and bedroom counts. No strong agreement could be reached as to the best path forward.

In the end, a recommendation was made using FAR as the primary standard in residential and commercial districts and form-based code, which emphasizes standards with predictable physical outcomes such as build-to lines and frontage and setback requirements, as a secondary approach. *These approaches, however, are already in use - Berkeley's Zoning Code is primarily "form-based,"* and Residential Districts already have unit-per-parcel or parcel-size limits in place.

The missing density element in Berkeley's code is a unit- or person- per acre (or parcel) number for Commercial and MU-R Districts. This recommendation seeks explicit density standards for the C- and MU-R Districts, where the Zoning Code is currently silent.

RECOMMENDATION:

Refer to the City Manager, Planning Commission, and City Attorney, the codification of units-per-acre standards for C- and MU-R Districts, as originally recommended by the City Council on July 17, 2017. The City's General Plan, Area Plans and the Purposes Section of each District provide guidance. Rezoning to increase density beyond what is already contemplated in existing plans and purposes will be considered in the context of the Housing Element Update.

To ensure density standards conform to State Law, any standards proposed must not reduce the capacity for residential development below what is currently in effect. Density limits articulated in the Zoning Ordinance must not be lower than what is permitted in the General Plan and can otherwise be built under existing City standards. Staff should consider upzoning parcels along with adoption of objective standards.

⁹ Council established JSISHL, the Joint Subcommittee for the Implementation of State Housing Laws, which included representatives of the Planning Commission, Zoning Adjustments Board, and Housing Advisory Commission, to review approaches to and make recommendations about objective standards for density, design, shadows and views.

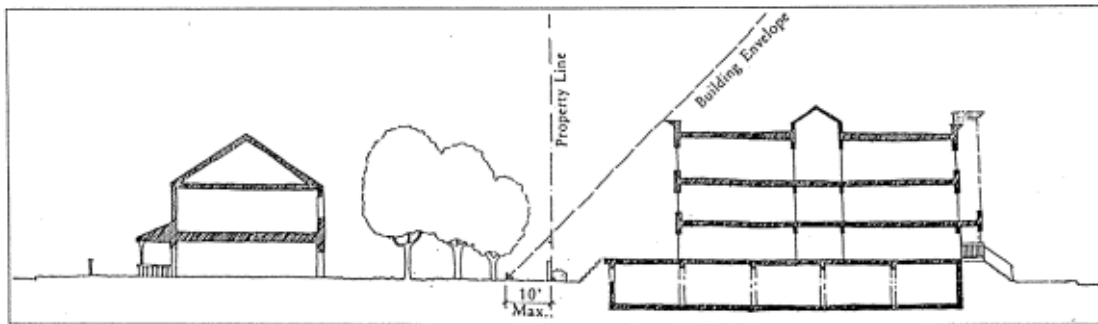
SUNLIGHT/SHADOWS

DISCUSSION:

~~One option for creating objective shadowing standards is the It is recommended that a~~ “Daylight Plane” method ~~which be used as a basis to propose maximum shadowing for by right/ministerial approvals, with extra allowances, as appropriate. The Daylight Plane approach~~ is already reflected in the [University Avenue Strategic Plan](#) and was used by El Cerrito for San Pablo Avenue ~~and by Los Angeles, San Francisco, and many other California cities. These cities’ Many other zoning codes use this method and~~ can serve as examples. In addition, other objective shadowing standards should be considered, to best ensure goals are achieved while conforming in full with State housing laws.

Shadowing of residential properties, especially those in neighboring R-Districts, and of parks, schoolyards, and other public outdoor spaces should be considered.

Example from the City of Berkeley’s University Avenue Strategic Plan:



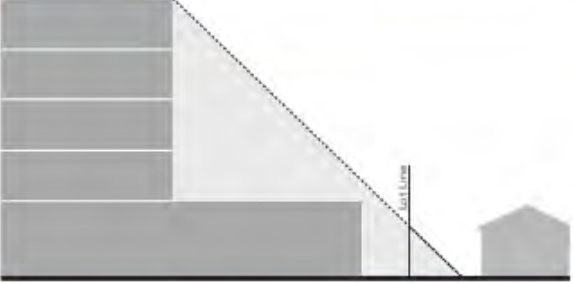
down as it approaches the rear property line, so as not to obstruct direct sunlight to adjacent

A building may not cast a shadow greater than 10' on an adjacent rear yard when the southern sun is at a 45 degree angle.

Example from [El Cerrito's Avenue Specific Plan for San Pablo](#):

2.01.05 FBC SUMMARY: SHADOWS

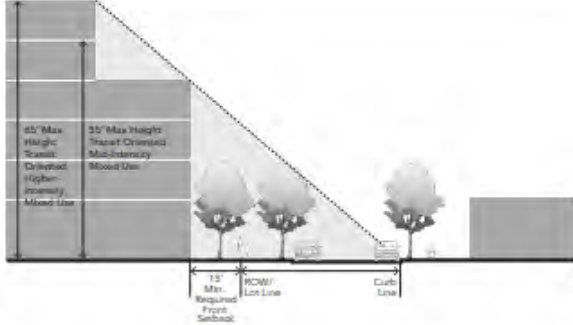
Rear and Upper Floor Rear Setback Adjacent to Residential Lot



Buildings shall not cast shadows onto adjacent existing residential uses on Winter Solstice (December 21):

- Adjacent parcels to the east greater than 14'-0" deep at 1:30pm.
- There is no requirement for shadows onto adjacent parcels to the west because shadows are negligible due to solar angle.

Front and Upper Floor Front Setback Along Street



Buildings shall not cast shadows beyond the curb line on the opposite side of the street on Winter Solstice (December 21):

- Streets to the east of the parcel at 1:30pm.
- Streets to the north of the parcel at 10:00am or 4:00pm.
- There is no requirement for streets to the south and west of the parcel because shadows are negligible due to solar angle.

02-4 - San Pablo Avenue Specific Plan - August, 2014 - Corrected

Shadows can also impact solar arrays. Berkeley needs to meet its climate action clean energy goals *and* build new housing, placing two important values in tension. This tension is not unique to Berkeley; all progressive communities that value both housing creation and the reduction of GHG emissions must find ways to ensure both can go forward in a robust manner.

It is therefore recommended that solar access regulations in other communities (and countries) be reviewed and solutions proposed that best support the maximization of *both goals*. In addition, Berkeley's Zoning Code has provisions for [private solar access easements](#) that include definitions and impact considerations that can be incorporated into objective standards.

RECOMMENDATION:

Develop shadowing standards providing an objective, measurable method of calculating shadow impacts on properties. Staff and consultants should take into consideration alternate proposals considered by JSISHL and any other objective shadowing standards in use in other California cities. Objective standards developed through this process should not reduce a site's residential development capacity. If shadowing standards would reduce building area, other standards should be relaxed to ensure that there is no net loss in residential capacity (for example, reduced setbacks and lot coverage or increased height could offset reductions that the objective shadow standard would otherwise create). Staff should also consider any upzoning necessary to balance impacts of proposed objective standards.

~~Using a Daylight Plane method, standards for shadowing and solar impacts should be proposed for all C- and the MU-R Districts.~~ Proposed standards for all C- and MU-R Districts should include both base and, where appropriate, extra allowances and ~~/or programs and~~ consider the following:

- Consideration for public parks, gardens, schools and recreation and gathering areas
- Protections for solar panels and/or compensation for loss of solar panel access
- Standards for transitions where Commercial/MU-R and Residential Districts meet, to limit impacts
- If possible, allowance for adjustments ~~(through the use permit process)~~ as necessary to the location, orientation and massing of structures to minimize shadowing and/or solar access impacts, including allowances to reduce setbacks or lot coverage requirements.

BUILDING FORM & BASIC DESIGN ELEMENTS

The term “Design Standards” encompasses a wide variety of concepts, many of which make no sense for the City of Berkeley, where a wide variety of styles, from traditional to eclectic, co-exist (mostly) in harmony. In addition, overly complicated and prescriptive design standards can hamper development and in some cases add costs, none of which the City of Berkeley should endorse. Especially in private townhouse and subdivision-type developments, standards sometimes require an excessive level of uniformity, limiting allowable paint, fence types, trims, roof colors, and even the varieties of grass that can be grown. Berkeley should not enact these types of Design Standards.

Berkeley does, however, have some established standards relating to building form and other key building elements, and also conducts Design Review of buildings in Commercial areas. Some area plans and zoning, for the Downtown and University Avenue, for example, include objective standards such as articulated rather than flat facades, inset entries, step-backs at high elevations or where taller buildings meet lower-rise adjacent areas, and other basic building form requirements that are easy to quantify objectively. Many other jurisdictions that value housing production have similar standards in place.

As with other elements of the Zoning Ordinance that have traditionally been left partially or wholly to discretionary review, Berkeley must now codify a set of key base standards related to building form, step downs and set-backs, facades, and street-level elements (entries, commercial spaces, drop off and bike access zones, etc.) that are *so fundamental to good architecture and a positive pedestrian and community experience that buildings meeting those standards rightly can be approved through a ministerial process*. Again, as with other objective elements, appropriate base standards may vary across Districts, Zones, Overlays and at borders.

In addition to providing base standards, Berkeley can and should allow buildings that diverge from those standards to be reviewed and considered for approval on a case-by-case basis through the use permit process. In addition, in the long run (not through this process), Berkeley may wish to create more detailed Design Guidelines that would be advisory, as is the practice in many cities across the Bay Area and the State.

Thus, a two-tiered system (base standards appropriate for ministerially approved buildings and extra-allowance standards for structures that wish to go beyond base standards) can co-exist with a set of non-binding Guidelines that help architects and designers anticipate elements that would enhance their projects.

As Berkeley is increasingly required by State law to approve projects through a ministerial process, some standards that are already being applied by Staff, ZAB and Design Review, in particular those relating to building form, setbacks, and step-downs/setbacks and to basic elements that improve the street-level and retail experience for pedestrians and bicyclists, should be codified. As with other areas traditionally left to Staff or ZAB review, failure to codify basic elements of building form and articulation would represent *an affirmative decision to leave a void where community standards have long been successfully applied*.

All buildings built over the last 50 years in Berkeley’s commercial districts were subject to design review; the fact that few would fail to meet the kinds of base form and design standards that Staff has proposed is proof that the existing design review process has yielded the desired results. Abandonment of these standards in the ministerial/by-right context, by choosing not to codify them, would likely result in at least some buildings whose form and elements would not be up to current standards.

RECOMMENDATION:

Staff on March 23, 2021 filed [a supplemental proposing draft objective standards](#).¹⁰ They cover in very basic terms a few key elements:

1. Building Form and Design
(including massing, number of materials, rooflines, facades, and windows)
2. Ground Floors
(including awnings, entries, storefronts, street trees, and signage)
3. Screening
(for parking lots, garbage areas, lighting, fences and mechanical equipment)

Staff and the consulting team should continue refining these proposed base standards, including consultation with the Design Review Committee and ZAB and review of standards adopted or proposed in other similar California jurisdictions, and consider special standards (step-downs, for example) where C- and MU-R Districts meet each other or meet overlays or Residential areas.

In particular on Berkeley’s commercial “spines” and at the edges of the Downtown, step-downs avoid unnecessarily abrupt transitions and ensure buildings meet adjacent neighborhoods respectfully. They also help mitigate shadowing, view, and privacy impacts, thus serving many neighborly functions. Staff should also clarify that base standards for form and other building elements, applied to buildings seeking ministerial approvals, in no way present a bar to what can be approved. Proposals that do not conform with these standards should still be able to receive permits on a case by case basis.

Recent case law should also be reviewed to ensure compliance with quickly evolving legal standards for objective elements.

¹⁰ https://www.cityofberkeley.info/Clerk/City_Council/2021/03_Mar/Documents/2021-03-23_Supp_3_Reports_Item_17_Supp_Planning_pdf.aspx

VIEWS

DISCUSSION:

Views are currently considered in Berkeley's land use decision-making processes, and are defined and addressed in several places in the Zoning Code. Evaluation of view impacts has traditionally been left to discretionary process; thousands - likely tens-of-thousands - of projects with view impacts have been approved over decades of land use decisions by the Zoning Officer, ZAB and the City Council - primarily in Residential Districts. Consideration of views is therefore a deeply embedded concept in Berkeley, and has not been a barrier to project approvals. Moreover, staff has developed administrative standards to guide its evaluation of impacts on protected views. However, this staff level guidance is not codified in the Municipal Code or any formal Administrative Regulation and is not considered an "objective standard".

As with sunlight and shadowing, many jurisdictions already have more objective standards for view impacts in place; Berkeley's lack of codified standards is a result of our Zoning Code and General Plan's more community-centered style and does not reflect a lack of concern for impacts. With a broadening of project types subject to ministerial approvals, including projects with potential view impacts that traditionally have been evaluated through Berkeley's use permit process, some view impact standards will need to be more fully codified. As with other elements typically left to discretionary review, failure to codify basic current practices would mean that an area of longstanding concern and application of standards would now be subject to no standards at all.

RECOMMENDATION:

Because Commercial and MU-R Districts are in flat areas of the City, view impacts are generally less prevalent. Most developments in these Districts present few, if any, significant view impacts to smaller neighboring residences, and developers building larger multi-family buildings know that their buildings' views, if any, are vulnerable to the addition of other tall buildings in the same area.

Step-downs and other features to mitigate shadowing, privacy and other concerns are already recommended. These mechanisms also mitigate view impacts which may exist at the interface/edges of C-/MU-R Districts and Residential areas. For the density that will be required in C- and MU-R Districts to meet our RHNA requirements, some views will inevitably be impacted by developments in these areas, mitigated somewhat by attention to step-downs and set-backs at borders.

PRIVACY

DISCUSSION:

Like “light,” “air,” and views, “privacy” is a longstanding element of consideration in zoning, but primarily for residential areas. In fact, every R-Zone in the Ordinance mentions consideration of privacy in its Purposes. The concept, however, isn’t defined or addressed with more precision anywhere in the Zoning Ordinance,¹¹ and is rarely, if ever, addressed in the context of Commercial Districts. One exception is in Section 23E.04, which addresses C-Lots abutting residential zones:

23E.04.050 Special Yard Requirements for C- Lots Abutting Residential Zones

E. The Board may approve a Use Permit authorizing yards smaller than those required above if it finds that such smaller yard would provide *greater privacy* or improved amenity to a lot in the residential District. [emphasis added]

RECOMMENDATION:

Because privacy is a greater concern in residential areas, and because step-downs, setbacks and other similar requirements, especially where C- and MU-R Districts meet, serve the purpose of preserving privacy as well as mitigating shadowing and view impacts, no special recommendations regarding privacy are offered for these Districts.

Attachments:

- A - Suggested format for conceptualizing, segmenting and proposing base and extra-allowance standards
- B - Excerpts from Berkeley’s Zoning Ordinance

Key Links:

- JSISHL report to Council 3/23/21, Objective Standards Recommendations for Density, Design and Shadows
https://www.cityofberkeley.info/Clerk/City_Council/2021/03_Mar/Documents/2021-03-23_Item_17_Objective_Standards.aspx
- Staff Supplemental 3/23/21, Objective Standards
https://www.cityofberkeley.info/Clerk/City_Council/2021/03_Mar/Documents/2021-03-23_Supp_3_Reports_Item_17_Supp_Planning_pdf.aspx
- JSISHL, Working Draft Recommendation Report Excerpt: OBJECTIVE STANDARDS FOR DESIGN, Jul 22, 2020
https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Commissions/JSISHL/2020-07-22_JSISHL_Item%2010.pdf

¹¹ See Attachment B

ATTACHMENT A

This chart is suggestive of how to conceptualize, segment, and present proposed objective standards for codification. Not all Elements listed below will require new standards in every Zone/District/Area. As is already the practice in Berkeley’s Zoning Code, extra-allowance standards may in some cases be appropriate, and, where recommended, may be finite or open-ended.

ZONE/DISTRICT/AREA

Element	Base Standards	Extra Allowance Standards
Density	•	•
Sunlight/ Shadowing - on property within a District	•	•
Sunlight/Shadowi ng on neighboring R-Districts		
Sunlight/ Shadowing - on solar panels	•	•
Form and Separation - general		
Form & Separation - Where Districts/ Zones meet		
Etc.		

ATTACHMENT B

Excerpts from Berkeley's Zoning Ordinance

The following is cut and paste of Berkeley General Plan and Zoning Ordinance references to elements being further codified through the Object Standards process. These are not comprehensive but provide examples of how our Zoning Code already considers some of these elements.

Sunlight/Shadows

Light, Sunlight, and Shadows are NOT defined in the zoning code

23F - Definitions

Privately-Owned Public Open Space: Area on a lot that is designed for active or passive recreational use and that is accessible to the general public without a requirement for payment or purchase of goods. Such areas may include mid-block passageways and other amenities intended to improve pedestrian access. Such areas may be indoor or enclosed, **but shall include natural light in the form of windows, skylights, entryways, or other openings.**

21.36.040 Solar access easements.

For any division of land for which a tentative map is required pursuant to Section 66426 of the Subdivision Map Act, the Planning Commission may require, as a condition of approval of the tentative map, the dedication of easements for the purpose of assuring that each parcel or unit in the subdivision for which approval is sought **shall have the right to receive sunlight across adjacent parcels or units in the subdivision for which approval is sought for any solar energy system,** provided that such easements meet the following requirements:

- A. The standards for determining the exact dimensions of locations of such easements shall be:
 1. The principal axis of the easement shall be true east-west, and the principal directions of the easement shall be in the direction of the principal axis, both east and west from the boundaries of the parcel or unit for which the solar access easement is provided.
 2. The width of the easement, at right angles horizontally to the principal axis, shall be equal to one-half of the length of the longest distance that can be measured in a true north-south direction horizontally between the boundaries of the parcel or unit for which the easement is being provided.
 3. A vertical plane, running in the direction of and containing the principal axis, shall pass through the centroid of volume of the enclosed living space as shown on the tentative map, or if living space is not shown, through the geometric center of a plane horizontal projection of the boundaries of the parcel or unit for which the easement is being provided, as determined within an accuracy of one foot. The easement shall lie entirely between two vertical planes parallel to the plane containing the principal axis, lying equidistant on either side. Said parallel easement boundary planes shall be separated by a distance equal to the width of the easement.

4. A vertically projected boundary point is defined as any point lying on the horizontal boundary, within the width of the easement, of the parcel or unit for which the easement is being provided, projected vertically eight feet above the ground surface at said boundary point or to a vertically projected point lying in a horizontal plane which is three feet above a parallel horizontal plane containing the minimum point of elevation of the living space (if shown) of the parcel or unit, whichever is higher.

5. The easement shall exist above every line projected in either principal direction outward from any and all vertically projected boundary line points, at a direction of thirty degrees above the horizontal, to a distance of five hundred feet as measured horizontally from said point, or to a lesser distance such that the easement lies wholly within the vertically projected boundaries of the subdivision for which the tentative map is sought.

B. At the request of the subdivider, the Planning Commission may specify an easement of equal width for which:

1. The parallel easement boundary planes defined in subsection A,3. above and the principal directions are both rotated by not more than ten degrees in either direction and remain parallel to each other, about a vertical line through the centroid of volume or geometric center as defined in subsection A,3. above.

2. The parallel easement boundary planes defined in subsection A,3. above are both translated at right angles to the vertical plane of the principal axis by a distance equal to not more than one third of the width of the easement.

C. In requiring the dedication of a solar access easement as a condition of approval of a tentative map, the Planning Commission may specify an easement of lesser volume or dimensions, provided said easement lies wholly within the boundaries specified in subsections A or B, above.

D. No buildings or other objects with a dimension greater than one foot as measured in a projection at right angles to the principal axis of the easement, shall block such easement.

E. No trees or vegetation shall obstruct the passage of more than thirty percent of the incident sunlight which would otherwise reach the parcel through the path specifically blocked by said trees or vegetation.

F. The solar access easement, after being recorded as part of the final map, may not be terminated or revised except by the Planning Commission, on the showing of overriding public purpose, and with the consent of the owner of said unit or parcel and upon payment to said owner of just compensation for termination. Notice of the termination or revision shall be filed for record with the Alameda County Recorder in the same manner that other easements are recorded.

G. In establishing solar access easements, the Planning Commission shall give consideration to feasibility, contour, configuration of the parcel to be divided, and cost. Such easements shall not result in reducing allowable densities or the percentage of a lot which may be occupied by a building or a structure under other applicable planning and zoning regulations in force at the time the tentative map is filed.

This section is not applicable to condominium projects which consist of the subdivision of airspace in an existing building where no new structures are added.

Solar access easements shall meet the requirements specified in Section 66475.3 of the Subdivision Map Act. (Ord. 5793-NS § 2 (part), 1987)

Chapter 12.45 - SOLAR ACCESS AND VIEWS

12.45.010 Purpose and objectives.

A. The purpose of this chapter is to:

1. Set forth a procedure for the resolution of disputes between private property owners relating to the resolution of sunlight or views lost due to tree growth.

B. The objectives of this chapter are:

3. To encourage the use of solar energy for heat and light;
4. To encourage food production in private gardens;
5. To restore access to light and views from the surrounding locale;

12.45.020 Definitions.

A. For the purposes of this chapter, the meaning and construction of words and phrases hereinafter set forth shall apply:

1. "Solar access" means the availability of sunlight to a property.
4. "Complaining party" means any property owner (or legal occupant without objection of property owner) who wishes to alter or remove a tree(s) on the property of another which creates an obstruction to their access to sunlight or view whether such access is gained from an original dwelling or any addition thereto used as a dwelling.
6. "Obstruction" means any substantial blocking or diminishment of a view from a structure lawfully used as a dwelling or access to sunlight to the real property which is attributable to the growth, maintenance or location of tree(s).

12.45.030 Procedures.

A. The procedures described in this section shall be followed in the resolution of tree disputes between private parties.

1. Initial reconciliation:

A complaining party who believes in good faith that the growth, maintenance or location of tree(s) on the private property of another (hereinafter referred to as tree owner) diminishes the beneficial use of economic value of their property because such tree(s) interfere with the access to sunlight or views which existed prior to such growth, maintenance or location of

the tree(s) on the property during the time the complaining party has occupied the property, shall notify the tree owner in writing of such concerns.

5. Litigation: In those cases where initial reconciliation fails and binding arbitration is not elected, civil action may be pursued by the complaining party for resolution of the sunlight access or view tree claim under the provisions of this chapter. The litigant must state in the lawsuit that arbitration was offered and not accepted, and that a copy of the lawsuit was filed with the City Clerk.

12.45.040 Standards for resolution of disputes.

A. In resolving the tree dispute, the tree mediator, tree arbitrator or court shall consider the benefits and burdens derived from the alleged obstruction within the framework of the objectives of this chapter as set forth in Section [12.45.010](#) in determining what restorative actions, if any, are appropriate.

Burdens:

- b. The extent to which the trees diminish the amount of sunlight available to the garden or home of the complaining party.
- c. The extent to which the trees interfere with efficient operations of a complaining party's pre-existing solar energy system.
- e. The extent to which the alleged obstruction interferes with sunlight or view. The degree of obstruction shall be determined by means of a measuring instrument or photography.
- f. The extent to which solar access or the view is diminished by factors other than trees.

3. Restorative actions:

The tree mediator shall recommend or the tree arbitrator or court shall order restorative action or no action according to Section [12.45.040](#) (Standards)

- e. The extent of solar access or view available and documentable as present at any time during the tenure of the present owner or legal occupant is the limit of restorative action which may be required. If the complaining party is seeking a view or sunlight from an addition, the complaining party has no right to a view or solar access greater than that which existed at the time the construction of the addition was completed

Chapter 23E.68 - C-DMU Downtown Mixed Use District Provisions

23E.68.090 Findings

F. In order to approve a Use Permit for modification of the setback requirements of [23E.68.070.C](#), the Board must find that the modified setbacks will not unreasonably limit solar access or create significant increases in wind experienced on the public sidewalk.

Chapter 23E.36 - C-1 General Commercial District Provisions

C. No yards for Main Buildings, Accessory Buildings or Accessory Structures shall be required, except that:

- a. **Solar Rear Yard Setback:** Buildings on the north side of University Avenue shall not cast a shadow at noon more than 20 feet onto any lot in a residential zone as calculated when the sun is at a 29 degree angle above the horizon (winter solstice).

23B.34.070 Development Standards for All Green Pathway Projects

Green Pathway projects shall comply with the applicable development standards in Section [23E.68.070](#) and the following additional requirements:

- C. **Shadow** Analysis Required for Buildings With Heights Between 60 and 75 Feet: Applications shall include diagrams showing:
 1. The extent of **shading on public sidewalks and open spaces** within a radius of 75 feet of the closest building wall that would be cast at two (2) hours after sunrise, 12 p.m., and two (2) hours before sunset, on March 21, June 21, December 21, and September 21, by a building 60 feet in height that complies with all applicable setback requirements;
 2. Features incorporated into the building design, including, but not limited to, additional upper floor setbacks that will **reduce the extent of shadowing** of the proposed building to no more than 75 percent of the shadowing projected in paragraph 1 above.

VIEWS

23F.04 Definitions

View Corridor: A significant view of the Berkeley Hills, San Francisco Bay, Mt. Tamalpais, or a significant landmark such as the Campanile, Golden Gate Bridge, and Alcatraz Island or any other significant vista that substantially enhances the value and enjoyment of real property.

23D.17.070 - Wireless Telecommunication Facilities

- C. **No readily visible antenna shall be placed at a location where it would impair a significant or sensitive view corridor** except as provided in subsection 1, below.
 1. Roof-mounted antennas shall be located in an area of the roof where the visual impact is minimized. Roof-mounted and ground-mounted antennas **shall not be placed in direct line of sight of significant or sensitive view corridors or where they adversely affect scenic vistas** unless the Zoning Officer or the Zoning Adjustments Board finds that the facility incorporates appropriate, creative stealth techniques to camouflage, disguise, and/or blend into the surrounding environment to the extent possible

Section 23D.08.010 Accessory Buildings & Structures May Exceed Limit with Use Permit

- A. An Accessory Building or Accessory Structure that satisfies the requirements of this Ordinance is permitted, except in the ES-R District.
- B. The Zoning Officer may issue an AUP for an accessory structure or accessory building which does not comply with the height limits, minimum setback distances, site location and/or maximum length requirements of this chapter, except for the height limit in Section 23D.08.020.C, **subject to a finding that**

the proposed accessory building or enclosed accessory structure will not be detrimental to the light, air, privacy and view of adjacent properties. (Ord. 7522-NS § 2, 2017; Ord. 6854-NS § 2 (part), 2005; Ord. 6478-NS § 4 (part), 1999)

Section 23D.16.090 Findings (R-1)

B. To deny a Use Permit for a major residential addition or residential addition subject to 23D.16.070 the Zoning Officer or Board must find that although the proposed residential addition satisfies all other standards of this Ordinance, the addition would unreasonably obstruct sunlight, air or views. (Ord. 7426-NS § 8, 2015; Ord. 6980-NS § 1 (part), 2007; Ord. 6763-NS § 7 (part), 2003; Ord. 6478-NS § 4 (part), 1999)

Section 23D.20.090 Findings (R-1A)

B. To deny a Use Permit for a major residential addition or residential addition subject to 23D.20.070, the Zoning Officer or Board must find that although the proposed residential addition satisfies all other standards of this Ordinance, the addition would unreasonably obstruct sunlight, air or views.

Section 23D.24.020 Purposes (ES-R)

H. Give reasonable protection to views and privacy, yet allow appropriate development of all property as long as public services and access are adequate to ensure protection of the health and safety of residents in this vulnerable area;

Section 23D.28.090 Findings (R-2)

B. To deny a Use Permit for a major residential addition or residential addition subject to 23D.28.070 the Zoning Officer or Board must find that although the proposed residential addition satisfies all other standards of this Ordinance, the addition would unreasonably obstruct sunlight, air or views.

For all other residential districts - R-2A, R-3, R-4 and R-5, the same findings must be made to deny a use permit for a residential addition

CHAPTER 12.45 SOLAR ACCESS AND VIEWS (LOSS OF, DUE TO TREE GROWTH)

12.45.010 Purpose and objectives.

A. The purpose of this chapter is to:

1. Set forth a procedure for the resolution of disputes between private property owners relating to the resolution of sunlight or views lost due to tree growth.
5. To restore access to light and views from the surrounding locale;

Section 12.45.020 Definitions

2. "Views" mean a distant vista or panoramic range of sight of Berkeley, neighboring areas or the San Francisco Bay. Views include but are not limited to skylines, bridges, distant cities, geologic features, hillside terrains and wooded canyons or ridges.

4. "Complaining party" means any property owner (or legal occupant without objection of property owner) who wishes to alter or remove a tree(s) on the property of another which creates an obstruction to their access to sunlight or view whether such access is gained from an original dwelling or any addition thereto used as a dwelling.

6. "Obstruction" means any substantial blocking or diminishment of a view from a structure lawfully used as a dwelling or access to sunlight to the real property which is attributable to the growth, maintenance or location of tree(s).

Section 12.45.030 Procedures.

A. The procedures described in this section shall be followed in the resolution of tree disputes between private parties.

1. Initial reconciliation: A complaining party who believes in good faith that the growth, maintenance or location of tree(s) on the private property of another (hereinafter referred to as tree owner) diminishes the beneficial use of economic value of their property because such tree(s) interfere with the access to sunlight or views which existed prior to such growth, maintenance or location of the tree(s) on the property during the time the complaining party has occupied the property, shall notify the tree owner in writing of such concerns. The notification should, if possible, be accomplished by personal discussions to enable the complaining party and tree owner to attempt to reach a mutually agreeable solution.

5. Litigation: In those cases where initial reconciliation fails and binding arbitration is not elected, civil action may be pursued by the complaining party for resolution of the sunlight access or view tree claim under the provisions of this chapter

Section 12.45.040 Standards for resolution of disputes

A. In resolving the tree dispute, the tree mediator, tree arbitrator or court shall consider the benefits and burdens derived from the alleged obstruction within the framework of the objectives of this chapter as set forth in Section 12.45.010 in determining what restorative actions, if any, are appropriate.

2. Burdens:

d. The existence of landmarks, vistas or other unique features which cannot be seen because of growth of trees since the acquisition of the property.

e. The extent to which the alleged obstruction interferes with sunlight or view. The degree of obstruction shall be determined by means of a measuring instrument or photography.

f. The extent to which solar access or the view is diminished by factors other than trees.

3. Restorative Actions

e. The extent of solar access or view available and documentable as present at any time during the tenure of the present owner or legal occupant is the limit of restorative action which may be required. If the complaining party is seeking a view or sunlight from an addition, the complaining party has no right to a view or solar access greater than that which existed at the time the construction of the addition was completed

23B.34.070 Development Standards for All Green Pathway Projects

Green Pathway projects shall comply with the applicable development standards in Section [23E.68.070](#) and the following additional requirements:

A. **Building Setbacks Within View Corridors:** To minimize interference with significant views, buildings that are 75 feet in height or less that are located on a corner lot at any intersection with University Avenue, Center Street, or Shattuck Avenue **must include upper story setbacks as follows:** any portion of a building between 45 feet and 75 feet must be set back from property lines abutting the street by at least one (1) foot for every one (1) foot by which the height exceeds 45 feet.

“AIR”

(To be expressed through Privacy and Building Form/Separation Requirements)

Section 23A.04.030 Purpose of [Zoning] Ordinance and Relationship to Plans

D. **Provide for adequate light and air** by limiting the height, bulk and size of buildings and requiring building yard setbacks from property lines as well as separations between buildings.

Section 23D.52.090 Findings

To deny a Use Permit for a major residential addition or residential addition subject to Section 23D.52.070, the Zoning Officer or Board **must find that the addition would unreasonably obstruct sunlight, air or views.**

Section 23D.16.020 Purposes (R-1)

The purposes of the Single Family Residential (R-1) Districts are to:

C. **Protect adjacent properties from unreasonable obstruction of light and air;** and

Section 23D.16.090 - Findings (R-1)

B. To deny a Use Permit for a major residential addition or residential addition subject to 23D.16.070 the Zoning Officer or Board must find that although the proposed residential addition satisfies all other standards of this Ordinance, **the addition would unreasonably obstruct sunlight, air or views.**

Section 23D.20.020 Purposes (R-1A)

The purposes of the Limited Two-family Residential Districts (R-1A) are to:

B. **Protect adjacent properties from unreasonable obstruction of light and air;**

Section 23D.20.090 Findings (R-1A)

B. To deny a Use Permit for a major residential addition or residential addition subject to 23D.20.070, the Zoning Officer or Board must find that although the proposed residential addition satisfies all other standards of this Ordinance, **the addition would unreasonably obstruct sunlight, air or views.**

C. To approve an application for reduction of a required Rear Yard, or a reduction in building separation, the

Zoning Officer or the Board must find that the unit would not cause a detrimental impact on emergency access; or on light, air or privacy for neighboring properties

Identical or very similar provisions exist for PURPOSES and FINDINGS for R-2, R-2A, R-3, R-4

Section 23D.44.020 Purposes (R-5)

The purposes of the High Density Residential (R-5) Districts are to:

- B. Make available housing for persons who desire both convenience of location, but who require relatively small amounts of Usable Open Space; yet assure adequate light, air, privacy and Usable Open Space to promote and protect their physical and mental health;
- C. Protect adjacent properties from unreasonable obstruction of light and air;

Section 23D.44.090 Findings (R-5)

- B. To deny a Use Permit for a major residential addition or residential addition subject to 23D.44.070 the Zoning Officer or Board must find that although the proposed residential addition satisfies all other standards of this Ordinance, the addition would unreasonably obstruct sunlight, air or views.

Identical or very similar provisions for air exist in R-S and R-SMU

PRIVACY

Privacy is NOT defined anywhere in the Zoning Code

References to Privacy in the Zoning Code:

C-1 General Commercial District Provisions

Privacy Rear Yard Setback: Buildings on lots abutting a residentially zoned lot along the south side of University Avenue shall be set back from the rear property line an average of 20 feet, i.e., a rear yard shall be maintained with a minimum area equal to the width of the lot (in feet) multiplied by 20 feet. The minimum depth of any rear yard shall be ten feet, or 10% of the depth of the lot, whichever is greater, as provided in Section [23E.04.050.C](#). The ZAB may approve a Use Permit to reduce the 20 foot average and ten foot minimum setback provisions to a minimum of six feet on the first floor provided that the square footage added on the first floor by this reduction in setback is utilized to increase the average 20 foot setback on higher floors to facilitate the privacy of abutting residentially zoned lots.

- d. Front Yard Setback for Residential-Only Projects: For all floors, buildings shall provide an average two-foot setback. A maximum setback of ten feet is permitted provided that this space is used to accommodate landscaping that enhances the streetscape and provides a sense of privacy for residential units on the first floor.

23D.48.020 Purposes (R-S Residential Southside District)

23D.48.020 Purposes

B. Make housing available for persons who desire a convenient location with relatively small amounts of Usable Open Space, yet assure adequate light, air, privacy and Usable Open Space to promote and protect their physical and mental health;

23D.52.020 Purposes (R-SMU Southside Mixed Use Residential)

The purposes of the Southside Mixed Use Residential (R-SMU) Districts are to:

A. Implement General Plan and Southside Plan policy by encouraging high density, multi-story residential development close to major shopping, transportation and employment centers;

B. Make housing available for persons who desire a convenient location, but who require relatively small amounts of Usable Open Space; yet assure adequate light, air, privacy and Usable Open Space to promote and protect their physical and mental health;

23D.20.090 Findings (R-1A)

A. In order to approve any Permit under this chapter, the Zoning Officer or Board must make the finding required by Section [23B.32.040](#). The Zoning Officer or Board must also make the findings required by the following paragraphs of this section to the extent applicable:

C. To approve an application for reduction of a required Rear Yard, or a reduction in building separation, the Zoning Officer or the Board must find that the unit would not cause a detrimental impact on emergency access; or on light, air or privacy for neighboring properties.

23D.44.020 Purposes (R-5)

The purposes of the High Density Residential (R-5) Districts are to:

B. Make available housing for persons who desire both convenience of location, but who require relatively small amounts of Usable Open Space; yet assure adequate light, air, privacy and Usable Open Space to promote and protect their physical and mental health;

12.45.040 Standards for resolution of disputes.

A. In resolving the tree dispute, the tree mediator, tree arbitrator or court shall consider the benefits and burdens derived from the alleged obstruction within the framework of the objectives of this chapter as set forth in Section [12.45.010](#) in determining what restorative actions, if any, are appropriate.

d. Visual, auditory and wind screening provided by the tree(s) to the tree owner and to neighbors. Existing privacy provided by the tree(s) to the tree owner's home shall be given particular weight.

Chapter 23D.04 - Lot and Development Standards

23D.04.010 Lot Requirements

E. The Zoning Officer shall designate the front, side and rear yards for main buildings for flag lots and irregular lots, **in a manner to best protect light, air and privacy.** The yard dimensions shall be as set forth in each District's provisions.

23D.08.010 Accessory Buildings & Structures May Exceed Limit with Use Permit

B. The Zoning Officer may issue an AUP for an accessory structure or accessory building which does not comply with the height limits, minimum setback distances, site location and/or maximum length requirements of this chapter, except for the height limit in Section **23D.08.020.C, subject to a finding that the proposed accessory building or enclosed accessory structure will not be detrimental to the light, air, privacy and view of adjacent properties.** (Ord. 7522-NS § 2, 2017; Ord. 6854-NS § 2 (part), 2005; Ord. 6478-NS § 4 (part), 1999)

23D.24.020 - ES-R - Purposes

H. Give reasonable protection to views and **privacy**, yet allow appropriate development of all property as long as public services and access are adequate to ensure protection of the health and safety of residents in this vulnerable area;

23E.04.050 Special Yard Requirements for C- Lots Abutting Residential Zones

E. The Board may approve a Use Permit authorizing yards smaller than those required above if it finds that such smaller yard would provide greater **privacy** or improved amenity to a lot in the residential District.



SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 1

Meeting Date: October 28, 2021

Item Number: 33

Item Description: Objective Standards Recommendation for Density,
Design and Shadows

Submitted by: Mayor Jesse Arreguín, Councilmembers Sophie Hahn, Susan
Wengraf, Kate Harrison

Additional materials for consideration and referral to City Manager and the Planning Commission in their review and update of objective standards.

ACTION CALENDAR

October 26, 2021

(Continued from September 28, 2021)

To: Members of the City Council

From: Councilmembers Sophie Hahn, Kate Harrison, Susan Wengraf and Mayor Jesse Arreguin

Subject: Supplemental Recommendations on Objective Standards

RECOMMENDATION:

Refer to the City Manager, for review by the Planning Commission and City Attorney and approval by the City Council, recommendations regarding codification of standards for Commercial Districts and the MU-R for elements of Berkeley’s zoning code traditionally addressed through the use permit process. Objective Standards for each District should reflect current patterns and practices of the Zoning Adjustments Board and Zoning Officer, including special consideration for impacts where Commercial and MU-R Districts border each other, or Residential.

Specific recommendations are described more fully below and include:

- Adopting units-per-acre density standards
- Using a “Daylight Plane” method for shadowing standards
- Developing limited standards regarding building form and elements

The City Manager is requested to prioritize recommendations most urgently needed to address project types subject to state-mandated ministerial review and to support implementation of any rezoning related to the 2023 Housing Element Update.

Additional recommendations, if any, should be brought forward as quickly as possible.

Funds needed, if any, for additional consulting services to complete objective standards codification should be referred by the City Manager to the budget process.

BACKGROUND:

AUPs and UPs to exceed base standards are routinely granted. In some cases, on review by Staff or the ZAB, impacts of diverging from an objective standard are found to be excessive, and the applicant is asked to revise their plans to reduce impacts. The back-and-forth between Staff or ZAB and the applicant in almost all cases results in a

project that is approved, with impacts on adjacent properties and/or the neighborhood and community having been taken into account.

There are a few areas of Berkeley's Zoning Ordinance where no (or very limited) standards exist, and the evaluation of impacts to adjacent properties, the neighborhood and the community is undertaken by Staff (officially, the Zoning Officer) or ZAB, who apply their judgement with reference, in general, to (1) the circumstances which exist at the time the permit is being issued, (2) the general purposes of the zone/district in which the project is found, and (3) definitions and standards that appear elsewhere in the code. Because Staff and ZAB routinely make these evaluations, there is significant consistency across applications; while there may be no "objective" standards or binding precedents there are patterns and practices.

While the overwhelming majority of projects in Berkeley that require AUPs or UPs are approved by Staff or ZAB and are not appealed, a small number are appealed, protracting the permitting process. In most cases, the decisions of Staff or ZAB are not overturned on appeal, resulting in permits being upheld, sometimes with modifications. In just a few cases, decisions of Staff or ZAB are overturned by the appeals decision-making body.¹

With the advent of State laws that seek to reduce time involved in permitting processes and increase certainty for applicants/developers, mandating "by right" or "ministerial" permitting for projects that conform with base standards, *Berkeley needs to codify standards for elements that have traditionally been left in part or whole to Staff or ZAB's review.*

Codifying standards for these elements means existing patterns and practices will be quantified and written down (and can be adjusted); *it does not mean new elements are introduced.* Conversely, because State law requires application of written, objective standards, *failure to document standards for these elements - to be "silent" where staff and community standards have long been applied - would represent an affirmative choice to allow unlimited impacts where impacts have long been considered.*

In a by-right/ministerial approvals scenario, base standards, which vary across Districts, are best thought of as *standards that are so unlikely to present unacceptable impacts that automatic approval of applications meeting those standards is warranted across a variety of circumstances.*² Base standards *do not operate as a bar to approval of a*

¹ Zoning Officer/Staff decisions are reviewed by ZAB, and ZAB decisions are reviewed by the City Council.

² "Circumstances" might include lot size, shape, topography, proximity to other Districts, overlays, etc.

zoning application; applications that exceed base standards in Berkeley can be - and already are - routinely considered and approved.

Base objective standards under a by-right or ministerial review process are thus the standards for *automatic* approvals. Projects with elements and impacts that exceed those standards are still approved through the existing AUP/UP process.³ Staff or ZAB take a second look and determine whether exceeding those base standards would be detrimental to adjacent properties, the neighborhood or the community.⁴ The overwhelming outcome of Staff or ZAB review is that projects are approved as originally presented, or as refined via a back-and-forth with the applicant.

The areas of Berkeley's Zoning Ordinance that have limited, if any, base standards in place are density, light/sunlight/shadows, privacy, views, and to some extent, building form and elements. All of these have traditionally been left in part or full to the consideration of Staff or ZAB in the AUP/UP and related Design Review processes.

Berkeley's Zoning Code is unusual in not including specific density limits (units or people per parcel or acre) for all Districts. In Berkeley's C- and MU-R Districts, building height, setbacks, lot coverage, Floor Area Ratio (FAR)⁵ and other elements shape building size and placement, but do not prescribe density of units or individuals. This complicates certain circumstances where State and local laws interact. Providing specific density standards for these Districts will facilitate application of State laws.

Berkeley's relative lack of explicit standards in these areas is not unique; many jurisdictions' zoning codes and practices also address some or all elements of building form, sunlight/shadows, privacy, and views through discretionary/community processes. At the same time, some jurisdictions do have more prescriptive, "objective" standards already in place. Differences among jurisdictions are largely a matter of style; some codes were written in a more prescriptive manner, while others, like Berkeley's, were written with more flexibility.

DISCUSSION & RECOMMENDATIONS:

The recommendations herein provide a structure and some guidelines for Staff and the Consulting team to use in proposing codification of objective standards, for Commercial

³ See footnote 1

⁴ "Detriment," the crux of the standard by which applications to exceed base objective standards is reviewed, is a much higher standard than a finding of negative impact. Many projects with negative impacts are approved because their impacts, while negative, are found not to rise to the level of detriment.

⁵ **Floor area ratio (FAR)** is the ratio of a building's total floor area (gross floor area) to the size of the piece of land upon which it is built.

and MU-R districts, for elements traditionally left to Staff or ZAB review, or where Berkeley's code is currently silent. Where appropriate, standards proposed should include allowances to exceed base standards (with or without caps), as is common throughout Berkeley's Zoning Code.

As with all objective standards, it is likely that standards may differ from District to District, in overlay areas, and where one District, Zone or overlay area borders another. Staff and the consulting team are asked to undertake a segmented review of each meaningfully different circumstance,⁶ consider current patterns and practices of Staff and ZAB, review zoning codes of similar sized or situated jurisdictions, and propose standards for Berkeley to codify.

DENSITY

DISCUSSION:

Berkeley's current zoning code uses a variety of methods to regulate the intensity of development on a single parcel. Not every zone uses all of the methods, but all use one or more.

- Prescribed number of units per parcel or parcel of a certain size (R-zones)
- Height, Setbacks, Building separations and Lot Coverage/Open Space requirements
- Floor Area Ratio (FAR)

Most of these approaches don't directly equate with density of units or residents. A building with allowed FAR, setbacks, and height, for example, could include only a few large units or a much larger number of small units. Because some elements of State law that interact with Berkeley's Zoning Code assume the presence of explicit density requirements, adopting clear density standards for C- and MU-R Districts will facilitate application of State requirements.

Berkeley's General Plan does provide some guidance on density, but the General Plan is not formally incorporated into the City's Zoning Ordinance, as is typical in other jurisdictions. The General Plan provides the following in the Land Use Element under Land Use Classifications:

Neighborhood & Avenue Commercial: *Population density will generally range from 44 to 88 persons per acre.*

⁶ A chart is provided in Attachment A to illustrate one method of organizing these recommendations.

Downtown: *Population density will generally range from 88 to 220 persons per net acre.*

Mixed Use Residential: *Population density will generally range from 22 to 44 persons per acre, where housing is allowed.*

Area plans may also address density in C- and MU-R Districts; staff and the consultants are requested to review applicable plans for potential guidance.

JSISHL⁷ considered dwelling units per acre as well as form-based code and floor area ratio (FAR) as approaches to regulate lot buildout and development proportions. There was also interest in a units-per-acre approach that assumed average unit sizes and bedroom counts. No strong agreement could be reached as to the best path forward.

In the end, a recommendation was made using FAR as the primary standard in residential and commercial districts and form-based code, which emphasizes standards with predictable physical outcomes such as build-to lines and frontage and setback requirements, as a secondary approach. *These approaches, however, are already in use - Berkeley's Zoning Code is primarily "form-based,"* and Residential Districts already have unit-per-parcel or parcel-size limits in place.

The missing density element in Berkeley's code is a unit- or person- per acre (or parcel) number for Commercial and MU-R Districts. This recommendation seeks explicit density standards for the C- and MU-R Districts, where the Zoning Code is currently silent.

RECOMMENDATION:

Refer to the City Manager, Planning Commission, and City Attorney, the codification of units-per-acre standards for C- and MU-R Districts, as originally recommended by the City Council on July 17, 2017. The City's General Plan, Area Plans and the Purposes Section of each District provide guidance. Rezoning to increase density beyond what is already contemplated in existing plans and purposes will be considered in the context of the Housing Element Update.

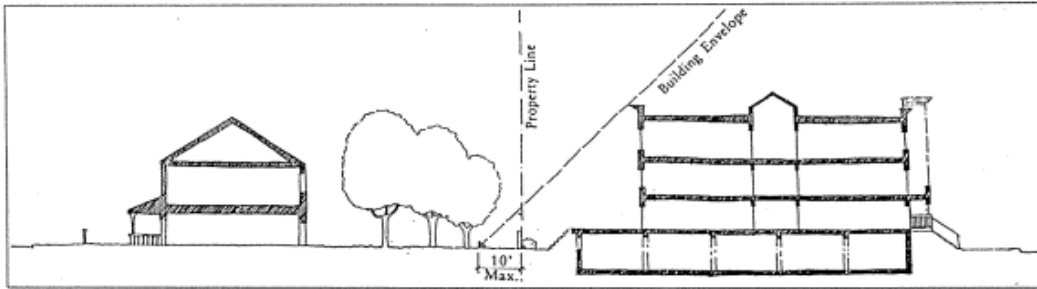
SUNLIGHT/SHADOWS

DISCUSSION:

⁷ Council established JSISHL, the Joint Subcommittee for the Implementation of State Housing Laws, which included representatives of the Planning Commission, Zoning Adjustments Board, and Housing Advisory Commission, to review approaches to and make recommendations about objective standards for density, design, shadows and views.

It is recommended that a “Daylight Plane” method be used as a basis to propose maximum shadowing for by-right/ministerial approvals, with extra-allowances, as appropriate. The Daylight Plane approach is already reflected in the [University Avenue Strategic Plan](#), and was used by El Cerrito for San Pablo Avenue. Many other zoning codes use this method and can serve as examples. Shadowing of residential properties, especially those in neighboring R-Districts, and of parks, schoolyards, and other public outdoor spaces should be considered.

Example from the City of Berkeley’s University Avenue Strategic Plan:



down as it approaches the rear property line, so as not to obstruct direct sunlight to adjacent

A building may not cast a shadow greater than 10' on an adjacent rear yard when the southern sun is at a 45 degree angle.

Example from [El Cerrito’s Avenue Specific Plan for San Pablo](#):

2.01.05 FBC SUMMARY: SHADOWS

Rear and Upper Floor Rear Setback Adjacent to Residential Lot

Buildings shall not cast shadows onto adjacent existing residential uses on Winter Solstice (December 21):

- Adjacent parcels to the east greater than 14'-0" deep at 1:30pm.
- There is no requirement for shadows onto adjacent parcels to the west because shadows are negligible due to solar angle.

Front and Upper Floor Front Setback Along Street

Buildings shall not cast shadows beyond the curb line on the opposite side of the street on Winter Solstice (December 21):

- Streets to the east of the parcel at 1:30pm.
- Streets to the north of the parcel at 10:00am or 4:00pm.
- There is no requirement for streets to the south and west of the parcel because shadows are negligible due to solar angle.

The first diagram shows a building with a height limit of 45' Max. Height Transit Oriented Higher Intensity Mixed Use. A shadow is cast from the top of the building, and a dashed line indicates the shadow's path. The second diagram shows a building with a height limit of 35' Max. Height Transit Oriented Mid-Intensity Wooded Use. It shows setbacks of 12' Min. Required Front Setback, PCW/ Lot Line, and Curb Line. A shadow is cast from the top of the building, and a dashed line indicates the shadow's path.

Shadows can also impact solar arrays. Berkeley needs to meet its climate action clean energy goals *and* build new housing, placing two important values in tension. This tension is not unique to Berkeley; all progressive communities that value both housing creation and the reduction of GHG emissions must find ways to ensure both can go forward in a robust manner.

It is therefore recommended that solar access regulations in other communities (and countries) be reviewed and solutions proposed that best support the maximization of *both goals*. In addition, Berkeley's Zoning Code has provisions for [private solar access easements](#) that include definitions and impact considerations that can be incorporated into objective standards.

RECOMMENDATION:

Using a Daylight Plane method, standards for shadowing and solar impacts should be proposed for all C- and the MU-R Districts. Proposed standards should include both base and, where appropriate, extra allowances and/or programs and consider the following:

- Consideration for public parks, gardens, schools and recreation and gathering areas
- Protections for solar panels and/or compensation for loss of solar panel access
- Standards for transitions where Commercial/MU-R and Residential Districts meet, to limit impacts
- If possible, allowance for adjustments (through the use permit process) to the location, orientation and massing of structures to minimize shadowing and/or solar access impacts, including allowances to reduce setbacks or lot coverage requirements.

BUILDING FORM & BASIC DESIGN ELEMENTS

The term "Design Standards" encompasses a wide variety of concepts, many of which make no sense for the City of Berkeley, where a wide variety of styles, from traditional to eclectic, co-exist (mostly) in harmony. In addition, overly complicated and prescriptive design standards can hamper development and in some cases add costs, none of which the City of Berkeley should endorse. Especially in private townhouse and subdivision-type developments, standards sometimes require an excessive level of uniformity, limiting allowable paint, fence types, trims, roof colors, and even the varieties of grass that can be grown. Berkeley should not enact these types of Design Standards.

Berkeley does, however, have some established standards relating to building form and other key building elements, and also conducts Design Review of buildings in Commercial areas. Some area plans and zoning, for the Downtown and University Avenue, for example, include objective standards such as articulated rather than flat facades, inset entries, step-backs at high elevations or where taller buildings meet lower-rise adjacent areas, and other basic building form requirements that are easy to quantify objectively. Many other jurisdictions that value housing production have similar standards in place.

As with other elements of the Zoning Ordinance that have traditionally been left partially or wholly to discretionary review, Berkeley must now codify a set of key base standards related to building form, step downs and set-backs, facades, and street-level elements (entries, commercial spaces, drop off and bike access zones, etc.) that are *so fundamental to good architecture and a positive pedestrian and community experience that buildings meeting those standards rightly can be approved through a ministerial process*. Again, as with other objective elements, appropriate base standards may vary across Districts, Zones, Overlays and at borders.

In addition to providing base standards, Berkeley can and should allow buildings that diverge from those standards to be reviewed and considered for approval on a case-by-case basis through the use permit process. In addition, in the long run (not through this process), Berkeley may wish to create more detailed Design Guidelines that would be advisory, as is the practice in many cities across the Bay Area and the State.

Thus, a two-tiered system (base standards appropriate for ministerially approved buildings and extra-allowance standards for structures that wish to go beyond base standards) can co-exist with a set of non-binding Guidelines that help architects and designers anticipate elements that would enhance their projects.

As Berkeley is increasingly required by State law to approve projects through a ministerial process, some standards that are already being applied by Staff, ZAB and Design Review, in particular those relating to building form, setbacks, and step-downs/setbacks and to basic elements that improve the street-level and retail experience for pedestrians and bicyclists, should be codified. As with other areas traditionally left to Staff or ZAB review, failure to codify basic elements of building form and articulation would represent *an affirmative decision to leave a void where community standards have long been successfully applied*.

All buildings built over the last 50 years in Berkeley’s commercial districts were subject to design review; the fact that few would fail to meet the kinds of base form and design standards that Staff has proposed is proof that the existing design review process has yielded the desired results. Abandonment of these standards in the ministerial/by-right context, by choosing not to codify them, would likely result in at least some buildings whose form and elements would be incompatible.

RECOMMENDATION:

Staff on March 23, 2021 filed [a supplemental proposing draft objective standards](#).⁸ They cover in very basic terms a few key elements:

1. Building Form and Design
(including massing, number of materials, rooflines, facades, and windows)
2. Ground Floors
(including awnings, entries, storefronts, street trees, and signage)
3. Screening
(for parking lots, garbage areas, lighting, fences and mechanical equipment)

Staff and the consulting team should continue refining these proposed base standards, including consultation with the Design Review Committee and ZAB and review of standards adopted or proposed in other similar California jurisdictions, and consider special standards (step-downs, for example) where C- and MU-R Districts meet each other or meet overlays or Residential areas.

In particular on Berkeley’s commercial “spines” and at the edges of the Downtown, step-downs avoid unnecessarily abrupt transitions and ensure buildings meet adjacent neighborhoods respectfully. They also help mitigate shadowing, view, and privacy impacts, thus serving many neighborly functions. Staff should also clarify that base standards for form and other building elements, applied to buildings seeking ministerial approvals, in no way present a bar to what can be approved. Proposals that do not conform with these standards should still be able to receive permits on a case by case basis.

Recent case law should also be reviewed to ensure compliance with quickly evolving legal standards for objective elements.

VIEWS

DISCUSSION:

⁸ https://www.cityofberkeley.info/Clerk/City_Council/2021/03_Mar/Documents/2021-03-23_Supp_3_Reports_Item_17_Supp_Planning_pdf.aspx

Views are currently considered in Berkeley's land use decision-making processes, and are defined and addressed in several places in the Zoning Code. Evaluation of view impacts has traditionally been left to discretionary process; thousands - likely tens-of-thousands - of projects with view impacts have been approved over decades of land use decisions by the Zoning Officer, ZAB and the City Council - primarily in Residential Districts. Consideration of views is therefore a deeply embedded concept in Berkeley, and has not been a barrier to project approvals. Moreover, staff has developed administrative standards to guide its evaluation of impacts on protected views. However, this staff level guidance is not codified in the Municipal Code or any formal Administrative Regulation and is not considered an "objective standard".

As with sunlight and shadowing, many jurisdictions already have more objective standards for view impacts in place; Berkeley's lack of codified standards is a result of our Zoning Code and General Plan's more community-centered style and does not reflect a lack of concern for impacts. With a broadening of project types subject to ministerial approvals, including projects with potential view impacts that traditionally have been evaluated through Berkeley's use permit process, some view impact standards will need to be more fully codified. As with other elements typically left to discretionary review, failure to codify basic current practices would mean that an area of longstanding concern and application of standards would now be subject to no standards at all.

RECOMMENDATION:

Because Commercial and MU-R Districts are in flat areas of the City, view impacts are generally less prevalent. Most developments in these Districts present few, if any, significant view impacts to smaller neighboring residences, and developers building larger multi-family buildings know that their buildings' views, if any, are vulnerable to the addition of other tall buildings in the same area.

Step-downs and other features to mitigate shadowing, privacy and other concerns are already recommended. These mechanisms also mitigate view impacts which may exist at the interface/edges of C-/MU-R Districts and Residential areas. For the density that will be required in C- and MU-R Districts to meet our RHNA requirements, some views will inevitably be impacted by developments in these areas, mitigated somewhat by attention to step-downs and set-backs at borders.

PRIVACY

DISCUSSION:

Like “light,” “air,” and views, “privacy” is a longstanding element of consideration in zoning, but primarily for residential areas. In fact, every R-Zone in the Ordinance mentions consideration of privacy in its Purposes. The concept, however, isn’t defined or addressed with more precision anywhere in the Zoning Ordinance,⁹ and is rarely, if ever, addressed in the context of Commercial Districts. One exception is in Section 23E.04, which addresses C-Lots abutting residential zones:

23E.04.050 Special Yard Requirements for C- Lots Abutting Residential Zones

E. The Board may approve a Use Permit authorizing yards smaller than those required above if it finds that such smaller yard would provide *greater privacy* or improved amenity to a lot in the residential District. [emphasis added]

⁹ See Attachment B

RECOMMENDATION:

Because privacy is a greater concern in residential areas, and because step-downs, setbacks and other similar requirements, especially where C- and MU-R Districts meet, serve the purpose of preserving privacy as well as mitigating shadowing and view impacts, no special recommendations regarding privacy are offered for these Districts.

Attachments:

- A - Suggested format for conceptualizing, segmenting and proposing base and extra-allowance standards
- B - Excerpts from Berkeley's Zoning Ordinance

Key Links:

- JSISHL report to Council 3/23/21, Objective Standards Recommendations for Density, Design and Shadows
https://www.cityofberkeley.info/Clerk/City_Council/2021/03_Mar/Documents/2021-03-23_Item_17_Objective_Standards.aspx
- Staff Supplemental 3/23/21, Objective Standards
https://www.cityofberkeley.info/Clerk/City_Council/2021/03_Mar/Documents/2021-03-23_Supp_3_Reports_Item_17_Supp_Planning_pdf.aspx
- JSISHL, Working Draft Recommendation Report Excerpt: OBJECTIVE STANDARDS FOR DESIGN, Jul 22, 2020
https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Commissions/JSISHL/2020-07-22_JSISHL_Item%2010.pdf

ATTACHMENT A

This chart is suggestive of how to conceptualize, segment, and present proposed objective standards for codification. Not all Elements listed below will require new standards in every Zone/District/Area. As is already the practice in Berkeley’s Zoning Code, extra-allowance standards may in some cases be appropriate, and, where recommended, may be finite or open-ended.

ZONE/DISTRICT/AREA

Element	Base Standards	Extra Allowance Standards
Density	•	•
Sunlight/ Shadowing - on property within a District	•	•
Sunlight/Shado wing on neighboring R- Districts		
Sunlight/ Shadowing - on solar panels	•	•
Form and Separation - general		
Form & Separation - Where Districts/ Zones meet		
Etc.		

ATTACHMENT B

Excerpts from Berkeley's Zoning Ordinance

The following is cut and paste of Berkeley General Plan and Zoning Ordinance references to elements being further codified through the Object Standards process. These are not comprehensive but provide examples of how our Zoning Code already considers some of these elements.

Sunlight/Shadows

Light, Sunlight, and Shadows are NOT defined in the zoning code

23F - Definitions

Privately-Owned Public Open Space: Area on a lot that is designed for active or passive recreational use and that is accessible to the general public without a requirement for payment or purchase of goods. Such areas may include mid-block passageways and other amenities intended to improve pedestrian access. Such areas may be indoor or enclosed, **but shall include natural light in the form of windows, skylights, entryways, or other openings.**

21.36.040 Solar access easements.

For any division of land for which a tentative map is required pursuant to Section 66426 of the Subdivision Map Act, the Planning Commission may require, as a condition of approval of the tentative map, the dedication of easements for the purpose of assuring that each parcel or unit in the subdivision for which approval is sought **shall have the right to receive sunlight across adjacent parcels or units in the subdivision for which approval is sought for any solar energy system,** provided that such easements meet the following requirements:

- A. The standards for determining the exact dimensions of locations of such easements shall be:
1. The principal axis of the easement shall be true east-west, and the principal directions of the easement shall be in the direction of the principal axis, both east and west from the boundaries of the parcel or unit for which the solar access easement is provided.
 2. The width of the easement, at right angles horizontally to the principal axis, shall be equal to one-half of the length of the longest distance that can be measured in a true north-south direction horizontally between the boundaries of the parcel or unit for which the easement is being provided.
 3. A vertical plane, running in the direction of and containing the principal axis, shall pass through the centroid of volume of the enclosed living space as shown on the tentative map, or if living space is not shown, through the geometric center of a plane horizontal projection of the boundaries of the parcel or unit for which the easement is being provided, as determined within an accuracy of one foot. The easement shall lie entirely between two

vertical planes parallel to the plane containing the principal axis, lying equidistant on either side. Said parallel easement boundary planes shall be separated by a distance equal to the width of the easement.

4. A vertically projected boundary point is defined as any point lying on the horizontal boundary, within the width of the easement, of the parcel or unit for which the easement is being provided, projected vertically eight feet above the ground surface at said boundary point or to a vertically projected point lying in a horizontal plane which is three feet above a parallel horizontal plane containing the minimum point of elevation of the living space (if shown) of the parcel or unit, whichever is higher.

5. The easement shall exist above every line projected in either principal direction outward from any and all vertically projected boundary line points, at a direction of thirty degrees above the horizontal, to a distance of five hundred feet as measured horizontally from said point, or to a lesser distance such that the easement lies wholly within the vertically projected boundaries of the subdivision for which the tentative map is sought.

B. At the request of the subdivider, the Planning Commission may specify an easement of equal width for which:

1. The parallel easement boundary planes defined in subsection A,3. above and the principal directions are both rotated by not more than ten degrees in either direction and remain parallel to each other, about a vertical line through the centroid of volume or geometric center as defined in subsection A,3. above.

2. The parallel easement boundary planes defined in subsection A,3. above are both translated at right angles to the vertical plane of the principal axis by a distance equal to not more than one third of the width of the easement.

C. In requiring the dedication of a solar access easement as a condition of approval of a tentative map, the Planning Commission may specify an easement of lesser volume or dimensions, provided said easement lies wholly within the boundaries specified in subsections A or B, above.

D. No buildings or other objects with a dimension greater than one foot as measured in a projection at right angles to the principal axis of the easement, shall block such easement.

E. No trees or vegetation shall obstruct the passage of more than thirty percent of the incident sunlight which would otherwise reach the parcel through the path specifically blocked by said trees or vegetation.

F. The solar access easement, after being recorded as part of the final map, may not be terminated or revised except by the Planning Commission, on the showing of overriding public purpose, and with the consent of the owner of said unit or parcel and upon payment to said owner of just compensation for termination. Notice of the termination or revision shall be filed for record with the Alameda County Recorder in the same manner that other easements are recorded.

G. In establishing solar access easements, the Planning Commission shall give consideration to feasibility, contour, configuration of the parcel to be divided, and cost. Such easements shall not result in reducing allowable densities or the percentage of a lot which may be occupied by a building or a structure under other applicable planning and zoning regulations in force at the time the tentative map is filed.

This section is not applicable to condominium projects which consist of the subdivision of airspace in an existing building where no new structures are added.

Solar access easements shall meet the requirements specified in Section 66475.3 of the Subdivision Map Act. (Ord. 5793-NS § 2 (part), 1987)

Chapter 12.45 - SOLAR ACCESS AND VIEWS

12.45.010 Purpose and objectives.

A. The purpose of this chapter is to:

1. Set forth a procedure for the resolution of disputes between private property owners relating to the resolution of sunlight or views lost due to tree growth.

B. The objectives of this chapter are:

3. To encourage the use of solar energy for heat and light;
4. To encourage food production in private gardens;
5. To restore access to light and views from the surrounding locale;

12.45.020 Definitions.

A. For the purposes of this chapter, the meaning and construction of words and phrases hereinafter set forth shall apply:

1. "Solar access" means the availability of sunlight to a property.
4. "Complaining party" means any property owner (or legal occupant without objection of property owner) who wishes to alter or remove a tree(s) on the property of another which creates an obstruction to their access to sunlight or view whether such access is gained from an original dwelling or any addition thereto used as a dwelling.
6. "Obstruction" means any substantial blocking or diminishment of a view from a structure lawfully used as a dwelling or access to sunlight to the real property which is attributable to the growth, maintenance or location of tree(s).

12.45.030 Procedures.

A. The procedures described in this section shall be followed in the resolution of tree disputes between private parties.

1. Initial reconciliation:

A complaining party who believes in good faith that the growth, maintenance or location of tree(s) on the private property of another (hereinafter referred to as tree owner) diminishes the beneficial use of economic value of their property because such tree(s) interfere with the access to sunlight or views which existed prior to such growth, maintenance or location of the tree(s) on the property during the time the complaining party has occupied the property, shall notify the tree owner in writing of such concerns.

5. Litigation: In those cases where initial reconciliation fails and binding arbitration is not elected, civil action may be pursued by the complaining party for resolution of the sunlight access or view tree claim under the provisions of this chapter. The litigant must state in the lawsuit that arbitration was offered and not accepted, and that a copy of the lawsuit was filed with the City Clerk.

12.45.040 Standards for resolution of disputes.

A. In resolving the tree dispute, the tree mediator, tree arbitrator or court shall consider the benefits and burdens derived from the alleged obstruction within the framework of the objectives of this chapter as set forth in Section [12.45.010](#) in determining what restorative actions, if any, are appropriate.

Burdens:

- b. The extent to which the trees diminish the amount of sunlight available to the garden or home of the complaining party.
- c. The extent to which the trees interfere with efficient operations of a complaining party's pre-existing solar energy system.
- e. The extent to which the alleged obstruction interferes with sunlight or view. The degree of obstruction shall be determined by means of a measuring instrument or photography.
- f. The extent to which solar access or the view is diminished by factors other than trees.

3. Restorative actions:

The tree mediator shall recommend or the tree arbitrator or court shall order restorative action or no action according to Section [12.45.040](#) (Standards)

- e. The extent of solar access or view available and documentable as present at any time during the tenure of the present owner or legal occupant is the limit of restorative action which may be required. If the complaining party is seeking a view or sunlight from an addition, the complaining party has no right to a view or solar access greater than that which existed at the time the construction of the addition was completed

Chapter 23E.68 - C-DMU Downtown Mixed Use District Provisions

23E.68.090 Findings

F. In order to approve a Use Permit for modification of the setback requirements of [23E.68.070.C](#), the Board **must find that the modified setbacks will not unreasonably limit solar access** or create significant increases in wind experienced on the public sidewalk.

Chapter 23E.36 - C-1 General Commercial District Provisions

C. No yards for Main Buildings, Accessory Buildings or Accessory Structures shall be required, except that:

- a. **Solar Rear Yard Setback:** Buildings on the north side of University Avenue shall not cast a shadow at noon more than 20 feet onto any lot in a residential zone as calculated when the sun is at a 29 degree angle above the horizon (winter solstice).

23B.34.070 Development Standards for All Green Pathway Projects

Green Pathway projects shall comply with the applicable development standards in Section [23E.68.070](#) and the following additional requirements:

C. **Shadow** Analysis Required for Buildings With Heights Between 60 and 75 Feet:
Applications shall include diagrams showing:

1. The extent of **shading on public sidewalks and open spaces** within a radius of 75 feet of the closest building wall that would be cast at two (2) hours after sunrise, 12 p.m., and two (2) hours before sunset, on March 21, June 21, December 21, and September 21, by a building 60 feet in height that complies with all applicable setback requirements;
2. Features incorporated into the building design, including, but not limited to, additional upper floor setbacks that will **reduce the extent of shadowing** of the proposed building to no more than 75 percent of the shadowing projected in paragraph 1 above.

VIEWS

23F.04 Definitions

View Corridor: A significant view of the Berkeley Hills, San Francisco Bay, Mt. Tamalpais, or a significant landmark such as the Campanile, Golden Gate Bridge, and Alcatraz Island or any other significant vista that substantially enhances the value and enjoyment of real property.

23D.17.070 - Wireless Telecommunication Facilities

C. **No readily visible antenna shall be placed at a location where it would impair a significant or sensitive view corridor** except as provided in subsection 1, below.

1. Roof-mounted antennas shall be located in an area of the roof where the visual impact is minimized. Roof-mounted and ground-mounted antennas **shall not be placed in direct line of sight of significant or sensitive view corridors or where they adversely affect scenic vistas** unless the Zoning Officer or the Zoning Adjustments Board finds that the facility

incorporates appropriate, creative stealth techniques to camouflage, disguise, and/or blend into the surrounding environment to the extent possible

Section 23D.08.010 Accessory Buildings & Structures May Exceed Limit with Use Permit

A. An Accessory Building or Accessory Structure that satisfies the requirements of this Ordinance is permitted, except in the ES-R District.

B. The Zoning Officer may issue an AUP for an accessory structure or accessory building which does not comply with the height limits, minimum setback distances, site location and/or maximum length requirements of this chapter, except for the height limit in Section 23D.08.020.C, **subject to a finding that the proposed accessory building or enclosed accessory structure will not be detrimental to the light, air, privacy and view of adjacent properties.** (Ord. 7522-NS § 2, 2017: Ord. 6854-NS § 2 (part), 2005: Ord. 6478-NS § 4 (part), 1999)

Section 23D.16.090 Findings (R-1)

B. To deny a Use Permit for a major residential addition or residential addition subject to 23D.16.070 the Zoning Officer or Board must find that although the proposed residential addition satisfies all other standards of this Ordinance, **the addition would unreasonably obstruct sunlight, air or views.** (Ord. 7426-NS § 8, 2015: Ord. 6980-NS § 1 (part), 2007: Ord. 6763-NS § 7 (part), 2003: Ord. 6478-NS § 4 (part), 1999)

Section 23D.20.090 Findings (R-1A)

B. To deny a Use Permit for a major residential addition or residential addition subject to 23D.20.070, the Zoning Officer or Board must find that **although the proposed residential addition satisfies all other standards of this Ordinance, the addition would unreasonably obstruct sunlight, air or views.**

Section 23D.24.020 Purposes (ES-R)

H. **Give reasonable protection to views and privacy,** yet allow appropriate development of all property as long as public services and access are adequate to ensure protection of the health and safety of residents in this vulnerable area;

Section 23D.28.090 Findings (R-2)

B. To deny a Use Permit for a major residential addition or residential addition subject to 23D.28.070 the Zoning Officer or Board must find that **although the proposed residential addition satisfies all other standards of this Ordinance, the addition would unreasonably obstruct sunlight, air or views.**

For all other residential districts - R-2A, R-3, R-4 and R-5, the same findings must be made to deny a use permit for a residential addition

CHAPTER 12.45 SOLAR ACCESS AND VIEWS (LOSS OF, DUE TO TREE GROWTH)

12.45.010 Purpose and objectives.

A. The purpose of this chapter is to:

1. Set forth a procedure for the resolution of disputes between private property owners relating to the resolution of sunlight or views lost due to tree growth.
5. To restore access to light and views from the surrounding locale;

Section 12.45.020 Definitions

2. "Views" mean a distant vista or panoramic range of sight of Berkeley, neighboring areas or the San Francisco Bay. Views include but are not limited to skylines, bridges, distant cities, geologic features, hillside terrains and wooded canyons or ridges.
4. "Complaining party" means any property owner (or legal occupant without objection of property owner) who wishes to alter or remove a tree(s) on the property of another which creates an obstruction to their access to sunlight or view whether such access is gained from an original dwelling or any addition thereto used as a dwelling.
6. "Obstruction" means any substantial blocking or diminishment of a view from a structure lawfully used as a dwelling or access to sunlight to the real property which is attributable to the growth, maintenance or location of tree(s).

Section 12.45.030 Procedures.

A. The procedures described in this section shall be followed in the resolution of tree disputes between private parties.

1. Initial reconciliation: A complaining party who believes in good faith that the growth, maintenance or location of tree(s) on the private property of another (hereinafter referred to as tree owner) diminishes the beneficial use of economic value of their property because such tree(s) interfere with the access to sunlight or views which existed prior to such growth, maintenance or location of the tree(s) on the property during the time the complaining party has occupied the property, shall notify the tree owner in writing of such concerns. The notification should, if possible, be accomplished by personal discussions to enable the complaining party and tree owner to attempt to reach a mutually agreeable solution.
5. Litigation: In those cases where initial reconciliation fails and binding arbitration is not elected, civil action may be pursued by the complaining party for resolution of the sunlight access or view tree claim under the provisions of this chapter

Section 12.45.040 Standards for resolution of disputes

A. In resolving the tree dispute, the tree mediator, tree arbitrator or court shall consider the benefits and burdens derived from the alleged obstruction within the framework of the objectives of this chapter as set forth in Section 12.45.010 in determining what restorative actions, if any, are appropriate.

2. Burdens:

- d. The existence of landmarks, vistas or other unique features which cannot be seen because of growth of trees since the acquisition of the property.
- e. The extent to which the alleged obstruction interferes with sunlight or view. The degree of obstruction shall be determined by means of a measuring instrument or photography.
- f. The extent to which solar access or the view is diminished by factors other than trees.

3. Restorative Actions

- e. The extent of solar access or view available and documentable as present at any time during the tenure of the present owner or legal occupant is the limit of restorative action which may be required. If the complaining party is seeking a view or sunlight from an addition, the complaining party has no right to a view or solar access greater than that which existed at the time the construction of the addition was completed

23B.34.070 Development Standards for All Green Pathway Projects

Green Pathway projects shall comply with the applicable development standards in Section [23E.68.070](#) and the following additional requirements:

- A. **Building Setbacks Within View Corridors:** To minimize interference with significant views, buildings that are 75 feet in height or less that are located on a corner lot at any intersection with University Avenue, Center Street, or Shattuck Avenue must include upper story setbacks as follows: any portion of a building between 45 feet and 75 feet must be set back from property lines abutting the street by at least one (1) foot for every one (1) foot by which the height exceeds 45 feet.

“AIR”

(To be expressed through Privacy and Building Form/Separation Requirements)

Section 23A.04.030 Purpose of [Zoning] Ordinance and Relationship to Plans

- D. Provide for adequate light and air by limiting the height, bulk and size of buildings and requiring building yard setbacks from property lines as well as separations between buildings.

Section 23D.52.090 Findings

To deny a Use Permit for a major residential addition or residential addition subject to Section 23D.52.070, the Zoning Officer or Board must find that the addition would unreasonably obstruct sunlight, air or views.

Section 23D.16.020 Purposes (R-1)

The purposes of the Single Family Residential (R-1) Districts are to:

- C. Protect adjacent properties from unreasonable obstruction of light and air; and

Section 23D.16.090 - Findings (R-1)

B. To deny a Use Permit for a major residential addition or residential addition subject to 23D.16.070 the Zoning Officer or Board must find that although the proposed residential addition satisfies all other standards of this Ordinance, **the addition would unreasonably obstruct sunlight, air or views.**

Section 23D.20.020 Purposes (R-1A)

The purposes of the Limited Two-family Residential Districts (R-1A) are to:

B. **Protect adjacent properties from unreasonable obstruction of light and air;**

Section 23D.20.090 Findings (R-1A)

B. To deny a Use Permit for a major residential addition or residential addition subject to 23D.20.070, the Zoning Officer or Board must find that although the proposed residential addition satisfies all other standards of this Ordinance, **the addition would unreasonably obstruct sunlight, air or views.**

C. To approve an application for reduction of a required Rear Yard, or a reduction in building separation, the Zoning Officer or the Board **must find that the unit would not cause a detrimental impact on emergency access; or on light, air or privacy for neighboring properties**

Identical or very similar provisions exist for PURPOSES and FINDINGS for R-2, R-2A, R-3, R-4

Section 23D.44.020 Purposes (R-5)

The purposes of the High Density Residential (R-5) Districts are to:

B. Make available housing for persons who desire both convenience of location, but who require relatively small amounts of Usable Open Space; yet **assure adequate light, air, privacy and Usable Open Space** to promote and protect their physical and mental health;

C. **Protect adjacent properties from unreasonable obstruction of light and air;**

Section 23D.44.090 Findings (R-5)

B. To deny a Use Permit for a major residential addition or residential addition subject to 23D.44.070 the Zoning Officer or Board must find that although the proposed residential addition satisfies all other standards of this Ordinance, **the addition would unreasonably obstruct sunlight, air or views.**

Identical or very similar provisions for air exist in R-S and R-SMU

PRIVACY

Privacy is NOT defined anywhere in the Zoning Code

References to Privacy in the Zoning Code:

C-1 General Commercial District Provisions

Privacy Rear Yard Setback: Buildings on lots abutting a residentially zoned lot along the south side of University Avenue shall be set back from the rear property line an average of 20 feet, i.e., a rear yard shall be maintained with a minimum area equal to the width of the lot (in feet) multiplied by 20 feet. The minimum depth of any rear yard shall be ten feet, or 10% of the depth of the lot, whichever is greater, as provided in Section [23E.04.050.C](#). The ZAB may approve a Use Permit to reduce the 20 foot average and ten foot minimum setback provisions to a minimum of six feet on the first floor provided that the square footage added on the first floor by this reduction in setback **is utilized to increase the average 20 foot setback on higher floors to facilitate the privacy of abutting residentially zoned lots.**

d. Front Yard Setback for Residential-Only Projects: For all floors, buildings shall provide an average two-foot setback. **A maximum setback of ten feet is permitted provided that this space is used to accommodate landscaping that enhances the streetscape and provides a sense of privacy for residential units on the first floor.**

23D.48.020 Purposes (R-S Residential Southside District)

23D.48.020 Purposes

B. Make housing available for persons who desire a convenient location with relatively small amounts of Usable Open Space, yet **assure adequate light, air, privacy and Usable Open Space to promote and protect their physical and mental health;**

23D.52.020 Purposes (R-SMU Southside Mixed Use Residential)

The purposes of the Southside Mixed Use Residential (R-SMU) Districts are to:

A. Implement General Plan and Southside Plan policy by encouraging high density, multi-story residential development close to major shopping, transportation and employment centers;

B. Make housing available for persons who desire a convenient location, but who require relatively small amounts of Usable Open Space; yet **assure adequate light, air, privacy and Usable Open Space to promote and protect their physical and mental health;**

23D.20.090 Findings (R-1A)

A. In order to approve any Permit under this chapter, the Zoning Officer or Board must make the finding required by Section [23B.32.040](#). The Zoning Officer or Board must also make the findings required by the following paragraphs of this section to the extent applicable:

C. To approve an application for reduction of a required Rear Yard, or a reduction in building separation, the Zoning Officer or the Board must find that the unit would not cause a detrimental impact on emergency access; or on light, air or privacy for neighboring properties.

23D.44.020 Purposes (R-5)

The purposes of the High Density Residential (R-5) Districts are to:

B. Make available housing for persons who desire both convenience of location, but who require relatively small amounts of Usable Open Space; yet assure adequate light, air, privacy and Usable Open Space to promote and protect their physical and mental health;

12.45.040 Standards for resolution of disputes.

A. In resolving the tree dispute, the tree mediator, tree arbitrator or court shall consider the benefits and burdens derived from the alleged obstruction within the framework of the objectives of this chapter as set forth in Section [12.45.010](#) in determining what restorative actions, if any, are appropriate.

d. Visual, auditory and wind screening provided by the tree(s) to the tree owner and to neighbors. Existing privacy provided by the tree(s) to the tree owner's home shall be given particular weight.

Chapter 23D.04 - Lot and Development Standards

23D.04.010 Lot Requirements

E. The Zoning Officer shall designate the front, side and rear yards for main buildings for flag lots and irregular lots, in a manner to best protect light, air and privacy. The yard dimensions shall be as set forth in each District's provisions.

23D.08.010 Accessory Buildings & Structures May Exceed Limit with Use Permit

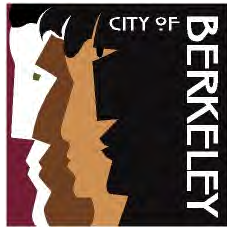
B. The Zoning Officer may issue an AUP for an accessory structure or accessory building which does not comply with the height limits, minimum setback distances, site location and/or maximum length requirements of this chapter, except for the height limit in Section [23D.08.020](#).C, subject to a finding that the proposed accessory building or enclosed accessory structure will not be detrimental to the light, air, privacy and view of adjacent properties. (Ord. 7522-NS § 2, 2017; Ord. 6854-NS § 2 (part), 2005; Ord. 6478-NS § 4 (part), 1999)

23D.24.020 - ES-R - Purposes

H. Give reasonable protection to views and privacy, yet allow appropriate development of all property as long as public services and access are adequate to ensure protection of the health and safety of residents in this vulnerable area;

23E.04.050 Special Yard Requirements for C- Lots Abutting Residential Zones

E. The Board may approve a Use Permit authorizing yards smaller than those required above if it finds that such smaller yard would provide greater **privacy** or improved amenity to a lot in the residential District.



Office of the City Manager

SUPPLEMENTAL AGENDA MATERIAL

Meeting Date: March 23, 2021

Item Number: 17

Item Description: Objective Standard Recommendations for Density, Design and Shadows

Supplemental/Revision Submitted By: Alene Pearson, Secretary, Joint Subcommittee for the Implementation of State Housing Laws (JSISHL)

“Good of the City” Analysis:

The analysis below must demonstrate how accepting this supplement/revision is for the “good of the City” and outweighs the lack of time for citizen review or evaluation by the Council.

JSISHL’s recommendation for objective design standards references a set of proposed standards for review by other City Commissions. This supplemental communication provides the matrix of proposed objective design standards, for benefit of Council and public while discussing this item.

[from page two of the staff report]

*To aid JSISHL in making a recommendation, staff created a matrix of design guidelines to identify design goals, introduced objective language to reflect desired design outcomes, and test-fit approved projects to double-check objective language. JSISHL recommended the **proposed objective design standards** be reviewed by the Design Review Committee and further refined by Planning Commission.*

Consideration of supplemental or revised agenda material is subject to approval by a two-thirds roll call vote of the City Council. (BMC 2.06.070)

A minimum of **42 copies** must be submitted to the City Clerk for distribution at the Council meeting. This completed cover page must accompany every copy.

Copies of the supplemental/revised agenda material may be delivered to the City Clerk Department by 12:00 p.m. the day of the meeting. Copies that are ready after 12:00 p.m. must be delivered directly to the City Clerk at Council Chambers prior to the start of the meeting.

Supplements or Revisions submitted pursuant to BMC § 2.06.070 may only be revisions of the original report included in the Agenda Packet.

Objective Standards for Design Guidelines				Row #
Section	Subsection	Proposed Objective Design Standards	Definitions	
1. Neighborhood Context	<p>Massing</p> <p>Goal: Promote harmony in scale and massing.</p>	<p>Differentiate the base. A base shall visually carry the weight of the building. A base <i>is defined as a plane or material change between the ground floor and the upper floors</i> and can be made by thickening the walls or a change in material and color and <i>shall extend</i> at least 75% of <i>each individual</i> building facade.</p> <p>Buildings over three stories tall shall have major massing breaks at least every 100 feet <i>along every building frontage</i> through the use of varying setbacks, building entries, and recesses, courtyards or structural bays. Major breaks shall be a minimum of 5 feet deep and 10 feet wide and shall extend at least two-thirds of the height of the building.</p>	Base - a plane or material change between the ground floor and the upper floors	1
	<p>Materials</p> <p>Goal: Provide texture and visual interest while minimizing glare.</p>	<p>At least two materials shall be used on any building face visible from the street or adjacent parcel in addition to glazing and railings. Any one material must comprise at least 20% of <i>street facing building facade</i>.</p> <p>Materials shall not cause glare on the public right of way or adjacent parcels.</p>		2
2. Building Design	<p>Rooflines</p> <p>Goal: Vertically break up building mass at the roofline.</p>	<p>Rooflines shall be <i>articulated at least every 50 feet along the street frontage, through the use of architectural elements such as cornices, clerestory windows, canopies, or varying roof height and/or form</i>.</p>	Roofline - Top termination of the massing.	3
	<p>Façade Design</p> <p>Goal: Give depth to the building façade.</p>	<p>Provide balconies or upper facade projections or recesses every 25 to 30 feet.</p> <p>Blank walls on side and rear facades shall not exceed 30 ft in length.</p>	<p>Upper façade projection or recess - Any balcony, window box, window articulation that either creates a recess in or projects out from the building face.</p> <p>Blank wall - A length of uninterrupted wall space that does not include a window, door, material change, or plane change.</p>	4
	<p>Windows</p> <p>Goal: Give depth to the building façade.</p>	<p>Windows <i>shall not exceed 75% of upper facades</i>.</p> <p>Windows set in wall surfaces shall be recessed a minimum of 2 inches <i>unless in a contiguous vertical bay, in which case the recess may be substituted with a vertical fin or projection</i>.</p>		5
3. Ground Floor Design	<p>Residential Lobbies</p> <p>Goal: Create a focal point for residents and pedestrians.</p>	<p>A primary building entrance shall be visible from the street. Direct pedestrian access shall be provided between the public sidewalk and such primary entrance.</p> <p><i>A primary building entrance</i> must have a roofed projection <i>in the form of either a canopy or the extension of a vertical bay</i>, or recess with a minimum depth of 5 feet and a minimum area of 60 sq. feet. <i>Entrances to upper floors shall be distinguished with either plane changes, material transitions, or building signage</i>.</p>		6
	<p>Ground Floor Height</p> <p>Goal: Enhance ground floor experience.</p>	<p>Ground floor <i>commercial spaces</i> shall have a minimum interior height of <i>13 feet</i>.</p>		7
	<p>Storefronts</p> <p>Goal: Enhance pedestrian experience and provide visual cues that distinguish between retail and residential entries.</p>	<p>Retail spaces shall be accessed directly from the sidewalk, rather than through lobbies or other internal spaces. Clear glass shall comprise at least 60% of the street facing façade where it is between 3 feet and 8 feet above elevation of adjacent sidewalk.</p> <p>Maintain the typical rhythm of 15-30 foot storefronts at ground level. Provide at least one of the following architectural features to protect pedestrians from inclement weather:</p> <p>A) awnings B) canopies C) recessed entries</p> <p>Except for recessed entries, a majority of storefront glazing shall be at the property line.</p>		8

Objective Standards for Design Guidelines				Row #
Section	Subsection	Proposed Objective Design Standards	Definitions	
3. Ground Floor Design	<p>Public Service Street Frontages</p> <p>Goal: Activate the public street.</p>	<p>At least one publicly-accessible street-level entrance shall be provided for every 40 feet along a streetfacing property line. Any remainder exceeding 30 feet shall also have a publicly-accessible street-level entrance. No two entrances shall be separated by more than 50 feet.</p> <p>~ <i>Downtown only</i></p> <p><i>*reference Figure 43: Public Serving Frontages on page 61 of the Downtown Design Guidelines for applicability.</i></p>		9
4. Parking Lots, Garages and Driveways	<p>General Guidelines</p> <p>Goal: Reduce visual impact of parking on the street frontage.</p>	Locate parking structures underground or behind buildings or provide either landscape or architectural elements to screen view of parking from the street.		10
	<p>Surface Lots</p> <p>Goal: Screen surface lots from view of the street while providing shade and landscaping.</p>	Perimeter landscaping shall include trees and shrubs. In addition to required screening, parking area shall have trees which achieve a canopy coverage of at least 50% within seven years.		11
	<p>Garage Lighting and Ventilation</p> <p>Goal: Reduce impact of garages on neighboring parcels.</p>	All parking garage lighting shall be shielded so that light does not shine through vents at night and headlights are not visible from the street and adjacent parcels. If forced venting is required for the garage, air shall not vent directly onto the sidewalk or podium courtyards.		12
5. Building Accessories	<p>Lighting</p> <p>Goal: Prevent glare on public right of way.</p>	All lighting shall be downcast and not cause glare on the public right of way or neighboring parcels.		13
	<p>Security and Fences</p> <p>Goal: Reduce visual impact.</p>	<p>Security devices and grillwork visible from the street shall be integrated into the overall building design.</p> <p>Perimeter fencing utilized along public street shall be constructed of decorative iron, pre-painted welded steel, or wood picket material.</p>		14
	<p>Trash Service, Mechanical and Utilities</p> <p>Goal: Reduce visual impact.</p>	Garbage receptacles, utility meters and mechanical and electrical equipment at rooftop and ground shall be screened from the view of pedestrians.		15
6. Street Trees	<p>Goal: Preserve and/or add street trees.</p>	Existing street trees shall be retained and protected <i>if determined to be healthy by the Urban Forester</i> . Work with Berkeley's Urban Forestry Department and Public Works to determine preferred locations for new street trees.		16
7. Signs and Awnings	<p>Goal: Cohesive sign program that is in keeping with the building design</p>	<p>Coordinate the design and alignment of signs and awnings on buildings with multiple storefronts in order to achieve a cohesive appearance to the base of the building.</p> <p>Signs and awnings shall not obscure architectural elements such as clerestory windows or columns.</p> <p>All front faces shall be opaque.</p>		17



Joint Subcommittee for the Implementation of State Housing Laws

ACTION CALENDAR

November 9, 2021

(Continued from October 26, 2021)

To: Honorable Mayor and Members of the City Council

From: Joint Subcommittee for the Implementation of State Housing Laws
(JSISHL)

Submitted by: Igor Tregub, Chairperson

Subject: Objective Standards Recommendations for Density, Design and Shadows

RECOMMENDATION

Refer to the Planning Commission and Design Review Committee to review the recommendations from the Joint Subcommittee for the Implementation of State Housing Laws (JSISHL) for objective standards for density, design and shadows and draft Zoning Ordinance amendments for City Council consideration.

FISCAL IMPACTS OF RECOMMENDATION

This project will involve staff and consultant time that will total approximately \$200,000. Budget for the consultant time was previously allocated from the General Fund in the 2021-2022 fiscal year budget (\$115,000). Additional staff time amounting to \$100,000 would have to be covered by re-arranging staff priorities within existing resources to support the effort.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley's Zoning Ordinance and permitting process for residential and mixed use projects relies heavily on discretion and subjective development standards. State laws, such as Senate Bill (SB) 35, limit interpretation of zoning regulations and require a streamlined permit approval process for many housing projects. JSISHL was tasked with reviewing approaches to objective standards for density, design, shadows and views. Between April 2018 and July 2020 JSISHL, including representatives of the Planning Commission, Zoning Adjustments Board, and Housing Advisory Commission, met eleven times to discuss these topics and ultimately prepared the recommendations summarized below.

Objective Standards for Density (Building Intensity)

The referral specifically requested that JSISHL consider dwelling units per acre as an objective measurement of density. JSISHL also considered a form-based code method and floor area ratio (FAR) as approaches to objectively regulate lot buildout and development proportions. No unanimous agreement could be reached as to the best

path forward. In the end, a recommendation was made using FAR as the primary density standard in residential and commercial districts and form-based code¹, which emphasizes standards with predictable physical outcome such as build-to lines and frontage and setback requirements, as a secondary approach. There was also an interest in a units/acre approach that assumed average unit sizes and bedroom counts; however, this approach was not adopted. See Attachment 1 (July 22, 2020 Final Minutes) for the text of these options. **JSISHL recommended developing an objective standard for density using FAR and potentially form-based code.**

Objective Standards for Design

Berkeley's design review process relies heavily on four sets of design guidelines:

1. Design Review Guidelines (applied citywide);
2. Downtown Design Guidelines;
3. Southside Strategic Plan Design Guidelines; and
4. University Strategic Plan Design Guidelines.

This process heavily relies on the discretion of staff and the Design Review Committee; however, recent State laws require that cities develop objective standards for streamlined and ministerial approval processes for qualified projects. To aid JSISHL in making a recommendation, staff created a matrix of design guidelines to identify design goals, introduced objective language to reflect desired design outcomes, and test-fit approved projects to double-check objective language. **JSISHL recommended the proposed objective design standards be reviewed by the Design Review Committee and further refined by Planning Commission.**

Objective Standards for Shadows

The Berkeley Municipal Code (BMC) addresses shadows as follows:

- Section 23E.36.070(C)(1)(a): Projects on the north side of University Avenue within the University Avenue Strategic Plan Overlay area must meet a Solar Rear Yard Setback (subject to override by Density Bonus waivers). Required daylight plane analysis is incorporated directly into the development standards: “...*shall not cast a shadow at noon more than 20 feet onto any lot in a residential zone as calculated when the sun is at a 29 degree angle above the horizon (winter solstice).*”
- Section 23B.34.070(C): Green Pathway Projects² within the Downtown Mixed-Use District (C-DMU) that are between 60 and 75 feet tall. Shadow analysis for these projects must show that:

¹ <https://formbasedcodes.org/standards-of-practice/>

² As defined in in Chapter 23B.34 of the municipal code, the “Green Pathway” is a streamlined permit process for buildings that exceed the Green Building requirements applicable to the C-DMU district and confer extraordinary public benefits.

1. *The extent of shading on public sidewalks and open spaces within a radius of 75 feet of the closest building wall that would be cast at two (2) hours after sunrise, 12 p.m., and two (2) hours before sunset, on March 21, June 21, December 21, and September 21, by a building 60 feet in height that complies with all applicable setback requirements; and*
2. *Features incorporated into the building design, including, but not limited to, additional upper floor setbacks that will reduce the extent of shadowing of the proposed building to no more than 75 percent of the shadowing projected in paragraph 1 above.*

Otherwise, shading impacts are evaluated on a discretionary basis during Use Permit review and are permissible provided they are not “unreasonable” or provided they will not result in a “significant reduction in sunlight.” Although the review of shadow studies is somewhat objective – administrative guidelines establish methods for analyzing impacts by time of day and time of year on living area windows and yards - the ultimate finding is subjective. Therefore, while shadow studies provide accurate information on shading due to proposed projects, the amount of shading from new development that is deemed “reasonable” depends on the context.

JSISHL discussed many aspects of shadow impacts, including shading of solar panels and roofs, windows, yards and gardens. The recommendation is fairly detailed, including five applicability considerations and four methods of measuring shadow impacts that depend on project elements. **JSISHL recommended that the proposal for objective shadow standards be reviewed and further refined by staff and the Planning Commission.**

BACKGROUND

On July 17, 2017, the City Council adopted a referral to address the State Housing Accountability Act (Government Code Section 65589.5) and to preserve local land use discretion (see Attachment 2). The referral requested research into a set of objective zoning standards for new development projects in the following four topic areas:

- Density and/or building intensity;
- Public health and safety standards;
- Design review standards; and
- Views, shadows, and other impacts that often underlie detriment findings.

In the time since the referral was adopted by City Council in 2017, the State adopted several bills to streamline the approval process for housing developments. Legislation facilitates housing production for projects that comply with a jurisdiction’s objective standards and prohibits localities from adopting standards what would reduce the number of residential units allowed (i.e. downzones a property or area). As a result of

these legislative actions, jurisdictions benefit from adopting objective planning standards that can guide the development process and reflect goals of the local community.

JSISHL's first few meetings in 2018 were focused on understanding and analyzing 2017 State housing laws and associated City Council referrals. At its fourth meeting, in January 2019, JSISHL adopted a work plan (see Attachment 3) to direct efforts towards researching approaches to objective standards for density, design, shadows and views. In March and May of 2019, JSISHL examined existing conditions at the City of Berkeley and implementation of the Zoning Ordinance and of State law (i.e. Density Bonus, SB-35, the Housing Accountability Act). Since September 2019, JSISHL has evaluated objective standards for density, design and shadows in order to develop a recommendation to City Council. At its final meeting on July 22, 2020, JSISHL recommended approaches to objective standards for design, density and shadows to City Council for consideration. JSISHL was not able to address objective standards for views.

ENVIRONMENTAL SUSTAINABILITY

Adoption of objective standards will streamline the permitting process for housing projects, encouraging infill development and density, creating opportunities to live and work within close proximity and reduce reliance on private vehicle use and/or vehicles miles traveled.

RATIONALE FOR RECOMMENDATION

State law requires that jurisdictions adopt objective standards in order to ministerially approved projects.

ALTERNATIVE ACTIONS CONSIDERED

The city can choose to not adopt objective standards, in which case projects will be ministerially approved without meeting certain standards.

CITY MANAGER

The City Manager concurs with the content and recommendations of the Commission's Report.

CONTACT PERSON

Alene Pearson, Subcommittee Secretary, Planning and Development Department, 510-981-7489

Attachments:

- 1: Meeting Minutes (July 22, 2020)
- 2: City Council Referral (July 17, 2017)
- 3: Work Plan (January 17, 2019)



Planning Commission

**DRAFT MINUTES OF THE REGULAR MEETING OF THE JSISHL
(JOINT SUBCOMMITTEE FOR IMPLEMENTATION OF STATE HOUSING LAWS)**

July 22, 2020

The meeting was called to order at 7:02 p.m.

Location: N/A (This meeting was conducted exclusively through videoconference and teleconference)

Commissioners Present: Teresa Clarke, Dohee Kim, Thomas Lord, Shoshana O’Keefe, Igor Tregub, Alfred Twu, Jeff Vincent, Marian Wolfe (left at 9:29), Rob Wrenn

Commissioners Absent: None

Staff Present: Alene Pearson, Nilu Karimzadegan, Anne Burns and Desiree Dougherty

ORDER OF AGENDA: No Change

CONSENT CALENDAR: N/A

PUBLIC COMMENT: 1 speaker

PLANNING STAFF REPORT: Staff announced that three supplemental communications were sent out via email prior to the meeting and are posted on the online agenda. Communications received “At the Meeting” will be posted by the end of Friday.

COMMUNICATIONS IN PACKET:

- Email from Cantor Lois on 10/24/19 re: BART apartments
- Email from Vicki Sommer on 10/24/19 re: Objective Standards for Sunlight Detriment
- Email from Alene Pearson on 11/15/19 to JSISHL re: JSISHL October follow up and December supplemental material request
- Letter from Toni Mester on 12/2/19 re: density and solar recommendation
- Letter from David Ushijima on 12/2/19 re: Objective Standards for Shadow and Sunlight
- Email from Commissioner Wolfe on 12/2/19 re: JSISHL October follow up and December supplemental material request

COMMISSIONER ATTACHMENTS IN PACKET:

- Email from Alene Pearson to JSISHL on June 26, 2020 re: JSISHL Meeting scheduled for July 22
- Email from Alene Pearson to JSISHL on May 15, 2020 re: JSISHL Meeting via Zoom

- Email from Timothy Burroughs, Planning Director on April 23, 2020 re: Update on status of board and commission meetings
- Email from Commissioner Lord on April 13, 2020 re: “The Constitution.....”
- Email from Commissioner Lord on March 30, 2020 re: Objectifying and Modernizing Study Standards
- Email from Commissioner Kim on March 30, 2020 re: Follow Up to February 26 JSISHL Meeting
- Email from Commissioner Wolfe on March 28, 2020 re: Follow Up to February 26 JSISHL Meeting
- Email from Commissioner Wright on March 12, 2020 re: Follow Up to February 26 JSISHL Meeting
- Email from Alene Pearson to JSISHL on March 6, 2020 re: Follow Up to February 26 JSISHL Meeting

LATE COMMUNICATIONS (Received after the Packet deadline):

- Supplemental Communication 1
- Supplemental Communication 2
- Supplemental Communication 3

LATE COMMUNICATIONS (Received and distributed at the meeting):

- Supplemental Communication 4

CHAIR REPORT: None

COMMITTEE REPORT: None

7. APPROVAL OF MINUTES:

Motion/Second/Carried (Wolfe/Clarke) to approve the JSISHL Meeting Minutes from February 26, 2020. Ayes: Clarke, Kim, Lord, Tregub, Vincent, Wolfe, Wrenn. Noes: None. Abstain: O’Keefe, Twu. Absent: None (7-0-2-0)

8. FUTURE AGENDA ITEMS AND OTHER PLANNING-RELATED EVENTS: None

AGENDA ITEMS

9. Action: Objective Standards for Density

PUBLIC COMMENT: 4 speakers

Primary Motion/Second/No Action Taken (O’Keefe/Wrenn) to recommend that the City Council refer to staff and Planning Commission development of a dwelling units per acre standard in all commercial districts and in the MULI and MUR districts with consideration of a cap on average number of bedrooms. Take into consideration size of parcel and develop an average bedroom/unit (to be determined) for multi-unit buildings. Develop Floor Area Ratios (FARs) for residentially zoned (“R” prefix) districts such as R-2, R-2A, and R-3, to help clarify and make more objective what is permitted in these districts.

Substitute Motion/Second/Carried (Kim/Clarke) to recommend using FAR as a density standard with a secondary form-based approach in Residential and Commercial districts. Ayes: Clarke, Kim, Wolfe, Twu, Vincent. Noes: Lord, O’Keefe, Tregub, Wrenn. Abstain: None
Absent: None
(5-4-0-0)

10. Action: Objective Standards for Design

PUBLIC COMMENT: 1 speakers

Primary Motion/Second/Carried (Wolfe/Clarke) to recommend to City Council the proposed design standards be reviewed and further developed by the Design Review Committee and Planning Commission. These standards were included in JSISHL’s July 22, 2020 packet. Ayes: Clarke, Kim, O’Keefe, Tregub, Vincent, Wolfe, Wrenn. Noes: None. Abstain: Lord, Twu.
Absent: None
(7-0-2-0)

Substitute Motion/Second/Not Carried (Twu/O’Keefe) to recommend to City Council the proposed design standards -- minus the first four design standards (massing, material, rooflines, facades) -- be reviewed and further developed by the Design Review Committee and Planning Commission. These standards were included in JSISHL’s July 22, 2020 packet. Ayes: O’Keefe, Twu. Noes: Clarke, Kim, Lord, Tregub, Vincent, Wolfe, Wrenn. Abstain: None.
Absent: None
(2-7-0-0)

11. Action: Objective Standards for Shadows

PUBLIC COMMENT: 2 speakers

Motion/Second/Not Carried (Wrenn/Tregub) to recommend to City Council the following:

In developing draft objective standards, staff should start with existing daylight plane standards, including the standards for San Pablo Avenue in El Cerrito, and with the City’s own standard in effect for University Avenue.

Shadowing standards would only apply if the proposed project was asking for a Use Permit, AUP, waiver or density bonus to exceed the “base” residential and commercial zoning district development standards that are in effect as of 7/1/20.

Where there is a lot coverage limit, adjustments to the location and orientation of the massing can be required in order to minimize shadowing impacts.

In the development of shadowing standards, impacts on light and air and existing windows and door openings of the applicable adjacent buildings will be taken into consideration.

JSISHL should recommend that the City Council direct staff to go forward with drafting of an objective standard to protect existing rooftop solar panels from shadowing by new development on adjacent and nearby parcels.

JSISHL should recommend that the City Council direct staff to go forward with drafting objective shadowing standards to limit shadowing of residential buildings by new development on adjacent or nearby parcels.

Standards should apply in residentially zoned (“R” prefix) districts and to properties in commercially zoned (“C” prefix) districts that are adjacent to residential properties, where new development could cause shadowing impacts on residential properties. Staff could present to Council a range of options with draft language for each.

JSISHL should recommend that the City Council direct staff to work on standards to protect open, currently unshadowed areas of public parks, and open currently unshadowed areas of school grounds that are used for student recreation.

Ayes: O’Keefe, Tregub, Vincent, Wrenn. Noes: Lord, Abstain: Clarke, Kim, Twu. Absent: Wolfe (4-1-3-1)

Motion/Second/Carried (Clarke/Vincent) to recommend to City Council the following proposed shadow standards be reviewed and further developed by the staff and Planning Commission.

1. Applicability of Shadow Impacts:
 - a. Shadow impacts would not be considered when a proposed new building or new construction meets all base development standards.
 - b. Shadow impacts on an adjacent property would only be considered when a side or rear yard setback reduction or an increase in height is requested by use permit or by state density bonus over the allowable standard. Shadow impacts for Front or Street yard setback reductions would not be included or considered.
 - c. The shadow impact would only be calculated on the increase in shadow caused by the additional height or reduced setback portion of the project, not the cumulative.
 - d. Adjustments would seek to limit reductions in overall building envelope and could compensate with increases in height in another portion of the building, or reduced setback in another portion of the site, or some other mutually agreed adjustment to a development standard or mitigation. Adjustments may require, if no other solution can be proposed to mitigate the impact, a reduction in the overall total building envelope proposed. However, for state density bonus projects, adjustments to a proposed new residential construction shall not require a reduction in the overall total building envelope, habitable area, or cause the number of bedrooms or units to be reduced.
 - e. If the adjacent building being affected has a reduced building setback on the adjacent side or rear yard, a light and air impact would not be applicable, except in those cases where the building has a historic designation or was built prior to the implementation of the zoning code.
2. Elements of consideration for Shadow Impact:

- a. Light & Air for Building Openings of Applicable adjacent buildings: The light and air shadow impact shall consider impact to light and air access only of the existing windows and door openings of the applicable adjacent buildings. The new construction would be required to adjust its setback such that a minimum 3 foot perpendicular distance was achieved and a 6 foot width, with minimum 1 foot on either side of the window or door for 2 stories (min. 6 foot for courts with openings on both sides) and 1 foot additional setback for each additional story up to 14 stories, or a total maximum setback of 15 feet from the adjacent building. For instance if the building is 3 feet away from the property line, a 12 foot maximum from the property line for the new building.
- b. Minimum Required Open Space of Adjacent properties: An increase in shadow impact caused by the additional height or reduced setback on the minimum required open space of the adjacent impacted property shall not be more than a 50% increase in direct shade averaged over the entire year. If the affected property has more than the required open space, the calculation would be made on the open space that is least impacted by the shadow. The setback or height shall be adjusted to result in a net shadow increase of no more than 50% (or suggest alternate per staff research) as limited in Section 1 above. The shadow impact would only be calculated on the increase in shadow caused by the additional height or reduced setback portion of the project, not the cumulative.
- c. Solar Access: An increase for the additional impact only of more than 50% of direct shading on existing solar panels averaged over the entire year and over the entire area of solar array would require that an adjustment to the requested height or setback be made, or other mutually agreed adjustment to a development standard or mitigation be made. If a mitigation such as moving the solar panels or re-orienting the solar panels has been mutually agreed upon in lieu of a development standard adjustment, this mitigation should be completed prior to building permit issuance, if possible.

The shadow impact would only be calculated on the increase in shadow caused by the additional height or reduced setback portion of the project, not the cumulative.

Ayes: Clarke, Kim, O'Keefe, Twu, Vincent. Noes: Lord, Wrenn. Abstain: Tregub. Absent: Wolfe. (5-2-1-1)

The meeting was adjourned at 11: 01 p.m.

Commissioners in attendance: 9 of 9

Members in the public in attendance: 7

Public Speakers: 7

Length of the meeting: 2 hours and 59 minutes

APPROVED:

Page 6 of 6

Secretary to the JSISHL

DRAFT

RESOLUTION NO. 69,159-N.S.

EXTENSION OF THE JOINT SUBCOMMITTEE FOR THE IMPLEMENTATION OF
STATE HOUSING LAWS

WHEREAS, the Joint Subcommittee for the Implementation of State Housing Laws (JSISHL) was established under Resolution No. 68,308-N.S. in January 2018; and

WHEREAS, the mission of JSISHL is to advise Council regarding issues around density bonuses, the Housing Accountability Act, inclusionary zoning, and permit streamlining to attain compliance with state law and take advantage of new opportunities for the development of affordable housing; and

WHEREAS, under its enabling legislation, JSISHL is tasked with completing its work by January 2020, reporting to Council by March 2020; and

WHEREAS, in order to fulfill its mission an extension is needed to provide adequate time to review recently passed State housing laws, and to provide adequate feedback on recommendations on units per acre density standards, Floor to Area Ratios (FARs) and daylight plane shadowing standards, along with anything else such as an objective definition of detriment.


NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby extends the timeline for the Joint Subcommittee for the Implementation of State Housing Laws to complete its work by July 2020, with the recommendations being brought to the City Council for consideration by the end of September 2020.

The foregoing Resolution was adopted by the Berkeley City Council on October 29, 2019 by the following vote:

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

Noes: None.

Absent: None.



Jesse Arreguin, Mayor

Attest: 

Mark Numainville, City Clerk

RESOLUTION NO. 68,308–N.S.

ESTABLISHING A JOINT SUBCOMMITTEE FOR THE IMPLEMENTATION OF STATE HOUSING LAWS.

WHEREAS, Berkeley and California is facing an unprecedented housing affordability crisis; and

WHEREAS, rents for a two bedroom apartment in Berkeley have risen by 62.5% over the past five years; and

WHEREAS, Berkeley has so far achieved 48% of its housing allocation goals for 2014-2022 set out by the Association of Bay Area Governments, including 0% for extremely low income and moderate income; and

WHEREAS, many residential developments that have received zoning approval have yet to receive a building permit; and

WHEREAS, to address the rising crisis of housing in the State of California, 15 state bills were signed into law, with many dealing with how local municipalities respond to the development of new units; and

WHEREAS, issues around density bonuses, the Housing Accountability Act, inclusionary zoning, and permit streamlining need to be addressed by the City to be compliant with state law and to take advantage of new opportunities for the development of affordable housing; and

WHEREAS, because the Zoning Adjustments Board, Housing Advisory Commission, and Planning Commission have policy and quasi-judicial powers around housing, it would be beneficial for representatives of these commissions to meet jointly to develop policies for consideration by the Planning Commission and City Council; and

WHEREAS, community input is of vital importance in the review and implementation of these housing policies, and such input can be encouraged by regular publicly-noticed meetings of the Task Force; and

WHEREAS, the Joint Subcommittee should be comprised of nine voting members, with representatives from each commission.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley does hereby establish a Joint Subcommittee composed of members from the Zoning Adjustments Board, Housing Advisory Commission, and Planning Commission.

BE IT FURTHER RESOLVED that the Joint Subcommittee members shall be appointed from the membership of the Zoning Adjustments Board, Planning Commission or Housing Advisory Commission. Any Commissioner on any of those commissions is eligible for appointment to the Joint Subcommittee, as long as there is representation from each commission on the Joint Subcommittee.


BE IT FUTHER RESOLVED that the Joint Subcommittee shall complete its work by January 2020. Staff shall forward the Joint Subcommittee's recommendations to each parent Commission for comment, and bring the Joint Subcommittee's recommendations to the City Council for consideration by the end of March 2020, along with comments by any parent commissions.

The foregoing Resolution was adopted by the Berkeley City Council on January 23, 2018 by the following vote:

Ayes: Davila, Droste, Hahn, Harrison, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

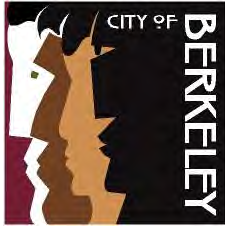
Absent: Bartlett.



Jesse Arreguin, Mayor

Attest: 

Mark Numalville, City Clerk



Mayor Jesse Arreguin
Councilmember Sophie Hahn, District 5

SUPPLEMENTAL AGENDA MATERIAL

Meeting Date: June 13, 2017

Item Number: # 59

Item Description: Housing Accountability Act

Submitted by: Mayor Jesse Arreguin and Councilmember Sophie Hahn

The revision removes the idea that staff and the Planning Commission consider as one of several options downzoning and then upzoning by increasing development standards on a discretionary basis.

These ideas largely reflect those originally proposed by the City Attorney and Planning staff.

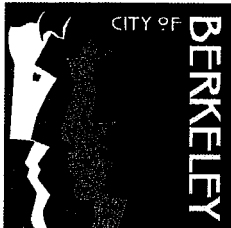


Mayor Jesse Arreguin
Councilmember Sophie Hahn, District 5

Motion, Item # 59: Housing Accountability Act

Refer to the City Manager and Planning Commission to consider the following actions, and others they may find appropriate, to address the potential impacts of the Housing Accountability Act and to preserve local land use discretion:

- Amend the General Plan and Zoning Ordinance to adopt numerical density and/or building intensity standards that can be applied on a parcel-by-parcel basis in an easy and predictable manner. These would constitute reliable and understandable “objective general plan and zoning standards” that would establish known maximum densities. This could be done across the board or for specified districts.
- Devise and adopt “objective, identified written public health or safety standards” applicable to new housing development projects.
- Adopt “design review standards that are part of ‘applicable, objective general plan and zoning standards and criteria’”.
- ~~Downzone & increase the number and amount of additional height, setback, and other elements available on a discretionary basis.~~
- Quantify and set standards for views, shadows, and other impacts that often underlie detriment findings.



Office of the Mayor

RECEIVED AT
COUNCIL MEETING OF:

MAY 30 2017

OFFICE OF THE CITY CLERK
CITY OF BERKELEY

Motion, Item # 46: Housing Accountability Act

Refer to the City Manager and Planning Commission to consider the following actions, and others they may find appropriate, to address the potential impacts of the Housing Accountability Act and to preserve local land use discretion:

- Amend the General Plan and Zoning Ordinance to adopt numerical density and/or building intensity standards that can be applied on a parcel-by-parcel basis in an easy and predictable manner. These would constitute reliable and understandable “objective general plan and zoning standards” that would establish known maximum densities. This could be done across the board or for specified districts.
- Devise and adopt “objective, identified written public health or safety standards” applicable to new housing development projects.
- Adopt “design review standards that are part of ‘applicable, objective general plan and zoning standards and criteria’”.
- Downzone & increase the number and amount of additional height, setback, and other elements available on a discretionary basis.
- Quantify and set standards for views, shadows, and other impacts that often underlie detriment findings.

Meeting Date: January 17, 2019

To: Joint Subcommittee for the Implementation of State Housing Law (JSISHL)

From: Chris Schildt, Chairperson

Subject: JSISHL background, mission, objectives, and developing 2019 Workplan

Background

JSISHL held three meetings last year in April, May, and July, and had two meetings cancelled in September and November. Due to the long gap since our last meeting, I thought it'd be helpful to revisit the mission and objectives of this subcommittee, as background to a discussion of our workplan for the coming year.

At our April 17, 2018 meeting, we reviewed the mission and objectives of this subcommittee (from April 17, 2018 staff presentation to JSISHL):

Mission: Assist the City of Berkeley to effectively implement new State housing laws and advance City Council priorities that are designed to increase affordable housing.

Objectives:

- Learn about the new State housing law package and its implications for our community
- Assist the City to incorporate new practices designed to enable implementation of new State housing laws
- Based on City Council priorities and referrals, assist with development of new policies for consideration by parent commissions and City Council.

At our subsequent meetings, we heard information about and discussed new state housing laws and a range of related issues, including developing objective standards, streamlining affordable housing, density bonus, and inclusionary zoning.

Developing a 2019 Workplan

While we heard information and had a lot of discussion last year, my aim for this coming year is for this body to move forward on a finite number of items that will best position the City to implement State housing laws. To that aim, I recommend we develop a workplan with agreed upon priorities that we will work on in the coming year. This would not preclude commissioners from submitting agenda items on other topics for JSISHL to consider, but would help to align our efforts and focus.

The workplan should build off of our existing work and discussion. In last year's meetings, we discussed the following areas that relate to implementation of new State housing laws:

- Developing objective standards
- Streamlining affordable housing
- Density bonus
- Inclusionary housing

Proposal:

Numerous state laws, including the Housing Accountability Act, SB 35, and other potential future state legislation (e.g. SB 50) have made it difficult to implement our local laws, which were developed to be flexible with local discretion. The City has recently undertaken a review of the applicable standards that can be enforced under these laws in the light of three recent projects that have applied for approval under SB 35. For an example of how the City applied objective standards for one of the projects, 1601 Oxford Street, see:

https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_ZAB/2018-12-21_Attachment%20C_SB35_Objective%20Standards_1601%20Oxford.pdf

One outcome of the recent reviews has been the clear identification of those areas where the City does not have objective standards, including design review and use permit findings, which are by necessity discretionary and flexible to address unique circumstances. Developing objective standards in areas such as view, sunlight, density, and detriment could help to ensure local needs and goals are included in the development review process for all projects. These objective standards would also help address some of the other topics that have come up on this commission, such as facilitating streamlined review of affordable housing projects and improving the density bonus process.

As a proposed workplan, we could decide as a commission to use each of the next several meetings to do research and discussion on a separate topic within objective standards, and develop a set of recommendations for the City Council and/or our parent commissions. For each topic, commissioners and members of the public would be encouraged to submit information and research to this commission related to the topic to inform discussion. Attached is an example of research provided by a member of public, David Ushijima, on providing objective standards for sunlight detriment.

For example, we could dedicate one of each of these topics for each upcoming meeting:

- Daylight.
- Views.
- Density standards (Note: The city has hired a consultant, Opticos Design, to develop density standards this year. They will be presenting to this commission in 2019, date TBD).
- Detriments to health, comfort, and general welfare.

We could also agendaize for a future meeting to review the City's existing objective standards table.

At the end of the year, we can compile our research and discussion and develop a set of recommendations to send to the City Council and/or our parent bodies.

Questions for discussion:

- Do the members of the commission agree to develop a workplan for 2019?
- If yes, what should our priorities be for 2019?



Planning Commission

1 **DRAFT MINUTES OF THE REGULAR MEETING OF THE JSISHL**
2 **(JOINT SUBCOMMITTEE FOR IMPLEMENTATION OF STATE HOUSING LAWS)**

3
4 **January 17, 2019**

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

6 **Location:** 2180 Milvia Street 1st Floor, Cypress Conference Room

7 **Commissioners Present:** Thomas Lord, Shoshana O'Keefe (arrived at 7:16), Christine Schildt
8 Igor Tregub, Marian Wolfe, Rob Wrenn.

9 **Commissioners Absent:** None

10 **Staff Present:** Alene Pearson, Nilu Karimzadegan and Beth Greene

11 **ORDER OF AGENDA:** Order of Agenda was changed to:

12 Discussion Item 9 (Adopt 2019 JSISHL Work Plan), Discussion Item 10 (Renewing
13 Democratized Planning in Berkeley), Action Item 11 (Approve 2019 JSISHL Meetings Calendar)
14 and Action Item 12 (Elections: Elect 2019 JSISHL Chair and Vice Chair).

15 Motion/Second/Carried (Lord/ Tregub) to move Agenda Item 12 to Agenda Item 10 and vote
16 on the 2019 JSISHL Work Plan after Agenda Item 10. Ayes: Lord, O'Keefe, Schildt, Tregub,
17 Wolfe, Wrenn. Noes: None. Abstain: None. Absent: None (6-0-0-0)

18
19 **CONSENT CALENDAR:** N/A.

20 **PUBLIC COMMENT:** 1 speaker

21 **PLANNING STAFF REPORT:**

22 Staff announced that 2019 meeting dates will be decided tonight with Agenda Item 11 and future
23 meeting location will depend upon room availability.

24 **COMMUNICATIONS IN PACKET:**

- 25 • White Paper on Sunlight Impacts by David Ushijima (October 15, 2018).
26 • 2019-01-08_Communication_BNC_Support of White Paper by Dean Metzger (January 8,
27 2019)

28
29 **LATE COMMUNICATIONS** (Received after the Packet deadline): None

30

31 **LATE COMMUNICATIONS** (Received and distributed at the meeting): None

32 **CHAIR REPORT:** None

33 **COMMITTEE REPORT:** None

34 **7. APPROVAL OF MINUTES:**

35 Motion/Second/Carried (Tregub/Wrenn) to approve the JSISHL Meeting Minutes from July 17,
36 2018. Ayes: Lord, O’Keefe, Schildt, Tregub, Wrenn. Noes: None. Abstain: Wolfe. Absent:
37 None (5-0-1-0)

38
39 **8. FUTURE AGENDA ITEMS AND OTHER PLANNING-RELATED EVENTS:** None.

40 **AGENDA ITEMS**

41 **9. Discussion:** Adopt 2019 JSISHL Work Plan:

42 The Commission discussed a work plan for 2019 and developed a proposed schedule with
43 meeting dates and topics that focus on objective standards for the implementation of State
44 Housing Law. Below is a summary of that discussion:

45 January 17: Work Plan Development

46 March 27: Existing Objective Standard Framework

47 May 22: Density Standards and Density Bonus

48 September 25: Daylight, shadowing, and solar access

49 October 23: Views and other objective standards

50 December 12: Report out.

51 The Commissioners and the members of the public were encouraged to submit information and
52 research related to future meeting topics. This work plan will result in a set of recommendations
53 to parent commissions and/or City Council.

54 **PUBLIC COMMENT:** 1 speaker

55 **10. Discussion:** Renewing Democratized Planning in Berkeley

56 Commissioner Lord explained his memo and suggested modifications to the work plan
57 developed during discussion of Agenda Item 9. The Commission added the topic of local
58 overlay zones to the September and October meetings.

59 **PUBLIC COMMENT:** 1 speaker

60 Motion/Second/Carried (O’Keefe/Wolfe) to adopt the proposed 2019 workplan. Ayes: O’Keefe,
61 Schildt, Tregub, Wolfe, Wrenn. Noes: Lord. Abstain: None. Absent: None (5-1-0-0)

62
63 **11. Action:** Approve 2019 JSISHL Meetings Calendar:

64 The Commission discussed their availability and agreed on the following 2019 calendar:

65 January 17, 2019 (Wednesday)

66 March 27, 2019 (Wednesday)

67 May 22, 2019 (Wednesday)

68 September 25, 2019 (Wednesday)

69 October 23, 2019 (Wednesday)

70 December 12, 2019 (Thursday)

71 Motion/Second/Carried (O’Keefe/Tregub) to adopt the proposed 2019 calendar. Ayes: Lord,
72 O’Keefe, Schildt, Tregub, Wolfe, Wrenn. Noes: None. Abstain: None. Absent: None
73 (6-0-0-0)

74
75 **12. Elections:** Elect 2019 JSISHL Chair and Vice Chair:

76 Motion/Second/Carried (Wolfe/O’Keefe) to Elect Chris Schildt as Chair and Igor Tregub as
77 Vice Chair for 2019 JSISHL. Ayes: Lord, O’Keefe, Schildt, Tregub, Wolfe, Wrenn. Noes: None.
78 Abstain: None. Absent: None (6-0-0-0)

79
80 **The meeting was adjourned at 9: 03 p.m.**

81 **Commissioners in attendance: 6 of 6**

82 **Members in the public in attendance: 2**

83 **Public Speakers: 2**

84 **Length of the meeting: 1 hour and 58 minutes**