



Office of the City Manager

WORKSESSION  
September 20, 2022

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Jordan Klein, Director, Planning and Development Department  
Subject: Residential Objective Standards: Middle Housing and Southside

SUMMARY

In response to City Council referrals, recent changes in housing-related State laws, and the requirement to update the City's Housing Element, City staff are preparing Zoning Ordinance and zoning map changes for:

1. **Lower density districts**, which include the R-1, R-1A, R-2, R-2A, and MU-R zoning districts, to create or modify objective residential development standards to encourage duplexes, triplexes/fourplexes, townhomes, and other small-scale multi-family housing types ("middle housing") that have historically appeared in Berkeley neighborhoods comprised of single-family homes. The intent is to address the need for more housing options, including rental and ownership.
2. **The Southside Area**, to create or modify objective standards for building height, coverage, parking, ground-floor residential uses, and zoning district boundaries to increase residential development potential—particularly student-oriented housing—in portions of the R-3, R-S, R-SMU, C-SA, and C-T zoning districts within the Southside Area.

The proposed amendments are based on input from community engagement through the Housing Element Update as well as prior meetings with Council, Planning Commission, Southside Environmental Impact Report (EIR) Subcommittee, and the Zoning Ordinance Revision Project Subcommittees. The City Council is asked to receive a staff presentation and provide feedback on the proposed objective development standards and approaches.

## CURRENT SITUATION AND ITS EFFECTS

As stated in prior reports<sup>1</sup>, the City Council referred staff to consider and codify objective zoning standards with the goal of encouraging the creation of additional residential development and affordable homes. Further purposes include:

- Address State laws that seek to reduce time involved in permitting processes through by-right and ministerial approvals.
- Increase certainty for applicants by removing subjective judgements from project approvals.
- Reduce the administrative costs and burden associated with needing to provide qualitative justifications for discretionary review.

## **LOWER DENSITY DISTRICTS**

Over the past year, staff have worked to implement the City Council's direction to end exclusionary zoning<sup>2</sup> and allow for "missing middle" development<sup>3</sup> in Berkeley's lower density zones<sup>4</sup>. As cited in the Council referrals, the intent is to:

- Foster a broader range of housing types across Berkeley in areas with access to essential components of livability like parks, schools, employment, transit, and other services; and
- End single family residential zoning, which has its roots in racist exclusionary zoning policy and leads to racial and economic segregation.

Middle housing can meet the needs of renters as well as create more ownership opportunities by offering flexibility for a range of unit sizes and incentivizing housing types that are "affordable by design," i.e. with less development cost per unit due to the increased density and other modified development standards.

The draft proposed standards are designed to increase the total number of units allowed based on lot size, increase the total achievable floor area on a lot as the number of units increases, and encourage a mix of unit sizes and densities. In the lower density Residential zoning districts, this is accomplished by marginally increasing allowed lot coverage and floor area ratios (FAR) as the number of units increases, but at a rate that results in lower average unit sizes for larger buildings. In the MU-R district, this is accomplished by increasing FAR as the number of units increases, as there is already no limit to lot coverage.

Table 1 below provides a summary of the proposed standards, the recommended changes, and the policy rationale for each recommendation. Each standard is further discussed below and a detailed table listing all of the draft proposed development

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<sup>1</sup> November 9, 2021. Objective Standards for Density, Design, and Shadows. Berkeley City Council.

<sup>2</sup> February 23, 2021. Resolution to End Exclusionary Zoning in Berkeley. Berkeley City Council.

<sup>3</sup> April 23, 2019. Missing Middle Housing Report. Berkeley City Council

<sup>4</sup> The ES-R District is excluded from this program because new dwelling units are currently prohibited in that limited area due to extreme hazards and inadequate infrastructure.



standard changes can be found in Attachment 2. In addition, staff are considering strategies for wildfire mitigation, view preservation, and solar access and address these concerns in the report following the discussion on standards.

*Table 1. Summary of Proposed Lower Density Residential Standards*

Standard	Recommendation	Policy Goal
Minimum and Maximum Densities	Set minimum and maximum densities expressed in units per acre	Encourage appropriate densities Increase predictability of review process and outcome Maintain middle housing scale in low-density residential districts
Maximum Floor Area Ratio (FAR)	Set a maximum FAR that scales up as the number of units increases	Maintain middle housing scale in low-density residential districts Encourage a mix of unit sizes that are “affordable by design” Comply with SB 478 which prohibits a local agency from imposing a FAR less than 1.0 on a housing project with 3 to 7 units, or less than 1.25 on a housing project with 8 to 10 units
Minimum Open Space	Reduce required minimum open space, and set the requirement based on square feet of building area, rather than per unit	Maintain middle housing scale in low-density residential districts
Maximum Height	Set a maximum average height and/or maximum overall height without an option to modify with a Use Permit	Streamline the approval process Increase predictability of review process and outcome
Lot Coverage and Setbacks	Increase allowable lot coverage as the number of units increases; Reduce rear setbacks with reduced building height.	Maintain middle housing scale in low-density residential districts
Building Separation	Remove building separation requirement where there is more than one building on a lot	
Permits and Levels of Discretion	Enable projects with two or more units to be approved with a Zoning Certificate (ZC)	Maintain middle housing scale in low-density residential districts Streamline the approval process

**Zoning Map Amendment**

In response to City Council’s feedback at its March 15, 2022 worksession, the proposed R-1A and R-2 district standards have been merged to be one set of standards, identified as “Residential Multi-Unit 2 (R-2)”, which also would be reflected on a zoning map amendment (Attachment 1). Both R-1A and R-2 districts are in the same General Plan land use designation already: Lower Medium Density Residential (LMDR).

**Permits and Levels of Discretion**

*Current Standards:* Table 2 includes the current permit requirements in lower-density residential districts for residential and live/work projects that include more than one dwelling unit. The proposed standards do not change any permit requirements for Single-Family, Group Living Accommodation or Mixed-Use Residential<sup>5</sup> uses in these zones, so those regulations are not listed.

*Table 2. Current Permit Requirements*

	R-1	R-1H	R-1A	R-2	R-2H	R-2A	R-2AH	MU-R
Two-Family	NP	NP	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	AUP [1]
Multi-Family	NP	NP	NP	UP(PH)	NP	UP(PH)	UP(PH)	AUP/UP(PH) [1]
Live/Work	NP	NP	NP	NP	NP	NP	NP	AUP/UP(PH)[1]
[1] A Use Permit is required to establish a unit that is within 150 feet of an M or MM district; or a construction product manufacturing or primary product manufacturing use. (BMC 23.206.090(B)(8) MU-R Mixed Use-Residential District)								
UP(PH) = Use Permit (Public Hearing); AUP = Administrative Use Permit; NP = Not Permitted								

*Proposed Standards:* The proposed standards, shown in Table 3, would combine Two-Family and Multi-Family Residential uses into a single Multi-Unit Residential use type. The City would provide ministerial approval with a Zoning Certificate for Multi-Unit Residential and Live/Work projects that comply with all objective standards; no discretionary permit or public hearing would be required. A Zoning Certificate is a ministerial approval reviewed by staff to verify compliance with the Zoning Ordinance, and is not appealable.

*Table 3. Proposed Permit Requirements*

	R-1	R-1H	R-2	R-2H	R-2A	R-2AH	MU-R
Multi-Unit Residential	ZC	ZC	ZC	ZC	ZC	ZC	ZC[1]
Live/Work	NP	NP	NP	NP	NP	NP	ZC[1]
[1] A Use Permit is required to establish a unit that is within 150 feet of an M or MM district; or a construction product manufacturing or primary product manufacturing use. (BMC 23.206.090(B)(8) MU-R Mixed Use-Residential District)							

<sup>5</sup> Mixed-use residential is allowed in the R-2 and R-2A, and involves combinations of residential use with other permissible non-residential uses, such as childcare center and religious assembly.

### ***Minimum and Maximum Densities***

In July 2017, Council directed staff to consider adoption of a numerical density and/or building intensity standard that can be applied on a parcel-by-parcel basis in an easy and predictable manner.<sup>6</sup>

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

- The R-1 district currently permits only single-family uses. The resulting density on a 5,000 square foot lot is approximately nine units per acre. However, SB 9 State legislation applies throughout single-family zoning districts including in the Hillside Overlay (H) district, and permits up to two units ministerially on a lot and/or an urban lot split to subdivide an existing single-family parcel into two parcels.
- The R-1A district currently permits single-family and two-family uses. No more than two units are allowed on a lot. The resulting density on a 5,000 square-foot lot is roughly 17 units per acre.
- R-2 and R-2A districts currently permit single-family, two-family, and multi-family residential uses with a UP(PH), with density determined based on lot size. The resulting density on a 5,000 square-foot lot is roughly 17 units per acre in the R-2 district and 26 units per acre in the R-2A district.
- MU-R currently permits single-family and two-family uses with an AUP, and multi-family with a UP(PH) or AUP depending on project size and proximity to a M or MM district. The resulting density on a 5,000 square foot lot is roughly 35 units per acre.

*Proposed Standards:* Table 4 summarizes the proposed density standards expressed in units per acre, and includes the maximum number of units that may result from each standard on a typical 5,000 square foot lot in each zone. There is no minimum density requirement for lots in the H district. Minimum densities would apply for new development on vacant lots or redevelopment and infill of existing nonvacant lots.

SB 9 would no longer apply to the R-1 district because it would no longer be a single-family zone. Projects with five or more units that include affordable units on-site would be eligible to utilize the State Density Bonus Law.

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<sup>6</sup> July 11, 2017. Housing Accountability Act. Berkeley City Council.

**Table 4. Proposed Density Standards**

	R-1	R-1H	R-2	R-2H	R-2A	R-2AH	MU-R
Minimum Density (units/acre)	10	No min.	10	No min.	20	No min.	20
Maximum Density (units/acre)	25	20	35	20	55	55	55
<i>Example: Resulting units on a 5,000 sf lot</i>							
Minimum Units	1	No min.	1	No min.	2	No min.	2
Maximum Units	3	2	4	2	6	6	6

The proposed density standards do not include any eligible Accessory Dwelling Units (ADUs) permitted under recently-adopted ADU provisions. A maximum of one ADU is permitted on lots with more than one detached dwelling. A maximum of two detached ADUs or up to 25 percent of the total number of existing units may be converted into ADUs on a lot with a duplex or multiple attached dwelling units. In R-1H, R-2H, and R-2AH, a maximum of one ADU or JADU is permitted.

**Maximum Floor Area Ratio (FAR)**

*Current Standards:* The Zoning Ordinance does not include a specific FAR standard in the R-1, R-1H, R-1A, R-2, R-2H, R-2A, R-2H and R-2AH districts. However, an effective maximum FAR of 1.2 can be calculated based on existing standards for lot coverage and maximum number of stories. The BMC includes a maximum 1.5 FAR in the MU-R district.

*Proposed Standards:* Table 5 summarizes the proposed maximum FAR standards. The existing effective FAR is applied to one-unit and non-residential projects, which would continue to require a use permit and public hearing process<sup>7</sup>. No FAR limit is applied if a project is subdividing existing habitable space to create additional dwelling units.

The City Council has referred consideration of an increase in the FAR as the number of units increases on a site. The recommended FAR standards also reflect guidance from the ZORP Subcommittees to encourage the development of smaller or medium-sized, cost-efficient units that are “affordable by design.”<sup>8</sup> In addition, SB 478 prohibits a local agency from imposing a FAR less than 1.0 on a housing project with three to seven

<sup>7</sup> The focus of the Middle Housing project is to facilitate multi-unit housing development; analysis of single-family development standards is not a part of this scope.

<sup>8</sup> The ZORP Subcommittees also recommended development standards that would incentivize, but not require, the preservation of existing buildings. However, this would assume there is merit to preserving all existing street-facing buildings and that “preservation” can be objectively defined. For these reasons, the proposed FAR standards do not include a preservation bonus.

units, or less than 1.25 on a housing project with eight to 10 units.

*Table 5. Proposed Maximum FAR Standards*

	R-1	R-1H	R-2	R-2H	R-2A	R-2AH	MU-R
1 Unit or Non-Residential	1.2 [1]	1.2 [1]	1.2 [1]	1.2 [1]	1.2 [1]	1.2 [1]	1.5 [2]
2 Units	0.5	0.5	0.6	0.6	1.0	1.0	1.5
3 - 7 Units	1.0	1.0	1.0	1.0	1.25	1.25	1.5
8 + Units	1.25	1.25	1.25	1.25	1.5	1.5	1.75
[1] UP(PH) [2] AUP							

**Minimum Required Open Space**

*Current Standards:* Table 6 summarizes current minimum open space requirements in lower-density districts, on a per unit basis.

*Proposed Standards:* The proposed development standard would require 150 sf of open space for every 1,000 sf of floor area on a project site in each of the lower density districts, not based on the number of units since individual units may vary in size and occupancy. The proposed standard is designed to permit greater flexibility in the configuration of open space on a lot while also preserving the requirement to provide residents with usable open space.

*Table 6. Required Open Space*

	R-1	R-1H	R-1A	R-2	R-2H	R-2A	R-2AH	MU-R
<b>Current Minimum Open Space</b>								
Per Dwelling Unit (sf)	400					300		150
<b>Proposed Minimum Open Space</b>								
Per 1,000 sf Floor Area	150		--	150				

**Maximum Height**

*Current Standards:* The Zoning Ordinance generally limits average building heights for main buildings in most lower density residential districts to 28 feet and 3 stories, with a possible increase to 35 feet with an AUP. In the H district, the Zoning Officer may approve an AUP to increase the allowed average height (28 feet) and allowed maximum height (35 feet). In the R-1A district, rear main buildings are limited to 22 feet and 2 stories. In the MU-R, the maximum height is 35 feet and 3 stories without the need for an additional AUP. Current standards also limit the height of residential additions to 14 feet, with a possible increase to 35 feet with an AUP.

*Proposed Standards:* The proposed development standards for maximum building height include the following (see Table 7):

- Outside of the H District, the maximum average building height in lower-density residential districts would be 28 feet and the maximum overall height would be 35

feet. In addition, the maximum height would be reduced to 22 feet within 15 feet of a rear property line.

- Within the H District, the maximum overall building height would be reduced to 28 feet, to address concerns for both wildfire mitigation (e.g., less fire fuel in the form of building materials), structural fireground operations (e.g., ground ladder placement for access to windows and the roof), and view preservation.
- The limit on the maximum number of stories would be removed; maximum height would be measured in feet.
- Maximum height standards for main buildings, rear buildings, and residential additions would be the same. (ADUs have separate regulations that would be unaffected.)

The proposed development standards largely preserve existing height limits, while providing a pathway for a nondiscretionary process based on objective standards. The proposed standards also include provisions that consider potential impacts on neighboring properties, such as lower maximum heights near the rear property line and reduced height limits in the H District. Attachment 3, Figure 3.5 includes height measurement diagrams that illustrate how the existing and proposed development standards consider sloped situations in the H District.

*Table 7. Current and Proposed Height Standards*

	R-1	R-1H	R-1A	R-2	R-2H	R-2A	R-2AH	MU-R
<b>Current Standards</b>								
Max. Average Height (ft)	28	28	28	28	28	28	28	--
Max. Height (ft)	--	35	--	--	35	--	35	35
Max. Height with AUP (ft)	35	No max	35	35	No max	35	No max	--
<b>Proposed Standards</b>								
Max. Average Height (ft)	28	--	28	28	--	28	--	--
Max. Height (ft)	35	28	35	35	28	35	28	35

**Maximum Lot Coverage**

*Current Standards:* Table 8 summarizes existing maximum lot coverage requirements. Current requirements distinguish between interior and corner lots, and reduce maximum lot coverage for taller projects.

*Table 8. Current Maximum Lot Coverage Standards*

	R-1	R-1H	R-1A	R-2	R-2H	R-2A	R-2AH	MU-R
<b>Interior &amp; Through-Lots</b>								
1 Story	40%	40%	40%	45%	45%	45%	45%	100%
2 Stories	40%	40%	40%	40%	40%	40%	40%	100%
3 Stories	40%	40%	40%	35%	35%	35%	35%	100%

Corner Lots								
1 Story	40%	40%	50%	50%	50%	50%	50%	100%
2 Stories	40%	40%	45%	45%	45%	45%	45%	100%
3 Stories	40%	40%	45%	40%	40%	40%	40%	100%

*Proposed Standards:* The proposed development standards, summarized in Table 9:

- Marginally increase maximum lot coverage in most lower-density residential districts.
- Use the total number of units in a project as the controlling factor for the standard, instead of the number of stories.
- Eliminates the distinction between interior/through lots and corner lots.

*Table 9. Proposed Maximum Lot Coverage Standards*

	R-1	R-1H	R-1A	R-2	R-2H	R-2A	R-2AH	MU-R
1 - 2 Units & Non-Residential	40%	40%	50%	50%	50%	50%	50%	100%
3 - 7 Units	50%	50%	55%	55%	55%	55%	55%	100%
8 + Units	55%	55%	55%	55%	55%	60%	60%	100%

**Minimum Setbacks**

*Current Standards:* The Zoning Ordinance currently regulates four types of setbacks:

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

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

- Interior Side Setbacks: Interior side setbacks are currently four feet in the R-1, R-1H, and R-1A, and increases based on building height in the R-2, R-2H, R-2A, and R-2AH. At the second story, the interior setback increases to six feet in the R-2, R-2H, R-2A, and R-2AH districts. Interior side setbacks can be reduced to three feet or five feet with a ZC.

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

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

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

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

*Proposed Standards:* The proposed development standards include the following, as detailed in Table 2 of Attachment 2.

- Front Setbacks: Staff reviewed development patterns around Berkeley and found that many neighborhoods have existing setbacks of less than the zoning standard. Based on this, front setback standards are proposed to be reduced by five feet from the current standard, except in the H districts and MUR, which would maintain existing regulations. Furthermore, a project could provide a smaller setback based on the average of the front setback(s) of adjacent existing structure(s).
- Rear Setbacks: The rear setback in all lower-density residential districts would be reduced to four feet, except in the H districts and MUR, which would maintain existing regulations. As noted above, a building's maximum height would be limited to 22 feet within 15 feet of the rear property line. The four-foot setback is consistent with the required setbacks for ADUs. The 15- and 20-foot rear setbacks required for H district lots help maintain defensible space.
- Interior Side Setbacks: The interior side setback in all lower-density residential districts would be a minimum of four feet, except in the H district where the interior side setback would increase to five feet, and in the MU-R, which would maintain its existing regulations. The increase from the current four-feet to a five-foot setback in the H district is to accommodate upcoming State Board of Forestry's Zone Zero requirement for an ember-resistant zone within five feet of a structure in a Very High Fire Hazard Severity Zone (VHFHSZ). Zone Zero is directed by AB 3074 (2020) and takes effect January 1, 2023 for new structures. Newly constructed ADUs would continue to adhere to a minimum four-foot setback.
- Street Side Setbacks: Street side setbacks in the R-1, R-1H and R-1A would be 4 feet. There would be no changes to street side setbacks in the MU-R.

### ***Building Separation***

*Current Standards:* Current building separation requirements are summarized in Table 10:



*Table 10. Current Building Separation Standards*

	R-1	R-1H	R-1A	R-2	R-2H	R-2A	R-2AH	MU-R
1 Story (ft)	No min.	No min.	8	8	8	8	8	No min.
2 Stories (ft)	No min.	No min.	12	12	12	12	12	No min.
3 Stories (ft)	No min.	No min.	16	16	16	16	16	No min.
Reduce with an AUP	--	--	AUP	AUP	AUP	AUP	AUP	--

**Proposed Standards:** The proposed development standards would eliminate all building separation requirements. Building and fire code requirements for fire rating and separation would continue to apply.

### ***Front Street-Facing Façade Requirements***

Currently there are no objective design standards for front-facing facades and elevations. During the June 1, 2022 Planning Commission meeting, staff received comments expressing concerns about blank walls as viewed from the public right-of-way.

To create visual interest and prevent blank walls facing the street, the proposed development standards would require a minimum of 20 percent of the front façade elevation within the front 40 feet of a lot to be comprised of entries, windows or glazing, and/or railings. Trim, including window shutters, would be counted towards meeting this requirement; garage doors would not be included. Attachment 3, Figure 3.6 includes front façade elevation diagrams to illustrate how the proposed standard would be measured.

### ***Neighbor Noticing***

Similar to the current ADU notification requirement, City staff would mail notices to owners and tenants of adjacent, confronting, and abutting properties within ten working days of a building permit application submittal. Notification would include information on how to contact the applicant on the design and construction of the proposed project.

### ***Wildfire Mitigation***

The State Department of Forestry and Fire Protection (CALFIRE) develops initial boundaries for VHFHSZ throughout California, and the final boundaries of a VHFHSZ are adopted by each jurisdiction. The VHFHSZ formally adopted by the City is larger than originally proposed by CALFIRE and is consistent with the boundaries for Fire Zones 2 and 3, and largely follows the boundary for the H district.

The majority of sites in the H district are within R-1H, where SB 9 currently applies. Middle housing projects in the H district would be subject to the same existing building standards or state fire mitigation measures that are currently applied to SB 9 projects.<sup>9</sup>

<sup>9</sup> SB 9 does not include an absolute prohibition on development in fire hazard areas. Within a very high fire hazard severity zone, sites must adopt "fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development." Gov. Code § 65913.4(a)(6)(D).

Staff will continue to confer with the Berkeley Fire Department on objective wildfire mitigation measures for streamlined projects in the VHFSZ. Considerations include maintenance of defensible space, as well as standards that improve fireground operations and evacuation access.

### ***View Preservation***

Following the June 2022 Planning Commission meeting, staff received comments expressing concerns about potential private view impacts resulting from by-right development in the H District.

Currently, a new home in the H District requires a UP(PH), and a major residential addition requires an AUP. To approve an AUP for a major residential addition, the Zoning Administrator must find that the addition would not “unreasonably obstruct sunlight, air, or views.” Under existing H District standards, a view corridor is defined as:

*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.*

To approve a UP(PH) or AUP, the ZAB or Zoning Administrator must find that the proposed project “will not be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.” While the Zoning Ordinance does not define detriment, the City’s informational handout for AUPs and UP(PH)s states that a project resulting in the “unreasonable obstruction of a neighbor’s significant view” may be considered detrimental.

If by-right housing development is to be allowed in the H District, the City would no longer use the discretionary permit process and the non-detriment findings to consider potential neighbor view impacts resulting from proposed projects. For this reason, staff proposes to implement an objective 28-foot maximum building height standard in the H district, which cannot be adjusted by a discretionary permit (see Attachment 3, Figure 3.5 Height Measurement in the H district). This would reduce the maximum building height and provide a more predictable development envelope in order to reduce possible obstruction of neighbor views.

### ***Solar Access***

Members of the ZORP Subcommittees and community have expressed concern about how the proposed development standards may impact solar access to neighboring existing or planned rooftop solar panels. In response to this concern, staff produced solar models to evaluate shadow impacts in a “maximum impact scenario” (see Attachment 3, Figure 3.7 Solar Modeling Diagrams). The solar model considers:

- *Building Height:* A flat-roofed 35-foot building height compared to the shadow effects of a flat-roofed 28-foot height building;
- *Building Volume:* The entire building envelope (which in actuality would be reduced by FAR and coverage standards);

- *Orientation:* East-West and North-South building orientations;
- *Daytime:* Between 8:00am and 4:00pm, although the highest solar generation is usually from 11:00am to 4:00pm when sun rays are at right angles to the panels;
- *Equinox:* A solar equinox day (September or March), where there is greater differentiation between the shadows as compared to the winter solstice, where solar panels at both 28-foot height and 35-foot height would be more equally impacted by reduced daylight;
- *No Other Shade:* Clear skies and no existing trees or vegetation that could impact solar access.

In this “maximum impact scenario” model, the amount of increase in shadow area for the seven-foot height difference is less than 10 percent averaged over the course of a day. As a result of the solar model analysis, staff proposes:

- A 28-foot maximum average height, paired with a 35-foot maximum height to the ridge, and
- A maximum building height of 22 feet in the rear 15 feet of a lot.

These height standards would address solar access concerns in balance with the objective of providing opportunities for more housing development throughout the city. Lastly, as a civil matter, State law allows for parties to voluntarily enter into solar or view easement agreements (e.g., where a neighbor may grant an easement to a solar system owner).

**SOUTHSIDE PLAN AREA**

The existing Southside Plan was adopted in 2011 and since 2016, the City Council has forwarded six referrals related to increasing housing production and availability in the Southside Area. The proposed standards in this section refer to the area located on the south side of the UC Berkeley campus, roughly bounded by Bancroft Way, Dwight Way, Fulton Street and Piedmont Avenue (see Attachment 1, Map 3. *Southside Area – Existing Zoning*). The intent of these proposed standards is to implement the City Council’s direction through revised zoning regulations.

Table 11 below provides a summary of the proposed standards, the general direction of the recommended changes and the policy rationale for each recommendation. Each standard is further discussed below and the specific development standard changes can be found in Attachment 2.

*Table 11. Summary of Proposed Southside Area Standards*

Standard	Recommendation	Policy Goal
Minimum and Maximum Densities	Set minimum and maximum densities expressed in units per acre	Encourage appropriate densities Provide predictability for the review process and outcome Facilitate calculations for State Density Bonus and possible future local density bonus

Maximum Floor Area Ratio (FAR)	Set a maximum FAR that scales up as units increase	Encourage housing development Facilitate calculations for State Density Bonus and future local density bonus
Minimum Open Space	Reduce required minimum open space, and set requirement to a per 1,000 square foot standard, rather than per unit	Encourage housing development Increase predictability of development outcomes
Maximum Height	Set a maximum height limit without option to exceed with a Use Permit	
Lot Coverage and Setbacks	Increase lot coverage and reduce setbacks	
Building Separation	Remove building separation requirement	

**Minimum and Maximum Densities**

The Zoning Ordinance does not include any minimum or maximum density standards for the Southside districts that are expressed in “units per acre”. A maximum density of 350 sf per resident is allowed for Group Living Accommodations (GLA) in the R-3, R-S, C-T, and C-SA Districts, and 175 sf per resident in the R-SMU. The ZAB may approve a UP(PH) to increase the GLA density.

*Proposed Approach:* The specific values for minimum and maximum dwelling units per acre are pending additional staff analysis and feedback from City Council, Planning Commission, and community engagement activities.

**Maximum Height**

In October 2017 and May 2018, Council referred staff to increase height in the R-SMU, R-S, and R-3<sup>10</sup>, as well as to allow up to two 12-story buildings and increase height for six projects<sup>11</sup> in the Southside Area, from Dwight to Bancroft and from College to Fulton.

For all Southside zoning districts, the proposal is to remove the Use Permit option to exceed height limits without added project quotas to provide clarity and predictability. Height limits stated in the Zoning Ordinance will be the maximum building height allowed, unless waived through State or a local density bonus. The limit on the maximum number of stories would be removed; maximum height would only be measured in feet. Zoning standards for building height are proposed to be changed in the following ways:

- Allow up to 85 feet in R-SMU district (increase from 60 feet, four stories) and in C-T north of Dwight (increase from 65 feet, no stories given). This would feasibly

<sup>10</sup> October 31, 2017. Increase Height and FAR in the Southside. Berkeley City Council.

<sup>11</sup> May 1, 2018. Increase Student Housing in the Southside. Berkeley City Council.

permit a building of at least 12 stories if a project were to maximize State or a local density bonus.

- Allow up to 65 feet in the C-T district south of Dwight (currently 50 feet, or up to 65 feet with a Use Permit).
- Allow up to 55 feet in R-S district (increase from 35 feet, three stories).
- Allow up to 45 feet in R-3 district (increase from 35 feet, three stories).
- Allow up to 60 feet in the C-SA district (currently 36 feet if non-residential and 60 feet if residential).

The Council also requested zoning provisions to facilitate the construction of student housing through a process that does “not require additional CEQA review”<sup>12</sup> or through a local density bonus in the R-SMU and/or C-T (north of Dwight) districts<sup>13</sup>. At this time, staff believes the zoning height amendments listed above provide opportunities to reach that height using State density bonus law. In Fall 2022, staff will be presenting to Planning Commission a local bonus program that reflects recent State law for student housing, without requiring the participation of UC Berkeley<sup>14</sup>.

### ***Maximum Lot Coverage and Minimum Setbacks***

Zoning standards for building setbacks and lot coverage are proposed to be changed in the following ways, as detailed in Table 4 of Attachment 2:

- Permit 70 percent lot coverage in R-3 district locations (increase from current 50 percent maximum)
- Permit 75 percent lot coverage in R-S district locations (increase from current 70 percent maximum).
- Permit 85 percent lot coverage in R-SMU district locations (increase from current 60 percent maximum).
- Permit 100 percent lot coverage in C-SA district locations (to match existing standard for non-residential land uses).

Change existing minimum setback requirements as follows, with no changes to C-SA district locations:

- No minimum front setback required for R-SMU, R-S, and C-SA districts (currently already allowed with an AUP in R-SMU and R-S, and by right in C-T).
- No minimum street side setbacks required for R-SMU and R-S districts.
- No minimum side setback required for the R-SMU district (currently already allowed with an AUP).

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<sup>12</sup> November 27, 2018. Advance More Student Housing Now. Berkeley City Council.

<sup>13</sup> May 30, 2017. Pilot Density Bonus Program. Berkeley City Council.

<sup>14</sup> SB 290, Skinner. Gov. Code §65915 Density Bonus.

[https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=65915&lawCode=GOV](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=65915&lawCode=GOV)

- Reduce the various lower-story and upper-story side setbacks for R-SMU, R-S, and R-3 districts to a single setback of 4 feet.
- Reduce lower-story and upper story rear setbacks for R-SMU, R-S, and R-3 districts to a single setback of 4 feet. No minimum would be required in the C-SA within the Southside Area, except when adjacent to a Residential District.
- Eliminate requirement for shade studies in the C-T district.

For all Southside districts, remove specified discretionary review option to modify setbacks and lot coverage.

***Minimum Required Open Space***

*Current Standards:* Table 12 summarizes current minimum open space requirements in Southside Area zoning districts.

*Table 12. Current Required Open Space*

	R-3	R-S	R-SMU	C-SA Mixed Use	C-SA Residential Only	C-T
Per Dwelling Unit (sf)	200	50	40	40	200	40
Per GLA Resident (sf)	90	20	20	No min.	90	No min.

*Proposed Approach:* Similar to the proposed Middle Housing standards, staff propose creating an open space standard for the Southside districts based on a ratio per 1,000 sf of building floor area instead of on the number of units. The proposed open space standard would be designed to increase floor area dedicated to residential development while also preserving the requirement to provide residents with common and/or private usable open space.

### ***Building Separation***

**Current Standards:** Current building separation requirements are summarized in Table 13.

**Table 13. Current Building Separation Standards**

	R-3	R-S	R-SMU	C-SA	C-T
1 <sup>st</sup> story			8 ft		No minimum
2 <sup>nd</sup> story			12 ft		
3 <sup>rd</sup> story			16 ft		
4 <sup>th</sup> story			20 ft		
5 <sup>th</sup> story			24 ft		
6 <sup>th</sup> story			28 ft		

**Proposed Standards:** The proposed development standards would eliminate all building separation requirements. Building and fire code requirements for fire rating and separation would still apply.

### ***Ground-Floor Residential Use***

**Proposed Approach:** Zoning standards for ground-floor residential use are anticipated to be changed to allow ground-floor residential throughout the C-T District if it is located behind a commercial use that fronts the street. In all Southside locations where there is ground-floor residential use, zoning provisions would also include design standards to incentivize or require ground-floor activation, consistent with the C-T District's purpose to "encourage those uses and structural architecture that reinforce, and discourage those uses and architecture that interrupt, the pedestrian orientation of the district."

## **OFF-STREET PARKING REQUIREMENTS**

Minimum and maximum standards for parking spaces will remain unchanged for lower density districts and in the Southside Area. Current standards include:

- **Minimum Parking:** No minimum parking requirement, except for parcels located along narrow roads in the H District. If located on a roadway less than 26 feet in width, a minimum of one parking space per unit for projects with fewer than 10 units. For projects with 10 or more units, one parking space per 1,000 sf of gross floor area is required.
- **Maximum Parking:** With limited exemptions<sup>15</sup>, a maximum of 0.5 spaces per unit is allowed for residential projects with two or more dwelling units on a parcel if a project is located within 0.25 miles of a major transit stop or along a transit corridor with 15-minute headways during peak periods.

<sup>15</sup> Off-Street Parking Maximums for Residential Development.  
[https://berkeley.municipal.codes/BMC/23.322.070\(A\)\(2\)](https://berkeley.municipal.codes/BMC/23.322.070(A)(2))

Newly constructed residential units are not eligible to receive parking permits under the Residential Permit Parking Program (RPP) as provided in BMC 14.72 Preferential Parking Program.<sup>16</sup>

Proposed changes to parking-related standards include:

- *Tandem Parking*: Currently, an AUP is required to provide off-street tandem parking spaces for all residential uses except ADUs. The proposed standards would allow tandem parking without an AUP to encourage reduced driveway widths and curb-cuts.
- *Front Setback in the H District*: Currently in the H district, the Zoning Officer may approve an AUP to reduce the minimum required front setback. The proposed standard would maintain the existing front setback requirement, but permit surface parking within the front setback to allow for off-street parking.<sup>17</sup>
- *Landscape Buffer*: Another commonly requested AUP is for an exception to the landscape buffer that is required along off-street parking spaces, driveways, and other vehicle-related paving. The landscape buffer is not commonly provided in existing sites and the proposed standards would eliminate the requirement to align with existing conditions.

## DISCUSSION ON RESIDENTIAL OBJECTIVE STANDARDS FRAMEWORK

When considering policies to address objective residential standards, including density, solar access, or view preservation, State law prohibits: a) the adoption of any new subjective development standards for housing development projects; and b) the adoption of new objective standards that would reduce the number of achievable residential units.

- > **Do the proposed development standards and approaches achieve the goals of the City Council referrals, namely encouraging the development of middle housing in lower density districts and increasing housing production and availability in the Southside Area?**
- > **Are there provisions of the proposed zoning standards that should be changed or revised?**
- > **Are there additional considerations that remain unaddressed by the proposed development standards?**

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<sup>16</sup> Preferential Parking Program. <https://berkeley.municipal.codes/BMC/14.72.080>

<sup>17</sup> Small accessory structures, such as sheds, that are less than 120 square feet and eight feet in height will continue to be allowed without requiring a permit.



BACKGROUND

**CITY COUNCIL REFERRALS**

The proposed objective standards are presented to respond to the following City Council referrals:

*Table 14. City Council Referrals and Reports*

<b>Residential Objective Standards</b>	
Housing Accountability Act (7/11/2017)	Requested research into a set of objective zoning standards for new development projects in the following four areas: <ul style="list-style-type: none"> <li>• Density and/or building intensity</li> <li>• Public health and safety standards</li> <li>• Design review standards</li> <li>• Views, shadows, and other impacts that underlie detriment findings</li> </ul>
Objective Standards for Density, Design, and Shadows (11/9/2021)	Consider and codify objective zoning standards with the goal of encouraging the creation of additional residential development and affordable homes. Further purposes include: <ul style="list-style-type: none"> <li>• Address State laws that seek to reduce time involved in permitting processes</li> <li>• Increase certainty for applicants</li> <li>• Reduce administrative costs and burden associated with discretionary review.</li> </ul>
<b>Lower Density Districts</b>	
Missing Middle Housing (4/23/2019)	Examine methods to provide for a broader range of housing types in areas of Berkeley with access to parks, schools, employment, transit, and other services. The Council directed the City Manager to explore opportunities to allow “missing middle” housing types in the R-1, R-1A, R-2, and R-2A zoning districts.
Eliminating Exclusionary Zoning (2/23/2021)	Allow multi-family housing in residential neighborhoods throughout Berkeley, and to allow for small-scale multi-family development in the R-1, R-1A, R-2, and R-2A zoning districts. As part of this effort, the resolution calls for the city to also: <ul style="list-style-type: none"> <li>• Protect public safety in all neighborhoods</li> <li>• Allow for new housing that reflects the existing mix of multi-family housing types within neighborhoods</li> <li>• Provide strong anti-displacement and tenant protections</li> <li>• Accommodate families in new and rehabilitated multi-family housing developments</li> <li>• Ensure that new development does not demolish any rent-controlled or below market-rate housing</li> <li>• Explore incentives for projects to contribute to the need for affordable housing</li> <li>• Carry out a robust community process when developing zoning changes.</li> </ul>
<b>Southside Area</b>	
Community Benefits within C-T (7/12/2016)	Allow increased development potential in the Telegraph Commercial (C-T) District between Dwight Avenue and Bancroft Avenue and develop community benefit requirements, with a focus on labor practices and affordable housing.

Non-Commercial Ground Floor in C-T (4/4/2017)	Create a Use Permit process to allow non-commercial use on the ground floor in appropriate locations, where commercial might otherwise be required. A pilot project is suggested for the C-T District.
Pilot Density Program in C-T (5/30/2017)	Develop a pilot Density Bonus program for the C-T District to generate in-lieu fees that could be used to build housing for homeless and extremely low-income residents.
Increase Height and FAR (10/31/2017)	Facilitate student housing by increasing the height and Floor Area Ratio (FAR) in the portions of the R-SMU, R-S and R-3 District which are located within the Southside area west of College Avenue.
Increase Student Housing (5/1/2018)	Convert commercial space into residential use within all districts in the Southside located west of College Avenue.
More Student Housing Now (11/27/2018)	Convert commercial space in the C-T to residential use, expand the Car-Free Housing overlay in the Southside, allow two high-rises for student housing, and consider micro-units and modular units.
<b>Affordable Housing Overlay</b>	
Affordable Housing Overlay (11/9/2021)	Consider an affordable housing overlay to permit increased height and density, with ministerial approval, for qualifying 100% affordable housing projects in the R-1, R-1A, R-2, R-2A, R-3, R-4, MUR, and all C-prefixed zoning districts.

## PRIOR FEEDBACK ON LOWER DENSITY RESIDENTIAL STANDARDS

### *City Council Worksession Feedback*

As part of the Housing Element Update, staff received feedback pertinent to middle housing standards at the March 15, 2022 City Council worksession.<sup>18</sup> Councilmembers identified the following key considerations:

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

### *ZORP Subcommittees Feedback*

To advise staff on the development of objective standards, the Planning Commission and the Zoning Adjustments Board appointed members to two ZORP Subcommittees.

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<sup>18</sup> March 15, 2022. *Housing Element Update and Residential Objective Standards*. City Council Worksession.

The Subcommittees met concurrently on two occasions. On December 15, 2021, the Subcommittees met to receive a background presentation and to approve the Objective Standards Framework and overall project approach. On February 16, 2022, the Subcommittees met to provide feedback on an initial version of the proposed middle housing development standards.

In their two meetings, the ZORP Subcommittees identified the following considerations when determining appropriate objective development standards:

- Encouraging smaller units that are “affordable by design.”
- Permitting more density while discouraging financial speculation.
- Balancing the environmental trade-offs between protecting rooftop solar access and higher densities.

### ***Planning Commission***

Staff presented preliminary standards for lower density districts to the Planning Commission on June 1, 2022 to elicit feedback from commissioners and the community. At the meeting, commissioners identified the following as important items:

- Encourage smaller unit sizes and consider eliminating minimum lot size requirements.
- Reduce minimum required open space dimensions -- currently a minimum width and length of 10 feet is required, or a minimum of six feet for balconies.
- Consider a “shared solar budget” or arrangement between incumbent solar owners and neighbors whose projects may create new shadows.

## **PRIOR FEEDBACK ON SOUTHSIDE AREA STANDARDS**

### ***Planning Commission***

On December 17, 2019, the Planning Commission reviewed and provided input on the proposed project description for the Southside EIR. Planning staff returned on February 5, 2020, with the proposed scope of ordinance changes and zoning map amendments to include in the EIR Project Description. A public hearing and EIR Scoping Session was held on September 2, 2020 to receive a project update and hear from stakeholders and members of the public on issues that the EIR should address. Notable comments from the Scoping Meeting included ensuring an adequate analysis of recreation and parks resources and the accuracy of the EIR’s buildout assumptions.

### ***Southside EIR Subcommittee***

On December 17, 2019, the Subcommittee held a meeting to review options to consider in the project description. The Subcommittee was generally supportive of the options provided by staff. Their main concern was whether the current boundary of the Southside contains enough opportunity sites to justify the EIR and zoning changes.

## RELATED CONCURRENT PROJECTS

### *Housing Element*

This focus area includes policies that ensure compliance with State Housing Element law and implement zoning policies proposed in the 6<sup>th</sup> Cycle 2023-2031 Housing Element to meet the City's approximately 9,000-unit Regional Housing Needs Allocation (RHNA) and a minimum 15 percent buffer. A first draft of the Housing Element Update was submitted to the California Department of Housing and Community Development (HCD) on August 10, 2022.

The proposed middle housing standards are featured in the draft Housing Element Update under Program 29-Middle Housing, and the Southside zoning map and development standard amendments are featured under Program 27-Priority Development Areas (PDAs), Commercial and Transit Corridors. The Housing Element draft Environmental Impact Report (EIR) assumes 1,745 additional units throughout the R-1, R-1A, R-2, R-2A, and MUR districts. An additional 1,000 units in the C-T, R-S, and R-SMU districts within the Southside Area is also analyzed for the 2023-2031 planning period.

As part the Housing Element process, the City has received public input on residential objective standards at City Council worksessions, public workshops, stakeholder meetings, and outreach events. The proposed objective standards allow for increased housing capacity and streamlined residential development consistent with the updated Housing Element.

### *Proposed Citywide Affordable Housing Requirements*

In March 2022, Planning Commission recommended to City Council the approval of a comprehensive update to the City's affordable housing requirements<sup>19</sup>, which would apply to all new residential development including middle housing projects, establish a per-square-foot in-lieu fee instead of assessing fees on a per-unit basis, and consider a sliding scale reduced fee for projects with less than 12,000 gross residential square feet. Staff are preparing an item for possible City Council action in Fall 2022 to update the Citywide affordable housing requirements in the Zoning Ordinance.

### *Demolition Ordinance Update*

The Demolition Ordinance prohibits demolition of specified dwelling units where a building has been removed from the rental market under the Ellis Act during the preceding five years or "there have been verified cases of harassment or threatened or actual illegal eviction during the immediately preceding three years." Applicants are generally required to provide relocation benefits, including moving expenses and differential rent payments. In addition, displaced tenants are provided a right of first refusal to rent new units. The City is currently reviewing the demolition ordinance to ensure compliance with State density bonus, SB 330, and other laws, and will amend

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<sup>19</sup> March 2, 2022. *Public Hearing on Amendments to Citywide Affordable Housing Requirements*. Planning Commission.

the administrative procedures, fee, and replacement requirements accordingly. Staff will bring recommended amendments to Planning Commission in Fall 2022.

### ***Affordable Housing Overlay and Local Density Bonus***

At its meeting on July 6, 2022, the Planning Commission heard a staff report<sup>20</sup> and provided feedback on two items:

- 1) A May 2017 City Council referral to develop a *local density bonus program* for the C-T (Telegraph Avenue Commercial) zoning district to allow density bonuses without requiring on-site affordable units and to generate in-lieu fees that could be used to build housing for homeless and extremely low income residents; and
- 2) A November 2021 City Council referral to request to consider an *affordable housing overlay* to permit increased height and density for housing projects comprised entirely of affordable units.

The Planning Commission communicated to staff that it wanted to move forward with a local density bonus program. Staff will present two options for such a program to the Planning Commission in Fall 2022. One will be based on SB 1227 (Skinner), which provided for student housing through the State density bonus, and a second will be based more directly on the City's affordable housing impact fee program.

The Planning Commission provided feedback on the affordable housing overlay referral and referred a number of the specific recommendations to other work which will focus on multi-family housing in the higher-density zoning districts.

### **ENVIRONMENTAL SUSTAINABILITY**

The proposed amendments to the Zoning Ordinance and Zoning Map are expected to result in greater infill housing development potential near transit and in employment-rich areas. Prioritizing density and affordable housing in these areas will incentivize community members to use alternative modes of transportation and reduce vehicle miles traveled (VMT), which are critical for reducing greenhouse gas emissions, and will bring the City closer to meeting its Climate Action Plan and Climate Emergency goals.

### **POSSIBLE FUTURE ACTION**

**Middle Housing.** Staff anticipate presenting a draft ordinance for Middle Housing to the Planning Commission in Spring 2023 after the final Housing Element Update and final Environmental Impact Report (EIR) are adopted. Upon receiving further direction and recommendation from the Planning Commission, staff will return to the Council with a final recommended Zoning Ordinance and zoning map changes.

**Southside.** Throughout the Fall 2022 semester, City staff will conduct outreach and engagement with Southside Area stakeholders, including UC Berkeley students and campus planning, affordable and market-rate residential developers, and neighborhood groups. Based on City Council direction and initial engagement efforts, staff will return

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<sup>20</sup> July 6, 2022. *Affordable Housing Overlay and Southside Local Density Bonus Program*. Planning Commission.

to the Planning Commission in late Fall with revised development standards for Southside, to be presented in concert with options for a local density bonus methodology. Upon receiving further direction and recommendation from the Planning Commission, staff will return to the Council with a final recommended Zoning Ordinance and zoning map changes.

As part of separate upcoming project, "Phase 2 Residential Objective Standards for Higher Density Residential and Commercial Districts", the Planning Department will consider confirming, modifying or creating objective design and development standards for projects in higher density residential and commercial districts, which may include R-3, R-4, and all C Districts. These policies will provide clarity and predictability for State-streamlined projects (e.g. SB 35, AB 1397) and create a pathway for additional local streamlined projects in order to reduce reliance on the use permit process and non-detriment findings.

#### FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

In addition to staff time, the City has budgeted \$350,000 to hire a consultant to assist in preparing objective design standards for higher density residential and commercial districts.

#### CONTACT PERSON

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#### ATTACHMENTS

1. Maps of Lower Density Zoning Districts and Southside Plan Area
2. Existing and Proposed Development Standards Tables
3. Lower Density Residential Diagrams

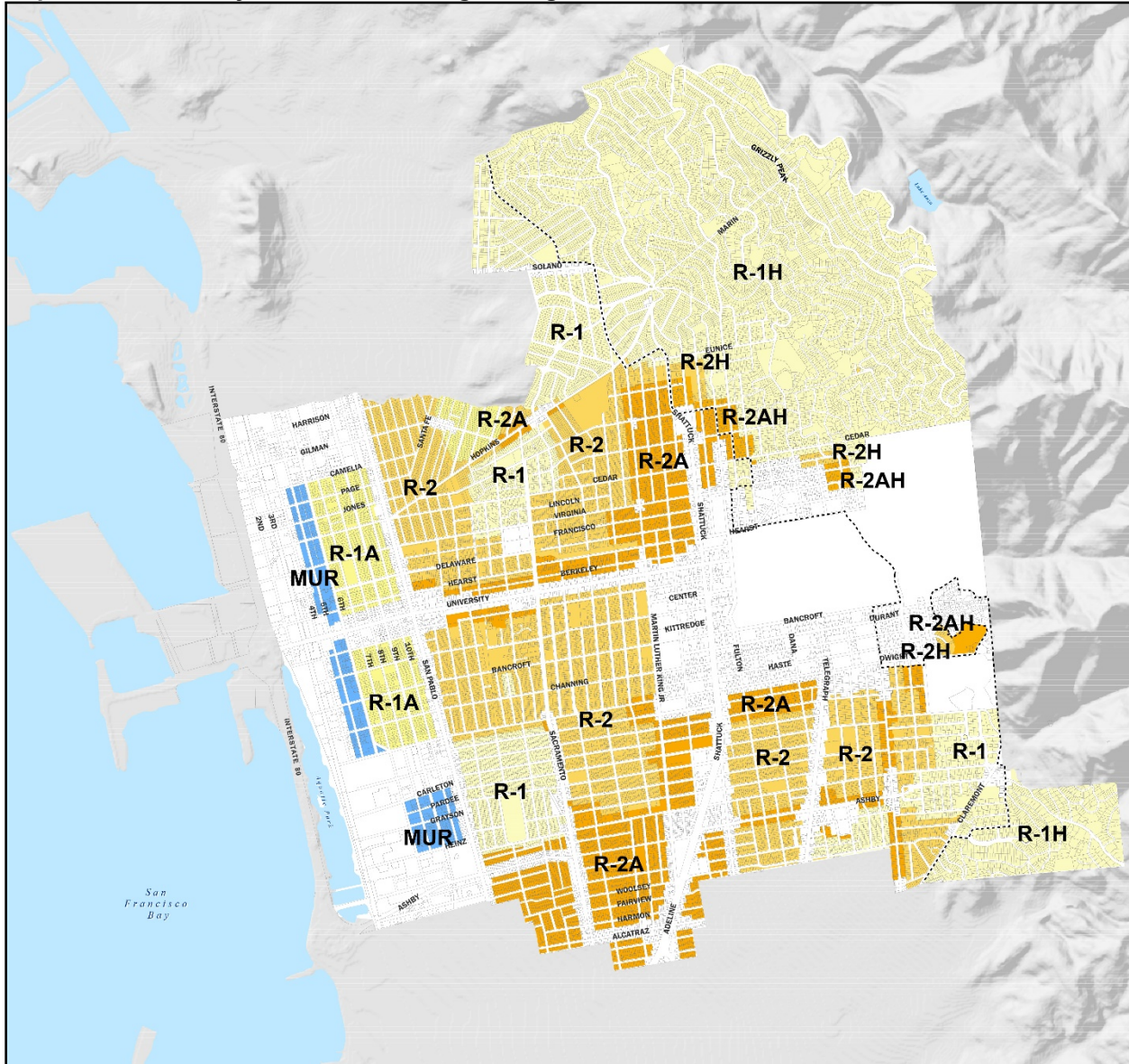
#### *Referenced City Council and Planning Commission Referrals and Reports*

4. July 12, 2016. Community Benefits within C-T District. Berkeley City Council.
5. April 4, 2017. Non-Commercial Ground Floor in C-T District. Berkeley City Council.
6. May 30, 2017. Pilot Density Program in C-T District. Berkeley City Council.
7. July 11, 2017. Housing Accountability Act. Berkeley City Council.
8. October 31, 2017. Increase Height and FAR in Southside. Berkeley City Council.
9. May 1, 2018. Increase Student Housing. Berkeley City Council.
10. November 27, 2018. More Student Housing Now. Berkeley City Council.
11. April 23, 2019. Missing Middle Housing. Berkeley City Council.

12. February 23, 2021. Eliminating Exclusionary Zoning. Berkeley City Council.
13. November 9, 2021. Affordable Housing Overlay. Berkeley City Council.
14. November 9, 2021. Objective Standards for Density, Design, and Shadows. Supplemental Packet 2. Berkeley City Council.
15. November 9, 2021. Objective Standards for Density, Design, and Shadows. Supplemental Packet 3. Berkeley City Council.
16. March 3, 2022. Public Hearing on Amendments to Citywide Affordable Housing Requirements. Planning Commission Staff Report.
17. March 15, 2022. Housing Element and Residential Objective Standards. Berkeley City Council Worksession.
18. July 6, 2022. Affordable Housing Overlay and Southside Local Density Bonus Program. Planning Commission Staff Report.

# ATTACHMENT 1. MAPS OF LOWER DENSITY ZONING DISTRICTS AND SOUTHSIDE PLAN AREA

Map 1. Lower Density Districts – Existing Zoning



R-1 Single Family Residential

R-1A Limited Two-family Residential

R-2 Restricted Two-family Residential

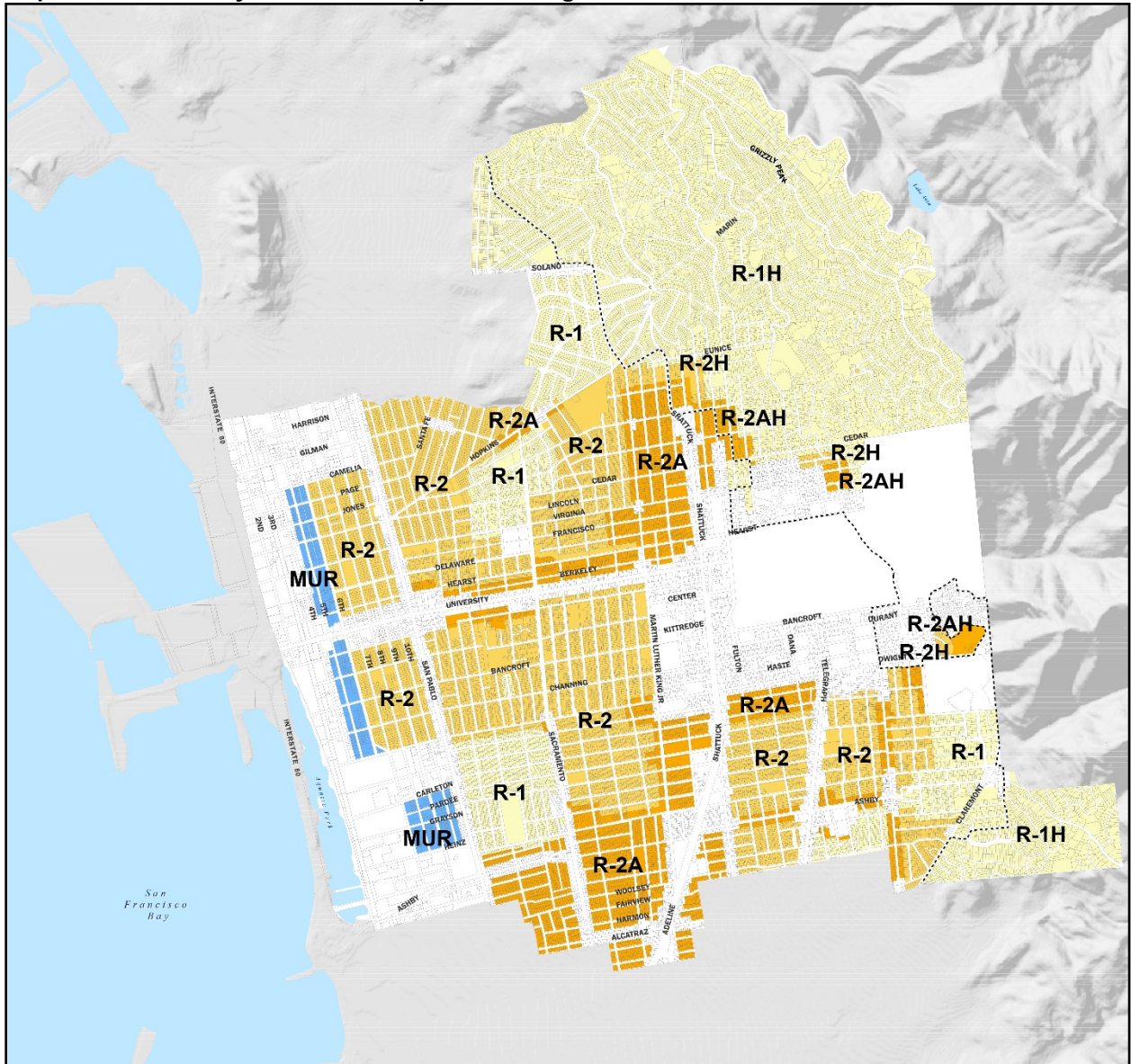
R-2A Restricted Multiple-family Residential

MUR Mixed Use-Residential

H = Hillside Overlay District



Map 2. Lower Density Districts – Proposed Zoning



R-1 Residential Multi-Unit 1

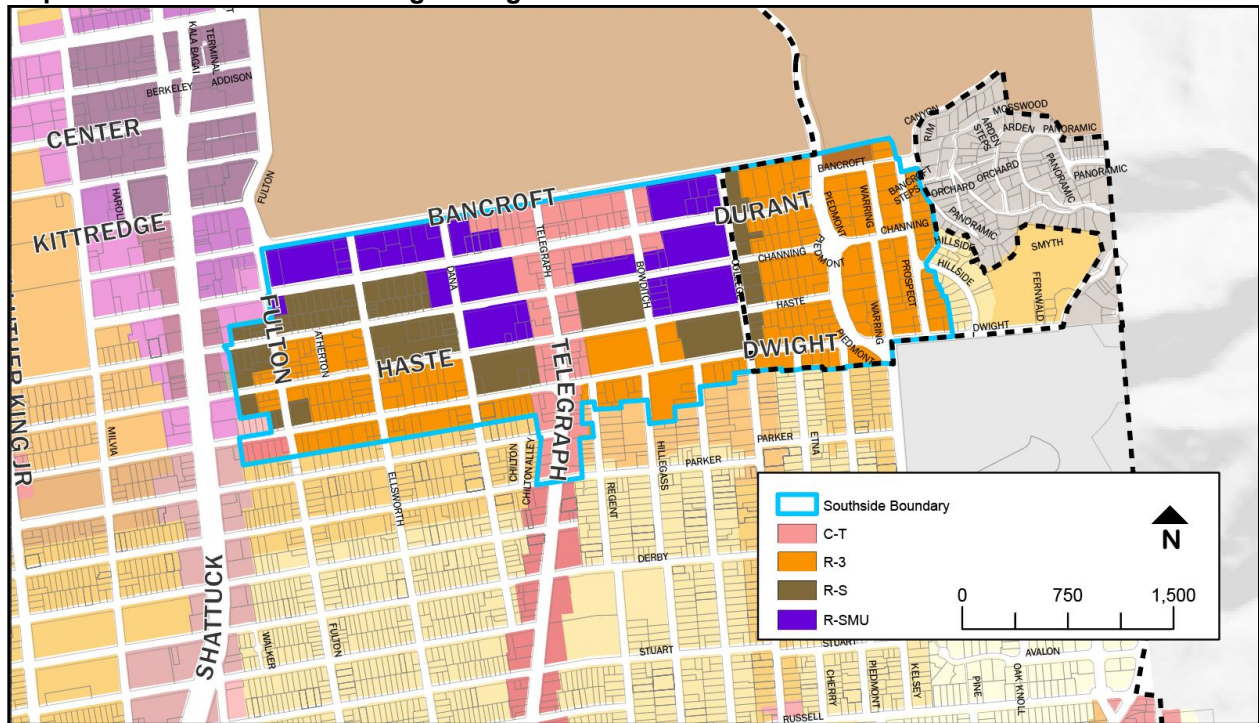
MUR Mixed Use-Residential

R-2 Residential Multi-Unit 2

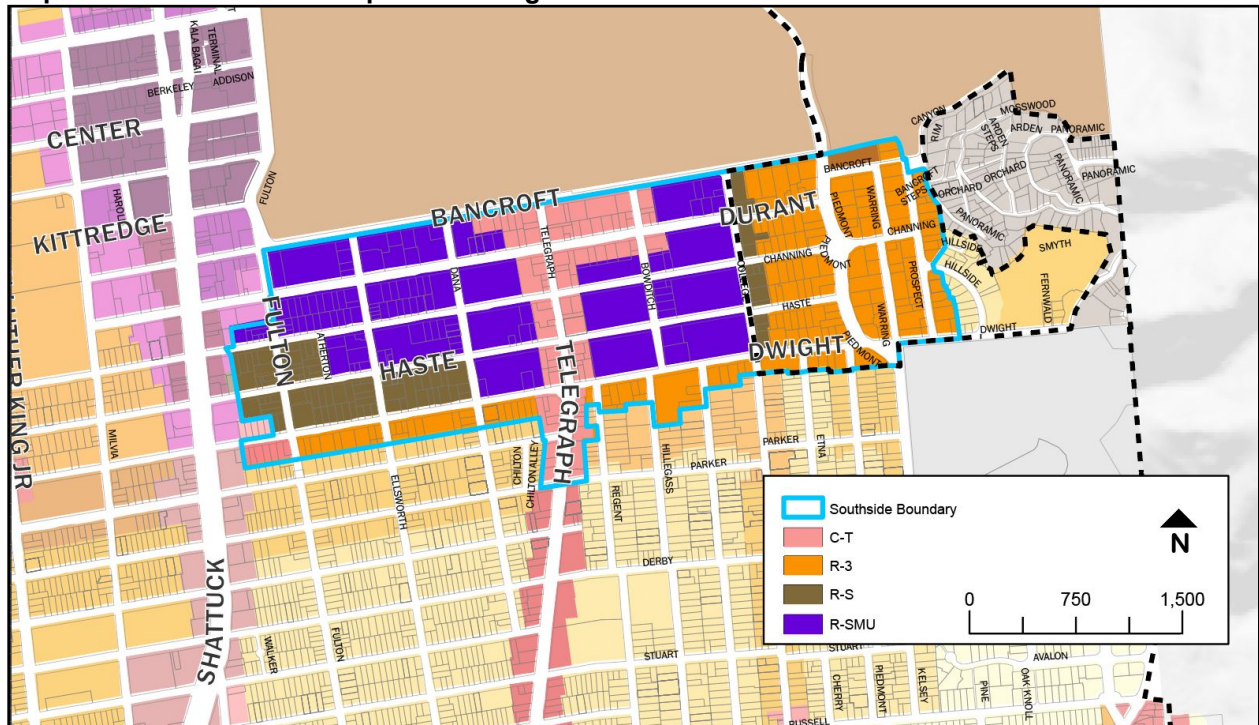
H = Hillside Overlay District

R-2A Residential Multi-Unit 2A

Map 3. Southside Area – Existing Zoning



Map 4. Southside Area – Proposed Zoning





**ATTACHMENT 2. EXISTING AND PROPOSED DEVELOPMENT STANDARDS TABLES**

**Table 1. Existing Development Standards – Lower Density Residential Districts**

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

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

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

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

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

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

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

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

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

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

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

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

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

**Table 2. Proposed Development Standards – Lower Density Residential Districts**

"-" = not applicable; P = Permitted AUP = Administrative Use Permit UPPH = Use Permit Public Hearing NP = Not Permitted		R-1	R-1H	R-2	R-2H	R-2A	R-2AH	MU-R
		Residential Multi-Unit 1		Residential Multi-Unit 2		Residential Multi-Unit 2A		Mixed-Use Residential
Single-Family		UPPH	UPPH	UPPH	UPPH	UPPH	UPPH	AUP [1]
Multi-Unit Residential		ZC	ZC	ZC	ZC	ZC	ZC	ZC [1]
Group Living Accommodation		NP	NP	NP	NP	NP	NP	UPPH
Mixed-Use Residential		NP	NP	UPPH	NP	UPPH	UPPH	UPPH
Live/Work		NP	NP	NP	NP	NP	NP	ZC[1]
Min. Density (DU/acre) - Round to the nearest whole number		10	No Min.	10	No Min.	20	No Min.	20
Max. Density (DU/acre) – Round to the nearest whole number		25	20	35	20	55	55	55
Max. ADUs		Varies [5]	1	Varies [5]	1	Varies [5]	1	Varies [5]
Min. Lot Area (sf)	New Lots	5000	5000	5000	5000	5000	5000	No Min.
Max. FAR	1 Unit and Non-Res. Uses	1.2	1.2	1.2	1.2	1.2	1.2	1.5
	2 Units	0.5	0.5	0.6	0.6	1.0	1.0	1.5
	3-7 Units	1.0	1.0	1.0	1.0	1.25	1.25	1.5
	8+ Units	1.25	1.25	1.25	1.25	1.5	1.5	1.75
Min. Open Space (sf)	Per 1,000 sf Floor Area	150	150	150	150	150	150	150
Max. Height, New Bldg. or Non-Res. Addition (ft)	Max. Avg. Height	28	-	28	--	28		-
	Max. Height	35	28	35	28	35	28	35
	Within 15' of Rear Property Line	22	22	22	22	22	22	22
	ADU	20	16	20	16	20	16	20
Max. Lot Coverage (%)	1-2 Units and Non-Res. Uses	40	40	50	50	50	50	100
	3-7 Units	50	50	55	55	55	55	100
	8+ Units	55	55	55	55	60	60	100
Min. Setback, Front (ft)		15 [4]	20	15 [4]	20	10 [4]	15	-
	Adjacent Non-Res. District	-	-	-	-	-	-	5
	Adjacent Res. District	-	-	-	-	-	-	10
	Reduce w/AUP	-	No Min.	-	No Min.	-	No Min.	No Min.
Min. Setback, Rear (ft)		4	20	4	20	4	15	-
	ADU	4	4	4	4	4	4	4
	Adjacent Non-Res. District	-	-	-	-	-	-	No Min./5 [2]
	Adjacent Res. District	-	-	-	-	-	-	10/10% [3]
Min. Setback, Interior Side (ft)		4	5	4	5	4	5	-
	ADU	4	4	4	4	4	4	4
	Adjacent Non-Res. District	-	-	-	-	-	-	0
	Adjacent Res. District	-	-	-	-	-	-	10/10% [3]
Min. Setback, Street Side (ft)		4	4	4	4	4	4	-
	Adjacent Non-Res. District	-	-	-	-	-	-	5
	Adjacent Res. District	-	-	-	-	-	-	10/10% [3]
Min. Building Separation (ft)		No Min.	No Min.	No Min.	No Min.	No Min.	No Min.	No Min.
Off-Street Parking (spaces per unit)	Min. Spaces	No Min.	No Min.	No Min.	No Min.	No Min.	No Min.	No Min.
	Min. Spaces if Roadway width < 26 ft	-	1	-	1	-	1	-
	Max. Spaces if 0.25mi from Transit Hub or Corridor	1 du: 0 2+ du: 0.5	1 du: 0 2+ du: 0.5	1 du: 0 2+ du: 0.5	1 du: 0 2+ du: 0.5	1 du: 0 2+ du: 0.5	1 du: 0 2+ du: 0.5	-
	Max. Driveway Width (ft)	20	20	20	20	20	20	20
Min. Long-Term Residential Bicycle Parking		1-4 Units: None 5+ Units: 1 per 3 Bedrooms GLA: Greater of 2 or 1 per 2.5 Bedrooms						
Min. Short-Term Residential Bicycle Parking		1-4 Units: None 5+ Units: Greater of 2 or 1 per 40 Bedrooms GLA: Greater of 2 or 1 per 20 Bedrooms						
Front Façade Elevation, within Front 40' of Lot	Min. % Entries, Glazing, or Railing; Incl. Trim, Exclude Garage Doors	20%	20%	20%	20%	20%	20%	20%

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

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

[3] 10 ft of 10% of lot width, whichever is less

[4] Or average front setback of adjacent structure(s), whichever is less.

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

Table 3. Existing Development Standards - Southside Area

"-" = not applicable; P = Permitted AUP = Administrative Use Permit UPPH = Use Permit Public Hearing NP = Not Permitted	R-3	R-S	R-SMU	C-T (south of Dwight)	C-T (north of Dwight)	C-SA
	Multiple-Family Residential	Residential High Density Subarea	Residential Southside District	Telegraph Avenue Commercial		South Area Commercial
Single-Family	UPPH	UPPH	UPPH	UPPH	UPPH	UPPH
Two-Family	UPPH	UPPH	UPPH	UPPH	UPPH	UPPH
Multi-Family	UPPH	UPPH	UPPH	UPPH	UPPH	UPPH
Group Living Accommodation	UPPH	UPPH	UPPH	UPPH	UPPH	UPPH
Mixed-Use Residential	UPPH	UPPH	UPPH	UPPH	UPPH	UPPH
Live/Work	NP	NP	NP	ZC	ZC	UPPH
Ground-floor residential	Allowed	Allowed	Allowed	Not allowed	Not allowed	Allowed
Max. Density (sf per GLA resident)	350	350	175 (increase w/UPPH)	350 (increase w/UPPH)	350 (increase w/UPPH)	350 (increase w/UPPH)
Max. ADUs	Varies [1]	Varies [1]	Varies [1]	Varies [1]	Varies [1]	Varies [1]
Min. Lot Area (sf)	5000	5000	5000	No Min.	No Min.	No Min.
Max. FAR	No Max.	No Max.	No Max.	4.0	5.0 (6.0 w/UPPH)	4.0 (Increase w/UPPH); No Max. if Res.-Only
Min. Open Space (sf per DU)	200; 90/GLA Resident	50; 20/GLA Resident	40; 20/GLA Resident	40; No Min. for GLA	40; No Min. for GLA	40 if MU; 200 if Res.-Only/No Min. for MU per GLA Resident; 90/GLA Res. if Res.-Only
Min. Height (ft)	No Min.	No Min.	No Min.	35	35	No Min.
Max. Height (stories)	3	3 (4 with UPPH)	4 (5 with UP)	5	6	5 if Res. or MU, 3 if Non-Res.
Max. Height (ft)	35	35 (45 with UPPH)	60 (65 in Subarea 2 or 75 in Subarea 1 with UPPH)	50 (65 w/ UPPH)	65 (75 w/ UPPH)	60 if Res. or MU; 36 if Non-Res.
Max. Height, ADU (ft)	20	20	20	20	20	20
Max. Lot Coverage, Interior/Thru Lot (%)	1-2 Stories: 45 3 Stories: 30	1-2 Stories: 65 3 Stories: 60 4 Stories: 55	1-2 Stories: 55 3 Stories: 50 4 Stories: 45 5 Stories: 40 (100 w/AUP)	100	100	1-2 Stories: 45 3+ Stories: 35 (Increase w/UP); 100 if Non-Res.
Max. Lot Coverage, Corner Lot (%)	1-2 Stories: 50 3 Stories: 45	1-2 Stories: 70 3 Stories: 65 4 Stories: 60	1-2 Stories: 60 3 Stories: 55 4 Stories: 50 5 Stories: 45 (100 w/AUP)	100	100	1-2 Stories: 50 3 Stories: 45 4+ Stories: 40 (Increase w/UP); 100 if Non-Res.
Min. Setback, Front (ft)	15	10 (No Min. w/ AUP)	10 (No Min. w/AUP)	No Min.	No Min.	15 if Res. or Same as Adjacent Res. District, Otherwise No Min. if Non-Res.
Min. Setback, Rear (ft)	15 (No Min. w/ AUP)	1 <sup>st</sup> -3 <sup>rd</sup> Story: 10 4 <sup>th</sup> Story: 17 (No Min. w/ AUP)	1 <sup>st</sup> -3 <sup>rd</sup> Story: 10 4 <sup>th</sup> Story: 17 5 <sup>th</sup> Story: 19 (No Min. w/ AUP)	No Min.	No Min.	15 if Res. or lesser of 10' or 10% lot depth if adjacent to R District, otherwise no min if non-resi
Min. Setback, Interior (ft)	1 <sup>st</sup> -2 <sup>nd</sup> Story: 4 3 <sup>rd</sup> Story: 6	1 <sup>st</sup> -2 <sup>nd</sup> Story: 4 3 <sup>rd</sup> Story: 6 4 <sup>th</sup> Story: 8	1 <sup>st</sup> -2 <sup>nd</sup> Story: 4 3 <sup>rd</sup> Story: 6 4 <sup>th</sup> Story: 8 5 <sup>th</sup> Story: 10 (No Min. with AUP)	5 if Adjacent to Res. District, Otherwise No Min.	5 if Adjacent to Res. District, Otherwise No Min.	1-2 <sup>nd</sup> Story: 4 3 <sup>rd</sup> Story: 6 3 <sup>th</sup> Story: 8 5 <sup>th</sup> Story: 10 6 <sup>th</sup> Story: 12 5 if Non-Res. Adjacent to Res. District, Otherwise No Min. if Non-Res. (Reduce w/ UP)
Min. Setback, Street Side (ft)	1 <sup>st</sup> Story: 6 2 <sup>nd</sup> Story: 8 3 <sup>rd</sup> Story: 10	1 story: 6 2 <sup>nd</sup> Story: 8 3 <sup>rd</sup> -4 <sup>th</sup> Story: 10	1 <sup>st</sup> Story: 6 2 <sup>nd</sup> Story: 8 3 <sup>rd</sup> -5 <sup>th</sup> Story: 10 (No Min. with AUP)	Same as Adjacent Res. District, Otherwise No Min.	Same as Adjacent Res. District, Otherwise No Min.	1 <sup>st</sup> Story: 6 2 <sup>nd</sup> Story: 8 3 <sup>rd</sup> Story: 10 4 <sup>th</sup> Story: 12 5 <sup>th</sup> Story: 14 6 <sup>th</sup> Story: 15 Same as Adjacent Res. District if Non-Res., Otherwise No Min. if Non-Res. (Reduce w/ UP)
Min. Building Separation (ft)	1 <sup>st</sup> Story: 8 2 <sup>nd</sup> Story: 12	1 <sup>st</sup> story: 8 2 <sup>nd</sup> Story: 12	1 <sup>st</sup> Story: 8 2 <sup>nd</sup> Story 12	No min	No min	1 <sup>st</sup> Story: 8 2 <sup>nd</sup> Story: 12

"-" = not applicable; P = Permitted AUP = Administrative Use Permit UPPH = Use Permit Public Hearing NP = Not Permitted	R-3	R-S	R-SMU	C-T (south of Dwight)	C-T (north of Dwight)	C-SA
	Multiple-Family Residential	Residential High Density Subarea	Residential Southside District	Telegraph Avenue Commercial		South Area Commercial
	3 <sup>rd</sup> Story: 16 (Reduce w/AUP)	3 <sup>rd</sup> Story: 16 4 <sup>th</sup> Story: 20 (Reduce w/AUP)	3 <sup>rd</sup> Story: 16 4 <sup>th</sup> Story: 20 5 <sup>th</sup> Story: 24 (Reduce w/AUP)			3 <sup>rd</sup> Story: 16 4 <sup>th</sup> Story: 20 5 <sup>th</sup> Story: 24 6 <sup>th</sup> Story: 28 No Min. if Non-Res. (Reduce w/UP)
Min. Residential Parking Spaces	No Min.	No Min.	No Min.	No Min.	No Min.	No Min.
Max. Residential Parking Spaces per Unit; 0.25 from transit hub or corridor	0.5					
Min. Long-Term Residential Bicycle Parking	1-4 Units: None 5+ Units: 1 per 3 bedrooms GLA: Greater of 2 or 1 per 2.5 bedrooms					
Min. Short-Term Residential Bicycle Parking	1-4 Units: None 5+ Units: Greater of 2 or 1 per 40 bedrooms GLA: Greater of 2 or 1 per 20 bedrooms					
Min. Off-Street Loading Spaces	No Min. for multi-unit or GLA; 1 per 10,000 sf + 1 for each additional 40,000 sf for senior congregate housing, hospital, nursing homes, schools 10,000sf+	No Min. for multi-unit or GLA; 1 per 10,000 sf + 1 for each additional 40,000 sf for non-res uses 10,000sf+	No Min. for multi-unit or GLA; 1 per 10,000 sf + 1 for each additional 40,000 sf for non-res uses 10,000sf+	No Min.	No Min.	No Min. for multi-unit or GLA; 1 per 10,000 sf + 1 for each additional 40,000 sf for commercial uses 10,000sf+

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

**Table 4. Proposed Development Standards - Southside Area**

"-" = not applicable; P = Permitted AUP = Administrative Use Permit UPPH = Use Permit Public Hearing NP = Not Permitted	R-3	R-S	R-SMU	C-T (south of Dwight)	C-T (north of Dwight)	C-SA
	Multiple-Family Residential	Residential High Density Subarea	Residential Southside District	Telegraph Avenue Commercial		South Area Commercial
Single-Family	UPPH	UPPH	UPPH	UPPH	UPPH	UPPH
Multi-Unit Residential	UPPH	UPPH	UPPH	UPPH	UPPH	UPPH
Group Living Accommodation	UPPH	UPPH	UPPH	UPPH	UPPH	UPPH
Mixed-Use Residential	UPPH	UPPH	UPPH	UPPH	UPPH	UPPH
Live/Work	NP	NP	NP	ZC	ZC	UPPH
Ground-floor residential	Allowed	Allowed	Allowed	Allowed behind commercial use	Allowed behind commercial use	Allowed
Min. Density (DU/acre) - Round to the nearest whole number	<i>Pending additional analysis, feedback</i>	<i>Pending additional analysis, feedback</i>	<i>Pending additional analysis, feedback</i>	<i>Pending additional analysis, feedback</i>	<i>Pending additional analysis, feedback</i>	<i>Pending additional analysis, feedback</i>
Max. Density (DU/acre) – Round to the nearest whole number	<i>Pending Council Feedback</i>	<i>Pending Council Feedback</i>	<i>Pending Council Feedback</i>	<i>Pending Council Feedback</i>	<i>Pending Council Feedback</i>	<i>Pending Council Feedback</i>
Max. ADUs	Varies [1]	Varies [1]	Varies [1]	Varies [1]	Varies [1]	Varies [1]
Min. Lot Area (sf)	5000	5000	5000	No Min.	No Min.	No Min.
Max. FAR	<i>Pending additional analysis, feedback</i>	<i>Pending additional analysis, feedback</i>	<i>Pending additional analysis, feedback</i>	<i>Pending additional analysis, feedback</i>	<i>Pending additional analysis, feedback</i>	<i>Pending additional analysis, feedback</i>
Min. Open Space (Per 1,000 sf floor area)	<i>Pending additional analysis, feedback</i>	<i>Pending additional analysis, feedback</i>	<i>Pending additional analysis, feedback</i>	<i>Pending additional analysis, feedback</i>	<i>Pending additional analysis, feedback</i>	<i>Pending additional analysis, feedback</i>
Min. Height (ft)	No Min.	No Min.	No Min.	35	35	No Min.
Max. Height (ft) [2]	45	55	85	65	85	60
Max. Height, ADU (ft)	20	20	20	20	20	20
Max. Lot Coverage (%)	70	75	85	100	100	100
Min. Setback, Front (ft)	15	No Min.	No Min.	No Min.	No Min.	No Min.
Min. Setback, Rear (ft)	4	4	4	No Min.	No Min.	No Min., or lesser of 10' or 10% lot depth if adjacent to R District
Min. Setback, Interior (ft)	4	4	No Min.	5 if adjacent to R District, otherwise no min	5 if adjacent to R District, otherwise no min	4
Min. Setback, Street Side (ft)	4	No Min.	No Min.	Same as adjacent R District, otherwise no min	Same as adjacent R District, otherwise no min	No Min.
Min. Building Separation (ft)	No Min.	No Min.	No Min.	No Min.	No Min.	No Min.
Min. Residential Parking Spaces	No Min.	No Min.	No Min.	No Min.	No Min.	No Min.
Max. Residential Parking Spaces per Unit; 0.25 from Transit Hub or Corridor	0.5					
Min. Long-Term Residential Bicycle Parking	1-4 Units: None 5+ Units: 1 per 3 bedrooms GLA: Greater of 2 or 1 per 2.5 bedrooms					
Min. Short-Term Residential Bicycle Parking	1-4 Units: None 5+ Units: Greater of 2 or 1 per 40 bedrooms GLA: Greater of 2 or 1 per 20 bedrooms					
Min. Off-Street Loading Spaces	No Min. for Multi-unit or GLA; 1 per 10,000 sf + 1 for each additional 40,000 sf for non-res 10,000sf+	No Min. for Multi-unit or GLA; 1 per 10,000 sf + 1 for each additional 40,000 sf for non-res uses 10,000sf+	No Min. for Multi-unit or GLA; 1 per 10,000 sf + 1 for each additional 40,000 sf for non-res uses 10,000sf+	No Min.	No Min.	No Min. for Multi-unit or GLA; 1 per 10,000 sf + 1 for each additional 40,000 sf for non-res uses 10,000sf+

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

[2] Building height is measured to the top of the roof. Parapets may exceed the height limit by up to 5 feet as of right.



# Attachment 3. Lower Density Districts Diagrams

Figure 3.1: Density and FAR Diagrams  
Maximum Developable Envelope

Maximum developable envelope is defined by maximum height and minimum setbacks from property lines. The diagrams below show the maximum developable envelope used for the diagrams in the following pages. Achievable floor area will also be constrained by maximum floor area ratio, lot coverage, and other standards.

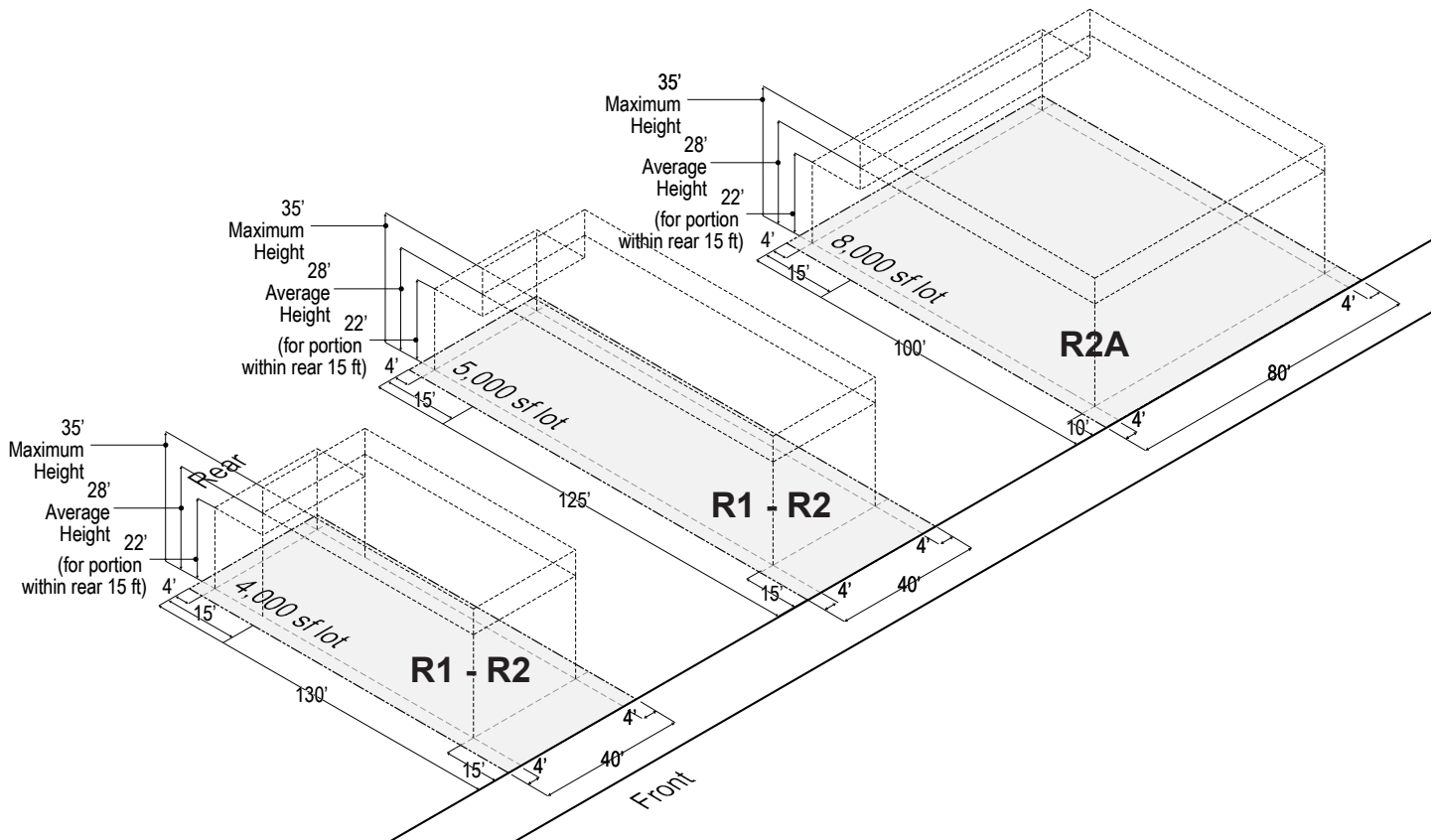


Figure 3.2: Density and FAR Diagrams  
Maximum Density and Floor Area Ratio (FAR) for 5,000 sf lots

The maximum allowed floor area increases as the number of units on the site increases. The permitted number of dwelling units is constrained by the maximum density in each district. In these example scenarios, average unit sizes on a 5,000 square foot lot range from 1,000 to 1,667 square feet per unit.

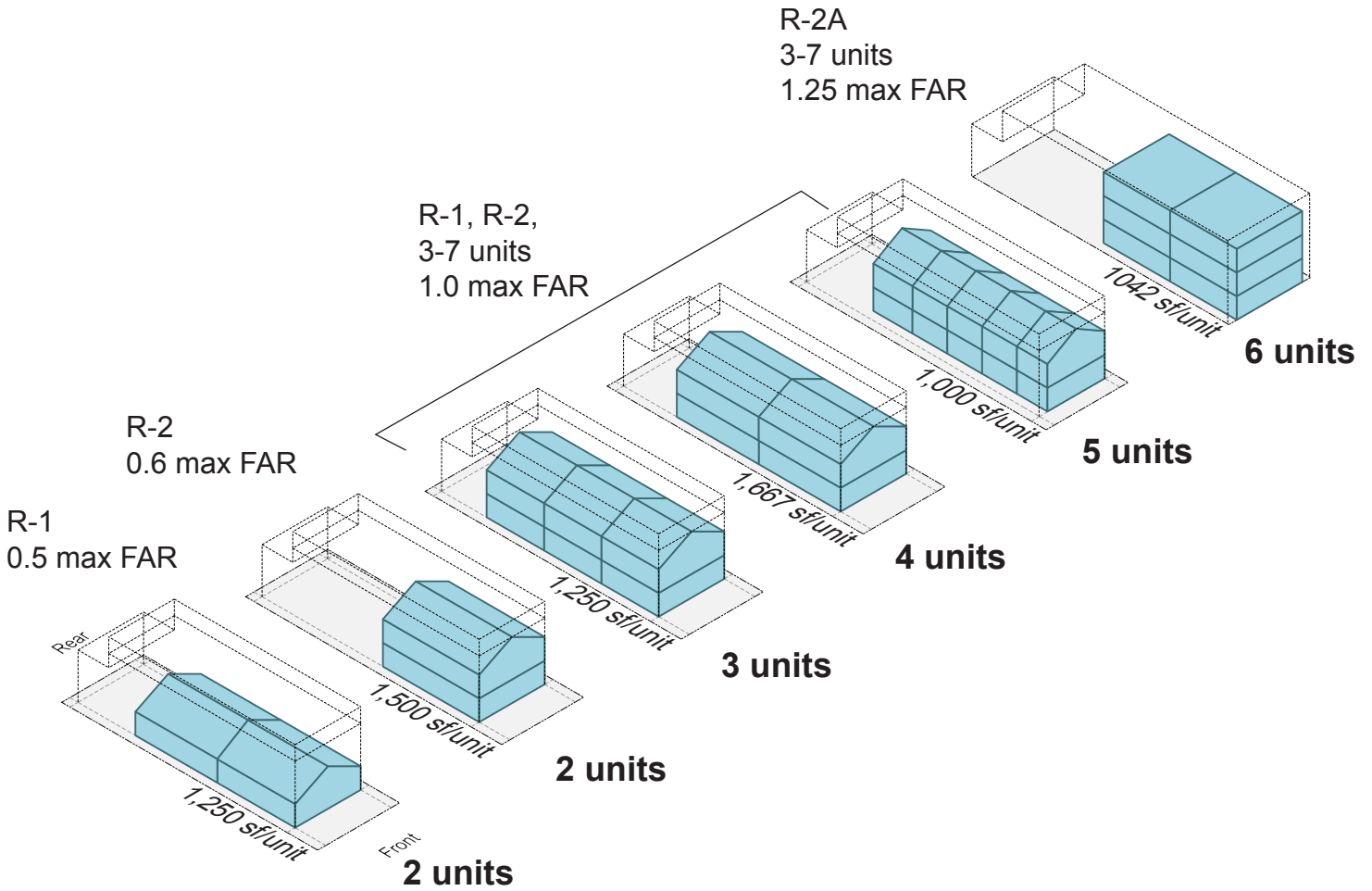


Figure 3.3: Density and FAR Diagrams  
Maximum Density and Floor Area Ratio (FAR) for 4,000 sf lots

On a 4,000 square foot lot, maximum density standards allow for 4,000 square feet in the R-1 district and up to four units in the R-2A district. Units may be provided in attached or detached configurations.

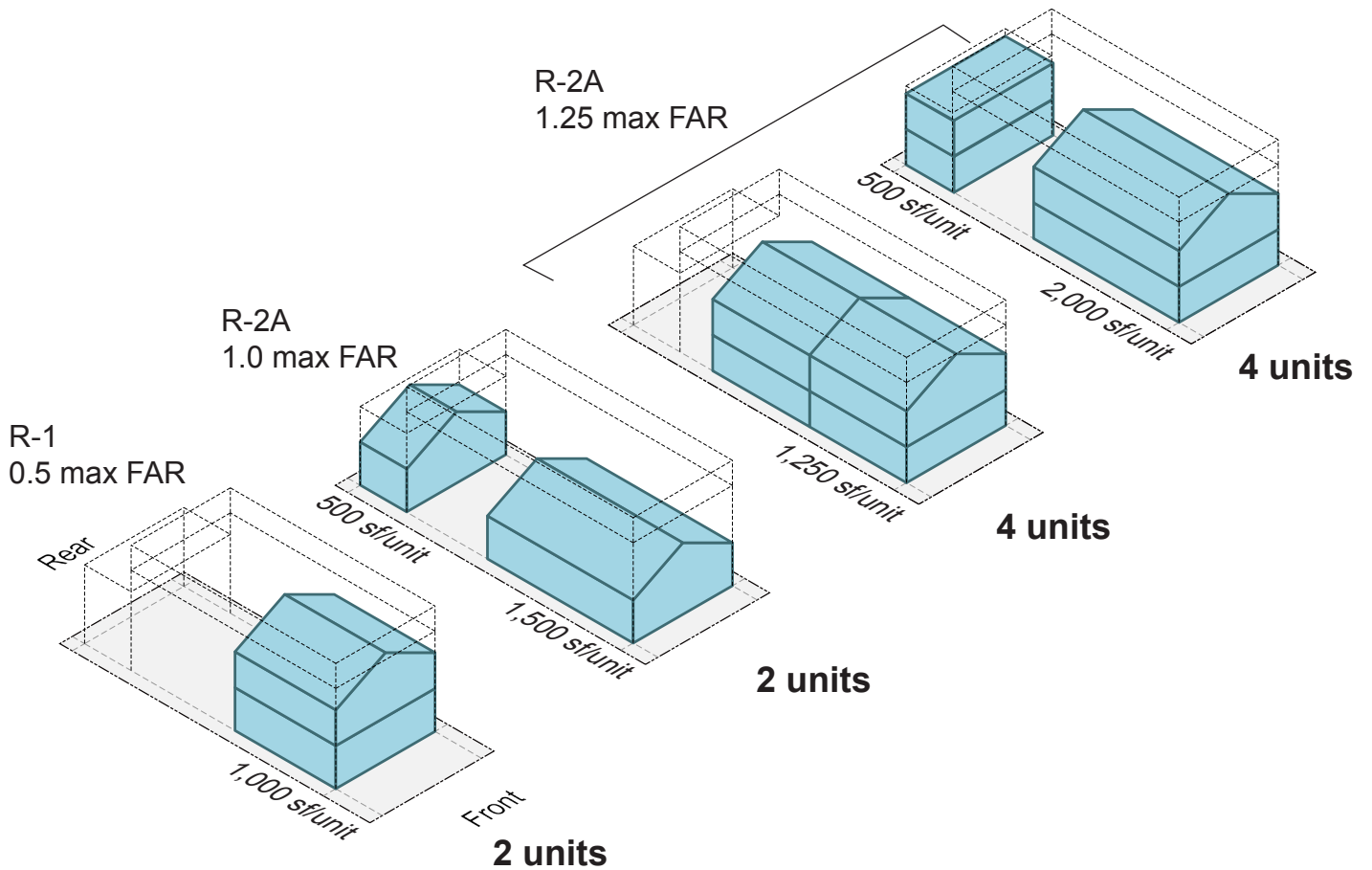


Figure 3.4: Density and FAR Diagrams  
Maximum Density and Floor Area Ratio (FAR) for 8,000 sf lots

In the R-2A district, maximum density standards allow for up to 10 units on an 8,000 square foot lot. FAR standards allow for an average unit size of 1,200 square feet. Projects could also include a mix of larger and smaller units.

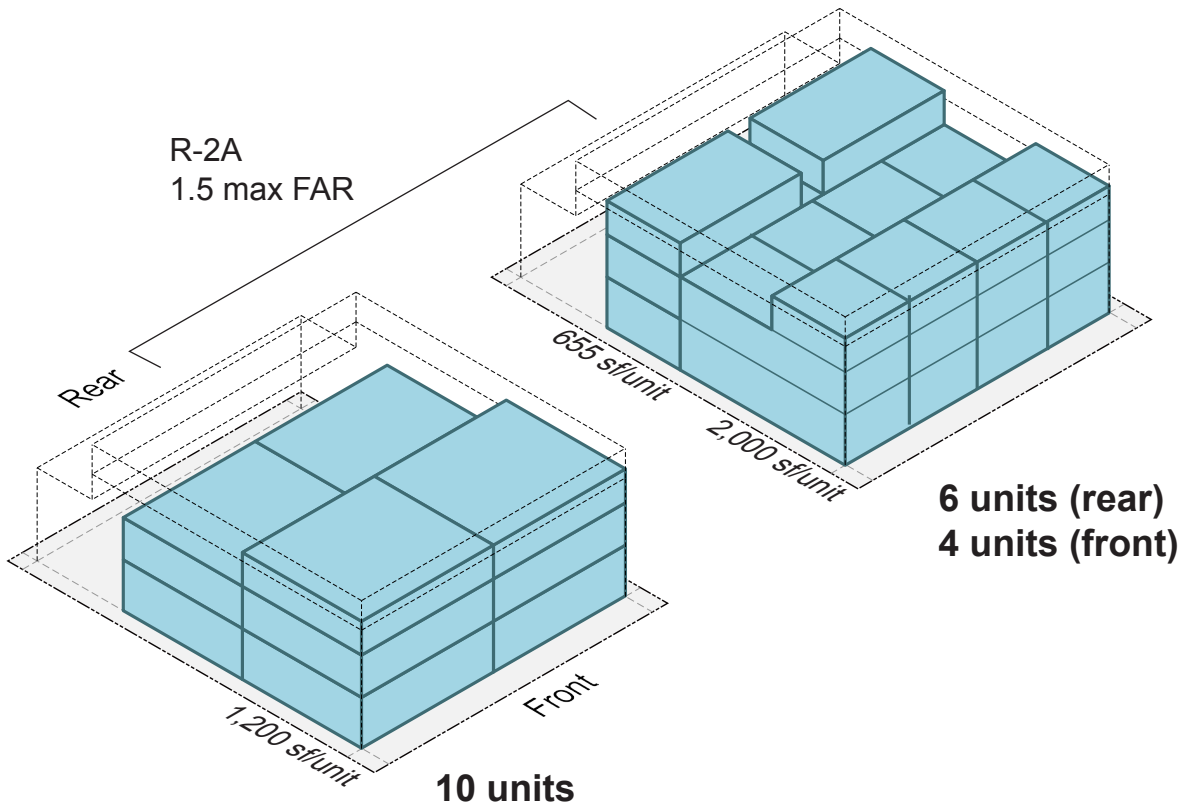
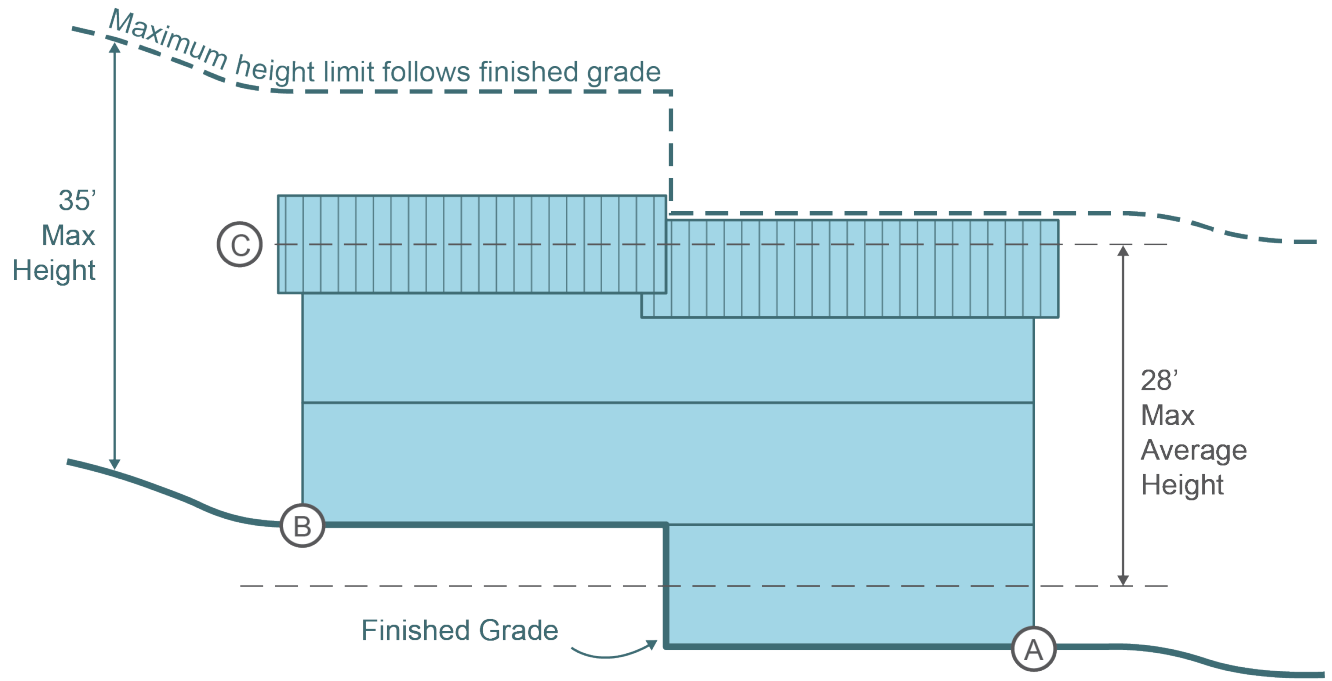
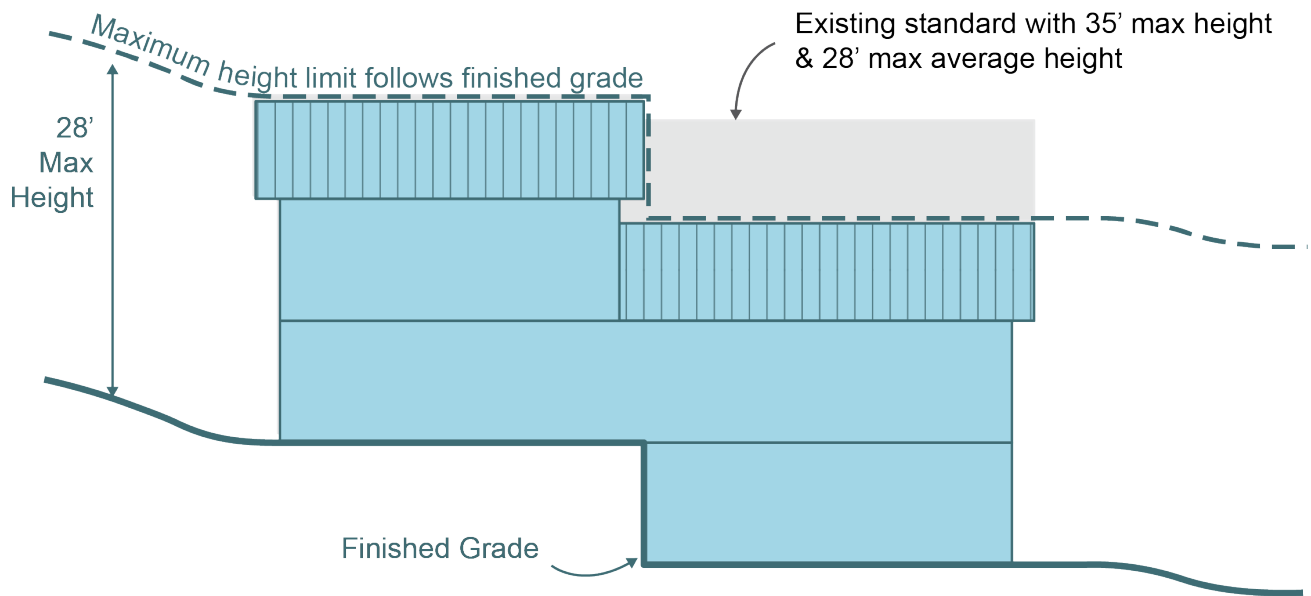


Figure 3.5 Height Measurement in the Hillside Overlay Zone

**Existing**



**Proposed**



*Figure 3.6. Front Façade Elevation Diagrams*

Street facing facade requirements: To create visual interest and prevent blank walls from the street, the proposed development standards would require a minimum 20 percent of the front façade elevation within the front 40 feet of a lot to be comprised of entries, windows or glazing, and/or railings. Trim, including window shutters, would be counted towards meeting this requirement; garage doors would not be included.



1911 Ninth Street, Berkeley  
Openings are approximately 20%



908 Cedar, Berkeley  
Openings are approximately 30%



1444 Fifth Street, Berkeley  
Openings are approximately 19%



1030 Grayson, Berkeley  
Openings are approximately 32%



Figure 3.7. Solar Modeling Diagrams

# Middle Housing Prototype Studies: R-1 and R-2A

## Project Overview

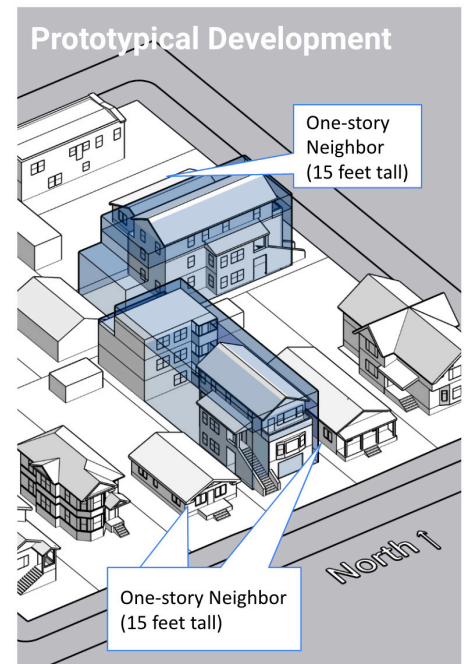
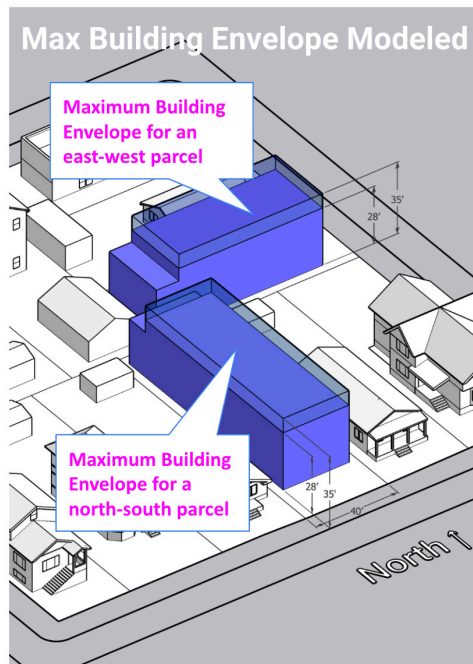
This project studies proposed changes to objective development standards to allow middle housing on neighboring buildings.

## Studying the Most Impactful Scenario

The models set up the most impactful scenario (with the biggest difference in height and the minimum distance between neighboring buildings) to better understand whether additional standards are needed.

## Shading Analysis Assumptions

The illustrations show shadows cast between 8am and 4pm during the equinox (Sept. or March 21st) for two parcels with different orientations on a flat site, with clear skies and no existing trees.

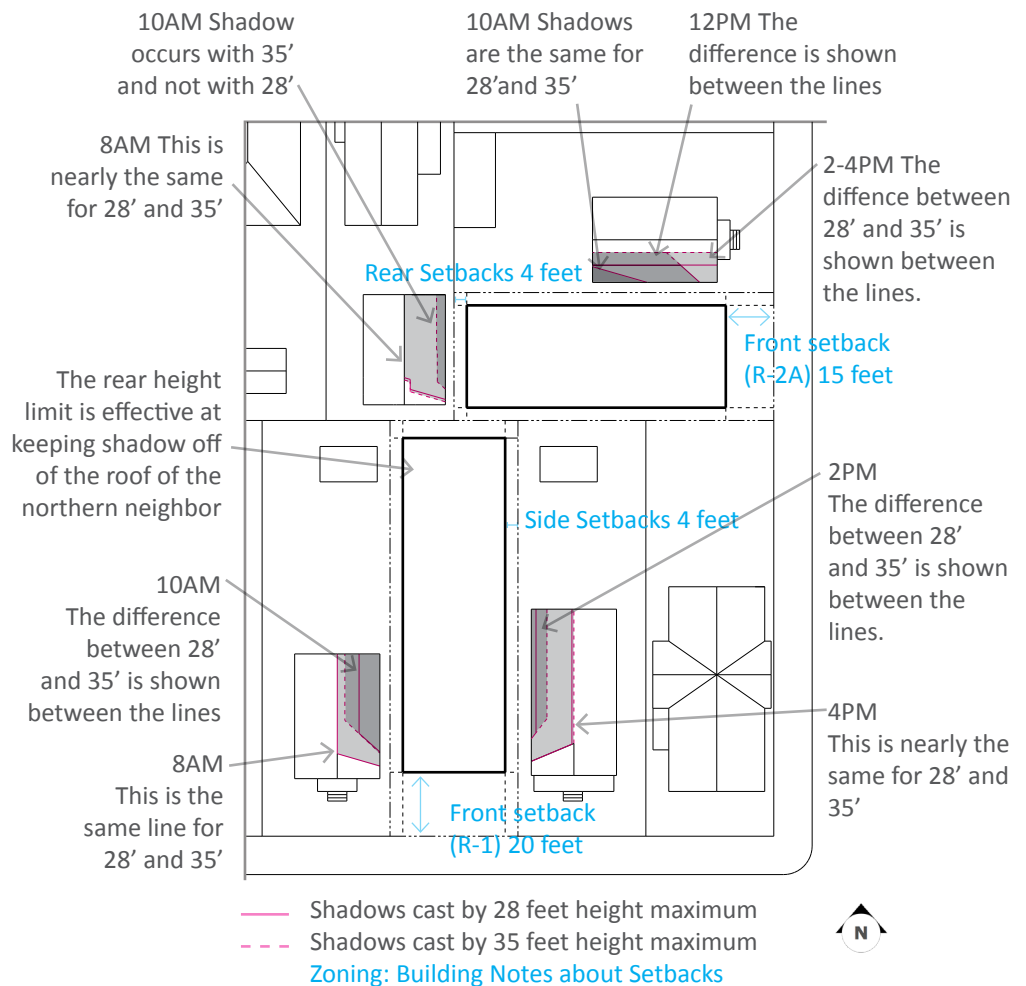


## Maximum Building Envelope Modeled

- 35 feet building height with objective standards
- R-1 front setback 20 feet
- R-2A front setback 15 feet
- Side setbacks 4 feet
- Rear setback 4 feet
- Reduced rear height to 22 feet within 15 feet of the rear property line

## Shading Calculations

The area of shadow was calculated for both 28 feet and 35 feet building heights using the maximum building envelope allowed. The amount of shadow for the 7-foot difference in height is less than 10% more shade on the neighbor's rooftop averaged over the day.





## Kriss Worthington

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### ACTION CALENDAR

July 12, 2016

*(Continued from May 24, 2016)*

To: Honorable Mayor and Members of the City Council  
From: Councilmember Kriss Worthington

Subject: Allow Increased Development Potential in the Telegraph Commercial (C-T) District Between Dwight Avenue and Bancroft Avenue and Refer to the City Manager to Develop Community Benefit Requirements, with a Focus on Labor Practices and Affordable Housing

### RECOMMENDATION

That the Council immediately amend the Berkeley Zoning Ordinance to allow increased development potential in the Telegraph Commercial (C-T) District between Dwight Avenue and Bancroft Avenue and refer to the City Manager to develop community benefit requirements, with a focus on labor practices and affordable housing.

### BACKGROUND

The City Council sent a referral to the Planning Commission on June 30, 2015, regarding the conflict between the 5.0 FAR adopted by the Council for the C-T District and the other development regulations in the district.

On April 20, 2016, the Planning Commission considered modifying the development standards and community benefits. The Planning Commission voted to recommend the following to the Berkeley City Council:

- a) That the staff proposed Zoning Ordinance development standards for buildings adjacent to Bancroft Way be applied to the entirety of the C-T District north of Dwight Way; and
- b) That the Council develop community benefit requirements, with a focus on labor practices and affordable housing, before implementation of the proposed Zoning Ordinance language.

### FINANCIAL IMPLICATIONS:

Minimal.



ENVIRONMENTAL SUSTAINABILITY:

Consistent with Berkeley's Environmental Sustainability Goals and no negative impact.

CONTACT PERSON:

Councilmember Kriss Worthington      510-981-7170

Attachment:

1. April 20, 2016 Planning Commission Staff Report on "Changes to the Zoning Ordinance to Allow Development Potential Increases in the Telegraph Avenue Commercial (C-T) District"



Planning and Development Department  
Land Use Planning Division

## STAFF REPORT

DATE: April 20, 2016

TO: Members of the Planning Commission

FROM: Elizabeth Greene, Senior Planner

SUBJECT: Public Hearing: Changes to the Zoning Ordinance to Allow Development Potential Increases in the Telegraph Avenue Commercial (C-T) District

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### RECOMMENDATION

Staff recommends that the Planning Commission:

- Hold a Public Hearing (continued from March 16, 2016) and take public comment; and
- Recommend the City Council modify language in Zoning Ordinance Section 23E.56.070, which would allow greater intensity of development in the C-T district only along Bancroft Way, as proposed in the staff recommendation.

See Attachment 1 for the proposed zoning amendment language.

### BACKGROUND

The City Council sent a referral to the Planning Commission on June 30, 2015, regarding the conflict between the 5.0 FAR adopted by the Council for the C-T District and the other development regulations in the district. The Planning Commission considered options for modifying the development standards at meetings held on November 4, 2015, and January 20, 2016.

On March 16, 2016, the Commission held a Public Hearing to consider a staff proposal to make the following changes to the Zoning Ordinance:

1. Removing limits on the number of stories throughout the C-T District;
2. Increasing the height limit in areas of the C-T District adjacent Bancroft Way; and
3. Allowing projects in the C-T District adjacent to Bancroft Way to exceed the FAR and height standards (up to 6.0 FAR and 75 feet) with a Use Permit.

For the reasoning behind this recommendation, as well as the staff reports from the previous meetings, see the [March 16, 2016 Staff Report and attachments](#).

At this meeting, the Commission discussed the location of any changes to development standards within the C-T District. The Commission also discussed the possibility of linking increased development potential to community benefits. In particular, the Commission was interested in adding a labor component, mandating a 1:8 ratio of apprentices to journeymen working on a project. The Commission voted to continue the hearing to April 20, 2016, to allow staff to study the financial and legal feasibility of linking a labor requirement, along with other community benefits, to additional development.

## DISCUSSION

The following is the staff analysis of the issues discussed at the March 16<sup>th</sup> meeting:

1. The location of the proposed development standards. The staff recommended restricting development standard changes to properties adjacent to Bancroft Way. At the March 16<sup>th</sup> meeting, the Commission discussed whether the development standards should be changed in the entire portion of the C-T District north of Dwight Way. Based on this discussion and the language in the public hearing notice, the Council could consider changes to development standards in any portion of the C-T District north of Dwight Way.
2. Linking community benefits to additional development potential. The City Council will be considering a wide range of strategies to address the City's need for housing. Among the strategies are referrals to the Planning Commission to consider a new City density bonus and modifications to development standards citywide. A recommendation to incorporate community benefits into new housing developments citywide could be included in the response to these referrals. Staff recommends reserving any neighborhood-specific recommendations for community benefits programs until after these programs have been considered as part of a city-wide study, including a financial feasibility analysis.
3. Incorporating labor practice standards into community benefits. Local regulations of labor standards or practices can be mandated by the City as long as they are not preempted by state or federal law. The City Attorney advises that this kind of regulation be treated like other community benefit proposals and adopted separately from the Zoning Ordinance. The Planning Commission could make a recommendation to Council to amend the Berkeley Municipal Code (BMC) to add labor requirements when it makes its recommendation on the C-T zoning amendments. Staff recommends tying recommendations for labor-related community benefits to any general recommendation regarding community benefits as discussed above.
4. Relationship between proposed development standards and community benefits. The Commission discussed the ramifications of approving increased density potential without a community benefits package. Staff has provided an alternative recommendation should the Commission want to defer a decision on the development standards until a BMC ordinance is developed for community benefits.



## CONCLUSION

Staff recommends that the Planning Commission hold a Public Hearing, take public comment, and forward recommendation 1a and 1b to Council:

1. a) Recommend the attached proposed Zoning Ordinance amendments, with any changes identified through a vote of the Commission; and
- b) Recommend that the Council develop community benefit requirements, with a focus on labor practices.

Alternatively, the Commission could make the following recommendations to Council:

2. a) Do not recommend any changes to the Zoning Ordinance; and
- b) Recommend that the Council develop community benefit requirements, with a focus on labor practices.

### Attachments:

1. Proposed ordinance language
2. Map of the C-T District
3. Public Hearing Notice (published March 4, 2016)



## Kriss Worthington

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### CONSENT CALENDAR

April 4, 2017

To: Honorable Mayor and Members of the City Council

From: Councilmembers Worthington, Wengraf, and Harrison

Subject: Referral to the Planning Commission to Allow Non-commercial Use on Ground Floor

#### RECOMMENDATION:

Refer to the Planning Commission an amendment to the Zoning Ordinance to create a use permit process to allow non-commercial use on the ground floor in appropriate locations, where commercial might otherwise be required.

#### BACKGROUND:

On January 20, 2015 the City Council passed a similar item. This item seeks to indicate that this is a time sensitive issue that needs to be addressed this year.

The purpose and intent of the current ground-floor commercial requirement is to preserve, enhance, and ensure establishment of retail commercial use and to support active pedestrian-oriented uses for the street level of buildings that abut a public street. In certain locations, especially on less commercially important side streets, that are midblock and away from commercial nodes, this requirement may result in vacant space that detracts from the original intent of the requirement. An amendment to the Zoning Ordinance that allows for broader definitions and flexibility of use on the ground floor, as a condition of approval of a Use Permit, would result in better projects and less empty commercial space.

If the City Staff determine that a full adoption would take a substantial amount of time we suggest a pilot program for the C-T Telegraph commercial district not including telegraph itself.

#### FINANCIAL IMPLICATIONS:

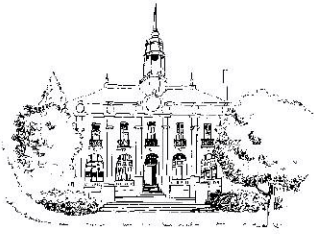
Minimal.

#### ENVIRONMENTAL SUSTAINABILITY:

Consistent with Berkeley's Environmental Sustainability Goals and no negative impact.

#### CONTACT PERSON:

Councilmember Kriss Worthington 510-981-7170



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CONSENT CALENDAR  
 May 30, 2017

To: Honorable Mayor and Members of the City Council  
 From: Councilmembers Kriss Worthington and Ben Bartlett, and Mayor Arreguin  
 Subject: Planning Commission Referral for a Pilot Density Bonus Program for the Telegraph Avenue Commercial District to Generate Revenue to House the Homeless and Extremely Low-Income Individuals

RECOMMENDATION

That the Berkeley City Council refer a City Density Bonus policy for the Telegraph Avenue Commercial District to the Planning Commission to generate in-lieu fees that could be used to build housing for homeless and extremely low-income residents.

BACKGROUND

Under current state law, new development projects that get a density bonus, allowing up to 35 percent more density, are required to build inclusionary housing. Inclusionary housing is typically defined as below-market rate housing for people who earn 50 percent or 80 percent of the Area Median Income (AMI).

While it's great that developers are including some affordable housing in their market-rate projects, affordable housing for the homeless and extremely low-income who don't qualify for inclusionary units can be provided if developers instead paid fees into the Housing Trust Fund. This can be achieved through the use of a City Density Bonus for the Telegraph Avenue Commercial District, an area where many residents have expressed support for housing the homeless and the extremely low-income.

The City bonus fee would be equal to the in-lieu affordable housing mitigation fee, currently set at \$34,000 per unit. Fees paid into the fund could be leveraged with other Federal, State and Regional affordable housing sources, resulting in significantly more affordable housing built through the Housing Trust Fund than currently available. The City has important policy proposals to assist the homeless and extremely low-income residents that urgently need funding.

The pilot program of a City Density Bonus in the Telegraph Avenue Commercial District could go a long way toward easing Berkeley's critical housing shortage by increasing incentives for developers to add more housing and give the city greater ability to deliver affordable housing.



FISCAL IMPACTS

This proposal will generate millions in new revenue to the Housing Trust Fund.

ENVIRONMENTAL IMPACTS

The proposed change is consistent with City Climate Action Plan goals supporting increased residential density. Additionally, new residential construction is subject to more stringent green building and energy efficiency standards and will help reduce per capita greenhouse gas emissions.

CONTACT PERSON

Councilmember Kriss Worthington 510-981-7170



Office of the City Manager

## ACTION CALENDAR

July 11, 2017

*(Continued from June 13, 2017)*

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Zach Cowan, City Attorney

Subject: Housing Accountability Act

### INTRODUCTION

At its meeting on November 14, 2016, the Agenda Committee requested a report on the Housing Accountability Act (Gov. Code § 65589.5; Attachment 1).

### CURRENT SITUATION AND ITS EFFECTS

The City reviews and acts on many applications every year for development projects, including many residential and mixed-use projects. The Housing Accountability Act constrains the City's discretion with respect to some of these projects.

### BACKGROUND

The Housing Accountability Act was originally enacted in 1982 and has been amended a number of times over the years. The original legislation, now designated as subdivision (j) of Section 65589.5 now reads:

(j) When a proposed housing development project complies with applicable, objective general plan and zoning standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to approve it upon the condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by substantial evidence on the record that both of the following conditions exist:

(1) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.



(2) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.<sup>1</sup>

For purposes of Section 65589.5, “housing development project” means a use consisting of residential units as well as mixed-use developments, provided that nonresidential uses are limited to “neighborhood commercial” uses and to the first floor of buildings that are two or more stories. “Neighborhood commercial” is defined as “small-scale general or specialty stores that furnish goods and services primarily to residents of the neighborhood.” “Housing development project” also includes “transitional housing or supportive housing”.

In addition, “disapproving” a development project includes denying approval as well as failing to comply with the Permit Streamlining Act (Gov. Code §§ 65950 et seq.)

Senator Greene, the author of the bill, stated that the intent of the legislation was to address the “problems in some cases where local governments adopt housing policies and then fail to comply with their own policies when specific projects are at stake. Presently, there is no effective remedy for the proponents of such a project. The obvious problem is that when developers of housing cannot rely on housing policies in proposing projects, then substantial uncertainty is created.”

Other provisions of Section 65589.5 apply more specifically to projects containing below-market rate units (see subds. (d) and (k))<sup>2</sup>, but we focus here on the more generally-applicable provision, subdivision (j).

Since its adoption in 1982, Section 65589.5(j) has been largely ignored. In part this was due to a belief that despite its language it only applied to projects that included below market rate units. This notion was effectively put to rest in *Honchariw v. County of Stanislaus* (2011)200 Cal.App.4<sup>th</sup> 1066, 1074-76.

Subject to limited exceptions discussed below, Section 65589.5(j) requires local governments to approve any “housing development project”, including specified mixed-use projects, if they comply with “applicable, objective general plan and zoning standards and criteria, including design review standards, in effect at the time that the housing development project’s application is determined to be complete...”

As *Honchariw* explained, this language was intended to “tak[e] away an agency’s ability to use what might be called a ‘subjective’ development ‘policy’ (for example,

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<sup>1</sup> The current language closely reflects the original language, but there have been some amendments to it as well.

<sup>2</sup> These were discussed in a May 7, 2002, information report to the Council (Attachment 2.)

‘suitability’)” to deny a project or reduce it in density. *Id.* With respect to design review standards, the court went on to “interpret that phrase to mean design review standards that are part of ‘applicable, objective general plan and zoning standards and criteria.’” *Id.* at 1077.

The City’s general plan and zoning ordinance contain “objective general plan and zoning standards and criteria”, such as lot development standards<sup>3</sup> and in some cases density or building intensity standards. Section 65589.5(j) does not override these lot development standards; nor does it compel approval of projects that require discretionary approvals to exceed these standards, such as reductions in setbacks or additional stories. Rather, it overrides the use of policies like neighborhood compatibility or detriment when a project complies with all applicable lot development standards.

Under Section 65589.5(j), a housing development project may be disapproved or reduced in density only if there is no other way to “satisfactorily mitigate or avoid” a “specific, adverse impact upon the public health or safety”. A “specific, adverse impact” “means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.” It is important to note that the reference to “health or safety” standards is much narrower than the typical “health, safety and welfare” basis for general police power regulations. The City does not have such standards that are typically applicable to housing development projects.

A few possible approaches to addressing the potential impacts of Section 65589.5(j) are:

- 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’”.

#### ENVIRONMENTAL SUSTAINABILITY

No effect; compliance is mandated by statute.

#### POSSIBLE FUTURE ACTION

The Council may wish to revisit relevant zoning and/or general plan provisions.

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<sup>3</sup> Lot development standards include such things as setbacks, FAR limits, height limits, and parking requirements.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

No action is required. If the Council wishes to revisit zoning and/or general plan provisions, the cost could be substantial.

CONTACT PERSON

Zach Cowan, City Attorney, 981-6950

Attachments:

- 1: Government Code section 65589.5
- 2: May 7, 2002 Information Report



**State of California**

**GOVERNMENT CODE**

**Section 65589.5**

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65589.5. (a) The Legislature finds and declares all of the following:

(1) The lack of housing, including emergency shelters, is a critical problem that threatens the economic, environmental, and social quality of life in California.

(2) California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing.

(3) Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

(4) Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing projects, reduction in density of housing projects, and excessive standards for housing projects.

(b) It is the policy of the state that a local government not reject or make infeasible housing developments, including emergency shelters, that contribute to meeting the need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action and without complying with subdivision (d).

(c) The Legislature also recognizes that premature and unnecessary development of agricultural lands for urban uses continues to have adverse effects on the availability of those lands for food and fiber production and on the economy of the state. Furthermore, it is the policy of the state that development should be guided away from prime agricultural lands; therefore, in implementing this section, local jurisdictions should encourage, to the maximum extent practicable, in filling existing urban areas.

(d) A local agency shall not disapprove a housing development project, including farmworker housing as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code, for very low, low-, or moderate-income households, or an emergency shelter, or condition approval in a manner that renders the project infeasible for development for the use of very low, low-, or moderate-income households, or an emergency shelter, including through the use of design review standards, unless it makes written findings, based upon substantial evidence in the record, as to one of the following:

(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588, is in substantial compliance with this article, and the jurisdiction has met or exceeded its share of the regional housing need allocation pursuant to Section 65584 for the planning period for the income category proposed for the housing development project, provided that any disapproval or conditional approval shall not be based on any of the reasons prohibited by Section 65008. If the housing development project includes a mix of income categories, and the jurisdiction has not met or exceeded its share of the regional housing need for one or more of those categories, then this paragraph shall not be used to disapprove or conditionally approve the project. The share of the regional housing need met by the jurisdiction shall be calculated consistently with the forms and definitions that may be adopted by the Department of Housing and Community Development pursuant to Section 65400. In the case of an emergency shelter, the jurisdiction shall have met or exceeded the need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. Any disapproval or conditional approval pursuant to this paragraph shall be in accordance with applicable law, rule, or standards.

(2) The development project or emergency shelter as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.

(3) The denial of the project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible.

(4) The development project or emergency shelter is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.

(5) The development project or emergency shelter is inconsistent with both the jurisdiction’s zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a revised housing element in accordance with Section 65588 that is in substantial compliance with this article.

(A) This paragraph cannot be utilized to disapprove or conditionally approve a housing development project if the development project is proposed on a site that is identified as suitable or available for very low, low-, or moderate-income households



in the jurisdiction's housing element, and consistent with the density specified in the housing element, even though it is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation.

(B) If the local agency has failed to identify in the inventory of land in its housing element sites that can be developed for housing within the planning period and are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels pursuant to Section 65584, then this paragraph shall not be utilized to disapprove or conditionally approve a housing development project proposed for a site designated in any element of the general plan for residential uses or designated in any element of the general plan for commercial uses if residential uses are permitted or conditionally permitted within commercial designations. In any action in court, the burden of proof shall be on the local agency to show that its housing element does identify adequate sites with appropriate zoning and development standards and with services and facilities to accommodate the local agency's share of the regional housing need for the very low and low-income categories.

(C) If the local agency has failed to identify a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit, has failed to demonstrate that the identified zone or zones include sufficient capacity to accommodate the need for emergency shelter identified in paragraph (7) of subdivision (a) of Section 65583, or has failed to demonstrate that the identified zone or zones can accommodate at least one emergency shelter, as required by paragraph (4) of subdivision (a) of Section 65583, then this paragraph shall not be utilized to disapprove or conditionally approve an emergency shelter proposed for a site designated in any element of the general plan for industrial, commercial, or multifamily residential uses. In any action in court, the burden of proof shall be on the local agency to show that its housing element does satisfy the requirements of paragraph (4) of subdivision (a) of Section 65583.

(e) Nothing in this section shall be construed to relieve the local agency from complying with the congestion management program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(f) (1) Nothing in this section shall be construed to prohibit a local agency from requiring the development project to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need pursuant to Section 65584. However, the development standards, conditions, and policies shall be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development.

(2) Nothing in this section shall be construed to prohibit a local agency from requiring an emergency shelter project to comply with objective, quantifiable, written development standards, conditions, and policies that are consistent with paragraph (4) of subdivision (a) of Section 65583 and appropriate to, and consistent with, meeting the jurisdiction's need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. However, the development standards, conditions, and policies shall be applied by the local agency to facilitate and accommodate the development of the emergency shelter project.

(3) This section does not prohibit a local agency from imposing fees and other exactions otherwise authorized by law that are essential to provide necessary public services and facilities to the development project or emergency shelter.

(g) This section shall be applicable to charter cities because the Legislature finds that the lack of housing, including emergency shelter, is a critical statewide problem.

(h) The following definitions apply for the purposes of this section:

(1) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(2) "Housing development project" means a use consisting of any of the following:

(A) Residential units only.

(B) Mixed-use developments consisting of residential and nonresidential uses in which nonresidential uses are limited to neighborhood commercial uses and to the first floor of buildings that are two or more stories. As used in this paragraph, "neighborhood commercial" means small-scale general or specialty stores that furnish goods and services primarily to residents of the neighborhood.

(C) Transitional housing or supportive housing.

(3) "Housing for very low, low-, or moderate-income households" means that either (A) at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold or rented to persons and families of moderate income as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income, as defined in Section 65008 of this code. Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based. Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the moderate-income eligibility limits are based.

(4) "Area median income" means area median income as periodically established by the Department of Housing and Community Development pursuant to Section 50093 of the Health and Safety Code. The developer shall provide sufficient legal commitments to ensure continued availability of units for very low or low-income households in accordance with the provisions of this subdivision for 30 years.



(5) “Disapprove the development project” includes any instance in which a local agency does either of the following:

(A) Votes on a proposed housing development project application and the application is disapproved.

(B) Fails to comply with the time periods specified in subdivision (a) of Section 65950. An extension of time pursuant to Article 5 (commencing with Section 65950) shall be deemed to be an extension of time pursuant to this paragraph.

(i) If any city, county, or city and county denies approval or imposes restrictions, including design changes, a reduction of allowable densities or the percentage of a lot that may be occupied by a building or structure under the applicable planning and zoning in force at the time the application is deemed complete pursuant to Section 65943, that have a substantial adverse effect on the viability or affordability of a housing development for very low, low-, or moderate-income households, and the denial of the development or the imposition of restrictions on the development is the subject of a court action which challenges the denial, then the burden of proof shall be on the local legislative body to show that its decision is consistent with the findings as described in subdivision (d) and that the findings are supported by substantial evidence in the record.

(j) When a proposed housing development project complies with applicable, objective general plan and zoning standards and criteria, including design review standards, in effect at the time that the housing development project’s application is determined to be complete, but the local agency proposes to disapprove the project or to approve it upon the condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by substantial evidence on the record that both of the following conditions exist:

(1) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(2) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

(k) The applicant or any person who would be eligible to apply for residency in the development or emergency shelter may bring an action to enforce this section. If, in any action brought to enforce the provisions of this section, a court finds that the local agency disapproved a project or conditioned its approval in a manner rendering it infeasible for the development of an emergency shelter, or housing for very low, low-, or moderate-income households, including farmworker housing, without making the findings required by this section or without making sufficient findings supported by substantial evidence, the court shall issue an order or judgment compelling



compliance with this section within 60 days, including, but not limited to, an order that the local agency take action on the development project or emergency shelter. The court shall retain jurisdiction to ensure that its order or judgment is carried out and shall award reasonable attorney's fees and costs of suit to the plaintiff or petitioner who proposed the housing development or emergency shelter, except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of this section. If the court determines that its order or judgment has not been carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled, including, but not limited to, an order to vacate the decision of the local agency, in which case the application for the project, as constituted at the time the local agency took the initial action determined to be in violation of this section, along with any standard conditions determined by the court to be generally imposed by the local agency on similar projects, shall be deemed approved unless the applicant consents to a different decision or action by the local agency.

(l) If the court finds that the local agency (1) acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of this section and (2) failed to carry out the court's order or judgment within 60 days as described in subdivision (k), the court, in addition to any other remedies provided by this section, may impose fines upon the local agency that the local agency shall be required to deposit into a housing trust fund. Fines shall not be paid from funds that are already dedicated for affordable housing, including, but not limited to, redevelopment or low- and moderate-income housing funds and federal HOME and CDBG funds. The local agency shall commit the money in the trust fund within five years for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households. For purposes of this section, "bad faith" shall mean an action that is frivolous or otherwise entirely without merit.

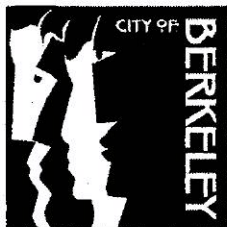
(m) Any action brought to enforce the provisions of this section shall be brought pursuant to Section 1094.5 of the Code of Civil Procedure, and the local agency shall prepare and certify the record of proceedings in accordance with subdivision (c) of Section 1094.6 of the Code of Civil Procedure no later than 30 days after the petition is served, provided that the cost of preparation of the record shall be borne by the local agency. Upon entry of the trial court's order, a party shall, in order to obtain appellate review of the order, file a petition within 20 days after service upon it of a written notice of the entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow. If the local agency appeals the judgment of the trial court, the local agency shall post a bond, in an amount to be determined by the court, to the benefit of the plaintiff if the plaintiff is the project applicant.

(n) In any action, the record of the proceedings before the local agency shall be filed as expeditiously as possible and, notwithstanding Section 1094.6 of the Code of Civil Procedure or subdivision (m) of this section, all or part of the record may be prepared (1) by the petitioner with the petition or petitioner's points and authorities, (2) by the respondent with respondent's points and authorities, (3) after payment of

costs by the petitioner, or (4) as otherwise directed by the court. If the expense of preparing the record has been borne by the petitioner and the petitioner is the prevailing party, the expense shall be taxable as costs.

(o) This section shall be known, and may be cited, as the Housing Accountability Act.

(Amended by Stats. 2015, Ch. 349, Sec. 2. (AB 1516) Effective January 1, 2016.)



Office of the City Manager

COUNCIL INFORMATION

May 7, 2002

To: Honorable Mayor and  
Members of the City Council

From: Weldon R. [Signature], City Manager

Subject: 2517 SACRAMENTO STREET APPEAL – USE PERMIT #01-10000085 - PUBLIC HEARING - SUPPLEMENTAL REPORT

STATUS:

California Health and Safety Code section 65589.5 likely applies to the 2517 Sacramento Street project.

BACKGROUND:

California Health and Safety Code Section 65589.5 states that a “housing development project” which meets certain requirements for inclusion of low and moderate income housing<sup>1</sup> shall not be disapproved or conditioned in a manner which renders the project infeasible for the use of low and moderate income households unless the local agency can make findings, based on substantial evidence in the record, that one of the following applies:

- (1) the jurisdiction has adopted a housing element and that this project is not needed to meet its share of the regional housing needs;
- (2) the project would have a specific, adverse impact upon the public health or safety and there is no feasible alternative to mitigate the impact without rendering the project unaffordable to low and moderate income households;
- (3) the denial or conditioning of the project is required by state or federal law and there is no feasible alternative to comply with this law without rendering the project unaffordable to low and moderate income households;
- (4) approval of the project would increase the concentration of lower income households in a neighborhood that already has a disproportionately high number of lower income households and there is no feasible method of approving the development for a different site without rendering the project unaffordable to low and moderate income households;

<sup>1</sup> As a practical matter, all projects which are subject to Berkeley’s inclusionary ordinance meet the requirements for provision of low and moderate income housing described in this section.



- (5) the project is proposed for land zoned for agriculture or resource preservation which is surrounded on at least two sides by land being used for agriculture or resource preservation purposes or which does not have adequate water or wastewater facilities to serve the project; or
- (6) the project is inconsistent with the jurisdiction's zoning ordinance and general plan land use designation and the jurisdiction has adopted a housing element.

#### 1. Application to the 2517 Sacramento Street Project

The 2517 Sacramento Street project is arguably subject to Section 65589.5 since it meets the City's inclusionary requirements and, therefore, meets the standards of provision of low income housing of this section as well. In addition, none of the above findings could be made based on substantial evidence in the record with regard to this project.

Previously, a similar mixed-use project (2700 San Pablo) was proposed and it too met the City's inclusionary requirements and none of the findings could have been made in that case either. Consequently, the developer of the San Pablo project argued that this section applied to his proposal. Conversely, the opponents' attorney argued that this section did not apply because it proposed a mixed-use project including commercial as well as residential development. In response, the developer argued that mixed-use projects are not exempt from the requirements of Section 65589.5. Unfortunately, there is no clear answer to this question since the term "housing development project" is not defined.

#### 2. Legislative History

Without clear statutory language, courts will look to the legislative history to interpret the meaning of a statute. Therefore, the City Attorney's Office reviewed the legislative history of this section to attempt to determine if the legislature intended to include mixed-use developments in the definition.

Regrettably, the legislative history does not provide much guidance. The only fact it clearly establishes is that the legislature gave no consideration to the matter. In fact, a lobbyist from the California League of Cities who was involved in negotiations on the passage of the bill remembered that she had suggested that the term needed to be defined and the legislators discounted this suggestion.

The legislation was proposed in response to the rejection of a low income housing project in San Diego. San Diego had adopted a housing element as required by law. The proposed project was a 74 unit development without commercial or other uses proposed. However, it needed a density bonus to render it feasible. Apparently, it met all the requirements for a density bonus, but was rejected because adjacent homeowners and flower growers did not want the site used for low income housing.

Senator Greene, the author of the bill, stated that the intent of the legislation was to address the "problems in some cases where local governments adopt housing policies and then fail to comply with their own policies when specific projects are at stake. Presently, there is no effective remedy for the proponents of such a project. The obvious problem is that when developers of housing cannot rely on housing policies in proposing projects, then substantial uncertainty is created. The result in additional delay and cost adds to the final cost of housing to the consumer."



Thus, this type of evidence in the legislative history establishes that the bill was authored in response to a housing development project, which consisted only of residential housing, being rejected by a County which adopted a housing element that identified it needed this exact type of housing to meet the regional needs of low income housing. There is no evidence in the record that the author intended it to apply to mixed-use developments. On the other hand, there is no evidence in the legislative history that it was intended to apply to projects containing housing exclusively.

### 3. Other Definitions of “Housing Development Project” in California Law

Since neither the law nor its legislative history gives a clear indication as to whether mixed-use projects were intended to be included within the definition of “housing development project”, the City Attorney’s Office looked to other California statutes which define this term for guidance.<sup>2</sup>

The only section found which deals with the issue is California Health and Safety Code Section 50073.<sup>3</sup> This section states:

"Housing development", for the purpose of housing assisted by the department, means any work or undertaking of new construction or rehabilitation, or the acquisition of existing residential structures in good condition, for the provision of housing which is financed pursuant to the provisions of this division for the primary purpose of providing decent, safe, and sanitary housing for persons and families of low or moderate income. A housing development may include nonhousing facilities, such as administrative, community, health, recreational, educational, commercial facilities, and child-care facilities which the agency determines are an integral part of a housing development or developments.

This section relates to housing developments which are financed through the California Housing Finance Agency (CHFA). The City Attorney’s Office contacted the legal department for this agency regarding their interpretation of the definition. The City Attorney’s Office was told that “for the primary purpose of providing housing for persons and families of low or moderate income” meant that at least 51% of the units of any development would qualify as low and/or moderate income housing.

It was also explained that, although the definition allows the agency to finance projects which include commercial facilities “integral to a housing development”, as a practical matter, this never occurs. CHFA can structure what it considers a “development” by the type of financing it provides. The CHFA attorneys asserted that the agency never finances the commercial part of any development and, therefore, they have never had to interpret the meaning of “integral” to a housing development. As a result, this definition does not shed any light on whether Section 65589.5 includes mixed-use developments.

<sup>2</sup> Courts have held that “Generally, identical words in different parts of the same act or in different statutes relating to the same subject matter are construed as having the same meaning.” (*Chandis Securities Co. v. City of Dana Point* (1996) 52 Cal.App.4<sup>th</sup> 475, 486 citing *Dept. of Revenue of Ore. v. ACF Industries, Inc.* (1994) 510 U.S. 332, 341.)

<sup>3</sup> The 2700 San Pablo project applicant has provided a letter from State Senator Richard Alarcon concluding that a mixed-use housing project which consists of one floor of commercial space and several stories of housing units is a “housing project” under Section 65589.5. However, Senator Alarcon is not the author of the language in question and, in any event, a legislator’s statement of his or her intent is not considered relevant to determining the entire legislature’s intent. (*People v. Patterson* (1999) 72 Cal.App.4<sup>th</sup> 438, 443 and *Metropolitan Water Dist. v. Imperial Irrigation Dist.* (2000) 80 Cal.App.4<sup>th</sup> 1403, 1426.)



#### 4. The California Department of Housing and Community Development

This agency is charged with promulgating and implementing policies and practices to develop low income housing in California. The City Attorney's Office also contacted the legal department of this agency. The legal department's position is that Section 65589.5 does include mixed-use developments since the purpose of the law is to encourage low income housing and this type of development often allows this type of project to be financially feasible. It concluded that the law would apply to a development which consisted of 15 percent commercial space and 85 percent of residential space (the 2700 San Pablo project). In addition, they stated that, if asked, they would provide such an opinion. The opinion of a state agency charged with enforcing a particular law, although not binding on a court, is entitled to a degree of deference. (*Smith v. Anderson* (1967) 67 Cal.2d 635, 641.)

The HCD lawyers were not willing to provide any further guidance on future projects and felt that the determinations would have to be made on a case by case basis. Here, not only does the 2517 Sacramento Street project have a very similar ratio of residential to commercial space (20% commercial and 80% residential), 100% of the housing units are affordable to low income households. Thus, it can be reasonably assumed that HCD's position with regard to this project would be identical.

In addition, the HCD legal department did state that they felt an agency would be able to identify whether a developer was simply trying to avail itself of the protections offered by Section 65589.5 without actually offering a low or moderate income housing development.

#### 5. Prudent Legal Course

As discussed above, there is no clear legislative history as to whether mixed-use projects fall within the definition of a "housing development project" of Section 65589.5. However, applying the protections afforded under Section 65589.5 to mixed-use projects is harmonious with the legislative intent to encourage low-income housing. Moreover, HCD, the state housing agency, interprets this section as including a mixed-use development such as this one. In addition, as this report now explains, HCD's interpretation is consistent with the City's zoning laws as applied to housing developments.

Berkeley's zoning districts for mixed-use development generally occur along major commercial arterial streets, and in commercial nodes. The height limits vary from two stories in low intensity areas, to four stories along the arterials. All of the mixed-use development approved and constructed in the last four years have had a minimum of four stories.

The development standards of those zoning districts generally require retail space to be located on the ground floor of a given project. In addition, some amount of parking is also required. This mix of ground floor space generally allows approximately 50% of the ground floor to be used for commercial purposes. The balance of the floor area for these projects is residential floor area, which generally equates to about 75% of the total floor area.

Given these factors, the mix of floor area for Berkeley's mixed-use projects generally works out to be 75% residential, and 25% non residential. The non residential component is split between parking and retail so the gross percentage of commercial floor area is approximately 13-20% of a project's gross floor area.

Page 5

Consequently, applying Section 65589.5 to mixed-use projects in consideration of the ratio of residential to commercial floor area seems appropriate given that the overwhelming majority of floor area is dedicated to residential use.

In light of all these factors, the City Attorney's Office believes that the legally prudent course of action would be to treat this development as though it is subject to the findings requirement of Section 65589.5.

CONTACT PERSON:

Manuela Albuquerque, City Attorney

981-6950

Approved by:

  
\_\_\_\_\_  
Zach Cowan, Acting City Attorney



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PACIFIC CENTER  
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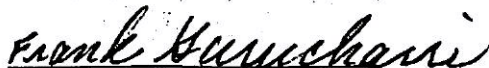
May 6, 2002

Sherry Kelley  
City Clerk  
City of Berkeley

Dear City Council and Mayor,

This is a letter of support for the "Outback Senior Homes" by Affordable Housing Associates. This is a proposed 40 unit affordable housing development at Sacramento and Dwight for our senior citizens. This site is especially suitable because of its access to public transportation (three bus lines) and appropriate services. The Pacific Center is acutely aware of the shortage of well managed affordable housing in particular for seniors. Affordable housing is one of our biggest inquiries on our information and referral phone line. Worries about housing destroy the quality of life for so many individuals. This proposal will provide much needed peace for some of our struggling seniors and we wholeheartedly support it. We ask that you, the leaders of our City, also support this project.

Sincerely,



Frank Gurucharri  
Executive Director  
Pacific Center for Human Growth





## Kriss Worthington

Councilmember, City of Berkeley, District 7  
 2180 Milvia Street, 5<sup>th</sup> Floor, Berkeley, CA 94704  
 PHONE 510-981-7170, FAX 510-981-7177,  
 EMAIL [kworthington@ci.berkeley.ca.us](mailto:kworthington@ci.berkeley.ca.us)

ACTION CALENDAR  
 October 31, 2017

To: Honorable Mayor and Members of the City Council  
 From: Councilmembers Kriss Worthington and Kate Harrison

Subject: City Manager and Planning Commission Referral: Facilitate Primarily Student Housing by a Twenty Feet Height Increase and Adjust Floor Area Ratio in the R-SMU, R-S and R-3 Areas Only from Dwight to Bancroft and from College to Fulton

### RECOMMENDATION

Refer to the City Manager and Planning Commission to facilitate primarily Student Housing by amending the Zoning Ordinance to add a twenty feet height increase and adjust Floor Area Ratio in the R-SMU, R-S and R-3 areas only from Dwight to Bancroft and from College to Fulton.

### BACKGROUND:

In the last few years students have become increasingly active at proposing ways to increase student housing. Housing is urgently needed in close proximity to the UC Berkeley campus as rents increase and the University population steadily rises. Students, recent graduates, employees of the University, and local businesses contribute to the local economy, create jobs for the local community, and greatly enrich the community through their presence. Implementing this action would provide a place to live for many individuals who would otherwise have to reside far from campus. Oftentimes, the quest to find living spaces is emotionally taxing on students and can decrease academic performance or leave students without affordable and safe places to live.

Increasing density in the area surrounding campus proves better for the environment, better for campus area businesses, and better for students. By reducing commute times, students will opt to walk or bike to class, reducing congestion on the road. A shorter commute will also increase student safety and allow students to participate in extracurricular activities that may run through the evening because students have to worry less about how they will get home. An enhanced sense of safety in the surrounding region is beneficial for all in the community. Finally, higher density benefits campus area businesses because it brings them more customers which supports the local economy.

Previous efforts to increase southside campus housing improved project viability just for the very small area of the C-T zoned blocks. Unfortunately even blocks on Bancroft directly across from the University still have excessive restrictions.

FINANCIAL IMPLICATIONS:

Minimal.

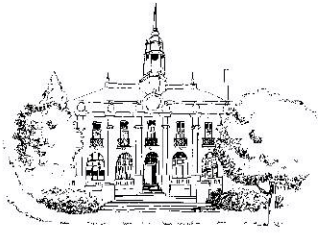
ENVIRONMENTAL SUSTAINABILITY

Consistent with Berkeley's Environmental Sustainability Goals and no negative impact.

CONTACT PERSON:

Councilmember Kriss Worthington

510-981-7170



Kriss Worthington  
 Councilmember, City of Berkeley, District 7  
 2180 Milvia Street, 5<sup>th</sup> Floor, Berkeley, CA 94704  
 PHONE 510-981-7170, FAX 510-981-7177,  
 EMAIL [kworthington@cityofberkeley.info](mailto:kworthington@cityofberkeley.info)

ACTION CALENDAR

May 1, 2018

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Kriss Worthington

Subject: Referral to the Planning Commission to allow 4 temporary zoning amendments to increase student housing in the Southside Area.

RECOMMENDATION:

That the Council refers the Planning Commission to allow 4 zoning amendments to increase student housing in the Southside Area through a Temporary Emergency Pilot Project.

BACKGROUND:

In current Planning Commission work plan indicates student housing zoning changes may take several years. The Planning Commission should explore the creation of a Temporary Emergency Pilot Project that allows 4 zoning amendments to increase student housing in the Southside area between College to Fulton and Bancroft to Dwight.

A Temporary Emergency Pilot Project is the best solution especially with a surge in the undergraduate population. Because this Temporary Emergency Pilot Project will be in place of immediate policy change, this will deliver quick relief to those that need it most--the students.

The proposed Temporary Emergency Pilot Project will take place over a set time period of 3 years with a limited and clearly outlined number of projects. During this time period, notwithstanding what is outlined in the current Zoning Ordinance, projects will be permitted:

- 1) Allow 4 projects that convert commercial space to residential space;
- 2) Allow 4 new projects to allow ground floors on any street to be converted into residential use except on Telegraph Avenue;
- 3) Allow up to 2 tall buildings up to 12 stories
- 4) Allow 6 projects to include a 20-foot height increase in order to increase the availability of student housing

The Temporary Emergency Pilot Project will help to ameliorate those suffering from the shortage in student housing. It will also make a greener Berkeley by cutting the commute times for students at UCB, BCC, or other schools in the vicinity.

FINANCIAL IMPLICATIONS:

Minimal as this is only a referral.

ENVIRONMENTAL SUSTAINABILITY:

Denser Housing close to campus will dramatically reduce greenhouses gases compare to students commuting by cars.

CONTACT PERSON:

Councilmember Kriss Worthington

Amir Wright

Toby Simmons

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CONSENT CALENDAR  
11/27/2018

To: Honorable Mayor and Members of the City Council  
From: Councilmember Kriss Worthington  
Subject: Short Term Referral to Expedite Components of the More Student Housing Now Resolution

RECOMMENDATION:

Short term referral to the City Manager and the Planning Department to promptly move forward with components of the More Student Housing Now Resolution **and any efforts to increase student housing** that do not require additional CEQA review, amend existing City ordinances and policies that prevent the implementation of SB 1227, and provide a budget referral that would allocate the necessary resources as determined by the Planning Staff.

BACKGROUND:

This referral is intended to expedite the implementation of particular components of the More Student Housing Now Resolution. The Planning Staff have identified the conversion of second floor commercial spaces to residential units, the expansion of car-free housing, and the creation of ground floor residential units as not requiring additional CEQA review. Therefore, the Planning Commission should be given the opportunity to vote on these policies at the earliest possible date. This Referral would also allow the City Council to approve a budget based on Planning Staff determination of needed resources for consultants and/or CEQA compliance.

Senator Nancy Skinner introduced and secured the passage of SB 1227, which “requires a density bonus to be provided to a developer that agrees to construct a housing development in which all units in the development will be used for students enrolled full-time at an institution of higher education.” This bill was created with both the City of Berkeley and UC Berkeley in mind, but existing City law may restrict the implementation of SB 1227. Therefore, the Council should recommended that the City of Berkeley make any administrative or ordinance changes necessary in order to take advantage of SB 1227. Doing so would not require additional CEQA review and would help actualize elements of the More Student Housing Resolution.

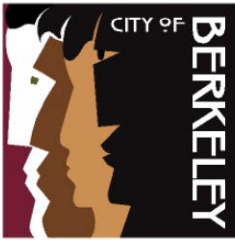
FINANCIAL IMPLICATIONS:

Budget referral to be determined by Planning Staff recommendation.

ENVIRONMENTAL SUSTAINABILITY: No negative impact and consistent with city standards.

CONTACT PERSON: Councilmember

Kriss Worthington 510-981-7170  
Holden Valentine 516-282-5400



Lori Droste  
Councilmember, District 8

## REVISED AGENDA MATERIAL for Supplemental Packet 2

**Meeting Date:** April 23, 2019 (continued from February 26, 2019)

**Item Number:** 32

**Item Description:** Missing Middle Housing Report

**Submitted by:** Councilmember Lori Droste, Councilmember Ben Bartlett,  
Councilmember Rigel Robinson, and Councilmember Rashi Kesarwani

In response to recent suggestions, this item has been further revised to include amendments from Councilmember Sophie Hahn and the Commission on Aging. Revisions from the authors are in red.





Lori Droste  
Councilmember, District 8

## **ACTION CALENDAR**

April 23, 2019

**To:** Honorable Mayor and Members of the City Council

**From:** Councilmember Lori Droste, Councilmember Ben Bartlett, Councilmember Rigel Robinson, and Councilmember Rashi Kesarwani

**Subject:** Missing Middle Housing Report

### **RECOMMENDATION**

Refer to the City Manager to prepare a report to the Council of examining methods, including potential revisions to the zoning code and General Plan, that may foster a broader range housing types across Berkeley, particularly missing middle housing types (duplexes, triplexes/fourplexes, courtyard apartments, bungalow courts, townhouses, etc.), in areas with access to essential components of livability like parks, schools, employment, transit, and other services.

The report should examine how other cities that have prepared for and implemented these changes particularly Minneapolis, Seattle, Chicago, and Portland, did so, including mitigating potential side effects, particularly on displacement and increases in rental prices in the surrounding area.

The Reports should include, but ~~is~~-(are-) not limited to:

1. Identifying where missing middle housing may be optimal
2. Allowing the possibility of existing houses/footprints/zoning envelopes to be divided into up to 4 units, potentially scaling the floor area ratio (FAR) to increase as the number of units increase on site, creating homes that are more affordable,

saving and lightly modifying an older structure as part of internally dividing it into more than one unit<sup>1</sup>

3. Evaluating Berkeley's residential areas –including Berkeley hillsides– while also considering fire and disaster preparedness service needs
4. Considering design elements and form-based zoning, which addresses the appropriate form, scale and massing of buildings as they relate to one another, as a potential strategy<sup>2</sup>
5. Creating incentives to maintain family-friendly housing stock, including consideration of seniors aging in place, while adding more diversity and range of smaller units
6. Creating incentives for building more than one unit on larger than average lots
7. Providing suggestions to
  - a. protect existing housing stock, particularly affordable and rent-controlled stock
  - b. protect tenant and vulnerable low-income individuals
  - c. control demolition
  - d. ensure no net loss provisions, and
  - e. increase affordability with provisions that align with our land value recapture policy objectives
8. Evaluating whether changes –or lack of changes– would
  - a. place particular economic or gentrifying pressure on low-income neighborhoods with historic redlining or contribute to
  - b. Contribute to further exclusion and/or exacerbate racial and economic segregation in Berkeley.
9. Evaluating methods for promoting first time home ownership of these units (e.g. Open Doors Initiative) and/or providing assistance to first time homebuyers so that the benefits of the additional housing are equitably distributed
10. Incorporating green features and evaluating environmental impacts of missing middle housing
11. Considering historic preservation efforts and preventing impacts to designated historic resources
12. Examining how different cities effectuated these changes (e.g. changes to their General Plan, zoning changes, etc.), and
13. Evaluating the public process used in the course of considering these changes

Given the range of requests included in this referral, it is expected that responding to the referral will require a combination of field research, consultation with design

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<sup>1</sup> City of Portland, <https://www.portlandoregon.gov/bps/article/711691>.

<sup>2</sup> Form-Based Codes Institute at Smart Growth America, 1152 15th Street NW Ste. 450 Washington, DC 20005. <https://formbasedcodes.org/definition/>



professionals and other cities and agencies, and community outreach and engagement. Council requests that staff initiate this work as soon as possible.

### **CURRENT PROBLEM AND ITS EFFECTS**

The nine-county Bay Area region is facing an extreme shortage of homes that are affordable for working families. The Metropolitan Transportation Commission illustrates the job-housing imbalance in a recently released a report showing that only one home is added for every 3.5 jobs created in the Bay Area region.<sup>3</sup> Governor Gavin Newsom has called for a “Marshall Plan for affordable housing” and has pledged to create millions of more homes in California to tackle the state’s affordability and homelessness crisis.

In Berkeley, the median sale price of a home is \$1.2 million (as of December 2018)—an increase of 65% over the median sale price in December 2013 of \$727,000. Similarly, Berkeley’s median rent index is \$3,663/month—a 54% increase since December 2013.<sup>4</sup> The escalating rents coincided with an increase of 17% in Berkeley’s homeless population as documented in the 2015 and 2017 point-in-time counts.<sup>5</sup> These skyrocketing housing costs put extreme pressure on low-, moderate- and middle-income households, as they are forced to spend an increasing percentage share of their income on housing (leaving less for other necessities like food and medicine), live in overcrowded conditions, or endure super-commutes of 90 minutes or more in order to make ends meet.

#### *Low-Income Households*

Recently, low-income households experienced the greatest increases in rent as a portion of their monthly income. According to the Urban Displacement Project, households are considered to be “rent burdened” when more than a third of their income goes toward housing costs. In Alameda County, “Although rent burden increased across all income groups, it rose most substantially for low- and very low-income households. In both 2000 and 2015, extremely low-income renters were by far the most likely to experience severe rent burden, with nearly three quarters spending more than half their income on rent.”<sup>6</sup>

Although residents of Berkeley recently passed Measure O which will substantially increase funding for affordable housing, low-income units are increasingly expensive to

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<sup>3</sup> Metropolitan Transportation Commission, 2018. <http://www.vitalsigns.mtc.ca.gov/>

<sup>4</sup> Berkeley Home Prices and Values, <https://www.zillow.com/berkeley-ca/home-values/>

<sup>5</sup> Berkeley Homeless Point-in-Time Count and Survey Data, 2017. [https://www.cityofberkeley.info/Clerk/City\\_Council/2017/07\\_Jul/Documents/2017-07-25\\_Item\\_53\\_2017\\_Berkeley\\_Homeless.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2017/07_Jul/Documents/2017-07-25_Item_53_2017_Berkeley_Homeless.aspx)

<sup>6</sup> Zuk, M., & Chapple, K. (2015). Urban Displacement Project. [http://www.urbandisplacement.org/sites/default/files/images/alameda\\_final.pdf](http://www.urbandisplacement.org/sites/default/files/images/alameda_final.pdf)

create. Low-income housing units typically cost well over \$500,000 to create and the demand for this type of affordable/subsidized housing exceeds the supply.<sup>7</sup> In Berkeley, roughly 700 seniors applied for the 42 affordable/subsidized units at Harpers Crossings.<sup>8</sup> Without a substantial additional increase in funding for affordable housing, the vast majority of low-income individuals have to rely on the market.

### *Middle-Income Households*

In the Bay Area, those earning middle incomes are facing similar challenges in finding affordable homes. The Pew Research Center classifies middle income households as those with “adults whose annual household income is two-thirds to double the national median.” In 2016, middle income households were those earning approximately \$45,000 to \$136,000 for a household of three.<sup>9</sup> However, in Berkeley, a similarly-sized family earning up to \$80,650 (80% Area Median Income) is considered low-income according to the U.S. Department of Housing and Urban Development.<sup>10</sup>

In the Bay Area, a family currently has to earn \$200,000 annually to afford the principal, interest, taxes and insurance payments on a median-priced home in the Bay Area (assuming they can pay 20 percent of the median home price of nearly \$1,000,000 up front).<sup>11</sup> This means that many City of Berkeley employees couldn’t afford to live where they work: a community health worker (making \$63,600) and a janitor (making \$58,300) wouldn’t be able to afford a home. Neither would a fire captain (making \$142,000) with a stay at home spouse. Even a police officer (making \$122,600) and a groundskeeper (making \$69,300), or two librarians (making \$71,700) couldn’t buy a house.<sup>12</sup>

Berkeley Unified School District employees have recently been advocating for teacher housing. Unfortunately, the housing options for teachers are insufficient for the overwhelming need. According to a recent Berkeley Unified School District (BUSD) survey, 69% of teachers or staff who rent believe that high housing costs will impact

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<sup>7</sup> “The Cost of Building Housing” *The Turner Center* <https://turnercenter.berkeley.edu/construction-costs-series>

<sup>8</sup> Flood, Lucy. (1/18/2018). “Berkeley low-income seniors get a fresh start at Harper Crossing.” <https://www.berkeleyside.com/2018/01/18/berkeley-low-income-seniors-get-fresh-start-harper-crossing>

<sup>9</sup> Kochhar, Rakesh. “The American middle class is stable in size, but losing ground financially to upper-income families,” 9/16/2018, Pew Research Center. <http://www.pewresearch.org/fact-tank/2018/09/06/the-american-middle-class-is-stable-in-size-but-losing-ground-financially-to-upper-income-families/>

<sup>10</sup> Berkeley Housing Authority, HUD Income Guidelines, effective April 1, 2018. [https://www.cityofberkeley.info/BHA/Home/Payment\\_Standards\\_Income\\_Limits\\_and\\_Utility\\_Allowance.aspx](https://www.cityofberkeley.info/BHA/Home/Payment_Standards_Income_Limits_and_Utility_Allowance.aspx)

<sup>11</sup> “The salary you must earn to buy a home in the 50 largest metros” (10/14/2018). HSH.com <https://www.hsh.com/finance/mortgage/salary-home-buying-25-cities.html#>

<sup>12</sup> City of Berkeley Human Resources, “Job Descriptions” <http://agency.governmentjobs.com/berkeley/default.cfm?action=agencyspecs&agencyID=1568>



their ability to retain their BUSD positions.<sup>13</sup> Since individual K-12 teacher salaries average ~\$75,962,<sup>14</sup> the majority of teachers are not classified as low-income (<\$62,750), according to Housing and Urban Development guidelines. As a result, many cannot qualify for affordable housing units.

Since middle income individuals and families can't qualify for affordable housing units and very few subsidies are available to help, most have to rely on non-governmental subsidized methods and the private market to live in the Bay Area.

### *Families*

Many families are fleeing the Bay Area due to the high cost of living. According to a recently released study by the Turner Center for Housing Innovation, the income and racial patterns out-migration and in-migration indicate that “the region risks backsliding on inclusion and diversity and displacing its economically vulnerable and minority residents to areas of more limited opportunity.”<sup>15</sup> Rent for a two bedroom apartment in Berkeley costs approximately \$3,200/month<sup>16</sup> while the median child care cost in Alameda County is \$1,824 a month, an increase of 36% in the past four years.<sup>17</sup> Consequently, many families are paying well over \$60,000 for living and childcare expenses alone.

### *Homelessness*

High housing costs also lead to California having among the highest rates of poverty in the nation at 19%.<sup>18</sup> Consequently, homelessness is on the rise throughout California. The Bay Area has one of the largest and least-sheltered homeless populations in North America.<sup>19</sup> The proliferation of homeless encampments—from select urban neighborhoods to locations across the region—is the most visible manifestation of the Bay Area's extreme housing affordability crisis. According to the 2017 point-in-time count, Berkeley had approximately 972 individuals experiencing homelessness on any

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<sup>13</sup> Berkeley Unified School District, “Recommendation for District-Owned Rental Housing for Employees”, <https://documentcloud.adobe.com/link/track?uri=urn%3Aaaid%3Ascds%3AUS%3Adfd74865-9541-4ff8-b6a6-4dcbd30acdc3>

<sup>14</sup> Education Data Partnership, “Teacher Salaries” <http://www.ed-data.org/district/Alameda/Berkeley-Unified>

<sup>15</sup> Romem, Issa and Elizabeth Kneebone, 2018. “Disparity in Departure: Who Leaves the Bay Area and Where Do They Go?” <https://turnercenter.berkeley.edu/disparity-in-departure>

<sup>16</sup> Berkeley Rentals, <https://www.zillow.com/berkeley-ca/home-values/>

<sup>17</sup> D'Souza, Karen, 2/3/19. “You think Bay Area housing is expensive? Child care costs are rising, too.” <https://www.mercurynews.com/2019/02/03/you-think-bay-area-housing-is-expensive-childcare-costs-are-rising-too/amp/>

<sup>18</sup> The U.S. Census The Supplemental Poverty Measure adjusts thresholds based on cost of living indexes.

<sup>19</sup> SPUR: Ideas and Action for a Better City. “Homelessness in the Bay Area: Solving the problem of homelessness is arguably our region's greatest challenge.” Molly Turner, Urbanist Article, October 23, 2017 <https://www.spur.org/publications/urbanist-article/2017-10-23/homelessness-bay-area>



given night.<sup>20</sup> In order to act in accordance with best practices research on alleviating homelessness and help homeless individuals get housed, the City needs to create more homes.<sup>21</sup> Tighter housing markets are associated with higher rates of homelessness, indicating that the creation of additional housing for all income levels is key to mitigating the crisis.<sup>22</sup> In 2015, the non-partisan California's Legislative Analyst Office published a report addressing the state's high housing costs. Their report revealed that growth control policies increased home prices by 3-5%.<sup>23</sup> In the 1,000 Person Plan to Address Homelessness, Berkeley's Health, Housing and Community Services staff also recommend that Council prioritizes "implementing changes to Berkeley's Land Use, Zoning, Development Review Requirements for new housing with an eye toward alleviating homelessness."

## BACKGROUND

### Missing Middle

*What is missing middle housing?*

Missing middle housing is a term used to describe:

1. a range of clustered or multi-unit housing types compatible in scale with single family homes<sup>24</sup> and/or
2. housing types naturally affordable to those earning between 80-120% of the area median income.

While this legislation aims to address the former, by definition and design, missing middle housing will always be less expensive than comparable single family homes in the same neighborhood, leading to greater accessibility to those earning median, middle, or lower incomes. Currently, the median price of a single family home in Berkeley is \$1.2 million dollars, which is out of reach for the majority of working people.<sup>25</sup> Approximately half of Berkeley's housing stock consists of single family units<sup>26</sup>

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<sup>20</sup> Berkeley Homeless Point-in-Time Count and Survey Data, 2017.

[https://www.cityofberkeley.info/Clerk/City\\_Council/2017/07\\_Jul/Documents/2017-07-25\\_Item\\_53\\_2017\\_Berkeley\\_Homeless.aspxn](https://www.cityofberkeley.info/Clerk/City_Council/2017/07_Jul/Documents/2017-07-25_Item_53_2017_Berkeley_Homeless.aspxn)

<sup>21</sup> United States Interagency Council on Homelessness "The Evidence behind Approaches that Drive an End to Homelessness" December 2017, [https://www.usich.gov/resources/uploads/asset\\_library/evidence-behind-approaches-that-end-homelessness.pdf](https://www.usich.gov/resources/uploads/asset_library/evidence-behind-approaches-that-end-homelessness.pdf)

<sup>22</sup> *Homeless in America, Homeless in California*. John M. Quigley, Steven Raphael, and Eugene Smolensky. The Review of Economics and Statistics, February 2001, 83(1): 37–51 © 2001 by the President and Fellows of Harvard College and the Massachusetts Institute of Technology. [https://urbanpolicy.berkeley.edu/pdf/qrs\\_restat01pb.pdf](https://urbanpolicy.berkeley.edu/pdf/qrs_restat01pb.pdf)

<sup>23</sup> California's High Housing Costs, Causes and Consequences, Legislative Analyst Office, March 17, 2015. <https://lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.pdf>

<sup>24</sup> Parolek, Dan. Opticos Design. <http://missingmiddlehousing.com/>

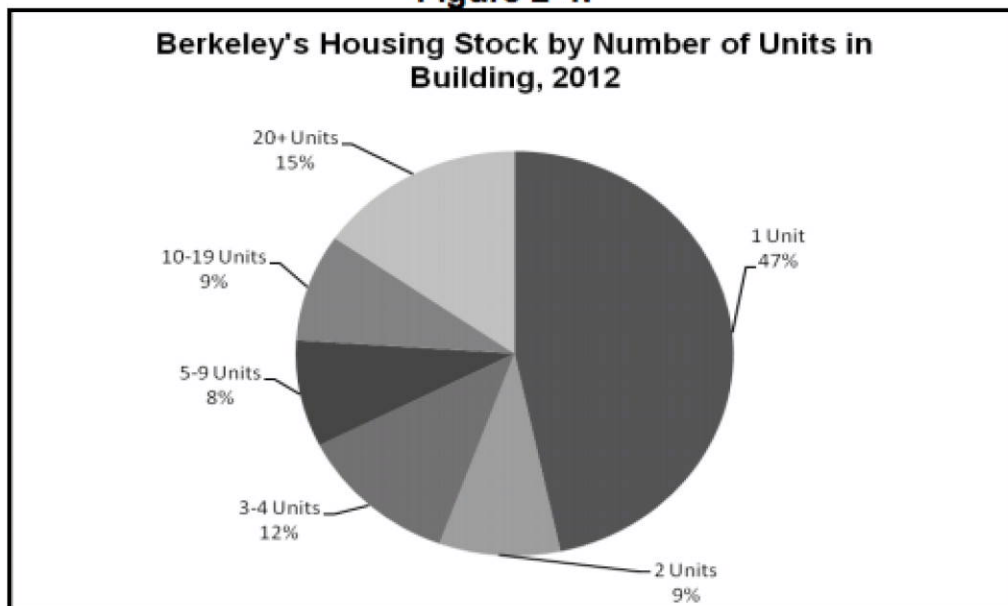
<sup>25</sup> Berkeley Home Prices and Values, <https://www.zillow.com/berkeley-ca/home-values/>

<sup>26</sup> City of Berkeley 2015 -2023 Housing Element.

[https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Commissions/Commission\\_for\\_Planning/2015-2023%20Berkeley%20Housing%20Element\\_FINAL.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2015-2023%20Berkeley%20Housing%20Element_FINAL.pdf)

and more than half of Berkeley's residential land is zoned in ways that preclude most missing middle housing. As a result, today, only wealthy households can afford homes in Berkeley.

**Figure 2-4:**



*Source: US Census, ACS 2008-2012 5-Year Estimate., Table B25024*

Missing middle housing includes duplexes, triplexes, courtyard apartments, bungalow courts, and multiplexes that often house people with a variety of incomes. These housing types generally have small- to medium-sized footprints and are often three stories or less, allowing them to blend into the existing neighborhood while still encouraging greater socioeconomic diversity. These types of homes exist in every district of Berkeley, having been built before they were banned in districts only allowing single family homes. Missing middle homes were severely limited in other districts by zoning changes initiated in 1973.

The current housing market has led to “barbell” housing delivery. That is, new units tend to high-priced (market rate or luxury) or highly subsidized (affordable). Consequently, the majority of the population can't access new units because of the dearth of funding, scarcity of land, and high construction costs impose challenges on viability. One study found that individuals trying to create missing middle housing cannot compete financially with larger projects in areas zoned for higher density, noting “many smaller developers have difficulty obtaining the necessary resources (including the competitive funding) required to offset the high initial per-unit development costs, and larger developers with deeper pockets and more experience navigating complex regulatory systems will almost always opt to build projects that are large enough to achieve the



bulk per-unit development rate.”<sup>27</sup> Additionally, many types of missing middle housing are not permitted in areas zoned R1 (single family family and one accessory dwelling unit only), R1A (limited two family), and R2 (restricted two family). Other factors that may prevent the creation of missing middle housing include onerous lot coverage ratios and excessive setback and parking requirements.<sup>28</sup>

### **History of Exclusionary Zoning, Racial and Economic Segregation and Current Zoning**

Prior to the 1970s, a variety of missing middle housing was still being produced and made available to families throughout the Bay Area, particularly in Berkeley. Many triplexes and similar building types exist in areas now zoned for a primary residence plus ADU single-family residential (R-1), limited two-family residential (R-1A), and restricted two-family residential (R-2). These areas are now some of the most expensive parts of our city—especially on a per-unit basis.

Until 1984, Martin Luther King Jr Way was known as Grove Street. For decades, Grove Street created a wall of segregation down the center of Berkeley. Asian-Americans and African-Americans could not live east of Grove Street due to race-restrictive covenants that barred them from purchasing or leasing property.<sup>29</sup> While many people are aware of this sordid piece of Berkeley history, less know about Mason-McDuffie Company’s use of zoning laws and racially-restrictive property deeds and covenants to prevent people of color from living in east Berkeley.

Mason-McDuffie race-restrictive covenants state: “if prior to the first day of January 1930 any person of African or Mongolian descent shall be allowed to purchase or lease said property or any part thereof, then this conveyance shall be and become void...”<sup>30</sup> In 1916, McDuffie began lobbying for the exclusionary zoning ordinances in Berkeley to protect against the “disastrous effects of uncontrolled development”<sup>31</sup> and restrict Chinese laundromats and African American dance halls, particularly in the Elmwood and Claremont neighborhoods.<sup>32</sup>

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<sup>27</sup> The Montgomery Planning Dept., “The Missing Middle Housing Study,” September 2018. [http://montgomeryplanning.org/wp-content/uploads/2018/09/MissingMiddleHousingStudy\\_9-2018.pdf](http://montgomeryplanning.org/wp-content/uploads/2018/09/MissingMiddleHousingStudy_9-2018.pdf)

<sup>28</sup> Ibid.

<sup>29</sup> Wollenberg, *Berkeley, A City in History*, 2008.

<sup>30</sup> Claremont Park Company Indenture, 1910

<sup>31</sup> Lory, Maya Tulip. “A History of Racial Segregation, 1878–1960.” *The Concord Review*, 2013. <http://www.schoolinfosystem.org/pdf/2014/06/04SegregationinCA24-2.pdf>

<sup>32</sup> Weiss, M. A. (1986). Urban Land Developers and the Origins of Zoning Laws: The Case of Berkeley. *Berkeley Planning Journal*, 3(1). Retrieved from <https://escholarship.org/uc/item/26b8d8zh>

After *Buchanan v Wareley* in 1917, explicit racially restrictive zoning became illegal. However, consideration to maintaining the character of districts became paramount and Mason-McDuffie contracts still stipulated that property owners must be white.

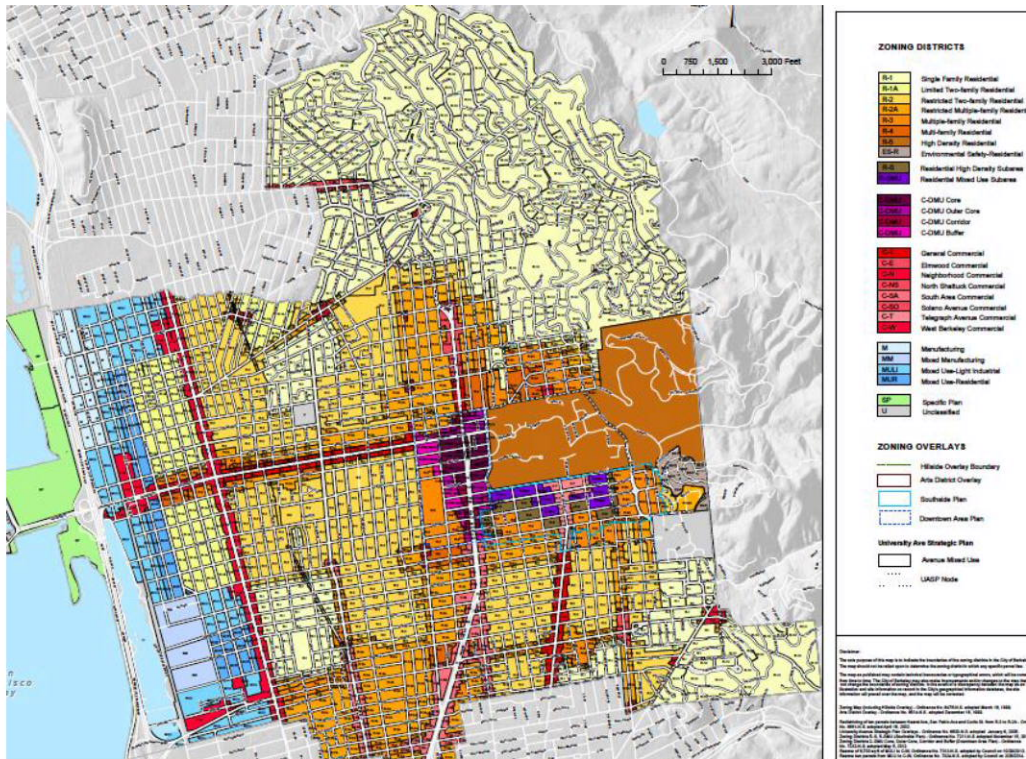
In 1933, the federal government created a Home Owners Loan Corporation (HOLC), which produced residential maps of neighborhoods to identify mortgage lending risks for real estate agents, lenders, etc. These maps were based on racial composition, quality of housing stock, access to amenities, etc. and were color coded to identify best (green), still desirable (blue), definitely declining (yellow), and hazardous (red) neighborhoods. These maps enabled discriminatory lending practices (later called 'redlining') and allowed lenders to enforce local segregation standards.<sup>33</sup>



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<sup>33</sup> NCRC Opening Doors to Economic Opportunity, "HOLC "REDLINING" MAPS: The persistent structure of segregation and economic inequality." Bruce Mitchell and Juan Franco. [https://ncrc.org/wp-content/uploads/dlm\\_uploads/2018/02/NCRC-Research-HOLC-10.pdf](https://ncrc.org/wp-content/uploads/dlm_uploads/2018/02/NCRC-Research-HOLC-10.pdf)





The images above compare a HOLC-era (Thomas Bros Map) map of Berkeley with a current zoning map. Neighborhoods identified as “best” in green on the HOLC-era map typically remain zoned as single family residential areas today. Red ‘hazardous’ neighborhoods in the first map are now largely zoned as manufacturing, mixed use, light industrial, or limited two family residential.<sup>34</sup>

Most cities still retain the vestiges of exclusionary zoning practices. By restricting desirable many areas to single-family homes low density housing (and banning less expensive housing options, such as duplexes, tri-/four-plexes, courtyard apartments, bungalow courts, and townhouses), the current zoning map dictates that only wealthier families will be able to live or rent in Berkeley. Today, with the median sale price at \$1.2 million, this de-facto form of segregation is even more pronounced.

According to the data mapped by the Urban Displacement Project, most of the low-income tracts in Berkeley are at-risk or have ongoing displacement and gentrification. Higher-income tracts in Berkeley are classified as ‘at-risk of exclusion’, currently feature ‘ongoing exclusion’, or are at stages of ‘advanced exclusion’. Degrees of exclusion are measured by a combination of data: the loss of low-income households over time, presence of high income households, being considered in a ‘hot housing market,’ and migration patterns. The Urban Displacement Project’s findings indicate that exclusion is more prevalent than gentrification in the Bay Area.<sup>35</sup> While Berkeley has created

<sup>34</sup> Robert K. Nelson, LaDale Winling, Richard Marciano, Nathan Connolly, et al., “Mapping Inequality,” American Panorama, ed. Robert K. Nelson and Edward L. Ayers, <https://dsl.richmond.edu/panorama/redlining/#loc=10/37.82011-122.4399&opacity=0.8&sort=17&city=oakland-ca&adview=full>

<sup>35</sup> Zuk, M., & Chapple, K. (2015). Urban Displacement Project. <http://www.urbandisplacement.org/map/sf>



policies and designated funding to prevent gentrification, policies that focus on preventing exclusion have lagged.

University of California-Berkeley Professor Karen Chapple, anti-displacement expert and director of the Urban Displacement Project, stated that “the Urban Displacement Project has established a direct connection between the neighborhood designations by the Home Owners Loan Corporation (HOLC), and 75% of today’s exclusionary areas in the East Bay... Thus, this historic legacy, compounded by Berkeley’s early exclusionary zoning practices, continues to shape housing opportunity and perpetuate inequities today.”<sup>36</sup>

### **Historic Redlining**

Redlining was a practice (still mirrored today, in some respects) whereby certain neighborhoods or areas were designated as being high-risk for investment. These high-risk designations were literally marked on maps using red coloring or lines, hence “redlining.” The designations were typically applied to areas with large non-white and/or economically disadvantaged populations, and resulted in people who lived in or wanted to move to these areas being denied loans, or only being provided loans on much worse terms than their counterparts who could access non-redlined areas, due to their ethnicity or higher economic status.

Because redlining practices were contemporaneous with segregationist race-restricted deeds that largely locked minorities out of non-redlined neighborhoods, most non-white households were effectively forced to live in areas where buying and/or improving residential property was extremely difficult. Consequently, low-income and minority families were often locked out of homeownership, and all the opportunities for stability and wealth-building that entails. Therefore redlining tended to reinforce the economic stagnation of the areas to which it was applied, further depressing property values and leading to disinvestment. Although redlining is no longer formally practiced in the fashion it was historically, its effects continued to be felt in wealth disparities, educational opportunity gaps, and other impacts.

One way in which the practice of redlining continues to be felt is through the continuation of exclusionary zoning. By ensuring that only those wealthy enough to afford a single family home with a relative large plot of land could live in certain areas, exclusionary zoning worked hand in hand with redlining to keep low-income families out of desirable neighborhoods with good schools and better economic opportunity. Cities, including Berkeley, adopted zoning that effectively prohibited multi-family homes in the

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<sup>36</sup> Karen Chapple’s February 25, 2019 letter to Berkeley City Council in support of this proposal. See Attachments.

same areas that relied on race restrictive deeds to keep out non-whites, meaning that other areas, including redlined areas, were more likely to continue allowing multi-family buildings.

Ironically, because these patterns of multi-family zoning versus exclusionary zoning have persisted, many areas that were historically redlined are now appealing areas for new housing development precisely because they have continued to allow multi-family homes. Any area which sees its potential housing capacity increase will become more appealing for new housing development. When these changes are made in historically redlined areas where lower-income and minority households tend to be more concentrated, it is especially important to ensure those policies do not result in [involuntary](#) displacement or the loss of rent-controlled or naturally affordable housing units.

### **TENANT AND ANTI-DISPLACEMENT STRATEGIES**

The types of zoning modifications that may result from the requested report could significantly increase Berkeley's housing stock with units that are more affordable to low- and middle-income residents. [However](#), [staff's](#) report should consider possible side effects and ways that policy can be crafted to prevent and mitigate negative externalities which could affect tenants and low [and moderate](#) -income homeowners. Steps must be taken to address the possibility that altering, demolishing, remodeling, or moving existing structures doesn't result in the widespread displacement of Berkeley tenants or loss of rent-controlled units. Staff should consider what measures are needed in conjunction with these zoning changes (e.g. strengthening the demolition ordinance, tenant protections or assistance, no net loss requirements or prohibiting owners from applying if housing was occupied by tenants five years preceding the date of application).

### **ALTERNATIVE ACTIONS CONSIDERED**

We considered an urgency ordinance but after consultation with City of Berkeley staff, we are recommending a report [to explore the possibility of](#) ~~on~~ fostering a variety of housing types to inform future policy decisions [and the General Plan Update](#), as opposed to zoning revisions.

### **IMPLEMENTATION, ADMINISTRATION, AND ENFORCEMENT**

Not applicable as this item requests an analytical report. [Any future implementation, administration, and enforcement should be determined by the City Manager and guided by Council policy direction.](#)

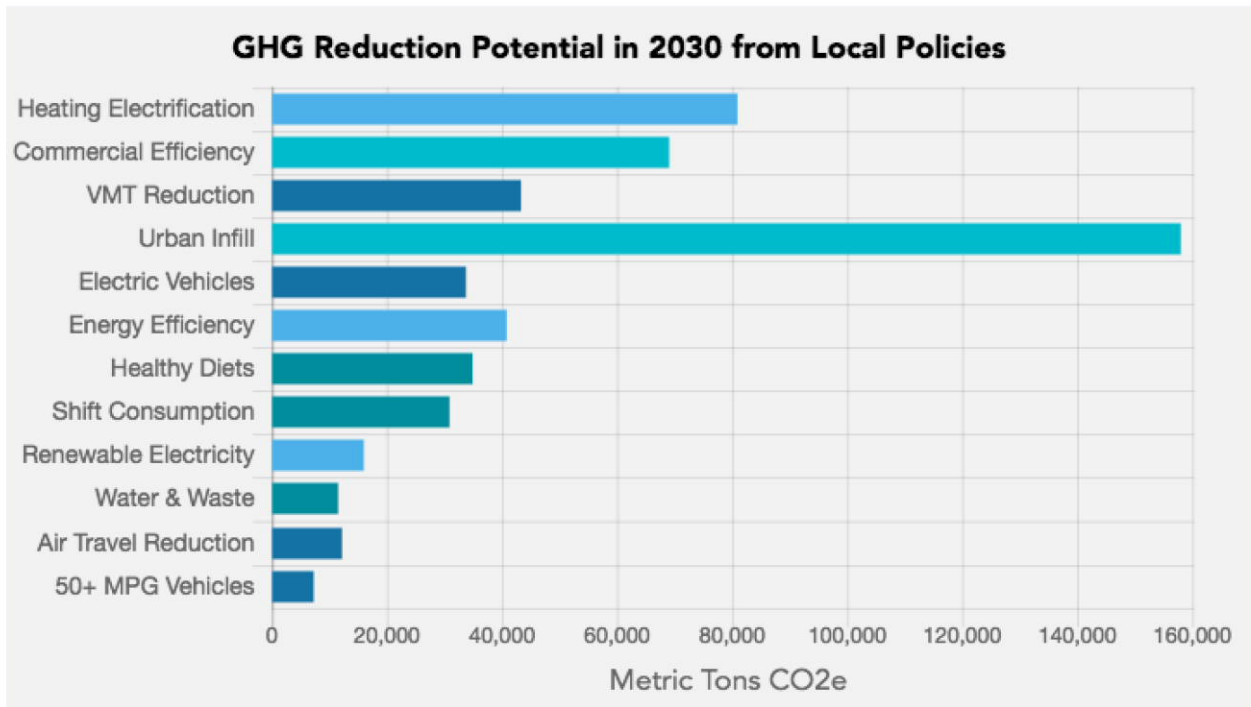
### **FINANCIAL IMPLICATIONS**



Costs for consultants to provide a missing middle scan or an in-depth analysis range from \$25,000-\$65,000. If feasible, staff should consider adding components of this Council referral to the city’s density standard study in order to accelerate the referral response, as long as it doesn’t displace or delay the density standard project.

**ENVIRONMENTAL SUSTAINABILITY**

Berkeley declared a climate emergency in 2018. Among other concerns, wildfires and sea level rise are constant ecological threats to our community. The City of Berkeley needs to act urgently to address this imminent danger. Last year, climate researchers in Berkeley quantified local and state opportunities to reduce greenhouse gases from a “comprehensive consumption-based perspective.”<sup>37</sup> The most impactful local policy to potentially reduce greenhouse gas consumption by 2030 is urban infill. In short, Berkeley can meaningfully address climate change if we allow the production of more homes near job centers and transit.



**CONTACT PERSON(S):**

Lori Droste, 510-981-7180

<sup>37</sup> “Carbon Footprint Planning: Quantifying Local and State Mitigation Opportunities for 700 California Cities.” Christopher M. Jones, Stephen M. Wheeler, and Daniel M. Kammen. Urban Planning (ISSN: 2183–7635) 2018, Volume 3, Issue 2. <https://rael.berkeley.edu/wp-content/uploads/2018/04/Jones-Wheeler-Kammen-700-California-Cities-Carbon-Footprint-2018.pdf>

**ATTACHMENTS/LINKS:**

Minneapolis Plan:

[https://minneapolis2040.com/media/1428/pdf\\_minneapolis2040\\_with\\_appendices.pdf](https://minneapolis2040.com/media/1428/pdf_minneapolis2040_with_appendices.pdf)

Seattle' Plan:

<http://www.seattle.gov/Documents/Departments/SeattlePlanningCommission/SPCNeighborhoodsForAllFINAL121318digital.pdf>



## **Berkeleyside**

### **Opinion: We can design our way out of Berkeley's housing crisis with 'missing middle' buildings**

*A Berkeley architect argues that Berkeley should build more small-scale, multi-unit buildings such as duplexes, bungalow courts, fourplexes, and small mansion apartments.*

By Daniel Parolek

Dec. 19, 2017

Berkeley's housing problems have gone national recently, as The New York Times' Conor Dougherty highlighted in a thought-provoking article, "The Great American Single-Family Home Problem." Dougherty examines the conflicting interests and regulations that threatened to halt the development of one lot on Haskell Street, and shows how those conflicting forces are contributing to the affordable housing crisis we are seeing in our state – and across the country.

As an architect and urban designer based in Berkeley for the past 20 years, I agree that California municipalities have an urgent need to deliver more housing. That said, just delivering more housing is not enough. We need to think about how this housing reinforces a high quality built environment and how to provide a range of housing for all segments of the market, including moderate and low-income households. More small-scale, multi-unit buildings such as duplexes, bungalow courts, fourplexes, and small mansion apartments, or what I call "Missing Middle Housing," should be a key focus of that housing.

Unfortunately, the design proposed for the Haskell Street site in Berkeley does not deliver on reinforcing a high quality built environment or affordability and, as the NYT article makes clear, does not deliver on any level of affordability. There are better design solutions that deliver a more compatible form, that have more and a broader range of housing units, and that can be more effective at building local support for this and similar infill projects.

For example, the 50' x 150' lot at 310 Haskell Street is big enough to accommodate a traditional fourplex, with two units down and two units above in a building that is the scale of a house (see image attached from our Missing Middle research). The units would typically be between 750-900 square feet each. An important characteristic of this housing type is that they do not go deeper onto the lot than a traditional house, thus eliminating the concern about privacy and shading and providing high-quality outdoor living spaces. These fourplex housing types exist all over Berkeley and are often successfully integrated onto blocks with single-family homes.

So how do we get there? Berkeley and most cities across the country need to sharpen their pencils on their outdated zoning codes, first to remove barriers for better solutions and secondly, to create a set of regulations that ensure that inappropriate design solutions like the one proposed for Haskell Street or even worse are not allowed on these sites. Lower densities do not equal better design solutions and higher densities do not need to mean larger or more buildings. This is a delicate balance that few zoning codes achieve and few code writers fully

understand.

We also need to change the way we communicate about housing needs in our communities. If we are using George Lakoff's rules for effective communication we would never go into a housing conversation with a community and use terms like "increasing density, adding multi-family, or upzoning a neighborhood." I can think of few neighborhoods that would feel good about saying yes to any of those options if they were framed in that way, but which can mostly get on board with thinking about aging within a neighborhood, or ensuring their kids or grandkids can afford to move back to the city they grew up in. Beginning this conversation by simply showing photographic and/or local existing documented examples of good Missing Middle housing types often disarms this conversation and leads to more fruitful results.

Berkeley's challenges related to housing are not going to go away anytime soon. We need to thoughtfully remove barriers to enable a broad range of solutions like the fourplex that have been a core part of choices provided in our communities already and learn how to effectively build consensus and support for good design solutions such as Missing Middle housing types.

*Daniel Parolek is an architect and urban designer who co-authored the book "Form-Based Codes," coined the term Missing Middle Housing ([www.missingmiddlehousing.com](http://www.missingmiddlehousing.com)) and speaks and consults nationally on these topics.*



February 25, 2019

Honorable Mayor and City Council members:

I am writing to convey my strong support for the "Missing Middle Report" on your 2/26 Council meeting.

As the Council item co-authored by Councilmembers Droste, Bartlett, Kesarwani, and Robinson points out, Berkeley's housing crisis today is a legacy of its past racist and exclusionary practices. I commend their effort to push Berkeley to confront its history in order to build a more inclusive future.

Our research at the Urban Displacement Project has established a direct connection between the neighborhood designations by the Home Owners Loan Corporation (HOLC) and today's patterns of residential displacement and exclusion.<sup>1</sup> Overall, 83% of today's gentrifying areas in the East Bay were rated as "hazardous" (red) or "definitely declining" (yellow) by the HOLC, and 75% of today's exclusionary areas in the East Bay were rated as "best" (green) or "still desirable" (blue) by HOLC. Thus, this historic legacy, compounded by Berkeley's early exclusionary zoning practices, continues to shape housing opportunity and perpetuate inequities today.

Should Berkeley elect to proceed to study the potential for zoning reform, it will be in good company. As the item authors note, Minneapolis and Seattle are already experimenting with ways to open up single-family zones, and Berkeley should be leading the charge as well.<sup>2</sup> Zoning reform has the potential not just to address the housing crisis but also to become a form of restorative or even transformative justice. There is no more important issue for planners to tackle today.

I urge you to vote yes on Item 22 to request a Missing Middle report. Please do not hesitate to call on me if any research on zoning impacts or alternatives is needed.

Sincerely,

A handwritten signature in blue ink that reads "Karen Chapple".

Karen Chapple  
Professor, City and Regional Planning  
Carmel P. Friesen Chair in Urban Studies  
Faculty Director, The Urban Displacement Project

<sup>1</sup> See <http://www.urbandisplacement.org/redlining>

<sup>2</sup> Interestingly, leading the charge in Minneapolis is City Council President Lisa Bender, a graduate of UC-Berkeley's Department of City and Regional Planning.





Lori Droste  
Vice Mayor, District 8

## **Supplemental Agenda Material for Supplemental Packet #2**

### **ACTION CALENDAR**

February 23, 2021

**To:** Honorable Mayor and Members of the City Council

**From:** Vice Mayor Lori Droste, Councilmember Terry Taplin,  
Councilmember Ben Bartlett, and Councilmember Rigel Robinson

**Subject:** Resolution to End Exclusionary Zoning in Berkeley

### **RECOMMENDATION**

Adopt a resolution to state Berkeley City Council's intent to end exclusionary zoning in Berkeley by December of 2022.

### **CURRENT PROBLEM AND ITS EFFECTS**

Single family residential zoning has its roots in racist exclusionary zoning policy and leads to racial and economic segregation.

The nine-county Bay Area region is facing an extreme shortage of homes that are affordable for working families. The Metropolitan Transportation Commission illustrates the job-housing imbalance in a report showing that only one home is added for every 3.5 jobs created in the Bay Area region.<sup>1</sup> California ranks 49th in the United States for housing units per capita – only Utah creates fewer homes.<sup>2</sup> Governor Gavin Newsom has called for a “Marshall Plan for affordable housing” and has pledged to create

<sup>1</sup> Metropolitan Transportation Commission. (2018). *Vital Signs*. <http://www.vitalsigns.mtc.ca.gov/>

<sup>2</sup> Woetzel, J., Mischke, J., Peloquin, S., and Weisfield, D. (2016, October). *A Toolkit to Close California's Housing Gap: 3.5 Million Homes by 2025*. McKinsey Global Institute, <https://www.mckinsey.com/~media/McKinsey/Industries/Public%20and%20Social%20Sector/Our%20Insights/Closing%20Californias%20housing%20gap/Closing-Californias-housing-gap-Full-report.pdf>



millions of more homes in California to tackle the state's affordability and homelessness crisis.

In Berkeley, the median sale price of a home is \$1.4 million (as of January 2021) –an increase of 56% over the median sale price in December 2015 of \$895,000.<sup>3</sup> These escalating costs coincided with an increase of 14% in Berkeley's homeless population from 2017 to 2019, and a 34% increase from 2015 to 2019 point-in-time counts.<sup>4</sup> These skyrocketing housing costs put extreme pressure on low-, moderate- and middle-income households, as they are forced to spend an increasing percentage share of their income on housing (leaving less for other necessities like food and medicine), live in overcrowded conditions, or endure super-commutes of 90 minutes or more in order to make ends meet.

#### *Low-Income Households Cannot Afford to Live in Berkeley*

Recently, low-income households experienced the greatest increases in rent as a portion of their monthly income. The U.S. Department of Housing and Urban Development (HUD) defines "affordable" as housing that costs no more than 30 percent of a household's monthly income. Households are considered to be "rent burdened" when more than a third of their income goes toward housing costs. In Alameda County, rent burdens increased across all incomes but it increased most substantially for low- and very low-income households. The Urban Displacement Project reported that "[i]n both 2000 and 2015, extremely low-income renters were by far the most likely to experience severe rent burden, with nearly three quarters spending more than half their income on rent."<sup>5</sup>

Although residents of Berkeley passed Measure O in 2018 which substantially increased funding for affordable housing, low-income units are increasingly expensive to create. Low-income housing units typically cost well over \$500,000 to create and the demand for this type of subsidized housing exceeds the supply.<sup>6</sup> Without a substantial additional increase in funding, Berkeley will be increasingly challenged to create enough subsidized affordable housing to meet the demand. For example, roughly 700 seniors applied for the 42 affordable/subsidized units at Harpers Crossings in Berkeley. This

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<sup>3</sup> *Berkeley Home Prices and Values*. (2021, January). Zillow. <https://www.zillow.com/berkeley-ca/home-values/>

<sup>4</sup> Applied Survey Research. (2019, September). *City of Berkeley Homeless Count and Survey, Comprehensive Report*. Everyone Home. [https://everyonehome.org/wp-content/uploads/2019/09/2019HIRDReport\\_Berkeley\\_2019-Final.pdf](https://everyonehome.org/wp-content/uploads/2019/09/2019HIRDReport_Berkeley_2019-Final.pdf)

<sup>5</sup> UC Berkeley's Urban Displacement Project and the California Housing Partnership. (2015). *Rising Housing Costs and Resegregation in Alameda County, Urban Displacement Project*. [http://www.urbandisplacement.org/sites/default/files/images/alameda\\_final.pdf](http://www.urbandisplacement.org/sites/default/files/images/alameda_final.pdf)

<sup>6</sup> Claros, M. (2020, March 20). *The Cost of Building Housing The Turner Center*, <https://turnercenter.berkeley.edu/construction-costs-series>

project cost \$18 million to build.<sup>7</sup> While Berkeley should continue to support subsidized housing, subsidized housing alone is insufficient to address the growing housing and homelessness crisis, especially considering the majority of low-income individuals only have access to non-subsidized affordable housing.

*Middle-Income Households Can't Afford to Live in Berkeley*

In the Bay Area, those earning middle incomes are facing similar challenges in finding affordable homes. The Pew Research Center classifies middle income households as those with “adults whose annual household income is two-thirds to double the national median.” In 2018, middle income households were those earning approximately \$48,500 to \$145,500 for a household of three. The Bay Area is one of the most expensive areas, with a price level that was 31.6% higher than the national average. As a result, a Bay Area household needs a reported income of about \$63,800, or approximately \$15,000 more than the U.S. norm, to join the middle class.<sup>8</sup>

In the Bay Area, a family currently has to earn ~\$200,000 annually to afford the principal, interest, taxes and insurance payments on a median-priced home in the Bay Area (assuming they can pay 20 percent of the median home price of \$1.4 million up front).<sup>9</sup> This means that many City of Berkeley employees can't afford to live where they work: a fire captain (making \$144,000) with a stay at home spouse wouldn't be able to afford a home. Even a firefighter (earning \$112,000 annually) and a groundskeeper (making \$64,000), or two librarians (making \$89,000 each) couldn't buy a house.<sup>10</sup>

Berkeley Unified School District employees have recently been advocating for teacher housing. Unfortunately, the housing options for teachers are insufficient for the overwhelming need. According to a recent Berkeley Unified School District (BUSD) survey, 69% of teachers or staff who rent believe that high housing costs will impact their ability to retain their BUSD positions.<sup>11</sup> Since individual K-12 teacher salaries average ~\$78,700, the majority of teachers are not classified as low-income, according to Housing and Urban Development guidelines.<sup>12</sup> As a result, many cannot qualify for

<sup>7</sup> Flood, L. (2018, January 18). *Berkeley low-income seniors get a fresh start at Harper Crossing*. Berkeleyside, <https://www.berkeleyside.com/2018/01/18/berkeley-low-income-seniors-get-fresh-start-harper-crossing>

<sup>8</sup> Ibid.

<sup>9</sup> *The salary you must earn to buy a home in the 50 largest metro*. (12/20/2020). HSH. <https://www.hsh.com/finance/mortgage/salary-home-buying-25-cities.html#>

<sup>10</sup> *Job Descriptions*. (2021) City of Berkeley Human Resources, <http://agency.governmentjobs.com/berkeley/default.cfm?action=agencyspecs&agencyID=1568>

<sup>11</sup> *BUSD Employee Housing Survey* (2017, November 17). Berkeley Unified School District. <https://documentcloud.adobe.com/link/track?uri=urn%3Aaaid%3Aascds%3AUS%3Adfd74865-9541-4ff8-b6a6-4dcbd30acdc3>

<sup>12</sup> *Teacher Salaries*. (2020). Education Data Partnership, <http://www.ed-data.org/district/Alameda/Berkeley-Unified>



affordable housing units. Since middle-income individuals and families can't qualify for affordable housing units and very few subsidies are available to help, the vast majority have to rely on non-governmental subsidized methods and the private market to live in the Bay Area.

### Families Are Struggling to Live in Berkeley

Many families are fleeing the Bay Area due to the high cost of living. According to a study by the Turner Center for Housing Innovation, the income and racial patterns of out-migration and in-migration indicate that “the region risks backsliding on inclusion and diversity and displacing its economically vulnerable and minority residents to areas of more limited opportunity.”<sup>13</sup> Rent for a two-bedroom apartment in Berkeley costs approximately \$2,070/month<sup>14</sup> while the median child care cost in Alameda County is \$1,824 a month, an increase of 36% in the past four years.<sup>15</sup> Consequently, most families are paying well over \$46,000 for living and childcare expenses alone.

### Homelessness is on the Rise in the Bay Area

High housing costs also lead to California having among the highest rates of poverty in the nation at 17.2%.<sup>16</sup> Consequently, homelessness is on the rise throughout California. The Bay Area has one of the largest and least-sheltered homeless populations in North America.<sup>17</sup> The proliferation of homeless encampments—from select urban neighborhoods to locations across the region—is the most visible manifestation of the Bay Area’s extreme housing affordability crisis. According to the 2019 point-in-time count, Berkeley had approximately 1,108 individuals experiencing homelessness on any given night.<sup>18</sup> In order to act in accordance with best practices research on alleviating homelessness and help homeless individuals get housed, the City needs to create more homes.<sup>19</sup> Tighter housing markets are associated with higher rates of homelessness,

<sup>13</sup> Romem, I and Kneebone, E. (2018). *Disparity in Departure: Who Leaves the Bay Area and Where Do They Go?* Turner Center. <https://turnercenter.berkeley.edu/disparity-in-departure>

<sup>14</sup> Chen, C. (2021, January 27). *San Francisco Bay Area Metro Report*. Zumper. <https://www.zumper.com/blog/san-francisco-bay-area-metro-report/>

<sup>15</sup> D'Souza, K. (2019, February 3) *You think Bay Area housing is expensive? Child care costs are rising, too*. The Mercury News <https://www.mercurynews.com/2019/02/03/you-think-bay-area-housing-is-expensive-childcare-costs-are-rising-too/amp/>

<sup>16</sup> Fox, L. (2020, September) *The Supplemental Poverty Measure 2019*, The Census. <https://www.census.gov/content/dam/Census/library/publications/2020/demo/p60-272.pdf>

<sup>17</sup> Turner, M. (2017, October 23). *Homelessness in the Bay Area: Solving the problem of homelessness is arguably our region's greatest challenge*. SPUR: Ideas and Action for a Better City. <https://www.spur.org/publications/urbanist-article/2017-10-23/homelessness-bay-area>

<sup>18</sup> Applied Survey Research. (2019, September). *City of Berkeley Homeless Count and Survey, Comprehensive Report*. Everyone Home. [https://everyonehome.org/wp-content/uploads/2019/09/2019HIRDReport\\_Berkeley\\_2019-Final.pdf](https://everyonehome.org/wp-content/uploads/2019/09/2019HIRDReport_Berkeley_2019-Final.pdf)

<sup>19</sup> *The Evidence behind Approaches that Drive an End to Homelessness*. (2017, December). United States Interagency Council on Homelessness

indicating that the creation of additional housing for all income levels is key to mitigating the crisis.<sup>20</sup> In the 1,000 Person Plan to Address Homelessness, Berkeley’s Health, Housing and Community Services staff also recommend that Council prioritizes “implementing changes to Berkeley’s Land Use, Zoning, Development Review Requirements for new housing with an eye toward alleviating homelessness.”

## **BACKGROUND**

### ***History of Exclusionary Zoning, Racial and Economic Segregation, and Current Zoning***

Single family residential zoning was born in Berkeley in the Elmwood neighborhood in 1916. This zoning regulation forbade the construction of anything other than one home per lot. In 1915, Berkeley’s City Attorney Frank V. Cornish wrote, “Apartment houses are the bane of the owner of the single family dwelling” while the consultant who penned Berkeley’s zoning ordinance stated, “[The] great principle of protecting the home against the intrusion of the less desirable and floating renter class.”<sup>21</sup> Subsequently, the Mason McDuffie Company’s use of Berkeley’s zoning laws and racially-restrictive property deeds and covenants prevented Black, Indigenous, and People of Color from purchasing or leasing property in east Berkeley.<sup>22</sup>

Mason-McDuffie race-restrictive covenants stated, “if prior to the first day of January 1930 any person of African or Mongolian descent shall be allowed to purchase or lease said property or any part thereof, then this conveyance shall be and become void...”<sup>23</sup> In 1916, McDuffie began lobbying for the exclusionary zoning ordinances in Berkeley to protect against the “disastrous effects of uncontrolled development”<sup>24</sup> and restrict Chinese laundromats and African American dance halls, particularly in the Elmwood and Claremont neighborhoods.<sup>25</sup>

After *Buchanan v Warley* in 1917, explicit racially restrictive zoning became illegal. However, consideration to maintaining the character of districts became paramount and Mason-McDuffie contracts still stipulated that property owners must be white.

[https://www.usich.gov/resources/uploads/asset\\_library/evidence-behind-approaches-that-end-homelessness.pdf](https://www.usich.gov/resources/uploads/asset_library/evidence-behind-approaches-that-end-homelessness.pdf)

<sup>20</sup> Quigley, J.M., Raphael S., and Smolensky, E. (2001, February). *Homeless in America, Homeless in California. The Review of Economics and Statistics*

[https://urbanpolicy.berkeley.edu/pdf/qrs\\_restat01pb.pdf](https://urbanpolicy.berkeley.edu/pdf/qrs_restat01pb.pdf)

<sup>21</sup> Cornish, F.V. *The Legal Status of Zone Ordinances* and Cheney, C. *The Necessity for a Zone Ordinance in Berkeley*. Berkeley Civic Bulletin, May 18, 1915.

<sup>22</sup> Wollenberg, C. (2008) *Berkeley, A City in History*, University of California Press.

<sup>23</sup> Claremont Park Company Indenture. (1910).

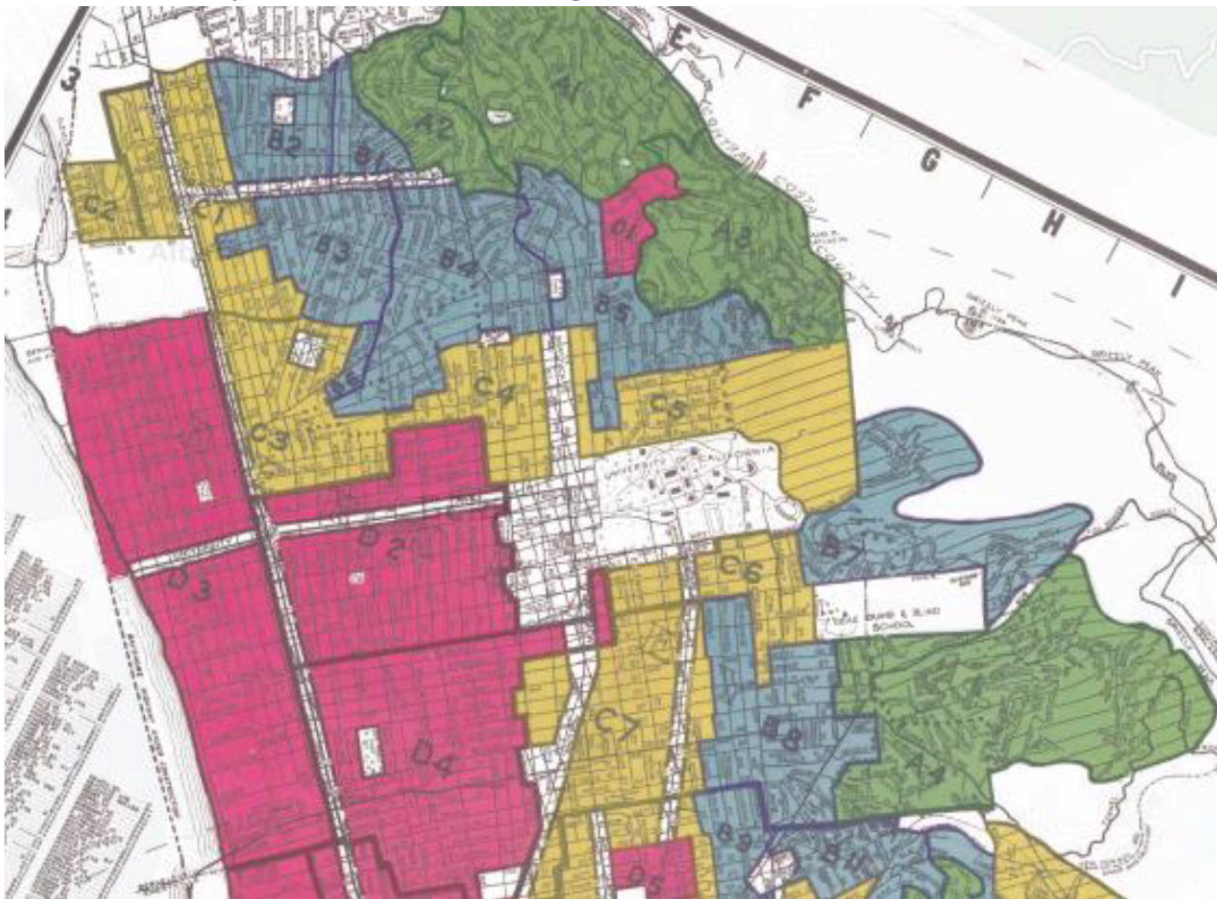
<sup>24</sup> Lory, M. T. (2013). A History of Racial Segregation, 1878–1960. *The Concord Review* 24(2).

<http://www.schoolinfosystem.org/pdf/2014/06/04SegregationinCA24-2.pdf>

<sup>25</sup> Weiss, M. A. (1986). Urban Land Developers and the Origins of Zoning Laws: The Case of Berkeley. *Berkeley Planning Journal*, 3(1). <https://escholarship.org/uc/item/26b8d8zh>

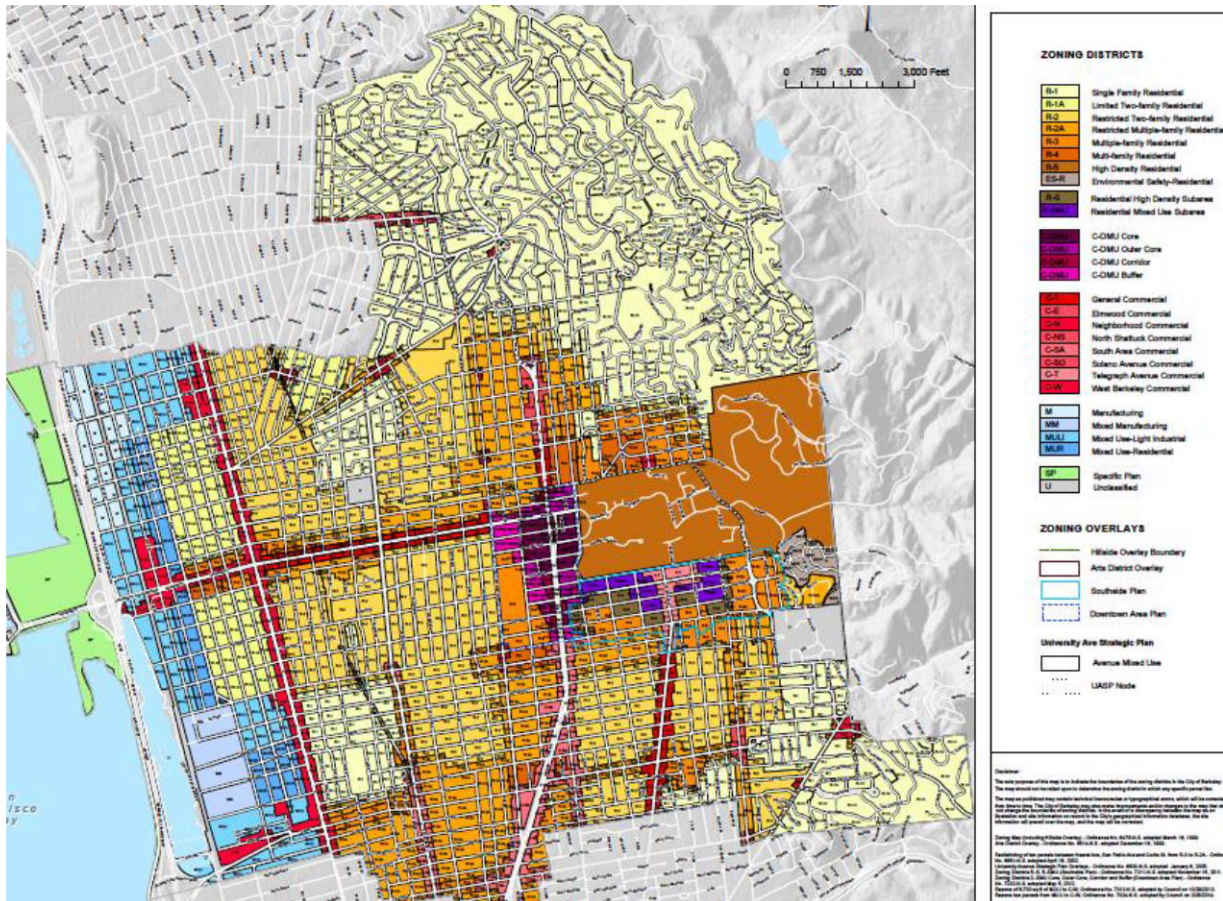


In 1933, the federal government created a Home Owners Loan Corporation (HOLC), which produced residential maps of neighborhoods to identify mortgage lending risks for real estate agents, lenders, and others. These maps were based on racial composition, quality of housing stock, access to amenities and were color coded to identify best (green), still desirable (blue), definitely declining (yellow), and hazardous (red) neighborhoods. HOLC maps enabled discriminatory lending practices—later called ‘redlining’—and allowed lenders to enforce local segregation standards.<sup>26</sup> These maps extensively referenced single-family zoning as on par with racial covenants in appreciating property values, unaffordability and excluding people of color. For example, the Berkeley Hills was described as, “zoned first residential, single family, deed restrictions prohibit Asiatics and Negroes.”



<sup>26</sup> Mitchell, B. and Franco, J. (2018). *HOLC “REDLINING” MAPS: The persistent structure of segregation and economic inequality*. NCRC Opening Doors to Economic Opportunity, [https://ncrc.org/wp-content/uploads/dlm\\_uploads/2018/02/NCRC-Research-HOLC-10.pdf](https://ncrc.org/wp-content/uploads/dlm_uploads/2018/02/NCRC-Research-HOLC-10.pdf)





The images above compare a HOLC-era (Thomas Bros Map) map of Berkeley with a current zoning map. Neighborhoods identified as “best” in green on the HOLC-era map typically remain zoned as single family residential areas today. Red ‘hazardous’ neighborhoods in the first map are now largely zoned as manufacturing, mixed use, light industrial, or limited two family residential.<sup>27</sup>

Prior to the 1970s and the passage of the Neighborhood Preservation Ordinance, a variety of missing middle housing –duplexes, triplexes, and other smaller multi-unit building typologies–was still being produced and made available to families throughout the Bay Area, particularly in Berkeley. In 1973, the residents of Berkeley passed the Neighborhood Preservation Ordinance which severely restricted multi-unit housing in certain parts of Berkeley.

<sup>27</sup> Nelson, R.K, Winling, L., Marciano, R, Connolly, N. et al., *Mapping Inequality, Redlining in New Deal America*. American Panorama.  
<https://dsl.richmond.edu/panorama/redlining/#loc=10/37.8201/-122.4399&opacity=0.8&sort=17&city=oakland-ca&adview=full>



Year Built	Units in Building				
	1	2-4	5-19	20+	Other
2000 or later	261	96	120	1305	9
Built 1980 to 1999	903	391	671	824	45
Built 1960 to 1979	4369	1292	2382	2114	124
Built 1940 to 1959	4369	2448	2095	1182	45
Built 1939 or earlier	14107	4926	2158	1364	28
<b>Total</b>	<b>24,009</b>	<b>9,153</b>	<b>7,426</b>	<b>6,789</b>	<b>251</b>

Source: U.S. Census, ACS 2008-2012 5 Year Estimate, Table B25127

Until 1984, Martin Luther King Jr Way was known as Grove Street. For decades, Grove Street created a wall of segregation down the center of Berkeley. Asian-Americans and African-Americans could not live east of Grove Street due to race-restrictive covenants that barred them from purchasing or leasing property. While race-restrictive covenants no longer prohibit individuals from purchasing or leasing homes, most cities still retain the vestiges of exclusionary zoning practices.

The UC Othring and Belonging Institute recently released a series of studies on racial segregation and zoning practices which revealed that 83% of residential land in the Bay Area is zoned for single family homes. The purpose of these studies was to,

*Raise public awareness about the degree of segregation that persists in the Bay Area and the harmful effects that result from it. Despite the enduring significance of race and salience of racial inequality in the Bay Area, too often racial residential segregation itself is not a part of the discussion for remedying persistent racial disparities. In a period in which systemic and structural racism is a widespread societal concern, there is insufficient attention to the centrality of racial residential segregation to the production of racial inequality.<sup>28</sup>*

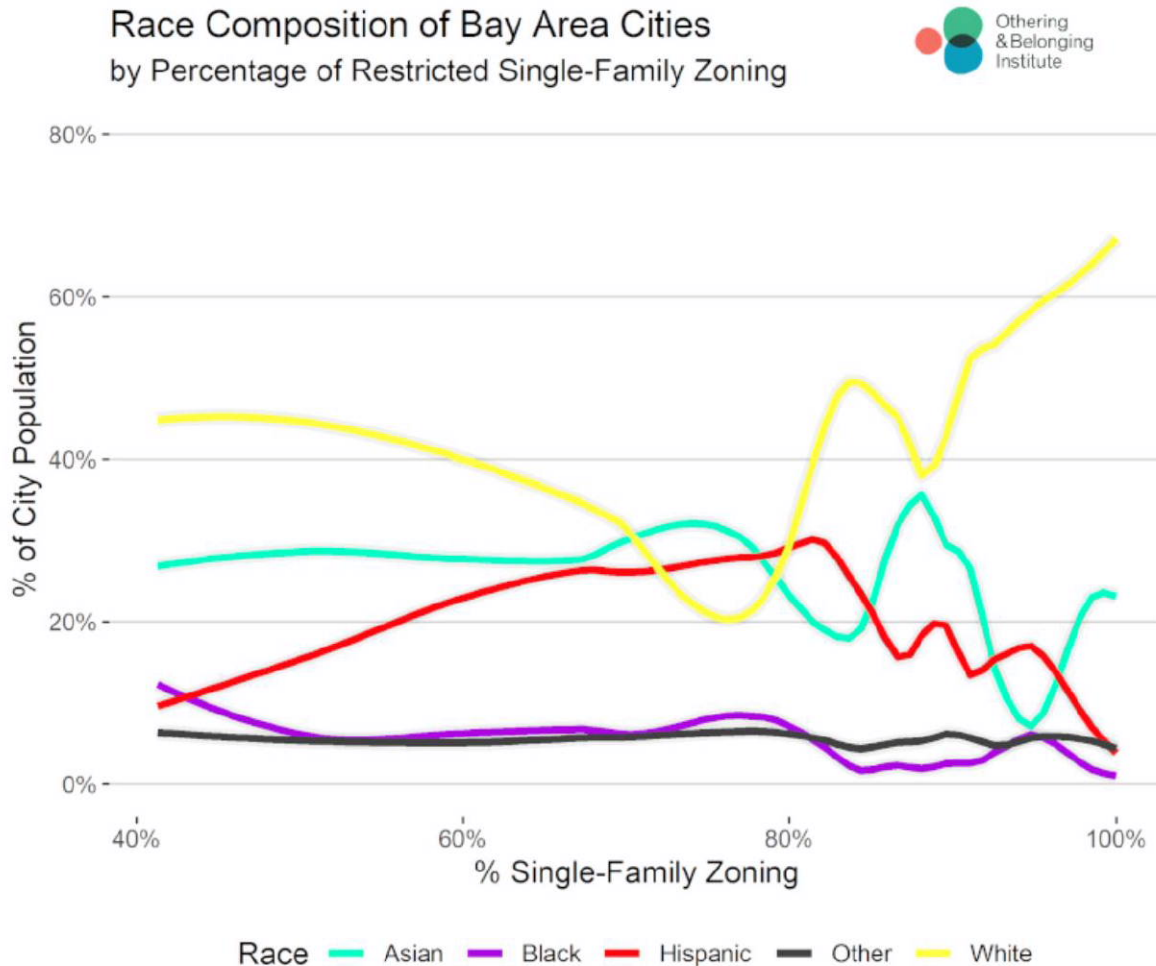
The authors found that the ramifications of restrictive zoning practices leads to a greater percentage of white residents, as recounted in KQED's "The Racist History of Single Family Zoning."<sup>29</sup> By banning less expensive housing options, such as duplexes, tri-/four-plexes, courtyard apartments, bungalow courts, and townhouses, in low-density,

<sup>28</sup> Menendian, S., Gambhir, S. and Gales, A. (2020) *Racial Segregation in the San Francisco Bay Area, Part 5*. UC Othring and Belonging Institute. <https://belonging.berkeley.edu/racial-segregation-san-francisco-bay-area-part-5>

<sup>29</sup> Baldassari, E. and Solomon, M. (2020). *The Racist History of Single Family Zoning*. KQED. <https://www.kqed.org/news/11840548/the-racist-history-of-single-family-home-zoning>



“desirable” places in Berkeley, the current zoning map dictates that predominantly wealthier families will be able to live or rent in certain parts of Berkeley, mainly in North and East Berkeley.<sup>30</sup> Today, with the median home sale price at \$1.4 million<sup>31</sup> and the typical White family having eight times the wealth of the typical Black family, this de-facto form of segregation is even more pronounced.<sup>32</sup>



Furthermore, the intensity of land use coupled with opposition to development predicts a lower share of Black, Hispanic, and blue collar workers living in the area.<sup>33</sup> Communities

<sup>30</sup> Rothwell, Jonathan. “Land Use Politics, Housing Costs, and Segregation in California Cities.” *Turner Center for Housing Innovation*, September, 2019.

<http://californialanduse.org/download/Land%20Use%20Politics%20Rothwell.pdf>

<sup>31</sup> Berkeley, CA Real Estate Market. (2021). *Realtor*. [https://www.realtor.com/realestateandhomes-search/Berkeley\\_CA/overview](https://www.realtor.com/realestateandhomes-search/Berkeley_CA/overview)

<sup>32</sup> *Survey of Consumer Finances* (2020). Federal Reserve. <https://www.federalreserve.gov/econres/scfindex.htm>

<sup>33</sup> Rothwell, J. (2019, September). *Land Use Politics, Housing Costs, and Segregation in California Cities*. Turner Center for Housing Innovation.

<http://californialanduse.org/download/Land%20Use%20Politics%20Rothwell.pdf>

with more restrictive land uses like single family zoning create cities with whiter residents. As Jessica Trounstine, political scientist and author of *Segregation by Design and Political Monopolies* states, “It is this maintenance of homogeneity that generates segregation across city lines.”<sup>34</sup>

According to the data mapped by UC Berkeley’s Urban Displacement Project, most of the low-income tracts in Berkeley are at-risk or have ongoing displacement and gentrification. Higher-income tracts in Berkeley are classified as ‘at-risk of exclusion’, currently feature ‘ongoing exclusion’, or are at stages of ‘advanced exclusion’. Degrees of exclusion are measured by a combination of data: the loss of low-income households over time, presence of high income households, being considered in a ‘hot housing market,’ and migration patterns. The Urban Displacement Project’s findings indicate that exclusion is more prevalent than gentrification in the Bay Area.<sup>35</sup> While Berkeley has created policies and designated funding to prevent gentrification, policies that focus on preventing exclusion have lagged.

University of California-Berkeley Professor Karen Chapple, anti-displacement expert and director of the Urban Displacement Project, stated that “the Urban Displacement Project has established a direct connection between the neighborhood designations by the Home Owners Loan Corporation (HOLC), and 75% of today’s exclusionary areas in the East Bay... Thus, this historic legacy, compounded by Berkeley’s early exclusionary zoning practices, continues to shape housing opportunity and perpetuate inequities today.” Not surprisingly, Chapple has indicated that zoning reform “has the potential not just to address the housing crisis but also to become a form of restorative or even transformative justice. There is no more important issue for planners to tackle today.”<sup>36</sup>

### **Historic Redlining**

Redlining was a practice whereby certain neighborhoods or areas were designated as being high-risk for investment. These high-risk designations were literally marked on maps using red coloring or lines, hence “redlining.” The designations were typically applied to areas with large non-white and/or economically disadvantaged populations, and resulted in people who lived in or wanted to move to these areas being denied

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<sup>34</sup> Trounstine, J. (2020, February). *The Geography of Inequality: How Land Use Regulation Produces Segregation* Cambridge University Press. <https://www.cambridge.org/core/journals/american-political-science-review/article/geography-of-inequality-how-land-use-regulation-produces-segregation/BAB4ABDF014670550615CE670FF66016>

<sup>35</sup> Zuk, M., & Chapple, K. (2015). *Mapping Displacement, Gentrification, and Exclusion in the San Francisco Bay Area*. Urban Displacement Project. <http://www.urbandisplacement.org/map/sf>

<sup>36</sup> Chapple, K. (2019, February 25). Letter to Berkeley City Council in support of zoning reform. Berkeleyside. <https://www.berkeleyside.com/wp-content/uploads/2019/02/Letter-on-Council-Item-22-Chapple-2.25.19.pdf>



loans, or only being provided loans on much worse terms than their counterparts who could access non-redlined areas, due to their ethnicity or higher economic status.

Because redlining practices were contemporaneous with segregationist race-restricted deeds that largely locked communities of color out of non-redlined neighborhoods, most non-white households were effectively forced to live in areas where buying and/or improving residential property was extremely difficult. Consequently, low-income and non-white families were often locked out of homeownership, and all the opportunities for stability and wealth-building that entails. Therefore, redlining tended to reinforce the economic stagnation of the areas to which it was applied, further depressing property values and leading to disinvestment. Although redlining is no longer formally practiced in the fashion it was historically, its effects continued to be felt in wealth disparities, educational opportunity gaps, and other impacts.

One way in which the practice of redlining continues to be felt is through the continuation of exclusionary zoning. By ensuring that only those wealthy enough to afford a single family home with a relatively large plot of land could live in certain areas, exclusionary zoning worked hand in hand with redlining to keep low-income families out of desirable neighborhoods with good schools and better economic opportunity. Cities, including Berkeley, adopted zoning that effectively prohibited multi-family homes in the same areas that relied on race restrictive deeds to keep out non-whites, meaning that other areas, including redlined areas, were more likely to continue allowing multi-family buildings.

Ironically, because these patterns of zoning have persisted, many areas that were historically redlined are now appealing areas for new housing development precisely because they have continued to allow multi-family homes. Any area which sees its potential housing capacity increase will become more appealing for new housing development. When these changes are made in historically redlined areas where lower-income and minority households tend to be more concentrated, it is especially important to ensure those policies do not result in displacement or the loss of rent-controlled or naturally affordable housing units. Nevertheless, the City of Portland, which is undergoing similar zoning reform, has predicted that there will be a 21-28% reduction of indirect displacement for low-income renters.<sup>37</sup>

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<sup>37</sup>City of Portland Bureau of Planning and Sustainability. (2019, February). *Residential Infill Project Displacement Risk and Mitigation* [https://www.portland.gov/sites/default/files/2019-12/vol\\_3\\_appendix\\_b\\_displacement\\_risk\\_and\\_mitigation.pdf](https://www.portland.gov/sites/default/files/2019-12/vol_3_appendix_b_displacement_risk_and_mitigation.pdf)



### ***Current Discourse on Exclusionary Zoning Regulations***

In 2019, Councilmembers Lori Droste, Ben Bartlett, Rashi Kesarwani and Rigel Robinson introduced Missing Middle Housing legislation in order to facilitate the construction of naturally affordable missing middle housing. The final legislation passed by Council was an agreement to **study** how the City of Berkeley can incorporate varying building types throughout Berkeley and address exclusionary practices. While the entire City Council voted unanimously to study this, the COVID-19 pandemic led to budget cuts which would have funded such a study. In July of 2020, Berkeley City Council additionally supported Senate Bill 902, which streamlines rezoning for missing middle housing in transit-oriented or jobs-rich areas.<sup>38</sup>

Exclusionary zoning laws also became a prevalent national topic during the 2020 Presidential campaign under the guise of “protect[ing] America’s suburbs.”<sup>39</sup> Celebrity Apprentice host and former President Donald Trump and his Housing and Urban Development Secretary Ben Carson expressed a concern that removing exclusionary zoning laws would prevent single family home ownership and “destroy suburbs” despite the fact that these reforms don’t bar single family home construction but allow the creation of duplexes, triplexes, and other multi-unit properties. Furthermore, exclusionary zoning practices were amplified with the termination of the 2015 Obama-era Fair Housing rule which outlawed discrimination in housing. In doing so, Trump stated that Democrats wanted to “eliminate single-family zoning, bringing who knows into your suburbs, so your communities will be unsafe and your housing values will go down.”<sup>40</sup> On the other hand, Democratic Presidential candidates embraced zoning reform, most notably Elizabeth Warren and Cory Booker. President Biden has also indicated that he plans to invest \$300 million in local housing policy grants to give communities the planning support they need to eliminate exclusionary zoning.<sup>41</sup>

In January 2021, the Association of Bay Area Governments voted to approve the implementation of Senate Bill 828 which was designed to address the extreme housing shortage across California. As a result, Bay Area cities will have to zone for 441,000 new homes. Berkeley will see a 19% increase — approximately 8,900 — in the number of homes for which it must zone.

<sup>38</sup>Wiener, S. and Atkins, T. (2020) *Senate Bill 902*. California Legislative Information. [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200SB902](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB902)

<sup>39</sup> Trump, D.J. and Carson, B. (2020) *We’ll Protect America’s Suburbs*. Wall Street Journal. <https://www.wsj.com/articles/well-protect-americas-suburbs-11597608133>

<sup>40</sup> Kurtzleben, D. (2020, July 21). *Seeking Suburban Votes, Trump to Repeal Rule Combating Racial Bias in Housing*. National Public Radio <https://www.npr.org/2020/07/21/893471887/seeking-suburban-votes-trump-targets-rule-to-combat-racial-bias-in-housing>

<sup>41</sup> “The Biden Plan for Investing in Our Communities Through Housing.” (2020) <https://joebiden.com/housing/>

According to the U.S. Census American Community Survey, newly built missing middle housing like duplexes, triplexes, and fourplexes more often houses middle and lower income families in Berkeley, while single-family homes, no matter what year built, are exclusively higher income.

Median household income, Berkeley & Albany, by building age & type					
	Pre-1950	1950-1969	1970-1989	1990-2004	2005-
Single-family detached	148,590	139,295	107,081	131,004	148,835
Single-family attached	84,903	126,930	96,233	167,025	134,460
2-4 units	79,012	63,973	53,335	45,403	48,691
5-19 units	46,037	41,104	39,811	42,243	27,950
20+ units	25,628	42,319	41,387	23,585	40,518

Source: American Community Survey, 2014-18, Public Use Microdata Set, US Census.

### ALTERNATIVE ACTIONS CONSIDERED

Berkeley City Council previously authorized a study on missing middle housing. Due to the impending Housing Element adoption and rezoning mandated by new Regional Housing Needs Allocations, Council wanted to ensure that there was a willingness on Council to address and acknowledge the implications of single family zoning on affordability and racial and economic segregation. This resolution is a problem statement and asks Council to acknowledge the problems associated with single family zoning and state its intentions to lift the ban on multi-family homes. The operational details of *how* this will occur are still being deliberated at the Land Use and Economic Development Policy Committee and if passed, will be further refined at Council and the Planning Commission.

### FINANCIAL IMPLICATIONS

There are no financial implications in approving a resolution.

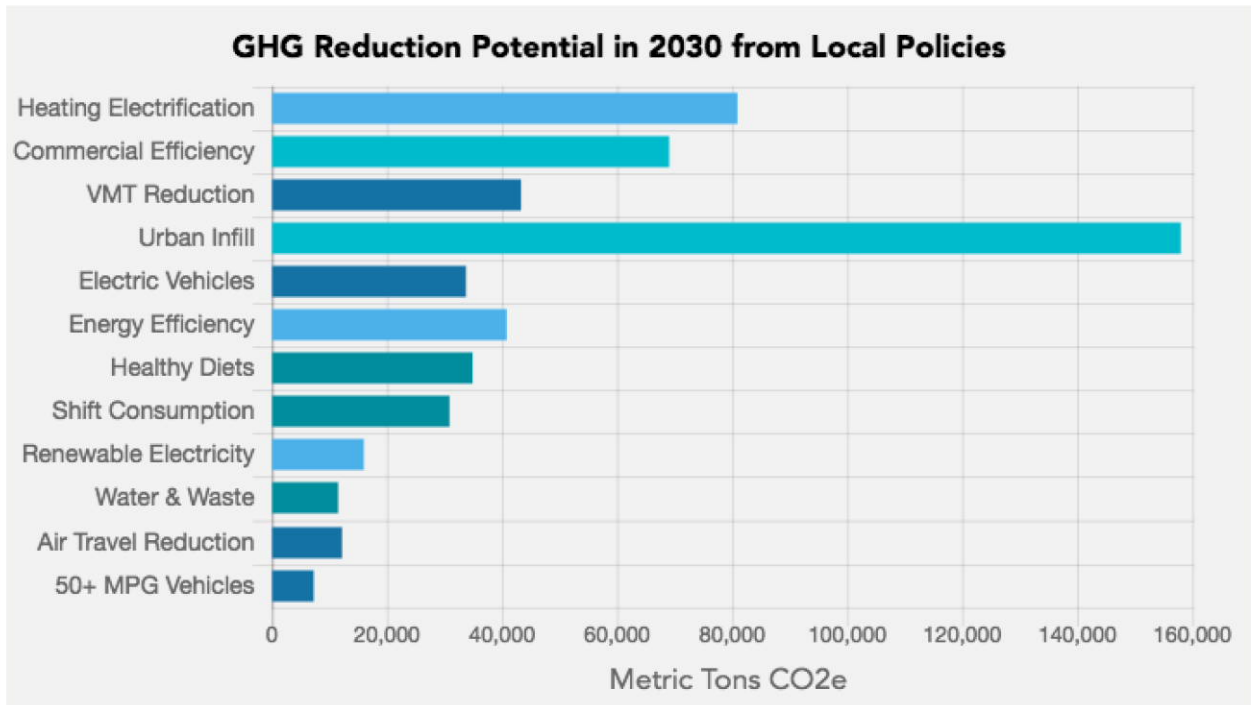
### ENVIRONMENTAL SUSTAINABILITY

In 2006, Berkeley voters adopted ballot Measure G for a call to action on climate change. In 2009, the Berkeley Climate Action Plan was written through a community-wide process and adopted by Council. Berkeley reiterated concern by declaring a climate emergency in 2018. Among other concerns, wildfires and sea level rise are constant ecological threats to our community. The City of Berkeley needs to act urgently to address this imminent danger. In 2018, climate researchers in Berkeley quantified local and state opportunities to reduce greenhouse gases from a “comprehensive consumption-based perspective.”<sup>42</sup> The most impactful local policy to potentially reduce

<sup>42</sup> Jones, C.M., Wheeler, S.M, and Kammen, D. (2018) *Carbon Footprint Planning: Quantifying Local and State Mitigation Opportunities for 700 California Cities*. Urban Planning (ISSN: 2183–7635). Volume 3,



greenhouse gas consumption by 2030 is urban infill. In short, Berkeley can meaningfully address climate change if we allow the production of more homes near job centers and transit.<sup>43</sup>



**CONTACT PERSON(S):**

Lori Droste, 510-981-7180

Issue 2. <https://rael.berkeley.edu/wp-content/uploads/2018/04/Jones-Wheeler-Kammen-700-California-Cities-Carbon-Footprint-2018.pdf>

<sup>43</sup> Wiener, S. and Kammen, D. (2019, March 25). *Why Housing Policy Is Climate Policy*. New York Times. <https://www.nytimes.com/2019/03/25/opinion/california-home-prices-climate.html>



RESOLUTION NO. XX

WHEREAS the City of Berkeley was the first city in the country to implement single-family zoning in 1916; and

WHEREAS the City of Berkeley's current zoning is still greatly influenced by maps developed by the federal government's Home Owners Loan Corporation which sought to maintain racial segregation through discriminatory lending practices; and

WHEREAS with the passage of the Neighborhood Preservation Ordinance in 1973, the City of Berkeley restricted the creation of multifamily units in residential zones; and

WHEREAS the prohibition of apartments and multi-family homes in the City of Berkeley coincide with the most unaffordable neighborhoods and the origins of the City's affordability crisis starting in the late 1970s after the passage of Proposition 13; and

WHEREAS there is deeply racist history to zoning practices all over the country, particularly as a proxy for overt racial restrictions, and inequities still exist today as a result of redlining; and

WHEREAS exclusionary zoning creates a system of de facto rather than de jure racial and economic segregation, which creates strong adverse effects in life outcomes for residents; and

WHEREAS California ranks 49th out of 50th in the nation for housing units per capita; and

WHEREAS California home prices and rents are among the highest in the United States; and

WHEREAS both market rate housing and subsidized housing reduce displacement pressures; and

WHEREAS zoning reform does not ban single family homes but allows for a greater mix of home types and home affordability levels in more Berkeley neighborhoods; and

WHEREAS zoning reform can reduce real housing cost-burdens for low- and middle-income households; and

WHEREAS the League of California Cities called for cities to allow up to fourplexes in single family zones in their *Blueprint for More Housing 2020*;

THEREFORE BE IT RESOLVED that the City of Berkeley registers its intent to allow for more multifamily housing throughout Berkeley; and

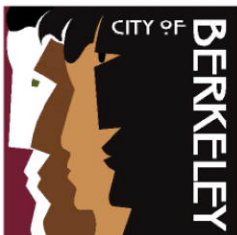
BE IT FURTHER RESOLVED that City Council will pursue zoning reform that takes into account the public safety in all parts of Berkeley,

BE IT FURTHER RESOLVED that in neighborhood interiors that already contain a mix of housing types from single family homes to apartments, allow new housing within that existing range; and

BE IT FURTHER RESOLVED that the elimination of exclusionary zoning by 2022 must coincide with strong anti-displacement and tenant protections; and

BE IT FURTHER RESOLVED that the City of Berkeley encourage inclusion of homes that can accommodate families in new and rehabilitated multifamily housing developments; and

BE IT FURTHER RESOLVED that the City of Berkeley will no longer ban multi-family housing, and by extension, affordable housing in certain parts of Berkeley.



Lori Droste  
Vice Mayor, District 8

**ACTION CALENDAR**

February 23, 2021

**To:** Honorable Mayor and Members of the City Council

**From:** Vice Mayor Lori Droste, Councilmember Terry Taplin, Councilmember Ben Bartlett, and Councilmember Rigel Robinson

**Subject:** Resolution to End Exclusionary Zoning in Berkeley

**RECOMMENDATION**

Adopt a resolution to state Berkeley City Council's intent to end exclusionary zoning in Berkeley by December of 2022.

**CURRENT PROBLEM AND ITS EFFECTS**

Single family residential zoning has its roots in racist exclusionary zoning policy and leads to racial and economic segregation.

The nine-county Bay Area region is facing an extreme shortage of homes that are affordable for working families. The Metropolitan Transportation Commission illustrates the job-housing imbalance in a report showing that only one home is added for every 3.5 jobs created in the Bay Area region.<sup>44</sup> California ranks 49th in the United States for housing units per capita—only Utah creates fewer homes.<sup>45</sup> Governor Gavin Newsom has called for a “Marshall Plan for affordable housing” and has pledged to create millions of more homes in California to tackle the state’s affordability and homelessness crisis.

In Berkeley, the median sale price of a home is \$1.4 million (as of January 2021)—an increase of 56% over the median sale price in December 2015 of \$895,000.<sup>46</sup> These escalating costs coincided with an increase of 14% in Berkeley’s homeless population

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<sup>44</sup> Metropolitan Transportation Commission. (2018). *Vital Signs*. <http://www.vitalsigns.mtc.ca.gov/>

<sup>45</sup> Woetzel, J., Mischke, J., Peloquin, S., and Weisfield, D. (2016, October). *A Toolkit to Close California’s Housing Gap: 3.5 Million Homes by 2025*. McKinsey Global Institute, <https://www.mckinsey.com/~media/McKinsey/Industries/Public%20and%20Social%20Sector/Our%20Insights/Closing%20Californias%20housing%20gap/Closing-Californias-housing-gap-Full-report.pdf>

<sup>46</sup> *Berkeley Home Prices and Values*. (2021, January). Zillow. <https://www.zillow.com/berkeley-ca/home-values/>



from 2017 to 2019, and a 34% increase from 2015 to 2019 point-in-time counts.<sup>47</sup> These skyrocketing housing costs put extreme pressure on low-, moderate- and middle-income households, as they are forced to spend an increasing percentage share of their income on housing (leaving less for other necessities like food and medicine), live in overcrowded conditions, or endure super-commutes of 90 minutes or more in order to make ends meet.

#### *Low-Income Households Cannot Afford to Live in Berkeley*

Recently, low-income households experienced the greatest increases in rent as a portion of their monthly income. The U.S. Department of Housing and Urban Development (HUD) defines "affordable" as housing that costs no more than 30 percent of a household's monthly income. Households are considered to be "rent burdened" when more than a third of their income goes toward housing costs. In Alameda County, rent burdens increased across all incomes but it increased most substantially for low- and very low-income households. The Urban Displacement Project reported that "[i]n both 2000 and 2015, extremely low-income renters were by far the most likely to experience severe rent burden, with nearly three quarters spending more than half their income on rent."<sup>48</sup>

Although residents of Berkeley passed Measure O in 2018 which substantially increased funding for affordable housing, low-income units are increasingly expensive to create. Low-income housing units typically cost well over \$500,000 to create and the demand for this type of subsidized housing exceeds the supply.<sup>49</sup> Without a substantial additional increase in funding, Berkeley will be increasingly challenged to create enough subsidized affordable housing to meet the demand. For example, roughly 700 seniors applied for the 42 affordable/subsidized units at Harpers Crossings in Berkeley. This project cost \$18 million to build.<sup>50</sup> While Berkeley should continue to support subsidized housing, subsidized housing alone is insufficient to address the growing housing and homelessness crisis, especially considering the majority of low-income individuals only have access to non-subsidized affordable housing.

<sup>47</sup> Applied Survey Research. (2019, September). *City of Berkeley Homeless Count and Survey, Comprehensive Report*. Everyone Home. [https://everyonehome.org/wp-content/uploads/2019/09/2019HIRDReport\\_Berkeley\\_2019-Final.pdf](https://everyonehome.org/wp-content/uploads/2019/09/2019HIRDReport_Berkeley_2019-Final.pdf)

<sup>48</sup> UC Berkeley's Urban Displacement Project and the California Housing Partnership. (2015). *Rising Housing Costs and Resegregation in Alameda County, Urban Displacement Project*. [http://www.urbandisplacement.org/sites/default/files/images/alameda\\_final.pdf](http://www.urbandisplacement.org/sites/default/files/images/alameda_final.pdf)

<sup>49</sup> Claros, M. (2020, March 20). *The Cost of Building Housing* *The Terner Center*, <https://ternercenter.berkeley.edu/construction-costs-series>

<sup>50</sup> Flood, L. (2018, January 18). *Berkeley low-income seniors get a fresh start at Harper Crossing*. *Berkeleyside*, <https://www.berkeleyside.com/2018/01/18/berkeley-low-income-seniors-get-fresh-start-harper-crossing>



### Middle-Income Households Can't Afford to Live in Berkeley

In the Bay Area, those earning middle incomes are facing similar challenges in finding affordable homes. The Pew Research Center classifies middle income households as those with "adults whose annual household income is two-thirds to double the national median." In 2018, middle income households were those earning approximately \$48,500 to \$145,500 for a household of three. The Bay Area is one of the most expensive areas, with a price level that was 31.6% higher than the national average. As a result, a Bay Area household needs a reported income of about \$63,800, or approximately \$15,000 more than the U.S. norm, to join the middle class.<sup>51</sup>

In the Bay Area, a family currently has to earn ~\$200,000 annually to afford the principal, interest, taxes and insurance payments on a median-priced home in the Bay Area (assuming they can pay 20 percent of the median home price of \$1.4 million up front).<sup>52</sup> This means that many City of Berkeley employees can't afford to live where they work: a fire captain (making \$144,000) with a stay at home spouse wouldn't be able to afford a home. Even a firefighter (earning \$112,000 annually) and a groundskeeper (making \$64,000), or two librarians (making \$89,000 each) couldn't buy a house.<sup>53</sup>

Berkeley Unified School District employees have recently been advocating for teacher housing. Unfortunately, the housing options for teachers are insufficient for the overwhelming need. According to a recent Berkeley Unified School District (BUSD) survey, 69% of teachers or staff who rent believe that high housing costs will impact their ability to retain their BUSD positions.<sup>54</sup> Since individual K-12 teacher salaries average ~\$78,700, the majority of teachers are not classified as low-income, according to Housing and Urban Development guidelines.<sup>55</sup> As a result, many cannot qualify for affordable housing units. Since middle-income individuals and families can't qualify for affordable housing units and very few subsidies are available to help, the vast majority have to rely on non-governmental subsidized methods and the private market to live in the Bay Area.

### Families Are Struggling to Live in Berkeley

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<sup>51</sup> Ibid.

<sup>52</sup> The salary you must earn to buy a home in the 50 largest metro. (12/20/2020). HSH. <https://www.hsh.com/finance/mortgage/salary-home-buying-25-cities.html#>

<sup>53</sup> Job Descriptions. (2021) City of Berkeley Human Resources, <http://agency.governmentjobs.com/berkeley/default.cfm?action=agencyspecs&agencyID=1568>

<sup>54</sup> BUSD Employee Housing Survey (2017, November 17). Berkeley Unified School District. <https://documentcloud.adobe.com/link/track?uri=urn%3Aaaid%3Aascds%3AUS%3Adfd74865-9541-4ff8-b6a6-4dcbd30acdc3>

<sup>55</sup> Teacher Salaries. (2020). Education Data Partnership, <http://www.ed-data.org/district/Alameda/Berkeley-Unified>



Many families are fleeing the Bay Area due to the high cost of living. According to a study by the Turner Center for Housing Innovation, the income and racial patterns of out-migration and in-migration indicate that “the region risks backsliding on inclusion and diversity and displacing its economically vulnerable and minority residents to areas of more limited opportunity.”<sup>56</sup> Rent for a two-bedroom apartment in Berkeley costs approximately \$2,070/month<sup>57</sup> while the median child care cost in Alameda County is \$1,824 a month, an increase of 36% in the past four years.<sup>58</sup> Consequently, most families are paying well over \$46,000 for living and childcare expenses alone.

### Homelessness is on the Rise in the Bay Area

High housing costs also lead to California having among the highest rates of poverty in the nation at 17.2%.<sup>59</sup> Consequently, homelessness is on the rise throughout California. The Bay Area has one of the largest and least-sheltered homeless populations in North America.<sup>60</sup> The proliferation of homeless encampments—from select urban neighborhoods to locations across the region—is the most visible manifestation of the Bay Area’s extreme housing affordability crisis. According to the 2019 point-in-time count, Berkeley had approximately 1,108 individuals experiencing homelessness on any given night.<sup>61</sup> In order to act in accordance with best practices research on alleviating homelessness and help homeless individuals get housed, the City needs to create more homes.<sup>62</sup> Tighter housing markets are associated with higher rates of homelessness, indicating that the creation of additional housing for all income levels is key to mitigating the crisis.<sup>63</sup> In the 1,000 Person Plan to Address Homelessness, Berkeley’s Health, Housing and Community Services staff also recommend that Council prioritizes

<sup>56</sup> Romem, I and Kneebone, E. (2018). *Disparity in Departure: Who Leaves the Bay Area and Where Do They Go?* Turner Center. <https://turnercenter.berkeley.edu/disparity-in-departure>

<sup>57</sup> Chen, C. (2021, January 27). *San Francisco Bay Area Metro Report*. Zumper. <https://www.zumper.com/blog/san-francisco-bay-area-metro-report/>

<sup>58</sup> D'Souza, K. (2019, February 3) *You think Bay Area housing is expensive? Child care costs are rising, too*. *The Mercury News* <https://www.mercurynews.com/2019/02/03/you-think-bay-area-housing-is-expensive-childcare-costs-are-rising-too/amp/>

<sup>59</sup> Fox, L. (2020, September) *The Supplemental Poverty Measure 2019, The Census*. <https://www.census.gov/content/dam/Census/library/publications/2020/demo/p60-272.pdf>

<sup>60</sup> Turner, M. (2017, October 23). *Homelessness in the Bay Area: Solving the problem of homelessness is arguably our region’s greatest challenge*. SPUR: Ideas and Action for a Better City. <https://www.spur.org/publications/urbanist-article/2017-10-23/homelessness-bay-area>

<sup>61</sup> Applied Survey Research. (2019, September). *City of Berkeley Homeless Count and Survey, Comprehensive Report*. Everyone Home. [https://everyonehome.org/wp-content/uploads/2019/09/2019HIRDReport\\_Berkeley\\_2019-Final.pdf](https://everyonehome.org/wp-content/uploads/2019/09/2019HIRDReport_Berkeley_2019-Final.pdf)

<sup>62</sup> *The Evidence behind Approaches that Drive an End to Homelessness*. (2017, December). United States Interagency Council on Homelessness [https://www.usich.gov/resources/uploads/asset\\_library/evidence-behind-approaches-that-end-homelessness.pdf](https://www.usich.gov/resources/uploads/asset_library/evidence-behind-approaches-that-end-homelessness.pdf)

<sup>63</sup> Quigley, J.M., Raphael S., and Smolensky, E. (2001, February). *Homeless in America, Homeless in California. The Review of Economics and Statistics* [https://urbanpolicy.berkeley.edu/pdf/qrs\\_restat01pb.pdf](https://urbanpolicy.berkeley.edu/pdf/qrs_restat01pb.pdf)



[“implementing changes to Berkeley’s Land Use, Zoning, Development Review Requirements for new housing with an eye toward alleviating homelessness.”](#)

## **BACKGROUND**

### ***History of Exclusionary Zoning, Racial and Economic Segregation, and Current Zoning***

Single family residential zoning was born in Berkeley in the Elmwood neighborhood in 1916. This zoning regulation forbade the construction of anything other than one home per lot. In 1915, Berkeley’s City Attorney Frank V. Cornish wrote, “Apartment houses are the bane of the owner of the single family dwelling” while the consultant who penned Berkeley’s zoning ordinance stated, “[The] great principle of protecting the home against the intrusion of the less desirable and floating renter class.”<sup>64</sup> Subsequently, the Mason McDuffie Company’s use of Berkeley’s zoning laws and racially-restrictive property deeds and covenants prevented Black, Indigenous, and People of Color (BIPOC) from purchasing or leasing property in east Berkeley.<sup>65</sup>

Mason-McDuffie race-restrictive covenants stated, “if prior to the first day of January 1930 any person of African or Mongolian descent shall be allowed to purchase or lease said property or any part thereof, then this conveyance shall be and become void...”<sup>66</sup> In 1916, McDuffie began lobbying for the exclusionary zoning ordinances in Berkeley to protect against the “disastrous effects of uncontrolled development”<sup>67</sup> and restrict Chinese laundromats and African American dance halls, particularly in the Elmwood and Claremont neighborhoods.<sup>68</sup>

After *Buchanan v Warley* in 1917, explicit racially restrictive zoning became illegal. However, consideration to maintaining the character of districts became paramount and Mason-McDuffie contracts still stipulated that property owners must be white.

In 1933, the federal government created a Home Owners Loan Corporation (HOLC), which produced residential maps of neighborhoods to identify mortgage lending risks for real estate agents, lenders, and others. These maps were based on racial composition, quality of housing stock, access to amenities, etc. and were color coded to identify best (green), still desirable (blue), definitely declining (yellow), and hazardous (red)

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<sup>64</sup> Cornish, F.V. *The Legal Status of Zone Ordinances* and Cheney, C. *The Necessity for a Zone Ordinance in Berkeley*. Berkeley Civic Bulletin, May 18, 1915.

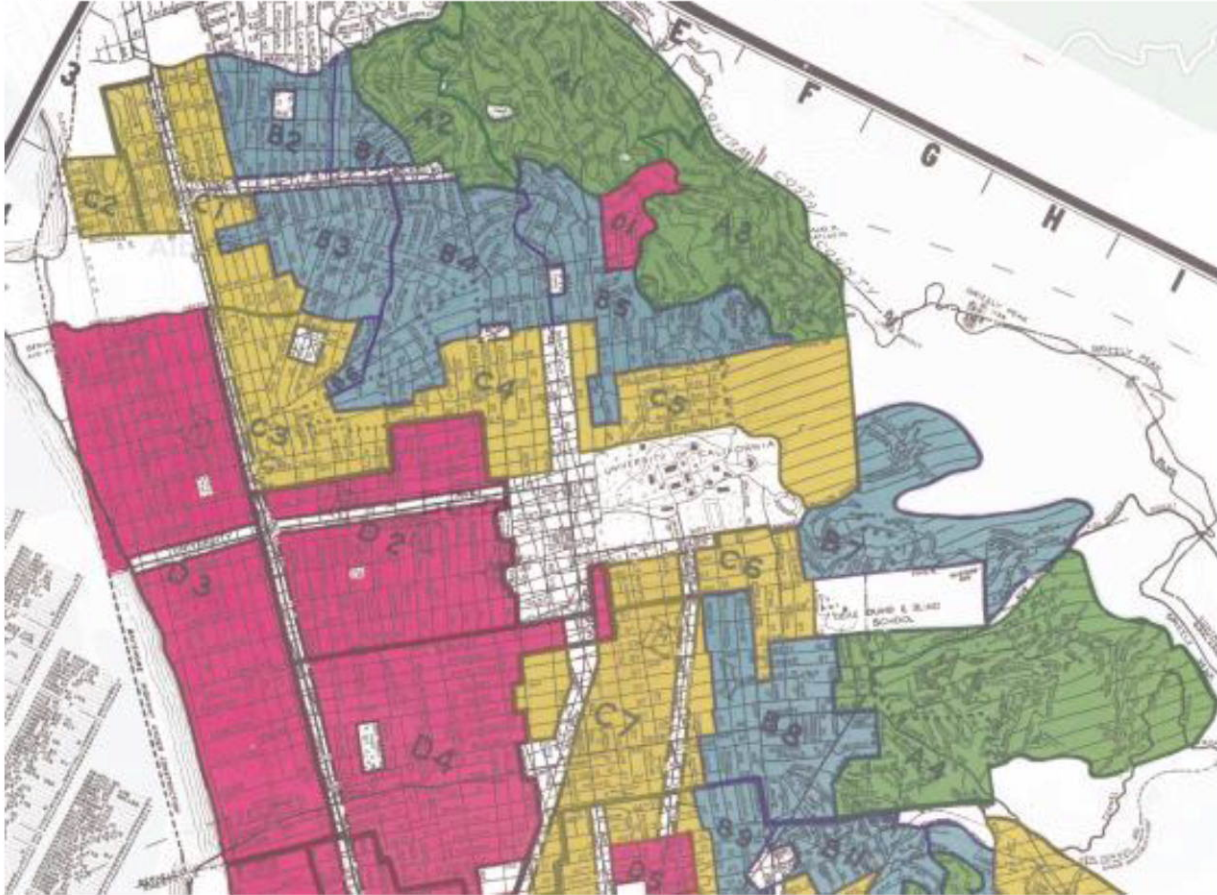
<sup>65</sup> Wollenberg, C. (2008) *Berkeley, A City in History*, University of California Press.

<sup>66</sup> Claremont Park Company Indenture. (1910).

<sup>67</sup> Lory, M. T. (2013). A History of Racial Segregation, 1878–1960. *The Concord Review* 24(2). <http://www.schoolinfosystem.org/pdf/2014/06/04SegregationinCA24-2.pdf>

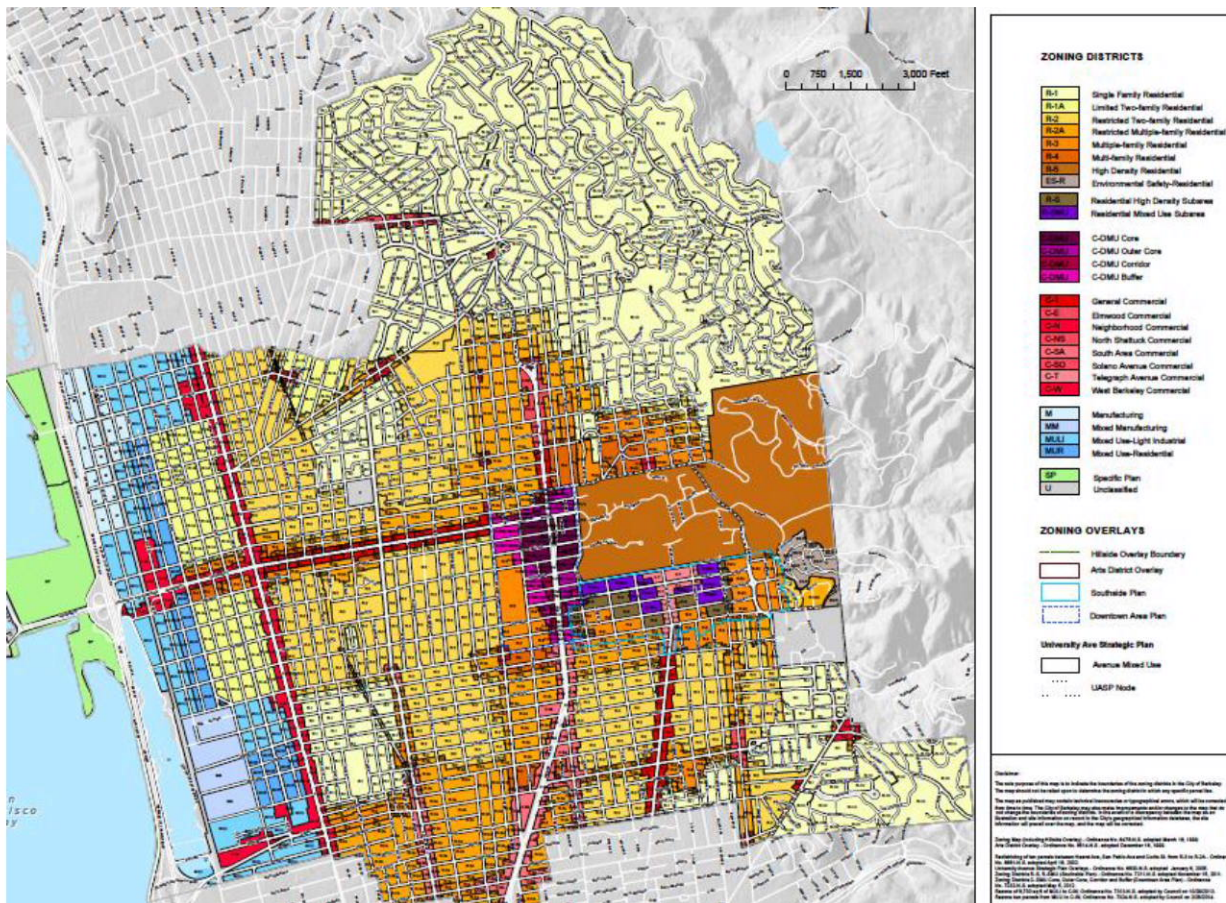
<sup>68</sup> Weiss, M. A. (1986). Urban Land Developers and the Origins of Zoning Laws: The Case of Berkeley. *Berkeley Planning Journal*, 3(1). <https://escholarship.org/uc/item/26b8d8zh>

neighborhoods. HOLC maps enabled discriminatory lending practices—later called ‘redlining’—and allowed lenders to enforce local segregation standards.<sup>69</sup> These maps extensively referenced single-family zoning as on par with racial covenants in appreciating property values, unaffordability and excluding people of color. For example, when describing the Berkeley Hills **was described as**, “zoned first residential, single family, deed restrictions prohibit Asiatics and Negroes.”



<sup>69</sup> Mitchell, B. and Franco, J. (2018). HOLC “REDLINING” MAPS: *The persistent structure of segregation and economic inequality*. NCRC Opening Doors to Economic Opportunity, [https://ncrc.org/wp-content/uploads/dlm\\_uploads/2018/02/NCRC-Research-HOLC-10.pdf](https://ncrc.org/wp-content/uploads/dlm_uploads/2018/02/NCRC-Research-HOLC-10.pdf)





The images above compare a HOLC-era (Thomas Bros Map) map of Berkeley with a current zoning map. Neighborhoods identified as “best” in green on the HOLC-era map typically remain zoned as single family residential areas today. Red ‘hazardous’ neighborhoods in the first map are now largely zoned as manufacturing, mixed use, light industrial, or limited two family residential.<sup>70</sup>

Prior to the 1970s and the passage of the Neighborhood Preservation Ordinance, a variety of missing middle housing –duplexes, triplexes, and other smaller multi-unit building typologies–was still being produced and made available to families throughout the Bay Area, particularly in Berkeley. In 1973, the residents of Berkeley passed the Neighborhood Preservation Ordinance which **severely restricted** multi-unit housing in certain parts of Berkeley. As Councilmember Ben Bartlett and Yelda Bartlett wrote in their 2017 *Berkeleyside* op-ed, the neighborhood preservation ordinance “[the Neighborhood Preservation Ordinance] did not mention race, but instead tried to preserve ‘neighborhood character.’ As a result, from 1970 to 2000, fewer than 600 dwelling units were built in Berkeley. Areas zoned for single family residential (R-1),

<sup>70</sup> Nelson, R.K, Winling, L., Marciano, R, Connolly, N. et al., *Mapping Inequality, Redlining in New Deal America*. American Panorama.  
<https://dsl.richmond.edu/panorama/redlining/#loc=10/37.8201/-122.4399&opacity=0.8&sort=17&city=oakland-ca&adview=full>



limited two-family residential (R-1A), and restricted two-family residential (R-2) are now some of the most expensive parts of our city—especially on a per-unit basis.”<sup>71</sup>

Year Built	Units in Building				
	1	2-4	5-19	20+	Other
2000 or later	261	96	120	1305	9
Built 1980 to 1999	903	391	671	824	45
Built 1960 to 1979	4369	1292	2382	2114	124
Built 1940 to 1959	4369	2448	2095	1182	45
Built 1939 or earlier	14107	4926	2158	1364	28
<b>Total</b>	<b>24,009</b>	<b>9,153</b>	<b>7,426</b>	<b>6,789</b>	<b>251</b>

Source: U.S. Census, ACS 2008-2012 5 Year Estimate, Table B25127

Until 1984, Martin Luther King Jr Way was known as Grove Street. For decades, Grove Street created a wall of segregation down the center of Berkeley. Asian-Americans and African-Americans could not live east of Grove Street due to race-restrictive covenants that barred them from purchasing or leasing property. While race-restrictive covenants no longer prohibit individuals from purchasing or leasing homes, most cities still retain the vestiges of exclusionary zoning practices.

The UC Othering and Belonging Institute recently released a [series of studies](#) on racial segregation and zoning practices which revealed that 83% of residential land in the Bay Area is zoned for single family homes. The purpose of these studies was to,

*Raise public awareness about the degree of segregation that persists in the Bay Area and the harmful effects that result from it. Despite the enduring significance of race and salience of racial inequality in the Bay Area, too often racial residential segregation itself is not a part of the discussion for remedying persistent racial disparities. In a period in which systemic and structural racism is a widespread societal concern, there is insufficient attention to the centrality of racial residential segregation to the production of racial inequality.*<sup>72</sup>

<sup>71</sup> Bartlett, B and Bartlett, Y.M. (2017, June 13). *Berkeley's zoning laws wall off communities of color, seniors, low-income people and others*. Berkeleyside, Op ed. <https://www.berkeleyside.com/2017/06/13/opinion-berkeley-s-zoning-laws-wall-off-communities-color-seniors-low-income-people-others>

<sup>72</sup> Menendian, S., Gambhir, S. and Gailles, A. (2020) *Racial Segregation in the San Francisco Bay Area, Part 5*. UC Othering and Belonging Institute. <https://belonging.berkeley.edu/racial-segregation-san-francisco-bay-area-part-5>

The authors found that the ramifications of **restrictive** zoning practices leads to a greater percentage of white residents, as recounted in KQED’s “The Racist History of Single Family Zoning.”<sup>73</sup> By banning less expensive housing options, such as duplexes, tri-/four-plexes, courtyard apartments, bungalow courts, and townhouses, in low-density, “desirable” places in Berkeley, the current zoning map dictates that **predominantly** wealthier families will be able to live or rent in certain parts of Berkeley, mainly in North and East Berkeley.<sup>74</sup> Today, with the median home sale price at \$1.4 million<sup>75</sup> and the typical White family having eight times the wealth of the typical Black family, this de-facto form of segregation is even more pronounced.<sup>76</sup>

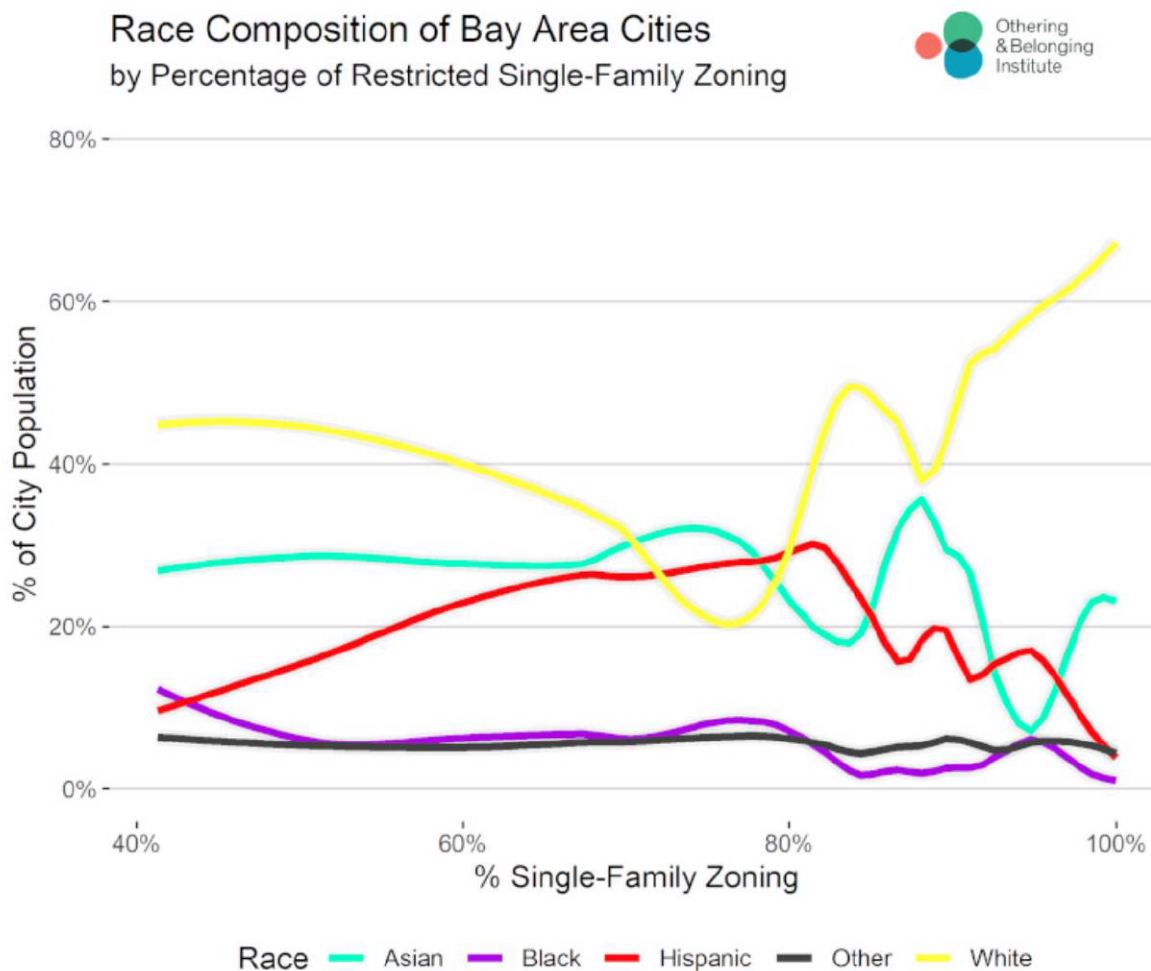
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<sup>73</sup> Baldassari, E. and Solomon, M. (2020). *The Racist History of Single Family Zoning*. KQED. <https://www.kqed.org/news/11840548/the-racist-history-of-single-family-home-zoning>

<sup>74</sup> Rothwell, Jonathan. “Land Use Politics, Housing Costs, and Segregation in California Cities.” *Turner Center for Housing Innovation*, September, 2019. <http://californialanduse.org/download/Land%20Use%20Politics%20Rothwell.pdf>

<sup>75</sup> Berkeley, CA Real Estate Market. (2021). *Realtor*. [https://www.realtor.com/realestateandhomes-search/Berkeley\\_CA/overview](https://www.realtor.com/realestateandhomes-search/Berkeley_CA/overview)

<sup>76</sup> *Survey of Consumer Finances* (2020). Federal Reserve. <https://www.federalreserve.gov/econres/scfindex.htm>



Furthermore, the intensity of land use coupled with opposition to development predicts a lower share of Black, Hispanic, and blue collar workers living in the area.<sup>77</sup> Communities with more restrictive land uses like single family zoning create cities with whiter residents. As Jessica Trounstone, political scientist and author of *Segregation by Design and Political Monopolies* states, “It is this maintenance of homogeneity that generates segregation across city lines.”<sup>78</sup>

<sup>77</sup> Rothwell, J. (2019, September). *Land Use Politics, Housing Costs, and Segregation in California Cities*. Turner Center for Housing Innovation.

<http://californialanduse.org/download/Land%20Use%20Politics%20Rothwell.pdf>

<sup>78</sup> Trounstone, J. (2020, February). *The Geography of Inequality: How Land Use Regulation Produces Segregation*. Cambridge University Press. <https://www.cambridge.org/core/journals/american-political-science-review/article/geography-of-inequality-how-land-use-regulation-produces-segregation/BAB4ABDF014670550615CE670FF66016>



According to the data mapped by UC Berkeley's Urban Displacement Project, most of the low-income tracts in Berkeley are at-risk or have ongoing displacement and gentrification. Higher-income tracts in Berkeley are classified as 'at-risk of exclusion', currently feature 'ongoing exclusion', or are at stages of 'advanced exclusion'. Degrees of exclusion are measured by a combination of data: the loss of low-income households over time, presence of high income households, being considered in a 'hot housing market,' and migration patterns. The Urban Displacement Project's findings indicate that exclusion is more prevalent than gentrification in the Bay Area.<sup>79</sup> While Berkeley has created policies and designated funding to prevent gentrification, policies that focus on preventing exclusion have lagged.

University of California-Berkeley Professor Karen Chapple, anti-displacement expert and director of the Urban Displacement Project, stated that "the Urban Displacement Project has established a direct connection between the neighborhood designations by the Home Owners Loan Corporation (HOLC), and 75% of today's exclusionary areas in the East Bay... Thus, this historic legacy, compounded by Berkeley's early exclusionary zoning practices, continues to shape housing opportunity and perpetuate inequities today." Not surprisingly, Chapple has indicated that zoning reform "has the potential not just to address the housing crisis but also to become a form of restorative or even transformative justice. There is no more important issue for planners to tackle today."<sup>80</sup>

### ***Historic Redlining***

Redlining was a practice whereby certain neighborhoods or areas were designated as being high-risk for investment. These high-risk designations were literally marked on maps using red coloring or lines, hence "redlining." The designations were typically applied to areas with large non-white and/or economically disadvantaged populations, and resulted in people who lived in or wanted to move to these areas being denied loans, or only being provided loans on much worse terms than their counterparts who could access non-redlined areas, due to their ethnicity or higher economic status.

Because redlining practices were contemporaneous with segregationist race-restricted deeds that largely locked **communities of color** out of non-redlined neighborhoods, most non-white households were effectively forced to live in areas where buying and/or improving residential property was extremely difficult. Consequently, low-income and **non-white** families were often locked out of homeownership, and all the opportunities for stability and wealth-building that entails. Therefore, redlining tended to reinforce the

<sup>79</sup> Zuk, M., & Chapple, K. (2015). *Mapping Displacement, Gentrification, and Exclusion in the San Francisco Bay Area*. Urban Displacement Project. <http://www.urbandisplacement.org/map/sf>

<sup>80</sup> Chapple, K. (2019, February 25). Letter to Berkeley City Council in support of **zoning reform**. **Berkeleyside**. <https://www.berkeleyside.com/wp-content/uploads/2019/02/Letter-on-Council-Item-22-Chapple-2.25.19.pdf>

economic stagnation of the areas to which it was applied, further depressing property values and leading to disinvestment. Although redlining is no longer formally practiced in the fashion it was historically, its effects continued to be felt in wealth disparities, educational opportunity gaps, and other impacts.

One way in which the practice of redlining continues to be felt is through the continuation of exclusionary zoning. By ensuring that only those wealthy enough to afford a single family home with a relatively large plot of land could live in certain areas, exclusionary zoning worked hand in hand with redlining to keep low-income families out of desirable neighborhoods with good schools and better economic opportunity. Cities, including Berkeley, adopted zoning that effectively prohibited multi-family homes in the same areas that relied on race restrictive deeds to keep out non-whites, meaning that other areas, including redlined areas, were more likely to continue allowing multi-family buildings.

Ironically, because these patterns of zoning have persisted, many areas that were historically redlined are now appealing areas for new housing development precisely because they have continued to allow multi-family homes. Any area which sees its potential housing capacity increase will become more appealing for new housing development. When these changes are made in historically redlined areas where lower-income and **BIPOC** households tend to be more concentrated, it is especially important to ensure those policies do not result in displacement or the loss of rent-controlled or naturally affordable housing units. Nevertheless, the City of Portland, which is undergoing similar zoning reform, has predicted that there will be a 21-28% reduction of indirect displacement for low-income renters.<sup>81</sup>

### ***Current Discourse on Exclusionary Zoning Regulations***

In 2019, Councilmembers Lori Droste, Ben Bartlett, Rashi Kesarwani and Rigel Robinson introduced Missing Middle Housing legislation in order to facilitate the construction of naturally affordable missing middle housing. The final legislation passed by Council was an agreement to **study** how the City of Berkeley can incorporate varying building types throughout Berkeley and address exclusionary practices. While the entire City Council voted unanimously to study this, the COVID-19 pandemic led to budget cuts which would have funded such a study. In July of 2020, Berkeley City Council additionally supported Senate Bill 902, which **streamlines rezoning for** missing middle housing in transit-oriented or jobs-rich areas.<sup>82</sup>

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<sup>81</sup>City of Portland Bureau of Planning and Sustainability. (2019, February). *Residential Infill Project Displacement Risk and Mitigation* [https://www.portland.gov/sites/default/files/2019-12/vol\\_3\\_appendix\\_b\\_displacement\\_risk\\_and\\_mitigation.pdf](https://www.portland.gov/sites/default/files/2019-12/vol_3_appendix_b_displacement_risk_and_mitigation.pdf)

<sup>82</sup>Wiener, S. and Atkins, T. (2020) *Senate Bill 902*. California Legislative Information. [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200SB902](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB902)



Exclusionary zoning laws also became a prevalent national topic during the 2020 Presidential campaign under the guise of “protect[ing] America’s suburbs.”<sup>83</sup> Celebrity Apprentice host and former President Donald Trump and his Housing and Urban Development Secretary Ben Carson expressed a concern that removing exclusionary zoning laws would prevent single family home ownership and “destroy suburbs” despite the fact that these reforms don’t bar single family home construction but allow the creation of duplexes, triplexes, and other multi-unit properties. Furthermore, exclusionary zoning practices were amplified with the termination of the 2015 Obama-era Fair Housing rule which outlawed discrimination in housing. In doing so, Trump stated that Democrats wanted to “eliminate single-family zoning, bringing who knows into your suburbs, so your communities will be unsafe and your housing values will go down.”<sup>84</sup> On the other hand, Democratic Presidential candidates embraced zoning reform, most notably Elizabeth Warren and Cory Booker. President Biden has also indicated that he plans to invest \$300 million in local housing policy grants to give communities the planning support they need to eliminate exclusionary zoning.<sup>85</sup>

In January 2021, the Association of Bay Area Governments voted to approve the implementation of Senate Bill 828 which was designed to address the extreme housing shortage across California. As a result, Bay Area cities will have to zone for 441,000 new homes. Berkeley will see a 19% increase — approximately 8,900 — in the number of homes for which it must zone.

According to the U.S. Census American Community Survey, newly built missing middle housing like duplexes, **triplexes, and fourplexes** more often houses middle and lower income families in Berkeley, while single-family homes, no matter what year built, are exclusively higher income.

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<sup>83</sup> Trump, D.J. and Carson, B. (2020) *We’ll Protect America’s Suburbs*. Wall Street Journal. <https://www.wsj.com/articles/well-protect-americas-suburbs-11597608133>

<sup>84</sup> Kurtzleben, D. (2020, July 21). *Seeking Suburban Votes, Trump to Repeal Rule Combating Racial Bias in Housing*. National Public Radio <https://www.npr.org/2020/07/21/893471887/seeking-suburban-votes-trump-targets-rule-to-combat-racial-bias-in-housing>

<sup>85</sup> “The Biden Plan for Investing in Our Communities Through Housing.” (2020) <https://joebiden.com/housing/>



Median household income, Berkeley & Albany, by building age & type					
	Pre-1950	1950-1969	1970-1989	1990-2004	2005-
Single-family detached	148,590	139,295	107,081	131,004	148,835
Single-family attached	84,903	126,930	96,233	167,025	134,460
2-4 units	79,012	63,973	53,335	45,403	48,691
5-19 units	46,037	41,104	39,811	42,243	27,950
20+ units	25,628	42,319	41,387	23,585	40,518

Source: American Community Survey, 2014-18, Public Use Microdata Set, US Census.

### ALTERNATIVE ACTIONS CONSIDERED

Berkeley City Council previously authorized a study on missing middle housing. Due to the impending **Housing Element adoption and rezoning** mandated by new Regional Housing Needs Allocations, Council wanted to ensure that there was a willingness on Council to address and acknowledge the implications of single family zoning on affordability and racial and economic segregation [This resolution is a problem statement and asks Council to acknowledging the problems associated with single family zoning and state its intentions to lift the ban on multi-family homes. The operational details of how this will occur are still being deliberated at the Land Use and Economic Development Policy Committee and if passed, will be further refined at Council and the Planning Commission.](#)

### FINANCIAL IMPLICATIONS

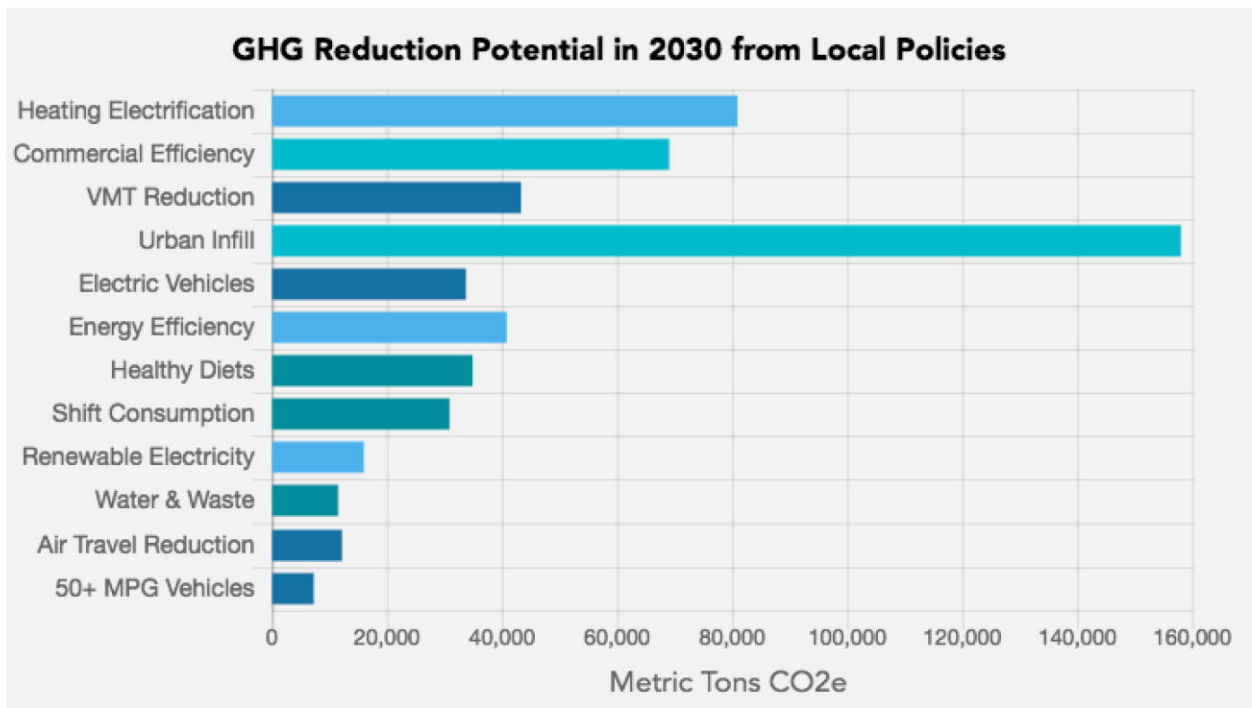
There are no financial implications in approving a resolution ~~of intent~~.

### ENVIRONMENTAL SUSTAINABILITY

In 2006, Berkeley voters adopted ballot Measure G for a call to action on climate change. In 2009, the Berkeley Climate Action Plan was written through a community-wide process and adopted by Council. Berkeley reiterated concern by declaring a climate emergency in 2018. Among other concerns, wildfires and sea level rise are constant ecological threats to our community. The City of Berkeley needs to act urgently to address this imminent danger. In 2018, climate researchers in Berkeley quantified local and state opportunities to reduce greenhouse gases from a “comprehensive consumption-based perspective.”<sup>86</sup> The most impactful local policy to potentially reduce greenhouse gas consumption by 2030 is urban infill. In short, Berkeley can meaningfully

<sup>86</sup> Jones, C.M., Wheeler, S.M, and Kammen, D. (2018) *Carbon Footprint Planning: Quantifying Local and State Mitigation Opportunities for 700 California Cities*. Urban Planning (ISSN: 2183–7635). Volume 3, Issue 2. <https://rael.berkeley.edu/wp-content/uploads/2018/04/Jones-Wheeler-Kammen-700-California-Cities-Carbon-Footprint-2018.pdf>

address climate change if we allow the production of more homes near job centers and transit.<sup>87</sup>



**CONTACT PERSON(S):**

Lori Droste, 510-981-7180

<sup>87</sup> Wiener, S. and Kammen, D. (2019, March 25). *Why Housing Policy Is Climate Policy*. New York Times. <https://www.nytimes.com/2019/03/25/opinion/california-home-prices-climate.html>

RESOLUTION NO. XX

WHEREAS the City of Berkeley was the first city in the country to implement single-family zoning in 1916; and

WHEREAS the City of Berkeley's current zoning is still greatly influenced by maps developed by the federal government's Home Owners Loan Corporation which sought to maintain racial segregation through discriminatory lending practices; and

WHEREAS with the passage of the Neighborhood Preservation Ordinance in 1973, the City of Berkeley restricted the creation of multifamily units in residential zones; and

WHEREAS the prohibition of apartments and multi-family homes in the City of Berkeley coincide with the most unaffordable neighborhoods and the origins of the City's affordability crisis starting in the late 1970s after the passage of Proposition 13; and

WHEREAS there is deeply racist history to zoning practices all over the country, particularly as a proxy for overt racial restrictions, and inequities still exist today as a result of redlining; and

WHEREAS exclusionary zoning creates a system of de facto rather than de jure racial and economic segregation, which creates strong adverse effects in life outcomes for residents; and

WHEREAS California ranks 49th out of 50th in the nation for housing units per capita; and

WHEREAS California home prices and rents are among the highest in the United States; and

WHEREAS both market rate housing and subsidized housing reduce displacement pressures; and

WHEREAS zoning reform does not ban single family homes but allows for a greater mix of home types and home affordability levels in more Berkeley neighborhoods; and

WHEREAS zoning reform can reduce real housing cost-burdens for low- and middle-income households; and

WHEREAS the League of California Cities called for cities to allow up to fourplexes in single family zones in their *Blueprint for More Housing 2020*;



**THEREFORE** BE IT ~~FURTHER~~ RESOLVED that the City of Berkeley registers its intent to allow for more multifamily housing throughout Berkeley; and

BE IT FURTHER RESOLVED that City Council will pursue zoning reform that takes into account the public safety in all parts of Berkeley, ~~including areas within CalFire's Very High Hazard Severity Zones;~~ and

BE IT FURTHER RESOLVED that in neighborhood interiors that already contain a mix of housing types from single family homes to apartments, allow new housing within that existing range; and

**BE IT FURTHER RESOLVED that the elimination of exclusionary zoning by 2022 must coincide with strong anti-displacement and tenant protections; and**

BE IT FURTHER RESOLVED that the City of Berkeley encourage inclusion of homes that can accommodate families in new and rehabilitated multifamily housing developments; and

BE IT FURTHER RESOLVED that the City of Berkeley will no longer ban multi-family housing, and by extension, affordable housing in certain parts of Berkeley.

CONSENT CALENDAR

DATE: November 9, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin (Author), Councilmember Bartlett (Co-sponsor),  
Councilmember Robinson (Co-sponsor) and Councilmember Hahn (Co-sponsor)

Subject: Affordable Housing Overlay

RECOMMENDATION

Council refers to the City Manager and the Planning Commission to consider an Affordable Housing Overlay for 100% affordable housing and seek to integrate it into the ongoing Housing Element process in anticipation of the 2023-2031 RHNA cycle. Staff should consider revisions to the zoning code and General Plan, permitting increased height and density for 100% affordable housing developments, including specific consideration of labor and design/form standards, to achieve the underlying goals:

1. Exceeding standards set forth in California Government Code Section 65915 (AB-1763) with additional local height and density incentives, including waivers and modifications similar to those vested in state density bonus law, with ministerial approval for qualifying 100% affordable projects deed-restricted for Low, Very Low, Extremely Low, and Moderate Income households (exclusive of manager's unit) pursuant to AB-1763, and maintaining demolition restrictions consistent with state law, specifying:
  - a. In R3, R4, MU-R, and all C-prefixed zoning districts, a local density bonus (granted in addition to, but not compounding with, any State density bonus[es]) with standards reflective of whatever State density bonus a project would be entitled to under the provisions of AB 1763 (2019), waiving limits on floor area ratio, and permitting up to 80% lot coverage; and study additional incentives in these zones;
  - b. In R-1, R-1A, R-2, and R-2A zones, a local bonus for qualifying projects inclusive of existing density bonuses, waiving limits on floor area ratio, and permitting up to 80% lot coverage; and study project feasibility in these zones;
  - c. Create General Plan amendments that allow for 100% affordable qualifying projects to increase density while avoiding inconsistencies with General Plan densities;
  - d. Skilled and trained workforce standards as defined by SB-7 (Atkins, 2021) for qualifying projects with at least 50,000 square feet of total floor area;
2. Exempting parcels with Designated City, State, and Federal Historic Landmarks;

3. Exempting parcels in Very High Fire Hazard Severity Zones (VHFHSZ) as determined by the California Department of Forestry and Fire Protection (CalFire), and in City of Berkeley Fire Zones 2 and 3;
4. Develop objective design standards or form-based standards for qualifying projects to receive ministerial approval, including guidelines for architectural details with respect to neighborhood context, massing, and building facades; materials, color, and finishes; open space, public art, and landscaping; circulation and outdoor lighting; 20' average building setback above the fourth floor (or 45') from any property line that is adjacent to a low or low-to-medium residential district; utilities; interiors; financial feasibility, and environmental sustainability, to be implemented with the following provisions:
  - a. Solicit community input, including through public outreach to be conducted in the Housing Element update process, for design standards that would ensure consistency with the City of Berkeley's architectural quality;
  - b. Establish an advisory Design Review process through the Design Review Committee (DRC). An applicant may elect to return for advisory comment up to two more times. For projects with fewer than 150 units, the City shall review and approve, based on consistency with objective standards, an affordable housing application within 90 days of submission. After 60 days, the City shall provide the applicant with an exhaustive list of objective standards not met by the project, and how the standards could or should be met. For projects with 150 units or more, these time frames shall be 90 and 180 days, respectively. The time under these provisions will toll between the City's issuance of a letter describing inconsistency with objective standards and the time necessary for the applicant to respond to those items.

#### POLICY COMMITTEE RECOMMENDATION

On October 7, 2021 the Land Use, Housing & Economic Development policy committee took the following action: M/S/C (Robinson/Hahn) Positive recommendation to approve the item as submitted in supplemental material from the Author; revising the first paragraph of the recommendation to read *“Council refers to the City Manager and the Planning Commission to consider an Affordable Housing Overlay for 100% affordable housing and seek to integrate it into the ongoing Housing Element process in anticipation of the 2023-2031 RHNA cycle. Staff should consider revisions to the zoning code and General Plan, permitting increased height and density for 100% affordable housing developments, including specific consideration of labor and design/form standards, to achieve the underlying goals:”*; and adding the words *“or form-based standards”* to bullet 4 of the recommendation.

#### BACKGROUND

Berkeley has made insufficient progress on meeting its state-mandated Regional Housing Need Allocation (RHNA) goals for low- and moderate-income housing in the



2014-2022 RHNA cycle. As recently as the city's 2020<sup>1</sup> Housing Pipeline Report, the city had only fulfilled 23% of its moderate-income RHNA goals, 21% of its RHNA goals for Very-Low Income households, and a mere 4% for Low-Income households. Berkeley's next RHNA cycle is estimated to mandate roughly 3 times as many units<sup>2</sup> as the previous cycle's total of 2,959 units across all income tiers. SB-330 by Sen. Nancy Skinner (D-Berkeley), passed in 2019, requires municipal general plans to zone adequately to meet residential capacity mandated by RHNA goals and state-certified Housing Elements.

Affordable housing will continue to be a high priority, but nonprofit affordable housing developers may face stiff competition for scarce land with market-rate developers, particularly during an anticipated period of economic recovery. In 2019, Governor Newsom signed AB-1763 by Assembly member David Chiu (D-SF), amending California Government Code 65915 to confer greater fiscal advantages for 100% affordable housing developments through state density bonus law. The bill prohibits minimum parking requirements (which Berkeley has recently removed) and grants an increase of up to 33' in permitted height, with a waiver on density restrictions for projects located within a half-mile of major transit stops.

When the 42-unit affordable housing project at Harpers Crossing opened in Berkeley, at a total project cost of \$18 million, over 700 seniors applied. Without substantial funding and square footage for affordable housing, the City of Berkeley will be increasingly challenged to create enough subsidized housing to meet increasing demand. Increased allowable density and streamlined approvals for affordable housing will also be key to meeting Berkeley's RHNA goals for low- and moderate-income housing.

#### RATIONALE FOR RECOMMENDATION

As of 2019, development costs in the San Francisco Bay Area averaged \$600,000 for new housing funded by 9% Low Income Housing Tax Credits.<sup>3</sup> At this cost, building nearly 4,000 housing units for low- and very low-income households would cost roughly \$2.5 billion, several orders of magnitude larger than the City of Berkeley's General Fund and Measure O bond funding.

Additional density bonuses and ministerial approval could reduce costs for affordable housing and increase Berkeley's capacity to meet its RHNA goals for low- and moderate-income housing. Increasing height limits allows smaller sites to fit enough homes to reach the economy of scale needed for affordable housing. According to an October 2014 report on affordable housing development by several state housing

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<sup>1</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2020/07\\_Jul/Documents/2020-07-28\\_Item\\_45\\_Annual\\_Housing\\_Pipeline\\_Report.aspx&sa=U&ved=2ahUKEwjc3tDIntHuAhXWu54KHdyGAtAQFjABegQICRAC&usq=AOvVaw0eXQ4oP5AAL14h0lphPdr](https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-28_Item_45_Annual_Housing_Pipeline_Report.aspx&sa=U&ved=2ahUKEwjc3tDIntHuAhXWu54KHdyGAtAQFjABegQICRAC&usq=AOvVaw0eXQ4oP5AAL14h0lphPdr)

<sup>2</sup> [https://abag.ca.gov/sites/default/files/draft\\_rhna\\_allocation\\_presentation\\_to\\_exec\\_bd\\_jan\\_21.pdf](https://abag.ca.gov/sites/default/files/draft_rhna_allocation_presentation_to_exec_bd_jan_21.pdf)

<sup>3</sup> Reid, C. (2020). The Costs of Affordable Housing Production: Insights from California's 9% Low-Income Housing Tax Credit Program. *UC Berkeley Turner Center for Housing Innovation*. Retrieved from [https://turnercenter.berkeley.edu/wp-content/uploads/pdfs/LIHTC\\_Construction\\_Costs\\_March\\_2020.pdf](https://turnercenter.berkeley.edu/wp-content/uploads/pdfs/LIHTC_Construction_Costs_March_2020.pdf)

agencies, “for each 10 percent increase in the number of units, the cost per unit declines by 1.7 percent.”<sup>4</sup> A 2020 study by UC Berkeley’s Turner Center on affordable housing projects funded by 9% Low Income Housing Tax Credits reported: “On average, efficiencies of scale translate into a reduction of about \$1,162 for every additional unit in a project.”<sup>5</sup>

Increased density and streamlined, predictable permitting processes through ministerial review can increase the amount of affordable housing that limited public subsidies are able to provide. By-right permitting is associated with increased housing supply and price elasticity<sup>6</sup> and lower “soft costs,” which is particularly beneficial to projects funded by Low Income Housing Tax Credits (LIHTC)<sup>7</sup>, with complex financing structures that may risk loss of funding due to uncertainty and delays in the permit process.<sup>8</sup>

There is existing precedent in the state of California for meeting low-income RHNA goals with an Affordable Housing Overlay. In eastern Contra Costa County, the newly-incorporated city of Oakley established an Affordable Housing Overlay in 2005, which has yielded 7 affordable housing developments totaling 509 housing units combined as of 2019.<sup>9</sup> Despite local opposition to low-income housing, the AHO enabled the city to obtain state certification for its first 2001-2007 Housing Element, procure funding from the county, and meet its low-income RHNA goals by rezoning 16.3 acres for multifamily housing.

According to the Association of Bay Area Governments (ABAG), 28 jurisdictions in the 9-county Bay Area have some form of Housing Overlay Zone policy.<sup>10</sup>

According to a 2010 fact sheet by Public Advocates and East Bay Housing Organizations (EBHO), “the more valuable the developer incentives included in a Housing Overlay Zone, the more effective the HOZ will be in encouraging production of homes that people can afford. Desirable incentives both motivate developers to take

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<sup>4</sup> California Department of Housing and Community Development, et al. (2014). Affordable Housing Cost Study: Analysis of the Factors that Influence the Cost of Building Multi-Family Affordable Housing in California. Retrieved from [https://www.treasurer.ca.gov/ctcac/affordable\\_housing.pdf](https://www.treasurer.ca.gov/ctcac/affordable_housing.pdf)

<sup>5</sup> See footnote 3.

<sup>6</sup> Mayer, C. J., & Somerville, C. T. (2000). Land use regulation and new construction. *Regional Science and Urban Economics*, 30(6), 639–662. doi:10.1016/s0166-0462(00)00055-7

<sup>7</sup> Hoyt, H. (2020). More is Less? An Inquiry into Design and Construction Strategies for Addressing Multifamily Housing Costs. *Joint Center for Housing Studies of Harvard University*. Retrieved from [https://www.jchs.harvard.edu/sites/default/files/media/imp/harvard\\_jchs\\_gramlich\\_design\\_and\\_construction\\_strategies\\_multifamily\\_hoyt\\_2020\\_3.pdf](https://www.jchs.harvard.edu/sites/default/files/media/imp/harvard_jchs_gramlich_design_and_construction_strategies_multifamily_hoyt_2020_3.pdf)

<sup>8</sup> Kendall, M. (2019, Nov. 24). Is California’s most controversial new housing production law working? *Mercury News*. Retrieved from <https://www.mercurynews.com/2019/11/24/is-californias-most-controversial-new-housing-production-law-working/>

<sup>9</sup> UC Berkeley Turner Center for Housing Innovation. (2019). Affordable Housing Overlays: Oakley. Retrieved from [https://turnercenter.berkeley.edu/wp-content/uploads/2020/10/Affordable\\_Housing\\_Overlay\\_Zones\\_Oakley.pdf](https://turnercenter.berkeley.edu/wp-content/uploads/2020/10/Affordable_Housing_Overlay_Zones_Oakley.pdf)

<sup>10</sup> <http://housing.abag.ca.gov/policysearch>

advantage of the HOZ, and reduce development costs to allow construction of more affordable homes.”<sup>11</sup>

The City Council of Cambridge, Massachusetts passed an Affordable Housing Overlay amendment to its zoning code in October of 2020.<sup>12</sup> The City Council of Somerville, MA passed a similar zoning ordinance in December of 2020. These zoning overlays permit greater height and density for ministerial approval 100% Below Market-Rate housing developments, following objective design criteria, in residential and commercial zones. The intent of these ordinances is to increase the availability of infill sites with an advantage for affordable housing development where nonprofit and public entities may otherwise be unable to compete in the private market, as well as promoting a more equitable distribution of affordable housing in cities where class and racial segregation still mirrors the historical legacy of redlining and Jim Crow-era racial covenants.

These ordinances preserve open space requirements and comport with restrictions on historic districts. The Somerville<sup>13</sup> and Cambridge<sup>14</sup> Overlays were overwhelmingly supported by nonprofit affordable housing developers and activists. The city of Boston is now considering similar proposals.<sup>15</sup>

Prior to the introduction of the city’s Affordable Housing Overlay policy, Somerville City Councilor Ben Ewen-Campen, chair of the council’s Land Use Committee, directed city staff to survey the region’s affordable housing. “Overwhelmingly, we heard about two obstacles,” Ewen-Campen wrote.<sup>16</sup>

*First, and most obviously, is the cost of land. Today, it is nearly impossible for any non-profit housing developer to purchase property in Somerville. This is no surprise: they are competing against “market rate” developers and investors who can afford to pay far more because they’ll soon be making windfall profits in our red-hot real estate market. Second, the funding agencies that support affordable housing are looking for predictability and certainty in the projects they support. This*

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<sup>11</sup> [http://www.friendsofrpe.org/files/HOZ\\_Fact\\_Sheet\\_FINAL\\_7-27-10%282%29.pdf](http://www.friendsofrpe.org/files/HOZ_Fact_Sheet_FINAL_7-27-10%282%29.pdf)

<sup>12</sup> Sennott, A. (2020). Mayor: ‘An important social justice moment.’ Councilors pass Affordable Housing Overlay after more than 20 community meetings. *WickedLocal.com*. Retrieved from <https://www.wickedlocal.com/story/cambridge-chronicle-tab/2020/10/06/an-important-social-justice-moment-cambridge-councilors-pass-affordable-housing-overlay/114657068/>

<sup>13</sup> Taliesin, J. (2020). Somerville moves to facilitate local affordable housing development. *WickedLocal.com*. Retrieved from <https://www.wickedlocal.com/story/somerville-journal/2020/11/23/residents-support-citys-move-ease-affordable-housing-development/6328944002/>

<sup>14</sup> Eisner, D. (2020). The Historic Affordable Housing Overlay Is about to Pass. How Did It Overcome so Many Obstacles? *A Better Cambridge*. Retrieved from [https://www.abettercambridge.org/the\\_historic\\_affordable\\_housing\\_overlay\\_is\\_about\\_to\\_pass\\_how\\_did\\_it\\_overcome\\_so\\_many\\_obstacles](https://www.abettercambridge.org/the_historic_affordable_housing_overlay_is_about_to_pass_how_did_it_overcome_so_many_obstacles)

<sup>15</sup> Logan, T. (2020). Boston to consider looser zoning for affordable housing. *The Boston Herald*. Retrieved from <https://www.bostonglobe.com/2020/08/24/business/boston-mull-looser-zoning-affordable-housing/>

<sup>16</sup> Ewen-Campen, B. (2020). We need a city-wide ‘Affordable Housing Overlay District’ in Somerville. *The Somerville Times*. Retrieved from <https://www.thesomervilletimes.com/archives/103539>



*means that the uncertainty, delays, and discretionary nature of the permitting process in Somerville can be a major issue when attempting to secure funding. Together, these two obstacles mean that new affordable units in Somerville are almost always created by market rate developers through Somerville's "20% inclusionary zoning" policy, which is absolutely necessary but nowhere near sufficient to meet Somerville's goals for affordability.*

Affordable housing nonprofits in California face similar fiscal and regulatory barriers to developing much-needed low- and moderate-income housing. While Berkeley does not have an abundance of vacant and/or publicly-owned land close to transit to help meet these goals, an Affordable Housing Overlay permitting more density for residential uses on commercial corridors for 100% affordable housing can tap into a larger subset of commercial parcels with residential potential in the city. According to a study by the UC Berkeley Turner Center for Housing Innovation, mid-sized cities in the San Francisco Bay Area have an average of 32.4% of land zoned for commercial uses, and this land tends to be evenly distributed between high- and low-opportunity neighborhoods as defined by the state's Tax Credit Allocation Committee.<sup>17</sup>

An overlay for 100% affordable housing with density bonuses and ministerial review would be critical for ensuring that residential zoning does not exclude affordable housing for low- and moderate-income households from high-opportunity neighborhoods, a necessary precondition for the city to comply with fair housing law.

Pursuant to Assembly Bill 686 (Santiago) passed in 2018, jurisdictions are required to produce housing elements that comply with the Affirmatively Furthering Fair Housing rule published by the U.S. Department of Housing and Urban Development (HUD) on July 16, 2015. The bill defines this requirement in the context of housing elements as "taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws."<sup>18</sup>

Zoning standards that prohibit densities needed for more affordable housing in high-opportunity neighborhoods risk exacerbating gentrification and displacement. According to research by the UC Berkeley Urban Displacement Project, 83% of today's gentrifying areas were rated "hazardous" or "declining" by the Home Owners Loan Corporation (HOLC), in part due to their Black and Asian populations, and denied federal mortgage insurance in the agency's infamous redlining maps of the early 20<sup>th</sup> Century. "Desirable"

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<sup>17</sup> Romem, I. & Garcia, D. (2020). Residential Redevelopment of Commercially Zoned Land in California. *UC Berkeley Turner Center for Housing Innovation*. Retrieved from <https://turnercenter.berkeley.edu/wp-content/uploads/2020/12/Residential-Redevelopment-of-Commercially-Zoned-Land-in-California-December-2020.pdf>

<sup>18</sup> [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180AB686](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB686)

neighborhoods with federal mortgage insurance were restricted to white homebuyers, and 75% of those neighborhoods are still measurably exclusionary today.<sup>19</sup>

The Urban Displacement Project has also reported that “subsidized housing is twice as effective as market-rate housing in mitigating displacement,” and Cash & Zuk (2019) recommend “equitable development considerations” which include “open[ing] up high-opportunity neighborhoods to low-income households.”<sup>20</sup> Additionally, the researchers recommend local preference or right to return policies “to stabilize neighborhoods as new developments take root,” and the City of Berkeley has implemented a local preference policy as part of the Adeline Corridor Specific Plan.<sup>21</sup>

As the Home for All SMC Housing Overlay Zone fact sheet explains: “In locations where the zoning doesn’t allow residential development, HOZs can enable housing construction while avoiding the lengthy process of amending a general plan.”<sup>22</sup> This proposal only refers broad recommendations for general plan amendments to the Planning Commission to align intended outcomes of the Affordable Housing Overlay with general plan revisions that will result from the upcoming Housing Element update, but a robust Overlay can continue to promote 100% affordable housing development in future cycles when general plan amendments are not under consideration.

Additionally, an enhanced density bonus program with robust skilled and trained workforce requirements can incorporate consistent labor standards<sup>23</sup> into beneficial economies of scale.

### ALTERNATIVES CONSIDERED

Due to aforementioned state laws, there is no alternative in which the City of Berkeley does not rezone certain areas to meet its upcoming RHNA goals and have a certified Housing Element. While the city could simply abide by the standards set forth in AB-1763 with no additional incentives or streamlining for 100% affordable housing, this would risk insufficiently prioritizing low- and moderate-income housing, and is inconsistent with goals already identified by the City Manager’s office to reduce homelessness and housing insecurity.

The City Manager’s 1000 Person Plan to End Homelessness<sup>24</sup> includes among its strategic recommendations:

<sup>19</sup> Cash, A. (2020). Redlining in Berkeley: the Past is Present. *Berkeley Rent Stabilization Board*. Retrieved from [https://www.cityofberkeley.info/uploadedFiles/Rent\\_Stabilization\\_Board/Level\\_3\\_-\\_General/SPECIAL\\_Item%206\\_Redlining%20in%20Berkeley%20presentation\\_02.20.20\\_FINAL\(2\).pdf](https://www.cityofberkeley.info/uploadedFiles/Rent_Stabilization_Board/Level_3_-_General/SPECIAL_Item%206_Redlining%20in%20Berkeley%20presentation_02.20.20_FINAL(2).pdf)

<sup>20</sup> Cash, A & Zuk, M. (2019). Investment Without Displacement: From Slogan to Strategy. *Shelterforce*. Retrieved from <https://shelterforce.org/2019/06/21/investment-without-displacement-from-slogan-to-strategy/>

<sup>21</sup> [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Land\\_Use\\_Division/Adeline%20Corridor%20Specific%20Plan%20Nov.%202020.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Land_Use_Division/Adeline%20Corridor%20Specific%20Plan%20Nov.%202020.pdf)

<sup>22</sup> <https://homeforallsmc.org/toolkits/housing-overlay-zones/>

<sup>23</sup> [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220SB7](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB7)

<sup>24</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2019/02\\_Feb/Documents/2019-02-26\\_Item\\_20\\_Referral\\_Response\\_1000\\_Person\\_Plan.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2019/02_Feb/Documents/2019-02-26_Item_20_Referral_Response_1000_Person_Plan.aspx)

*“Continue implementing changes to Berkeley’s Land Use, Zoning, and Development Review Requirements for new housing with an eye towards alleviating homelessness. If present economic trends continue, the pace with which new housing is currently being built in Berkeley will likely not allow for a declining annual homeless population. Berkeley should continue to streamline development approval processes and reform local policies to help increase the overall supply of housing available.”*

### ENVIRONMENTAL IMPACTS

Research from UC Berkeley scholars and the CoolClimate Network<sup>25</sup> finds that urban infill offers one of the greatest potential policy levers for municipalities to reduce their greenhouse gas emissions. Incentives for affordable housing, such as density bonuses, also offer potential to reduce per capita VMT by increasing housing options in Berkeley and shortening commute times for a greater share of the local workforce. In an analysis of 252 California Cities, Durst (2021) finds that “each additional affordable housing incentive is associated with a 0.37 percentage point decrease in the share of workers who commute more than 30 minutes.”<sup>26</sup>

An Affordable Housing Overlay coupled with the city’s Local Preference policy could reduce Berkeley’s transportation emissions by reducing per capita VMT pursuant to goals established in the city’s Climate Action Plan.

### FISCAL IMPACTS

TBD.

The City Manager’s 1000 Person Plan to End Homelessness notes that the fiscal impact of land use reform “could not be quantified” at the time the report was issued.

### CONTACT

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### ATTACHMENTS/SUPPORTING MATERIALS

1. Berkeley AHO Infographic with art by Alfred Twu (reflects previous draft)
2. Cambridge, MA: Ordinance No. 2020-8
3. Assembly Bill 1763 (2019)

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<sup>25</sup> Jones, C. et al. (2017). Carbon Footprint Planning: Quantifying Local and State Mitigation Opportunities for 700 California Cities. *Urban Planning*, 3(2). doi:10.17645/up.v3i2.1218.

<sup>26</sup> Durst, N. J. (2021). Residential Land Use Regulation and the Spatial Mismatch between Housing and Employment Opportunities in California Cities. *Turner Center for Housing Innovation*. Retrieved from <http://californialanduse.org/download/Durst%20Residential%20Land%20Use%20Regulation%202020.pdf>



# Berkeley Affordable Housing Overlay

## Low Density Zones (R-1, R-1A, R-2, R-2A)



## Medium Density Zones (R-3, R-4)



Many existing buildings have 5 or more floors

Projects that choose to use only state law AB1763 may have more height but do not get the other advantages of using the Berkeley AHO

**Affordable Housing Overlay (AHO)**  
5 floors

**State Density Bonus**  
4 to 5 floors

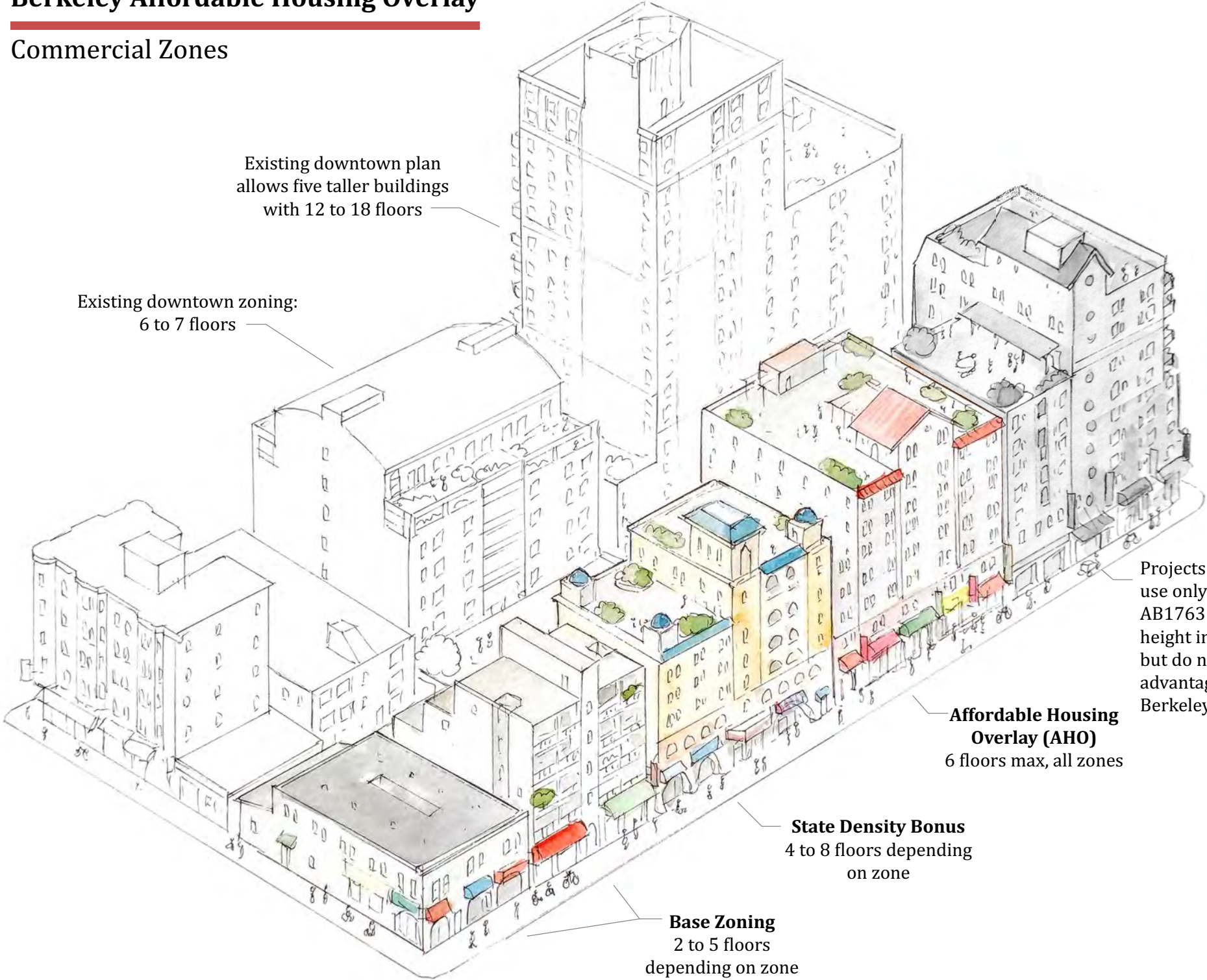
**Base Zoning**  
3 floors



## Commercial Zones

Existing downtown plan allows five taller buildings with 12 to 18 floors

Existing downtown zoning: 6 to 7 floors



Projects that choose to use only state law AB1763 may have more height in some zones, but do not get other advantages of using the Berkeley AHO

**Affordable Housing Overlay (AHO)**  
6 floors max, all zones

**State Density Bonus**  
4 to 8 floors depending on zone

**Base Zoning**  
2 to 5 floors depending on zone



**ORDINANCE NO. 2020-8 – First Publication**

CITY OF CAMBRIDGE

In the Year Two Thousand and Twenty

AN ORDINANCE

ORDERED: That the attached proposed zoning ordinance establishing an Affordable Housing Overlay be submitted by the City Council, and that it be referred to the Committee on Ordinances and the Planning Board for public hearings, as provided in Chapter 40A, Section 5 of the Massachusetts General Laws, to wit:

ORDERED: That the Cambridge City Council amend Section 2.000, DEFINITIONS, of the Zoning Ordinance of the City of Cambridge amended to insert the following definitions alphabetically:

**Affordable Housing Overlay (AHO).** A set of modified development standards set forth in Section 11.207.3 of this Zoning Ordinance intended to allow incremental increases in density, limited increases in height, and relaxation of certain other zoning limitations for residential developments in which all units are made permanently affordable to households earning up to 100% of area median income.

**Affordable Housing Overlay (AHO) Dwelling Unit.** A dwelling unit within an AHO Project for which occupancy is restricted to an AHO Eligible Household and whose rent or initial sale price is established by the provisions of Section 11.207.3 of this Zoning Ordinance.

**Affordable Housing Overlay (AHO) Eligible Household.** A household whose gross household income does not exceed the amounts set forth in Section 11.207.3 of this Zoning Ordinance.

**Affordable Housing Overlay (AHO) Project.** The construction of a new building or buildings and/or the modification of an existing building or buildings resulting in single-family, two-family, townhouse, or multifamily dwellings within which each dwelling unit is an AHO Dwelling Unit subject to the standards and restrictions set forth in Section 11.207 of this Zoning Ordinance.

**Grade.** The mean finished ground elevation of a lot measured either around the entire perimeter of the building or along any existing wall facing a public street, which ground elevation is maintained naturally without any structural support.

**Ground Story or Ground Floor.** The lowest Story Above Grade within a building. Story. That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above.

**Story Above Grade.** A Story whose highest point is more than 4 feet above the Grade.

**Story Below Grade.** Any Story that is lower than the Ground Story of a building.

ORDERED: That the Cambridge City Council amend of the Zoning Ordinance of the City of Cambridge, by inserting a new section 11.207, **AFFORDABLE HOUSING OVERLAY**, to read as follows:

11.207.1 Purpose and Intent

The purpose of this Section is to promote the public good by supporting the development of housing that is affordable to households earning up to 100% of area median income. The intent of this Section is to allow incremental increases in density, limited increases in height, and relaxation of certain other zoning limitations for residential developments in which all units are made permanently affordable to households earning up to 100% of area median income (referred to as “AHO Projects,” as defined in Article 2.000 of this Zoning Ordinance); to incentivize the reuse of existing buildings in order to create AHO Projects that are more compatible with established neighborhood character; to promote the city’s urban design objectives in Section 19.30 of this Zoning Ordinance while enabling AHO Projects to be permitted as-of-right, subject to non-binding advisory design consultation procedures that follow all design objectives set forth within this Zoning Ordinance and the results of the design review process shall be provided to the Cambridge Affordable Housing Trust; and to apply such standards throughout the City, to promote city planning goals of achieving greater socioeconomic diversity and a more equitable distribution of affordable housing citywide.

11.207.2 Applicability

- (a) The provisions set forth in this Section shall apply to AHO Projects, as defined in Article 2.000 of this Zoning Ordinance, in all zoning districts except Open Space Districts.
- (b) An AHO Project shall be permitted as-of-right if it meets all of the standards set forth in this Affordable Housing Overlay in place of the requirements otherwise applicable in the zoning district. Any development not meeting all of

the standards set forth in this Affordable Housing Overlay shall be subject to the requirements otherwise applicable in the zoning district, including any requirements for special permits.

11.207.3 Standards for Eligibility, Rent, and Initial Sale Price for AHO Dwelling Units

- (a) All dwelling units in an AHO Project shall comply with the standards for AHO Dwelling Units as set forth in this Section.
- (b) For all AHO Dwelling Units:
  - (i) AHO Dwelling Units shall be rented or sold only to AHO Eligible Households, with preference given to Cambridge residents, and former Cambridge residents who experienced a no-fault eviction in Cambridge in the last twelve (12) months, in accordance with standards and procedures related to selection, asset limits, and marketing established by the Community Development Department (CDD) and applicable state funding requirements.
  - (ii) AHO Dwelling Units shall be created and conveyed subject to recorded covenants approved by CDD guaranteeing the permanent availability of the AHO Dwelling Units for AHO Eligible Households.
- (c) For rental AHO Dwelling Units:
  - (i) The gross household income of an AHO Eligible Household upon initial occupancy shall be no more than one-hundred percent (100%) of AMI.
  - (ii) At least eighty percent (80%) of AHO Dwelling Units within the project shall be occupied by AHO Eligible Households whose gross household income upon initial occupancy is no more than eighty percent (80%) of AMI.
  - (iii) Rent, including utilities and any other fees routinely charged to tenants and approved by CDD, shall not exceed thirty percent (30%) of the gross household income of the AHO Eligible Household occupying the AHO Dwelling Unit or other similar standard pursuant to an applicable housing subsidy program which has been approved by CDD.



- (iv) After initial occupancy, the gross household income of an AHO Eligible Household shall be verified annually, or on such other basis required by an applicable housing subsidy program which has been approved by CDD, to determine continued eligibility and rent, in accordance with policies, standards, and procedures established by CDD.
  - (v) An AHO Eligible Household may continue to rent an AHO Dwelling Unit after initial occupancy even if the AHO Eligible Household's gross household income exceeds the eligibility limits set forth above, but may not exceed one hundred twenty percent (120%) of AMI for more than one year after that Eligible Household's gross household income has been verified to exceed such percentage, unless otherwise restricted pursuant to an applicable housing subsidy program which has been approved by CDD.
  - (vi) Notwithstanding the requirements set forth in (i) through (v) above, an owner may voluntarily choose to charge a lower rent than as provided herein for AHO Dwelling Units.
- (d) For owner-occupied AHO Dwelling Units:
- (i) The gross household income of an AHO Eligible Household upon initial occupancy shall be no more than one-hundred percent (100%) of AMI.
  - (ii) At least fifty percent (50%) of AHO Dwelling Units shall be sold to AHO Eligible Households whose gross household income upon initial occupancy is no more than eighty percent (80%) of AMI.
  - (iii) The initial sale price of an AHO Dwelling Unit shall be approved by CDD and shall be determined to ensure that the monthly housing payment (which shall include debt service at prevailing mortgage loan interest rates, utilities, condominium or related fees, insurance, real estate taxes, and parking fees, if any) shall not exceed thirty percent (30%) of the monthly income of:
    - 1) A household earning ninety percent (90%) of AMI, in the case of an AHO Dwelling Unit to be sold to an AHO Eligible Household whose income upon initial

occupancy is no more than one-hundred percent (100%) of AMI; or

- 2) A household earning seventy percent (70%) of AMI, in the case of an AHO Dwelling Unit to be sold to an AHO Eligible Household whose income upon initial occupancy is no more than eighty percent (80%) of AMI
- (e) An AHO Project meeting the standards set forth herein as approved by CDD shall not be required to comply with the Inclusionary Housing Requirements set forth in 11.203 of this Zoning Ordinance.

#### 11.207.4 Use

- (a) In all zoning districts, an AHO Project may contain single-family, two-family, townhouse, or multifamily dwellings as-of-right. Townhouse and Multifamily Special Permit procedures shall not apply.
- (b) An AHO Project may contain active non-residential uses on the ground floor as they may be permitted as-of-right in the base zoning district or the overlay district(s) that are applicable to a lot, which for the purpose of this Section shall be limited to Institutional Uses listed in Section 4.33, Office Uses listed in Section 4.34 Paragraphs a. through e., and Retail and Consumer Service uses listed in Section 4.35 that provide services to the general public.

#### 11.207.5 Development Standards

##### 11.207.5.1 General Provisions

- (a) For the purposes of this Section, the phrase “District Development Standards” shall refer to the development standards of the base zoning district as they may be modified by the development standards of all overlay districts (with the exception of this Affordable Housing Overlay) that are applicable to a lot.
- (b) District Dimensional Standards shall include the most permissive standards allowable on a lot, whether such standards are permitted as-of-right or allowable by special permit. A District Dimensional Standard that is allowable by special permit shall include any nondiscretionary requirements or limitations that would otherwise apply.

- (c) An AHO Project that conforms to the following development standards shall not be subject to other limitations that may be set forth in Article 5.000 or other Sections of this Zoning Ordinance, except as otherwise stated in this Section.

11.207.5.2 Dimensional Standards for AHO Projects

11.207.5.2.1 Building Height and Stories Above Grade. For an AHO Project, the standards set forth below shall apply in place of any building height limitations set forth in the District Development Standards.

- (a) Where the District Dimensional Standards set forth a maximum residential building height of forty (40) feet or less, an AHO Project shall contain no more than four (4) Stories Above Grade and shall have a maximum height of forty-five (45) feet, as measured from existing Grade. For AHO Projects containing active non-residential uses on the ground floor, the maximum height may be increased to fifty (50) feet but the number of Stories Above Grade shall not exceed four (4) stories.
- (b) Where the District Dimensional Standards set forth a maximum residential building height of more than forty (40) feet but not more than fifty (50) feet, an AHO Project shall contain no more than six (6) Stories Above Grade and shall have a maximum height of sixty-five (65) feet, as measured from existing Grade, except as further limited below. For AHO Projects containing active non-residential uses on the ground floor, the maximum height may be increased to seventy (70) feet but the number of Stories Above Grade shall not exceed six (6) stories.
  - (i) Except where the AHO Project abuts a non-residential use, portions of an AHO Project that are within thirty-five (35) feet of a district whose District Dimensional Standards allow a maximum residential building height of forty (40) feet or less shall be limited by the provisions of Paragraph (a) above, except that if the AHO project parcel extends into that District, then the height limitation shall only extend thirty five (35) feet from the property line.
- (c) Where the District Dimensional Standards set forth a maximum residential building height of more than fifty (50) feet, an AHO Project shall contain no more than seven (7) Stories Above Grade and shall have a maximum height



of eighty (80) feet, as measured from existing Grade, except as further limited below.

- (i) Except where the AHO Project abuts a non-residential use, portions of an AHO Project that are within thirty-five (35) feet of a district whose District Dimensional Standards allow a maximum residential building height of forty (40) feet or less shall be reduced to a minimum of five (5) Stories Above Grade or a maximum height of sixty (60) feet, as measured from existing Grade, except that if the AHO project parcel extends into that District, then the height limitation shall only extend thirty five (35) feet from the property line.
- (d) The Height Exceptions set forth in Section 5.23 of this Zoning Ordinance shall apply when determining the building height of an AHO Project.

#### 11.207.5.2.2 Residential Density

- (a) Where the District Dimensional Standards establish a maximum floor area ratio (FAR) of less than 1.00, an AHO Project shall not exceed an FAR of 2.00. Otherwise, there shall be no maximum FAR for an AHO Project.
- (b) There shall be no minimum lot area per dwelling unit for an AHO Project.

#### 11.207.5.2.3 Yard Setbacks

- (a) For the purpose of this Section, the applicable District Dimensional Standards shall not include yard setback requirements based on a formula calculation as provided in Section 5.24.4 of the Zoning Ordinance, but shall include non-derived minimum yard setback requirements set forth in Article 5.000 or other Sections of this Zoning Ordinance.
- (b) Front Yards. An AHO Project shall have a minimum front yard setback of 15 feet, except where the District Dimensional Standards establish a less restrictive requirement, or may be reduced to the average of the front yard setbacks of the four (4) nearest pre-existing principal buildings that contain at least two Stories Above Grade and directly front the same side of the street as the AHO Project, or may be reduced to a minimum of ten (10) feet in the case of an AHO Project on a corner lot. Where the District Dimensional Standards set forth different requirements for residential and non-residential uses, the

non-residential front yard setback requirement shall apply to the entire AHO Project if the Ground Story contains a non-residential use as set forth in Section 11.207.4 Paragraph (b) above; otherwise, the residential front yard setback shall apply.

- (c) Side Yards. An AHO Project shall have a minimum side yard setback of seven and one-half (7.5) feet, or may be reduced to the minimum side yard setback set forth in the District Dimensional Standards for residential uses that is not derived by formula if it is less restrictive.
- (d) Rear Yards. An AHO Project shall have a minimum rear yard setback of twenty (20) feet, or may be reduced to the minimum rear yard setback set forth in the District Dimensional Standards for residential uses that is not derived by formula if it is less restrictive.
- (e) Projecting eaves, chimneys, bay windows, balconies, open fire escapes and like projections which do not project more than three and one-half (3.5) feet from the principal exterior wall plane, and unenclosed steps, unroofed porches and the like which do not project more than ten (10) feet beyond the line of the foundation wall and which are not over four (4) feet above Grade, may extend beyond the minimum yard setback.
- (f) Bicycle parking spaces, whether short-term or long-term, and appurtenant structures such as coverings, sheds, or storage lockers may be located within a required yard setback but no closer than seven and one-half (7.5) feet to an existing principal residential structure on an abutting lot.

#### 11.207.5.2.4 Open Space

- (a) Except where the District Dimensional Standards establish a less restrictive requirement or as otherwise provided below, the minimum percentage of open space to lot area for an AHO Project shall be thirty percent (30%). However, the minimum percentage of open space to lot area may be reduced to no less than fifteen percent (15%) if the AHO Project includes the preservation and protection of an existing building included on the State Register of Historic Places.
- (b) The required open space shall be considered Private Open Space but shall be subject to the limitations set forth below and shall not be subject to the dimensional and other limitations set forth in Section 5.22 of this Zoning

Ordinance. Private Open Space shall exclude parking and driveways for automobiles.

- (c) All of the required open space that is located at grade shall meet the definition of Permeable Open Space as set forth in this Zoning Ordinance.
- (d) The required open space shall be located at Grade or on porches and decks that are no higher than the floor elevation of the lowest Story Above Grade, except that up to twenty five percent (25%) of the required open space may be located at higher levels, such as balconies and decks, only if it is accessible to all occupants of the building.
- (e) For the purpose of this Affordable Housing Overlay, area used for covered or uncovered bicycle parking spaces that are not contained within a building shall be considered Private Open Space.

#### 11.207.5.3 Standards for Existing Buildings

A building that is in existence as of the effective date of this Ordinance and does not conform to the standards set forth in Section 11.207.5.2 above may be altered, reconstructed, extended, relocated, and/or enlarged for use as an AHO Project as-of-right in accordance with the standards set forth below. Except as otherwise stated, the required dimensional characteristics of the building and site shall be those existing at the time of the conversion to an AHO Project if they do not conform to the standards of Section 11.207.5.2. The following modifications shall be permitted as-of-right, notwithstanding the limitations set forth in Article 8.000 of this Zoning Ordinance:

- (a) Construction occurring entirely within an existing structure, including the addition of Gross Floor Area within the interior of the existing building envelope that may violate or further violate FAR limitations set forth in Section 11.207.5.2, and including any increase to the number of dwelling units within the existing building, provided that the resulting number of Stories Above Grade is not more than the greater of the existing number of Stories Above Grade or the existing height of the building divided by 10 feet.
- (b) The relocation, enlargement, or addition of windows, doors, skylights, or similar openings to the exterior of a building.



- (c) The addition of insulation to the exterior of an existing exterior wall to improve energy efficiency, provided that the resulting exterior plane of the wall shall either conform to the yard setback standards set forth in Section 11.207.5.2 above or shall not intrude more than eight (8) inches further into the existing yard setback and provided that the lot shall either conform to the open space standards set forth in Section 11.207.5.2 or shall not decrease the existing open space by more than 5% or 100 square feet, whichever is greater.
- (d) The installation of exterior features necessary for the existing structure to be adapted to meet accessibility standards for persons with disabilities, including but not limited to walkways, ramps, lifts, or elevators, which may violate or further violate of the dimensional requirements set forth in Section 11.207.5.2.
- (e) The repair, reconstruction, or replacement of any preexisting nonconforming portions of a building including but not limited to porches, decks, balconies, bay windows and building additions, provided that the repair, reconstruction or replacement does not exceed the original in footprint, volume, or area.
- (f) Any other alterations, additions, extensions, or enlargements to the existing building that are not further in violation of the dimensional requirements set forth in Section 11.207.5.2 above.

#### 11.207.6 Parking and Bicycle Parking

The limitations set forth in Article 6.000 of this Zoning Ordinance shall be modified as set forth below for an AHO Project.

##### 11.207.6.1 Required Off-Street Accessory Parking

- (a) There shall be no required minimum number of off-street parking spaces for an AHO Project except to the extent necessary to conform to other applicable laws, codes, or regulations.
- (b) An AHO Project of greater than 20 units, for which no off-street parking is provided shall provide or have access to either on-street or off-street facilities that can accommodate passenger pick-up and drop-off by motor vehicles and short-term loading by moving vans or small delivery trucks. The Cambridge Traffic, Parking, and Transportation Department shall certify to the Superintendent of Buildings

that the AHO Project is designed to reasonably accommodate such activity without causing significant hazard or congestion. The Cambridge Director of Traffic, Parking, and Transportation shall have the authority to promulgate regulations for the implementation of the provisions of this Paragraph.

**11.207.6.2 Accessory Parking Provided Off-Site**

- (a) Off-street parking facilities may be shared by multiple AHO Projects, provided that the requirements of this Section are met by all AHO Dwelling Units served by the facility and the facility is within 1,000 feet of all AHO Projects that it serves.
- (b) Off-street parking facilities for an AHO Project may be located within existing parking facilities located within 1,000 feet of the AHO Project and in a district where parking is permitted as a principal use or where the facility is a pre-existing nonconforming principal use parking facility, provided that the owner of the AHO Project shall provide evidence of fee ownership, a long-term lease agreement or renewable short-term lease agreement, recorded covenant, or comparable legal instrument to guarantee, to the reasonable satisfaction of the Superintendent of Buildings, that such facilities will be available to residents of the AHO Project.

**11.207.6.3 Modifications to Design and Layout Standards for Off-Street Parking**

- (a) Notwithstanding Section 6.43.2, parking spaces may be arranged in tandem without requiring a special permit, provided that no more than two cars may be parked within any tandem parking space.
- (b) Notwithstanding Section 6.43.6, owners of adjacent properties may establish common driveways under mutual easements without requiring a special permit.
- (c) Notwithstanding Paragraph 6.44.1(a), on-grade open parking spaces may be located within ten (10) feet but not less than five (5) feet from the Ground Story of a building on the same lot or seven and one-half (7.5) feet from the Ground Story of a building on an adjacent lot without requiring a special permit, provided that such parking spaces are screened from buildings on abutting lots by a fence or other dense year-round visual screen.

- (d) Notwithstanding Paragraph 6.44.1(b), on-grade open parking spaces and driveways may be located within five (5) feet of a side or rear property line without requiring a special permit, provided that screening is provided in the form of a fence or other dense year-round visual screen at the property line, unless such screening is waived by mutual written agreement of the owner of the lot and the owner of the abutting lot.

#### 11.207.6.4 Modifications to Bicycle Parking Standards

- (a) Notwithstanding Section 6.104, long-term or short-term bicycle parking spaces may be located anywhere on the lot for an AHO Project or on an adjacent lot in common ownership or under common control.
- (b) Notwithstanding Section 6.107.5, up to 20 long-term bicycle parking spaces may be designed to meet the requirements for Short-Term Bicycle Parking Spaces, so long as they are covered from above to be protected from precipitation.
- (c) The requirement for short-term bicycle parking shall be waived where only four or fewer short-term bicycle parking spaces would otherwise be required.
- (d) The number of required bicycle parking spaces shall be reduced by half, up to a maximum reduction of 28 spaces, where a standard-size (19-dock) Public Bicycle Sharing Station is provided on the lot or by the developer of the AHO Project on a site within 500 feet of the lot, with the written approval of the City if located on a public street or other City property, or otherwise by legally enforceable mutual agreement with the owner of the land on which the station is located as approved by the Community Development Department. If additional Public Bicycle Sharing Station docks are provided, the number of required bicycle parking spaces may be further reduced at a rate of 0.5 bicycle parking space per additional Public Bicycle Sharing Station dock, up to a maximum reduction of half of the required number of spaces.
- (e) For AHO Dwelling Units created within an existing building, bicycle parking spaces meeting the standards of this Zoning Ordinance shall not be required but are encouraged to be provided to the extent practical given the limitations of the existing structure. Bicycle parking spaces shall be provided, as required by this Zoning Ordinance, for



dwelling units in an AHO Project that are constructed fully outside the envelope of the existing structure.

11.207.6.5 Transportation Demand Management

An AHO Project not providing off-street parking at a ratio of 0.4 space per dwelling unit or more shall provide, in writing, to the Community Development Department a Transportation Demand Management program containing the following measures, at a minimum:

- (a) Offering either a free annual membership in a Public Bicycle Sharing Service, at the highest available tier where applicable, or a 50% discounted MBTA combined subway and bus pass for six months or pass of equivalent value, to up to two individuals in each household upon initial occupancy of a unit.
- (b) Providing transit information in the form of transit maps and schedules to each household upon initial occupancy of a unit, or providing information and a real-time transit service screen in a convenient common area of the building such as an entryway or lobby.

11.207.7 Building and Site Design Standards for New Development

11.207.7.1 General Provisions

- (a) Except where otherwise stated, the Project Review requirements set forth in Article 19.000 of this Zoning Ordinance and any design standards set forth in Section 19.50 or elsewhere in the Zoning Ordinance shall be superseded by the following standards for an AHO Project.
- (b) The following design standards shall apply to new construction and to additions to existing structures. Except as otherwise provided, an existing building that is altered or moved to accommodate an AHO Project shall not be subject to the following standards, provided that such alterations do not create a condition that is in greater nonconformance with such standards than the existing condition.

11.207.7.2 Site Design and Arrangement

- (a) The area directly between the front lot line and the principal wall plane of the building nearest to the front lot line shall consist of any combination of landscaped area, hardscaped area accessible to pedestrians and bicyclists,

and usable spaces such as uncovered porches, patios, or balconies. Parking shall not be located within such area, except for driveway access which shall be limited to a total of thirty (30) feet of width for any individual driveway for each one hundred (100) feet of lot frontage.

- (b) Pedestrian entrances to buildings shall be visible from the street, except where the building itself is not visible from the street due to its location. All pedestrian entrances shall be accessible by way of access routes that are separated from motor vehicle access drives.
- (c) A building footprint exceeding two hundred and fifty (250) feet in length, measured parallel to the street, shall contain a massing recess extending back at least fifteen (15) feet in depth measured from and perpendicular to the front lot line and at least fifteen (15) feet in width measured parallel to the front lot line so that the maximum length of unbroken façade is one hundred fifty (150) feet.

#### 11.207.7.3 Building Façades

- (a) At least twenty percent (20%) of the area of building façades facing a public street or public open space shall consist of clear glass windows. For buildings located in a Business A (BA), Business A-2 (BA-2), Business B (BB) or Business C (BC) zoning district, this figure shall be increased to thirty percent (30%) for non-residential portions of the building, if any.
- (b) Building façades shall incorporate architectural elements that project or recess by at least two feet from the adjacent section of the façade. Such projecting or recessed elements shall occur on an average interval of 40 linear horizontal feet or less for portions of the façade directly facing a public street, and on an average interval of 80 linear horizontal feet or less for other portions of the façade. Such projecting or recessed elements shall not be required on the lowest Story Above Grade or on the highest Story Above Grade, and shall not be required on the highest two Stories Above Grade of a building containing at least six Stories Above Grade. The intent is to incorporate elements such as bays, balconies, cornices, shading devices, or similar architectural elements that promote visual interest and residential character, and to allow variation at the ground floor and on upper floors where a different architectural treatment may be preferable.

#### 11.207.7.4 Ground Stories and Stories Below Grade

- (a) The elevation at floor level of the Ground Story shall be at the mean Grade of the abutting public sidewalk, or above such mean Grade by not more than four feet. Active non-residential uses at the Ground Story shall be accessible directly from the sidewalk without requiring use of stairs or a lift. The requirements of this paragraph shall not apply if it is determined by the City Engineer that a higher Ground Story elevation is necessary for the purpose of flood protection.
- (b) Where structured parking is provided within the Ground Story of a building, the portion of the building immediately behind the front wall plane shall consist of residential units, common areas, or other populated portions of the building in order to screen the provided parking over at least seventy-five percent (75%) of the length of the façade measured parallel to the street and excluding portions of the façade used for driveway access. On a corner lot, the requirements of this Paragraph shall only apply along one street.
- (c) The façade of a Ground Story facing a public street shall consist of expanses no longer than twenty-five (25) feet in length, measured parallel to the street, which contain no transparent windows or pedestrian entryways.
- (d) If the Ground Story is designed to accommodate active non-residential uses, the following additional standards shall apply:
  - (i) the height of the Ground Story for that portion of the building containing active non-residential uses shall be at least fifteen (15) feet;
  - (ii) the depth of the space designed for active non-residential uses shall be at least thirty-five (35) feet on average measured from the portion of the façade that is nearest to the front lot line in a direction perpendicular to the street, and measured to at least one street in instances where the space abuts two or more streets; and
  - (iii) that portion of the Ground Story façade containing active non-residential uses shall consist of at least thirty percent (30%) transparent glass windows or, if the use is a retail or consumer service establishment, at least thirty percent (30%) transparent glass windows, across the combined façade on both streets in the case of a corner lot.



- (e) Ground Stories shall be designed to accommodate at least one space, with a total frontage equaling at least fifty percent (50%) of the existing retail frontage, for an active non-residential use, which may include retail or consumer establishments as well as social service facilities supporting the mission of the owner of the AHO Project, on sites that are located in a Business base zoning district, and where the project site contains or has contained a retail and or consumer service use at any point within the past two years prior to application for a building permit for an AHO Project.
- (f) Private living spaces within dwelling units, including bedrooms, kitchens, and bathrooms, may only be contained within Stories Above Grade. Stories Below Grade may only contain portions of dwelling units providing entries, exits, or mechanical equipment, or common facilities for residents of the building, such as lobbies, recreation rooms, laundry, storage, parking, bicycle parking, or mechanical equipment

11.207.7.5 Mechanical Equipment, Refuse Storage, and Loading Areas

- (a) All mechanical equipment, refuse storage, or loading areas serving the building or its occupants that are (1) carried above the roof, (2) located at the exterior building wall or (3) located outside the building, shall meet the requirements listed below. Mechanical equipment includes, but is not limited to, ventilation equipment including exhaust fans and ducts, air conditioning equipment, elevator bulkheads, heat exchangers, transformers and any other equipment that, when in operation, potentially creates a noise detectable off the lot. The equipment and other facilities: (a) Shall not be located within any required setback. This Paragraph (a) shall not apply to electrical equipment whose location is mandated by a recognized public utility, provided that project plans submitted for review by the City identify a preferred location for such equipment.
- (b) When on the ground, shall be permanently screened from view from adjacent public streets that are within 100 feet of the building, or from the view from abutting property in separate ownership at the property line. The screening shall consist of a dense year-round screen equal or greater in height at the time of installation than the equipment or facilities to be screened, or a fence of equal or greater

height that is comparable in quality to the materials used on the principal facades of the building, with no more than twenty-five (25) percent of the face of the fence open with adjacent planting.

- (c) When carried above the roof, shall be set back from the principal wall plane by a dimension equal to at least the height of the equipment and permanently screened from view, from the ground, from adjacent public streets and any abutting residentially used lot or lots in a residential zoning district. The screening shall be at least seventy-five percent (75%) opaque and uniformly distributed across the screening surface, or opaque to the maximum extent permissible if other applicable laws, codes, or regulations mandate greater openness.
- (d) Shall meet all city, state and federal noise regulations, as applicable, as certified by a professional acoustical engineer if the Department of Inspectional Services deems such certification necessary.
- (e) That handle trash and other waste, shall be contained within the building or screened as required in this Section until properly disposed of.

#### 11.207.7.6 Environmental Design Standards

- (a) This Section shall not waive the Green Building Requirements set forth in Section 22.20 of this Zoning Ordinance that may otherwise apply to an AHO Project.
- (b) Where the provisions of the Flood Plain Overlay District apply to an AHO Project, the performance standards set forth in Section 20.70 of this Zoning Ordinance shall apply; however, a special permit shall not be required.
- (c) An AHO Project shall be subject to other applicable laws, regulations, codes, and ordinances pertaining to environmental standards.
- (d) New outdoor light fixtures installed in an AHO Project shall be fully shielded and directed to prevent light trespass onto adjacent residential lots.

#### 11.207.8 Advisory Design Consultation Procedure

Prior to application for a building permit, the developer of an AHO Project shall comply with the following procedure, which is intended to provide an opportunity for non-binding community and staff input into the design of the project.

- (a) The intent of this non-binding review process is to advance the City's desired outcomes for the form and character of AHO Projects. To promote the City's goal of creating more affordable housing units, AHO Projects are permitted to have a greater height, scale, and density than other developments permitted by the zoning for a given district. This procedure is intended to promote design outcomes that are compatible with the existing neighborhood context or with the City's future planning objectives for the area.
- (b) The City's "Design Guidelines for Affordable Housing Overlay," along with other design objectives and guidelines established for the part of the city in which the AHO Project is located, are intended to inform the design of AHO Projects and to guide the Planning Board's consultation and report as set forth below. It is intended that designers of AHO Projects, City staff, the Planning Board, and the general public will be open to creative variations from any detailed provisions set forth in such objectives and guidelines as long as the core values expressed are being served.
- (c) At least two community meetings shall be scheduled at a time and location that is convenient to residents in proximity to the project site. The Community Development Department (CDD) shall be notified of the time and location of such meetings, and shall give notification to abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within three hundred feet of the property line of the lot on which the AHO Project is proposed and to any individual or organization who each year files with CDD a written request for such notification, or to any other individual or organization CDD may wish to notify.
  - (i) The purpose of the first community meeting shall be for the developer to share the site and street context analysis with neighborhood residents and other interested parties prior to building design, and receive feedback from community members.
  - (ii) The purpose of the subsequent community meeting(s) shall be to present preliminary project designs, answer questions from neighboring residents and other interested members of the public, and receive feedback on the design. The date(s), time(s), location(s), attendance, materials presented, and comments received at such



meeting(s) shall be documented and provided to CDD.

- (d) Following one or more such community meeting(s), the developer shall prepare the following materials for review by the Planning Board. CDD shall review to certify that the submitted written and graphic materials provide the required information in sufficient detail. All drawings shall be drawn to scale, shall include a graphic scale and north arrow for orientation, and shall provide labeled distances and dimensions for significant building and site features.
  - (i) A context map indicating the location of the project and surrounding land uses, including transportation facilities.
  - (ii) A context analysis, discussed with CDD staff, including existing front yard setbacks, architectural character, and unique features that inform and influence the design of the AHO Project.
  - (iii) An existing conditions site plan depicting the boundaries of the lot, the locations of buildings, open space features, parking areas, trees, and other major site features on the lot and abutting lots, and the conditions of abutting streets.
  - (iv) A proposed conditions site plan depicting the same information above as modified to depict the proposed conditions, including new buildings (identifying building entrances and uses on the ground floor and possible building roof deck) and major anticipated changes in site features.
  - (v) A design statement on how the proposed project attempts to reinforce existing street/context qualities and mitigates the planned project's greater massing, height, density, &c.
  - (vi) Floor plans of all proposed new buildings and existing buildings to remain on the lot.
  - (vii) Elevations and cross-section drawings of all proposed new buildings and existing buildings to remain on the lot, depicting the distances to lot lines and the heights of surrounding buildings, and labeling the proposed materials on each façade elevation.

- (viii) A landscape plan depicting and labeling all hardscape, permeable, and vegetated areas proposed for the site along with other structures or appurtenances on the site.
  - (ix) Plans of parking and bicycle parking facilities, as required by Section 6.50 of this Zoning Ordinance.
  - (x) Materials palettes cataloguing and depicting with photographs the proposed façade and landscape materials.
  - (xi) Existing conditions photographs from various vantage points on the public sidewalk, including photos of the site and of the surrounding urban context.
  - (xii) Proposed conditions perspective renderings from a variety of vantage points on the public sidewalk, including locations adjacent to the site as well as longer views if proposed buildings will be visible from a distance.
  - (xiii) A dimensional form, in a format provided by CDD, along with any supplemental materials, summarizing the general characteristics of the project and demonstrating compliance with applicable zoning requirements.
  - (xiv) A brief project narrative describing the project and the design approach, and indicating how the project has been designed in relation to the citywide urban design objectives set forth in Section 19.30 of the Zoning Ordinance, any design guidelines that have been established for the area, and the “Design Guidelines for Affordable Housing Overlay.”
  - (xv) Viewshed analysis and shadow studies that show the impact on neighboring properties with existing Solar Energy Systems.
  - (xvi) An initial development budget that shows anticipated funding sources and uses including developer fee and overhead.
- (e) Within 65 days of receipt of a complete set of materials by CDD, the Planning Board shall schedule a design consultation as a general business matter at a public meeting and shall give notification to abutters, owners of land directly opposite on any public or private street or

way, and abutters to the abutters within three hundred feet of the property line of the lot on which the AHO Project is proposed and to any individual or organization who each year files with CDD a written request for such notification, or to any other individual or organization CDD may wish to notify. The materials shall be made available to the public in advance, and the Planning Board may receive written comments prior to the meeting from City staff, abutters, and members of the public.

- (f) At the scheduled design consultation, the Planning Board shall hear a presentation of the proposal from the developer and oral comments from the public. The Board may ask questions or seek additional information from the developer or from City staff.
- (g) The Planning Board shall evaluate the proposal for general compliance with the requirements of this Section, for consistency with City development guidelines prepared for the proposal area and the “Design Guidelines for Affordable Housing Overlay,” for appropriateness in terms of other planned or programmed public or private development activities in the vicinity, and for consistency with the Citywide Urban Design Objectives set forth in Section 19.30. The Board may also suggest specific project adjustments and alterations to further the purposes of this Ordinance. The Board shall communicate its findings in a written report provided to the developer and to CDD within 20 days of the design consultation.
- (h) The developer may then make revisions to the design, in consultation with CDD staff, and shall submit a revised set of documents along with a narrative summary of the Planning Board’s comments and changes made in response to those comments.
- (i) The Planning Board shall review and discuss the revised documents at a second design consultation meeting, which shall proceed in accordance with Paragraphs (c) and (d) above. Following the second design consultation, the Planning Board may submit a revised report and either the revised report or if there are no revisions the initial report shall become the final report (the “Final Report”). Any additional design consultations to review further revisions may occur only at the discretion and on the request of the developer or the Cambridge Affordable Housing Trust.



- (j) The Final Report from the Planning Board shall be provided to the Superintendent of Buildings to certify compliance with the procedures set forth herein.

11.207.9 Implementation of Affordable Housing Overlay

- (a) The City Manager shall have the authority to promulgate regulations for the implementation of the provisions of this Section 11.207. There shall be a sixty-day review period, including a public meeting, to receive public comments on draft regulations before final promulgation.
- (b) The Community Development Department may develop standards, design guidelines, and procedures appropriate to and consistent with the provisions of this Sections 11.207 and the above regulations.

11.207.10 Enforcement of Affordable Housing Overlay

The Community Development Department shall certify in writing to the Superintendent of Buildings that all applicable provisions of this Section have been met before issuance of any building permit for any AHO Project, and shall further certify in writing to the Superintendent of Buildings that all documents have been filed and all actions taken necessary to fulfill the requirements of this Section before the issuance of any certificate of occupancy for any such project.

11.207.11 Review of Affordable Housing Overlay

- (a) Annual Report. CDD shall provide an annual status report to the City Council, beginning eighteen (18) months after ordination and continuing every year thereafter. The report shall contain the following information:
  - (i) List of sites considered for affordable housing development under the Affordable Housing Overlay, to the extent known by CDD, including site location, actions taken to initiate an AHO Project, and site status;
  - (ii) Description of each AHO Project underway or completed, including site location, number of units, unit types (number of bedrooms), tenure, and project status; and
  - (iii) Number of residents served by AHO Projects.
- (b) Five-Year Progress Review. Five (5) years after ordination, CDD shall provide to the City Council, Planning Board and

the Affordable Housing Trust, for its review, a report that assesses the effectiveness of the Affordable Housing Overlay in increasing the number of affordable housing units in the city, distributing affordable housing across City neighborhoods, and serving the housing needs of residents. The report shall also assess the effectiveness of the Advisory Design Consultation Procedure in gathering meaningful input from community members and the Planning Board and shaping AHO Projects to be consistent with the stated Design Objectives. The report shall evaluate the success of the Affordable Housing Overlay in balancing the goal of increasing affordable housing with other City planning considerations such as urban form, neighborhood character, environment, and mobility. The report shall discuss citywide outcomes as well as site-specific outcomes.

Passed to a second reading as amended at the City Council meeting held on September 14, 2020 and on or after October 5, 2020 the question comes on passage to be ordained.

Attest:- Anthony I. Wilson  
City Clerk

**Assembly Bill No. 1763**

**CHAPTER 666**

An act to amend Section 65915 of the Government Code, relating to housing.

[Approved by Governor October 9, 2019. Filed with Secretary of State October 9, 2019.]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 1763, Chiu. Planning and zoning: density bonuses: affordable housing.

Existing law, known as the Density Bonus Law, requires a city or county to provide a developer that proposes a housing development within the jurisdictional boundaries of that city or county with a density bonus and other incentives or concessions for the production of lower income housing units, or for the donation of land within the development, if the developer agrees to construct a specified percentage of units for very low income, low-income, or moderate-income households or qualifying residents and meets other requirements. Existing law provides for the calculation of the amount of density bonus for each type of housing development that qualifies under these provisions.

This bill would additionally require a density bonus to be provided to a developer who agrees to construct a housing development in which 100% of the total units, exclusive of managers' units, are for lower income households, as defined. However, the bill would provide that a housing development that qualifies for a density bonus under its provisions may include up to 20% of the total units for moderate-income households, as defined. The bill would also require that a housing development that meets these criteria receive 4 incentives or concessions under the Density Bonus Law and, if the development is located within ½ of a major transit stop, a height increase of up to 3 additional stories or 33 feet. The bill would generally require that the housing development receive a density bonus of 80%, but would exempt the housing development from any maximum controls on density if it is located within ½ mile of a major transit stop. The bill would prohibit a housing development that receives a waiver from any maximum controls on density under these provisions from receiving a waiver or reduction of development standards pursuant to existing law, other than as expressly provided in the bill. The bill would also make various nonsubstantive changes to the Density Bonus Law.

Existing law requires that an applicant for a density bonus agree to, and that the city and county ensure, the continued affordability of all very low and low-income rental units that qualified the applicant for a density bonus for at least 55 years, as provided. Existing law requires that the rent for



lower income density bonus units be set at an affordable rent, as defined in specified law.

This bill, for units, including both base density and density bonus units, in a housing development that qualifies for a density bonus under its provisions as described above, would instead require that the rent for at least 20% of the units in that development be set at an affordable rent, defined as described above, and that the rent for the remaining units be set at an amount consistent with the maximum rent levels for a housing development that receives an allocation of state or federal low-income housing tax credits from the California Tax Credit Allocation Committee.

Existing law, upon the request of the developer, prohibits a city, county, or city and county from requiring a vehicular parking ratio for a development meeting the eligibility requirements under the Density Bonus Law that exceeds specified ratios. For a development that consists solely of rental units, exclusive of a manager’s unit or units, with an affordable housing cost to lower income families, as provided in specified law, and that is a special needs housing development, as defined, existing law limits that vehicular parking ratio to 0.3 spaces per unit.

This bill would instead, upon the request of the developer, prohibit a city, county, or city and county from imposing any minimum vehicular parking requirement for a development that consists solely of rental units, exclusive of a manager’s unit or units, with an affordable housing cost to lower income families and is either a special needs housing development or a supportive housing development, as those terms are defined.

By adding to the duties of local planning officials with respect to the award of density bonuses, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. Section 65915 of the Government Code, as amended by Chapter 937 of the Statutes of 2018, is amended to read:

65915. (a) (1) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall comply with this section. A city, county, or city and county shall adopt an ordinance that specifies how compliance with this section will be implemented. Failure to adopt an ordinance shall not relieve a city, county, or city and county from complying with this section.

(2) A local government shall not condition the submission, review, or approval of an application pursuant to this chapter on the preparation of an

additional report or study that is not otherwise required by state law, including this section. This subdivision does not prohibit a local government from requiring an applicant to provide reasonable documentation to establish eligibility for a requested density bonus, incentives or concessions, as described in subdivision (d), waivers or reductions of development standards, as described in subdivision (e), and parking ratios, as described in subdivision (p).

(3) In order to provide for the expeditious processing of a density bonus application, the local government shall do all of the following:

(A) Adopt procedures and timelines for processing a density bonus application.

(B) Provide a list of all documents and information required to be submitted with the density bonus application in order for the density bonus application to be deemed complete. This list shall be consistent with this chapter.

(C) Notify the applicant for a density bonus whether the application is complete in a manner consistent with the timelines specified in Section 65943.

(D) (i) If the local government notifies the applicant that the application is deemed complete pursuant to subparagraph (C), provide the applicant with a determination as to the following matters:

(I) The amount of density bonus, calculated pursuant to subdivision (f), for which the applicant is eligible.

(II) If the applicant requests a parking ratio pursuant to subdivision (p), the parking ratio for which the applicant is eligible.

(III) If the applicant requests incentives or concessions pursuant to subdivision (d) or waivers or reductions of development standards pursuant to subdivision (e), whether the applicant has provided adequate information for the local government to make a determination as to those incentives, concessions, or waivers or reductions of development standards.

(ii) Any determination required by this subparagraph shall be based on the development project at the time the application is deemed complete. The local government shall adjust the amount of density bonus and parking ratios awarded pursuant to this section based on any changes to the project during the course of development.

(b) (1) A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (f), and, if requested by the applicant and consistent with the applicable requirements of this section, incentives or concessions, as described in subdivision (d), waivers or reductions of development standards, as described in subdivision (e), and parking ratios, as described in subdivision (p), when an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section, that will contain at least any one of the following:

(A) Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(B) Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(C) A senior citizen housing development, as defined in Sections 51.3 and 51.12 of the Civil Code, or a mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.

(D) Ten percent of the total dwelling units in a common interest development, as defined in Section 4100 of the Civil Code, for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.

(E) Ten percent of the total units of a housing development for transitional foster youth, as defined in Section 66025.9 of the Education Code, disabled veterans, as defined in Section 18541, or homeless persons, as defined in the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.). The units described in this subparagraph shall be subject to a recorded affordability restriction of 55 years and shall be provided at the same affordability level as very low income units.

(F) (i) Twenty percent of the total units for lower income students in a student housing development that meets the following requirements:

(I) All units in the student housing development will be used exclusively for undergraduate, graduate, or professional students enrolled full time at an institution of higher education accredited by the Western Association of Schools and Colleges or the Accrediting Commission for Community and Junior Colleges. In order to be eligible under this subclause, the developer shall, as a condition of receiving a certificate of occupancy, provide evidence to the city, county, or city and county that the developer has entered into an operating agreement or master lease with one or more institutions of higher education for the institution or institutions to occupy all units of the student housing development with students from that institution or institutions. An operating agreement or master lease entered into pursuant to this subclause is not violated or breached if, in any subsequent year, there are not sufficient students enrolled in an institution of higher education to fill all units in the student housing development.

(II) The applicable 20-percent units will be used for lower income students. For purposes of this clause, “lower income students” means students who have a household income and asset level that does not exceed the level for Cal Grant A or Cal Grant B award recipients as set forth in paragraph (1) of subdivision (k) of Section 69432.7 of the Education Code. The eligibility of a student under this clause shall be verified by an affidavit, award letter, or letter of eligibility provided by the institution of higher education that the student is enrolled in, as described in subclause (I), or by the California Student Aid Commission that the student receives or is eligible for financial aid, including an institutional grant or fee waiver, from the college or university, the California Student Aid Commission, or the federal government shall be sufficient to satisfy this subclause.

(III) The rent provided in the applicable units of the development for lower income students shall be calculated at 30 percent of 65 percent of the area median income for a single-room occupancy unit type.

(IV) The development will provide priority for the applicable affordable units for lower income students experiencing homelessness. A homeless service provider, as defined in paragraph (3) of subdivision (d) of Section 103577 of the Health and Safety Code, or institution of higher education that has knowledge of a person’s homeless status may verify a person’s status as homeless for purposes of this subclause.

(ii) For purposes of calculating a density bonus granted pursuant to this subparagraph, the term “unit” as used in this section means one rental bed and its pro rata share of associated common area facilities. The units described in this subparagraph shall be subject to a recorded affordability restriction of 55 years.

(G) One hundred percent of the total units, exclusive of a manager’s unit or units, are for lower income households, as defined by Section 50079.5 of the Health and Safety Code, except that up to 20 percent of the total units in the development may be for moderate-income households, as defined in Section 50053 of the Health and Safety Code.

(2) For purposes of calculating the amount of the density bonus pursuant to subdivision (f), an applicant who requests a density bonus pursuant to this subdivision shall elect whether the bonus shall be awarded on the basis of subparagraph (A), (B), (C), (D), (E), (F), or (G) of paragraph (1).

(3) For the purposes of this section, “total units,” “total dwelling units,” or “total rental beds” does not include units added by a density bonus awarded pursuant to this section or any local law granting a greater density bonus.

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

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

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

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

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



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

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

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

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

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

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

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

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

(i) If any dwelling units described in subparagraph (A) are occupied on the date of application, the proposed housing development shall provide at least the same number of units of equivalent size to be made available at

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

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

(C) Notwithstanding subparagraph (B), for any dwelling unit described in subparagraph (A) that is or was, within the five-year period preceding the application, subject to a form of rent or price control through a local government's valid exercise of its police power and that is or was occupied

by persons or families above lower income, the city, county, or city and county may do either of the following:

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

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

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

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

(d) (1) An applicant for a density bonus pursuant to subdivision (b) may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of any of the following:

(A) The concession or incentive does not result in identifiable and actual cost reductions, consistent with subdivision (k), to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(B) The concession or incentive would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households.

(C) The concession or incentive would be contrary to state or federal law.

(2) The applicant shall receive the following number of incentives or concessions:

(A) One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a common interest development.

(B) Two incentives or concessions for projects that include at least 20 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a common interest development.

(C) Three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a common interest development.

(D) Four incentives or concessions for projects meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b). If the project is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, the applicant shall also receive a height increase of up to three additional stories, or 33 feet.

(3) The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section that shall include legislative body approval of the means of compliance with this section.

(4) The city, county, or city and county shall bear the burden of proof for the denial of a requested concession or incentive.

(e) (1) In no case may a city, county, or city and county apply any development standard that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. Subject to paragraph (3), an applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted under this section, and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical



environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.

(2) A proposal for the waiver or reduction of development standards pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(3) A housing development that receives a waiver from any maximum controls on density pursuant to clause (ii) of subparagraph (D) of paragraph (3) of subdivision (f) shall not be eligible for, and shall not receive, a waiver or reduction of development standards pursuant to this subdivision, other than as expressly provided in subparagraph (D) of paragraph (2) of subdivision (d) and clause (ii) of subparagraph (D) of paragraph (3) of subdivision (f).

(f) For the purposes of this chapter, “density bonus” means a density increase over the otherwise maximum allowable gross residential density as of the date of application by the applicant to the city, county, or city and county, or, if elected by the applicant, a lesser percentage of density increase, including, but not limited to, no increase in density. The amount of density increase to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).

(1) For housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
17	30.5
18	32
19	33.5
20	35

(2) For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Very Low Income Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

(3) (A) For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of senior housing units.

(B) For housing developments meeting the criteria of subparagraph (E) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of the type of units giving rise to a density bonus under that subparagraph.

(C) For housing developments meeting the criteria of subparagraph (F) of paragraph (1) of subdivision (b), the density bonus shall be 35 percent of the student housing units.

(D) For housing developments meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b), the following shall apply:

(i) Except as otherwise provided in clause (ii), the density bonus shall be 80 percent of the number of units for lower income households.

(ii) If the housing development is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, the city, county, or city and county shall not impose any maximum controls on density.

(4) For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Moderate-Income Units	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19

25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35

(5) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not require, or be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.

(g) (1) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county in accordance with this subdivision, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density for the entire development, as follows:

Percentage Very Low Income	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26
22	27
23	28
24	29
25	30
26	31
27	32

28	33
29	34
30	35

(2) This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks an increase pursuant to both this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this subdivision if all of the following conditions are met:

(A) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

(B) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.

(C) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned with appropriate development standards for development at the density described in paragraph (3) of subdivision (c) of Section 65583.2, and is or will be served by adequate public facilities and infrastructure.

(D) The transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, not later than the date of approval of the final subdivision map, parcel map, or residential development application, except that the local government may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 if the design is not reviewed by the local government before the time of transfer.

(E) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c), which shall be recorded on the property at the time of the transfer.

(F) The land is transferred to the local agency or to a housing developer approved by the local agency. The local agency may require the applicant to identify and transfer the land to the developer.

(G) The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.



(H) A proposed source of funding for the very low income units shall be identified not later than the date of approval of the final subdivision map, parcel map, or residential development application.

(h) (1) When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a childcare facility that will be located on the premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:

(A) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the childcare facility.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the childcare facility.

(2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:

(A) The childcare facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to subdivision (c).

(B) Of the children who attend the childcare facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to subdivision (b).

(3) Notwithstanding any requirement of this subdivision, a city, county, or city and county shall not be required to provide a density bonus or concession for a childcare facility if it finds, based upon substantial evidence, that the community has adequate childcare facilities.

(4) “Childcare facility,” as used in this section, means a child daycare facility other than a family daycare home, including, but not limited to, infant centers, preschools, extended daycare facilities, and schoolage childcare centers.

(i) “Housing development,” as used in this section, means a development project for five or more residential units, including mixed-use developments. For the purposes of this section, “housing development” also includes a subdivision or common interest development, as defined in Section 4100 of the Civil Code, approved by a city, county, or city and county and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units shall be on contiguous sites that are the subject of one development application, but do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(j) (1) The granting of a concession or incentive shall not require or be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, study, or other discretionary approval. For purposes of this subdivision, “study” does not include reasonable documentation to establish eligibility for the concession or incentive or to demonstrate that the incentive or concession meets the definition set forth in subdivision (k). This provision is declaratory of existing law.

(2) Except as provided in subdivisions (d) and (e), the granting of a density bonus shall not require or be interpreted to require the waiver of a local ordinance or provisions of a local ordinance unrelated to development standards.

(k) For the purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable and actual cost reductions, to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(2) Approval of mixed-use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable and actual cost reductions to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(l) Subdivision (k) does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(m) This section does not supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). Any density bonus, concessions, incentives, waivers or reductions of development standards, and parking ratios to which the applicant is entitled under this section shall be permitted in a manner that is consistent with this section and Division 20 (commencing with Section 30000) of the Public Resources Code.

(n) If permitted by local ordinance, nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

(o) For purposes of this section, the following definitions shall apply:

(1) “Development standard” includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.

(2) “Maximum allowable residential density” means the density allowed under the zoning ordinance and land use element of the general plan, or, if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. If the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.

(p) (1) Except as provided in paragraphs (2), (3), and (4), upon the request of the developer, a city, county, or city and county shall not require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivisions (b) and (c), that exceeds the following ratios:

(A) Zero to one bedroom: one onsite parking space.

(B) Two to three bedrooms: two onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

(2) Notwithstanding paragraph (1), if a development includes the maximum percentage of low-income or very low income units provided for in paragraphs (1) and (2) of subdivision (f) and is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, and there is unobstructed access to the major transit stop from the development, then, upon the request of the developer, a city, county, or city and county shall not impose a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds 0.5 spaces per bedroom. For purposes of this subdivision, a development shall have unobstructed access to a major transit stop if a resident is able to access the major transit stop without encountering natural or constructed impediments.

(3) Notwithstanding paragraph (1), if a development consists solely of rental units, exclusive of a manager’s unit or units, with an affordable housing cost to lower income families, as provided in Section 50052.5 of the Health and Safety Code, then, upon the request of the developer, a city, county, or city and county shall not impose a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds the following ratios:

(A) If the development is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, and there is unobstructed access to the major transit stop from the development, the ratio shall not exceed 0.5 spaces per unit.

(B) If the development is a for-rent housing development for individuals who are 62 years of age or older that complies with Sections 51.2 and 51.3 of the Civil Code, the ratio shall not exceed 0.5 spaces per unit. The development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

(4) Notwithstanding paragraphs (1) and (8), if a development consists solely of rental units, exclusive of a manager's unit or units, with an affordable housing cost to lower income families, as provided in Section 50052.5 of the Health and Safety Code, and the development is either a special needs housing development, as defined in Section 51312 of the Health and Safety Code, or a supportive housing development, as defined in Section 50675.14 of the Health and Safety Code, then, upon the request of the developer, a city, county, or city and county shall not impose any minimum vehicular parking requirement. A development that is a special needs housing development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

(5) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide onsite parking through tandem parking or uncovered parking, but not through onstreet parking.

(6) This subdivision shall apply to a development that meets the requirements of subdivisions (b) and (c), but only at the request of the applicant. An applicant may request parking incentives or concessions beyond those provided in this subdivision pursuant to subdivision (d).

(7) This subdivision does not preclude a city, county, or city and county from reducing or eliminating a parking requirement for development projects of any type in any location.

(8) Notwithstanding paragraphs (2) and (3), if a city, county, city and county, or an independent consultant has conducted an areawide or jurisdictionwide parking study in the last seven years, then the city, county, or city and county may impose a higher vehicular parking ratio not to exceed the ratio described in paragraph (1), based upon substantial evidence found in the parking study, that includes, but is not limited to, an analysis of parking availability, differing levels of transit access, walkability access to transit services, the potential for shared parking, the effect of parking requirements on the cost of market-rate and subsidized developments, and the lower rates of car ownership for low-income and very low income individuals, including seniors and special needs individuals. The city, county, or city and county shall pay the costs of any new study. The city, county, or city and county



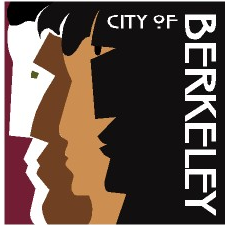
shall make findings, based on a parking study completed in conformity with this paragraph, supporting the need for the higher parking ratio.

(9) A request pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(q) Each component of any density calculation, including base density and bonus density, resulting in fractional units shall be separately rounded up to the next whole number. The Legislature finds and declares that this provision is declaratory of existing law.

(r) This chapter shall be interpreted liberally in favor of producing the maximum number of total housing units.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.



Vice Mayor Lori Droste

## **SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2**

**Meeting Date:** November 9, 2021

**Item Number:** 20

**Item Description:** “Objective Standards for Density, Design, And Shadows”  
(Hahn, Arreguín, Wengraf, And Harrison)

**Submitted by:** Vice Mayor Droste (District 8), Councilmember Kesarwani  
(District 1), Councilmember Taplin (District 2)

Presenting alternative approaches and direction for developing and implementing objective design and development standards, with the goal of encouraging the creation of additional homes/affordable homes and dovetailing with the 6<sup>th</sup> Cycle 2023–2031 Housing Element Update and associated rezoning effort.



Vice Mayor Lori Droste

## SUPPLEMENTAL AGENDA MATERIAL FOR SUPPLEMENTAL PACKET #2

### ITEM #20 “OBJECTIVE STANDARDS FOR DENSITY, DESIGN, AND SHADOWS” (HAHN, ARREGUÍN, WENGRAF, AND HARRISON)

#### ACTION CALENDAR

November 9, 2021

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Vice Mayor Lori Droste, Councilmember Terry Taplin, and Councilmember Rashi Kesarwani

**SUBJECT:** Supplemental Agenda Material for Supplemental Packet #2 “Objective Standards for Density, Design, and Shadows”

#### RECOMMENDATION

Refer to the Planning Commission and the City Manager the following set of recommendations for consideration and possible incorporation into Zoning Code revisions pursuant to the 2023–2031 6th Cycle Housing Element Update:

- 1. DENSITY: Adopt *minimum* units-per-acre density standards; but do NOT adopt *maximum* units-per-acre density standards.**

To demonstrate adequate capacity to meet RHNA targets, the City should adopt minimum units-per-acre density standards that are conservatively calibrated to reflect a realistic potential development capacity based on the allowable height and bulk of the associated zoning district and typical unit sizes. To avoid unnecessarily limiting the potential number of homes provided, avoid exclusionary zoning approaches, and ensure flexibility in unit types, the zoning code would not apply any maximum units-per-acre standards. (*See more detailed recommendations below.*)

**2. SUNLIGHT/SHADOWS: Manage shadows exclusively through generalized height/bulk controls.**

To reduce administrative burden, increase project certainty, and expand opportunities for small, local, and non-profit housing developers, eliminate requirements for project-level shadow studies (which require advanced modeling and/or potentially involve subjective judgements about impact severity) and instead control shadow impacts through pre-established objective controls on height, setbacks, stepbacks, and/or Floor Area Ratio (FAR). These standards would be designed to ensure no net loss in residential capacity, consistent with State law. *(See more detailed recommendations below.)*

**3. DESIGN: Focus building form regulations on fostering a high-quality street-level experience for pedestrians.**

To reduce administrative burden, encourage diverse architecture and innovative design, reduce costs, improve energy efficiency, and expedite creation of new homes, the zoning code should include limited and straightforward design standards focused on the convenience/quality of the pedestrian experience rather than more subjective aesthetic considerations. Design standards regarding positioning of pedestrian entrances, ground floor transparency, sidewalk landscaping/tree planting, and elimination/reduction of curb cuts could remain or be enhanced; meanwhile design standards regarding color, materials, and facade articulation would be liberalized or eliminated. *(See more detailed recommendations below.)*

Prior to the establishment of any of the above regulations, refer to the City Manager and Planning Commission to evaluate the potential implications for: racial and socioeconomic equity; city- and site-level housing capacity; provision of affordable housing units; project costs and feasibility; adequate protection of structures and open spaces from excess heat/direct sunlight in the face of climate change; and regulatory consistency with respect to shadows cast by things other than buildings.

The City Manager, Planning Commission, and any other commissions or participants are requested to consider these recommendations purely prospectively so as not to interfere with existing zoning and project approvals and so as to dovetail with development and implementation of any rezoning related to the 2023 Housing Element Update.

**SUMMARY STATEMENT**

Prior to the passage of State laws that streamlined the project approvals process, subjective and non-quantitative criteria in Berkeley's Zoning Code generated frequent conflicts, uncertainty, and/or back-and-forth delays in the approval of new homes. A non-exhaustive list of example projects includes:



- Berkeley Trader Joes<sup>1</sup>
- 3000 Shattuck Project<sup>2</sup>
- 2701 Shattuck<sup>3</sup>
- 1310 Haskell Street (see timeline below)<sup>4</sup>
- 1315 Berryman<sup>5</sup>
- 2211 Harold Way<sup>6</sup>
- Parker Place<sup>7</sup>
- “Holy Hill” Senior Housing<sup>8</sup>
- Peerless Greens<sup>9</sup>
- 2902 Adeline<sup>10</sup>
- 2801 Adeline<sup>11</sup>
- Gaia Building<sup>12</sup>
- 2004 University Ave (Former Touriel Building)<sup>13</sup>
- 3001 Telegraph Ave<sup>14</sup>
- Elmwood Hardware<sup>15</sup>
- Acheson Commons<sup>16</sup>

As the Planning Commission and City Council undertake rezoning efforts pursuant to the Housing Element Update that will conclude no later than January of 2023, these bodies will need to enact policies and zoning regulations that:

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<sup>1</sup><https://www.sfgate.com/politics/article/BERKELEY-Neighbors-say-no-to-popular-market-2484977.php>

<sup>2</sup><https://www.berkeleyside.org/2018/12/04/council-approves-south-berkeley-co-housing-units-after-zoning-board-denial>

<sup>3</sup><https://www.berkeleyside.org/2019/03/18/berkeley-council-narrowly-overturns-zoning-board-approval-of-2701-shattuck>

<sup>4</sup><https://www.berkeleyside.org/2017/09/08/long-legal-dispute-berkeley-approves-application-build-3-homes-haskell-street>

<sup>5</sup><https://www.berkeleyside.org/2021/11/03/north-berkeley-house-berryman-landmarking-townhouses>

<sup>6</sup><https://www.berkeleyside.org/2020/01/02/developer-suddenly-pulls-the-plug-on-18-story-harold-way-complex-in-berkeley>

<sup>7</sup><https://www.berkeleyside.org/2012/01/18/parker-place-development-wins-council-approval>

<sup>8</sup><https://www.berkeleyside.org/2017/01/13/controversial-plan-build-265-apartments-holy-hill-dies>

<sup>9</sup><https://eastbayexpress.com/back-to-the-green-future-1/>

<sup>10</sup><https://www.berkeleyside.org/2018/09/11/2902-adeline-housing-project-forges-ahead-after-south-berkeley-land-deal-lawsuit>

<sup>11</sup><https://www.berkeleyside.org/2020/02/14/housing-and-hotel-combo-among-new-buildings-proposed-in-south-berkeley>

<sup>12</sup><https://www.sfgate.com/bayarea/article/A-Tale-of-7-Stories-in-Berkeley-Flak-over-3237608.php>

<sup>13</sup><https://www.berkeleydailyplanet.com/issue/2002-06-05/article/12422>

<sup>14</sup>[https://www.cityofberkeley.info/Planning\\_and\\_Development/Zoning\\_Adjustment\\_Board/3001\\_Telegraph.aspx](https://www.cityofberkeley.info/Planning_and_Development/Zoning_Adjustment_Board/3001_Telegraph.aspx)

<sup>15</sup><https://transbayblog.com/2007/09/15/berkeley-nimby-ordinance-holds-the-elmwood-district-hostage/>

<sup>16</sup><https://www.berkeleyside.org/2018/08/23/construction-begins-on-downtown-berkeley-apartment-building-5-years-after-it-was-approved>

1. Ensure Berkeley's new zoning is capable of accommodating the housing capacities (at various income levels) assigned through the Regional Housing Allocation Needs (RHNA) process;
2. Maintain consistency with State laws already requiring the establishment of objective standards and prohibiting downzonings that would decrease any jurisdiction's aggregate capacity to provide new homes; and
3. Avoid replicating the deleterious effects of previous regulatory approaches with respect to the speed and volume of housing production.

To accomplish the above goals/requirements, the City must avoid piecemeal approaches and instead address upcoming zoning changes comprehensively, pursuant to the Housing Element Update, and with careful consideration for impacts relating to: overall housing capacity, affordable housing, equity, sustainability, project feasibility, remediation of historically racist zoning/planning practices, administrative costs and burden, and compliance with state law.

### **STATE REGULATORY SETTING**

#### *Housing Accountability Act*

Effective January 2018, AB 678, SB 167, and AB 1515 strengthened the Housing Accountability Act (HAA) by restricting the ability of jurisdictions to deny or reduce the density of proposed housing projects, including mixed-use projects, regardless of affordability levels. These laws also require local jurisdictions to review housing development proposals more quickly and encourage local governments to give developers more clarity and feedback in the review and approval process. With these changes, many findings previously used by local jurisdictions to deny housing projects are no longer considered valid grounds for denial, creating a review process that is more conducive to homebuilding.

AB 3194 (2018) expanded HAA guarantees to certain proposed housing projects that do not comply with the objective standards of applicable zoning, provided that the project complies with the objective standards specified for that land use in the General Plan and that the objective standards in the zoning are inconsistent with those in the General Plan.

Given these and other changes to State law, local governments are now usually required to approve residential or mixed-use projects that comply with all objective standards in the applicable zoning (or General Plan objective standards, when the zoning is not consistent with them). Local governments can only deny such projects under limited circumstances, such as when the preponderance of evidence demonstrates a project would have a specific, adverse health or safety impact. For affordable housing projects, HAA protections are even stronger, with cities generally being required to approve affordable housing projects, even when they don't conform to objective zoning standards, except under a limited set of circumstances.

#### *Senate Bill 330<sup>17</sup>*

[SB 330](#), also referred to as the Housing Crisis Act of 2019, is effective until January 1, 2030 (as

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<sup>17</sup> Text adapted and expanded from City of Pasadena INFORMATION ITEM – UPDATE ON RECENT HOUSING LEGISLATION, accessed on November 3, 2021.

extended by SB 8 in 2021) and one of its major provisions limits local jurisdictions' ability to downzone properties.

While SB 330 is in effect, affected cities (including Berkeley) cannot change their general plans, specific plans, zoning ordinances, or subdivision ordinances to lessen the intensity of housing below that in effect on January 1, 2018 unless that city concurrently changes other standards to ensure that there is no net loss in residential capacity. This downzoning prohibition includes changes in development standards, such as reductions in height, density, or floor area ratios that would lessen the intensity of housing. Additionally, no moratorium may be imposed on housing development, no new subjective design standards may be adopted or enforced, and no new residential development caps may be adopted.

SB 330 therefore prohibits the City of Berkeley from making any changes to its zoning or development standards that would have the effect of reducing residential intensity without commensurate increases elsewhere. This prohibition includes but would not be limited to reductions in potential buildable floor area from the imposition of standards relating to shadows/daylight planes; maximum dwelling units per acre; facade articulation; and/or other controls on bulk such as height limits, minimum setbacks/stepbacks, and/or FAR.

*Assembly Bill 2292 (2002)*<sup>18</sup>

[AB 2292](#) prohibits a city, county, or a city and county, by administrative, quasi-judicial, or legislative action, from reducing, requiring, or permitting the reduction of the residential density for any parcel to a lower residential density that is below the density that was utilized by the Department of Housing and Community Development in determining compliance with housing element law, unless the city, county, or city and county makes written findings supported by substantial evidence that the reduction is consistent with the adopted general plan, including the housing element, and the jurisdiction's share of the regional housing need.

#### **PREVIOUS COUNCIL ACTION TIMELINE**

April 2015 — A zoning compliant project at 1310 Haskell Street submitted for review by the Zoning Adjustment Board.

March 2016 — City of Berkeley Planning staff and the Zoning Adjustment Board approved the project which was then appealed to the City Council.

July 2016 — A majority of the City Council [overturned the ZAB decision](#) and rejected the use permit. Subsequently, the San Francisco Bay Area Renter's Federation (SFBARF) et. al filed suit against the City of Berkeley for violating the Housing Accountability Act because the proposed project was denied even though it did not have "specific adverse impact on public health or safety."

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[https://www.cityofpasadena.net/commissions/wp-content/uploads/sites/31/2020-01-08-Housing-Legislation-Update\\_PC-Memo.pdf](https://www.cityofpasadena.net/commissions/wp-content/uploads/sites/31/2020-01-08-Housing-Legislation-Update_PC-Memo.pdf)

<sup>18</sup> Text adapted from Legislative Counsel's Digest for Assembly Bill 2292

October 2016 — Alameda Superior Court orders the City to rescind the 2016 decision.

February 2017 — The City agreed to settle the suit and rescind the 2016 decision and hold a new public hearing.

February 2017 — At the second public hearing, a majority of Council [again rejected](#) 1310 Haskell Street arguing that the [demolition permit was not covered](#) by the Housing Accountability Act.

June 2017 — City Attorney Zach Cowan, in response to a request from the Agenda Committee, [recommended a three pronged approach](#) to address the Housing Accountability Act's impact on Berkeley's approvals process. In the City Attorney's report, Cowan recommended three approaches Berkeley could undertake to avoid conflict with the Housing Accountability Act:

- "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.'"

July 2017 — a majority of Berkeley City Council [adopted](#) the aforementioned approaches and added [one more](#) to preserve local land use discretion:

- "Quantify and set standards for views, shadows, and other impacts that often underlie detriment findings."

July 2017 — Alameda County Superior Court Judge Kimberly Crowell [rejected Council's second attempt](#) to deny a use permit for 1310 Haskell and ordered approval of the project.

September 2017 — Berkeley City Council approved the projects and paid associated legal fees.

June 2018 — Additional legislation was introduced by Councilmember Hahn to [define objective standards for views](#) but was shelved while the Joint Subcommittee on State Housing Laws discussed objective standards for density, design, and shadows.

October 2019 – The Housing Crisis Act of 2019 (SB 330) passed by the State Legislature and signed into law (see above).

July 2020 — the Joint Subcommittee on the Implementation of State Housing Laws recommended a path to refer to the Design Review Committee and Planning Commission to consider after convening eleven times. These recommendations are summarized in the [staff report](#).



September 2021 – Councilmember Hahn, Mayor Arreguín, Councilmember Wengraf, and Councilmember Harrison introduce amendments to the proposed [Objective Standards for Density, Design and Shadows](#).

## **BACKGROUND**

Berkeley has a history of delaying or denying permits for code-compliant residential and mixed-use projects based on subjective judgements regarding what constitutes “excessive” impacts. In some cases, repeated requests for project revisions have led to project cancellation (See in list above: 2211 Harold Way, 2701 Shattuck, Peerless Greens, Holy Hill) and—since the implementation of new State laws to streamline project approvals—costly litigation (see Haskell Street timeline, as well as 1900 Fourth St<sup>19</sup>) The loss of these potential projects has cost the city hundreds of housing units and millions of dollars for affordable housing.<sup>20</sup>

State laws designed to reduce time involved in permitting processes and increase certainty for applicants/developers by mandating ministerial permitting for projects that conform with base standards are expediting the creation of desperately needed housing and affordable housing. The fact that Berkeley is approving additional housing at all income levels in less time is a testament, in part, to the effectiveness of these new State statutes and argues against the creation of new local requirements that could undermine this streamlining success.<sup>21</sup>

Removing subjective judgements from project approvals has also reduced the administrative burden associated with needing to provide qualitative justifications for such judgements. On the other hand, wholesale replacement of these subjective judgements with a panoply of even more granular objective standards would restore or perhaps even expand that administrative burden. The explicitly stated intent of these new State laws was to expedite and increase the production of housing, not to merely transplant the entire existing burden of the housing approvals process from a subjective framework to an objective framework.<sup>2223</sup> Reimposing prior subjective

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<sup>19</sup><https://www.berkeleyside.org/2021/07/29/development-spengers-parking-lot-can-proceed-ohlone-shellmound-ruling>

<sup>20</sup><https://www.berkeleyside.org/2020/01/02/developer-suddenly-pulls-the-plug-on-18-story-harold-way-complex-in-berkeley>

<sup>21</sup><https://www.berkeleyside.org/2019/01/17/berkeley-approves-two-affordable-housing-projects-in-record-time-under-new-state-law-sb-35>

<sup>22</sup> From SB 330: "(c) It is the intent of the Legislature, in enacting the Housing Crisis Act of 2019, to do both of the following: (1) Suspend certain restrictions on the development of new housing during the period of the statewide emergency described in subdivisions (a) and (b). (2) Work with local governments to expedite the permitting of housing in regions suffering the worst housing shortages and highest rates of displacement."

From SB 35:

<sup>23</sup> From SB 167: "(1) The lack of housing, including emergency shelters, is a critical problem that threatens the economic, environmental, and social quality of life in California. (2) California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing. (3) Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced

requirements would have the effect of subverting this improved status quo by introducing new elements in the form of exacting objective requirements that did not previously exist, and which tend to discourage proposals for new homes and reduce unit capacities for projects that are proposed—as are seen on the north side of University Avenue.

Even without such highly prescriptive standards, the zoning and municipal code would not be silent on impacts and would continue to include numerous tools to limit and mitigate them. For example: shadow impacts would continue to be limited by heights, setbacks, and step backs; noise impacts would continue to be mitigated by the noise ordinance and limits on acceptable uses; impacts to historic/cultural resources would continue to be mitigated by the Landmarks Preservation Ordinance, and so forth.

Because of Berkeley's previous incorporation of subjective judgement into project approvals, the base standards included in the zoning code were incapable of functioning as a measuring stick for what constituted acceptable impacts. Projects that met base numerical standards with respect to height, bulk, lot coverage, etc. were routinely delayed or even denied based upon individual (and at times poorly evidenced) claims that a project would result in "unacceptable" impacts.

This said, base standards are still—and sometimes appropriately—capable of acting as a bar to project approval. Exceptions like density bonuses, development incentives, or 100% affordable projects notwithstanding, projects that, for example, exceed a height limit or fail to provide adequate open space are rightly denied. This is the very purpose of including building standards in the zoning code. The occasional granting of a variance does not eliminate or diminish the overall ability of building standards to preclude a project that violates them.

At least prior to the implementation of recent State housing laws, most (if not very nearly all) housing and mixed-use projects in Berkeley have undergone at least some degree of modification as a result of staff, design, and/or zoning review. Prominent examples include the Trader Joe's project; the original Harold Way project (now defunct); 2701 Shattuck<sup>24</sup> (also likely defunct); and the Downtown hotel project, among many others. The extensive back and forth process that characterized these projects is precisely what State leaders are seeking to prevent through approvals streamlining and prohibitions on subjective judgements.

Despite this shift away from subjective judgements, the City would still maintain its ability to grant exceptions to requirements for qualifying or otherwise exceptionally meritorious projects. Nothing in State law would preclude the City from continuing to grant variances; nor does State

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mobility, urban sprawl, excessive commuting, and air quality deterioration. (4) Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing development projects, reduction in density of housing projects, and excessive standards for housing development projects. (b) It is the policy of the state that a local government not reject or make infeasible housing development projects, including emergency shelters, that contribute to meeting the need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action and without complying with subdivision (d)."

<sup>24</sup><https://www.berkeleyside.org/2013/08/20/berkeley-neighbors-fight-micro-unit-proposal-on-shattuck>

law create any increased latitude for the granting of variances for cities that adopt more prescriptive standards. Put plainly, more detailed and restrictive standards decrease project flexibility.

In areas where Berkeley has so far implemented strict objective design standards of the sort contemplated, housing production has tended to suffer and the resulting structures have not necessarily exhibited what might be regarded as exceptional architectural merit. A primary example of this is the cited University Avenue corridor, where housing production has tended to lag relative to other areas with recent specific plan efforts, such as Downtown and Southside, which are both characterized by design guidelines rather than strict aesthetic requirements.

To give a specific architectural example, the new Best Western hotel on the northwest corner of University Avenue and Sacramento street presents an arguably squat and plain appearance on a major corner defined by two wide and highly traveled roadways, and in close proximity to the North Berkeley BART station, as well as numerous AC Transit bus lines. Alternatively, the recently completed Addison apartments in the Downtown, while not especially distinctive, anchors its block with a stronger, more contemporary presence. Counterintuitively, the Best Western was, in certain respects, subject to stricter explicit design/massing requirements than the Addison.<sup>25,26</sup> Although it is arguable that evaluations of architectural merit such as these are a matter of taste, this only argues further against attempts to codify such considerations—potentially locking future generations of buildings into outmoded trends. Moreover, some design standards—such as requirements for facade articulation—tend to increase building costs, while also having negative consequences (such as decreased energy efficiency in the case of the former).

Rather than focus resources and staff time on the development and application of increasingly minute aesthetic design standards, the City might benefit the public realm more greatly by building upon the highly successful [Downtown Berkeley Design Guidelines](#) by making this a living document that continually incorporates new design principles, best practices, and recommendations for including high-quality design at low cost. The City could also explore creating additional district-based design guidelines modelled on those for the Downtown, while still allowing and even encouraging architectural exploration and innovation of the sort that historically characterized Berkeley's built environment until the imposition of stricter zoning in the mid 20th century.

Over the past 50 years, Berkeley has experienced dramatic increases in housing costs and homelessness, and dramatic decreases in both the city's Black population and in the ability of

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<sup>25</sup>[https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Commissions/Design\\_Review\\_Committee/2017-12-21\\_DRC\\_Staff%20Report\\_1499%20University.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Design_Review_Committee/2017-12-21_DRC_Staff%20Report_1499%20University.pdf)

<sup>26</sup> "New buildings along the north side of University Avenue must avoid blocking the sun of all but a small portion of an adjoining parcel to the rear. Specifically, a new building shall not cast a shadow more than twenty feet (20) onto the adjacent property rear yard when the southern sun is at a 29 degree angle on the winter solstice (see diagram)."  
[https://www.cityofberkeley.info/uploadedFiles/Planning\\_\(new\\_site\\_map\\_walk-through\)/Level\\_3\\_-\\_General/N.%20Design\\_Guidelines.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_(new_site_map_walk-through)/Level_3_-_General/N.%20Design_Guidelines.pdf)

younger generations of Berkeleyans to make a home for themselves in the place they grew up. The existence and worsening of these negative consequences that have resulted would suggest that attempting to recreate previous policies in a new, “objective” form could result in the continuation of undesirable trends in affordability and exclusion. Moreover, many of Berkeley’s now problematic housing policies and approvals processes were a product of efforts to prevent “incompatibility.” Indeed, the birth of exclusionary zoning in Berkeley was a direct result of an African American dance hall being viewed as “incompatible” with its surrounding neighborhood.

## **DISCUSSION AND RECOMMENDATIONS**

The recommendations herein provide guidance for Staff, the Planning Commission, and/or consultants to use in proposing objective development and design standards for new zoning created pursuant to the 2023–2031 Housing Element Update. 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, consider current patterns and practices of Staff and ZAB, review zoning codes of similar sized or situated jurisdictions, ensure objective standards align with the underlying housing capacity and purpose of the underlying zoning designation, and, at the conclusion, propose certain standards for Berkeley to codify.

Five main criteria were used to analyze the various alternatives before Council:

- **Housing production:** How do the alternatives impact Berkeley’s ability to efficiently and fairly produce homes?
- **Cost:** What are the financial implications of the various alternatives?
- **Environmental sustainability:** How well do the alternatives align with the Climate Action plan and best practices to combat global climate change?
- **Racial and social equity:** How well do the alternatives advance racial and social equity and affirmatively further fair housing?
- **Administrative considerations:** What are the implications for internal logistics and staff time for the alternatives? (i.e., When could it be addressed? What will be delayed? How do the alternatives interface with the Housing Element Update? What issues/goals will be addressed with the Housing Element process currently underway?)

## **DENSITY**

### **Discussion:**

As discussed in the item from Hahn, Arreguín, Wengraf, and Harrison (HAWH), 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, the latter of which effectively equates to a units per acre maximum (R-zones)
- Height, Setbacks, Building separations and Lot Coverage/Open Space requirements
- Floor Area Ratio (FAR)

Most of these approaches avoid placing an explicit cap on the potential to create new homes and welcome new residents. And a building that meets FAR, setback, and height standards, for



example, has flexibility to include a smaller number of large units, a larger number of small units, or a mix. Some State laws interact with Berkeley's Zoning Code by granting a percent-based density bonus for projects that incorporate affordable housing units. In areas where Berkeley does not currently impose a cap on dwelling units per acre, the density bonus is applied based on the potential floor area of a project. Certain peculiarities in Berkeley's zoning code (most notably additional density granted through Use Permits) have previously caused confusion regarding how to calculate a density bonus; however, recent State-level guidance has clarified these issues. Potential floor area therefore remains a valid approach to calculating density bonuses, and continues to be successfully applied within Berkeley. Therefore, a shift to capping the number of allowable new homes within a proposed building is unnecessary and would ultimately limit flexibility.

As established in *Twain Harte Homeowners Association v. County of Tuolumne* (1982) (138 Cal.App.3d 664), General Plans are required to establish standards for population density. This means that a persons per acre standard (or a set of other standards that can be reasonably used to arrive at such a standard) is required for land uses designations with the potential to include residences. However, this does not obligate Berkeley's General Plan or zoning to incorporate a *dwelling units* per acre standard. Indeed, Berkeley's General Plan already makes use of a persons per acre standard rather than one based on units. Population ranges based on developable square footage and estimates of average living space per person therefore represent a viable approach to providing State-mandated population density standards in Berkeley's General Plan land uses—which will likely need to be revised to accommodate the Housing Element Update rezoning. This approach also offers an advantage over approaches based on a combination of units per acre and persons per unit because the number of persons per unit in Berkeley tends to vary greatly, in part owing to the large student population.

**The Joint Subcommittee on the Implementation of State Housing Laws (JSISHL) took the following action on Density Standards:**

- **Recommended** that the Planning Commission and Design Review Committee develop an objective standard for density using Floor Area Ratio and potentially form-based code as a secondary option.
- **Rejected** a motion to:
  - a) develop a dwelling units per acre standard in all commercial districts and in the Mixed Use Light Industrial and Mixed Use Residential districts with consideration of a cap on average number of bedrooms
  - b) consider the size of parcel and develop an average bedroom/unit (to be determined) for multi-unit buildings
  - c) 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

**The Hahn, Arreguín, Wengraf and Harrison (HAWH) Alternative recommends the following action on density standards:**

- 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 a majority of 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.

**Analysis of the density standards alternatives using the criteria listed above:**

- **Housing production:** Both the JSISHL and HAWH alternatives could result in a potential decrease in housing production and/or in unit design flexibility relative to maintaining the status quo of 1) not setting hard caps on units per acre in most circumstances and 2) not prescribing an FAR in every case. Even in the context of overall increases to potential building envelopes under new zoning, hard units per acre caps (as recommended by the HAWH alternative) would serve to limit the number of units that could be produced within a given parcel. The JSISHL proposal is somewhat more flexible, instead opting for a combination of FAR and development standards; however, with height, setback, stepback, and/or lot coverage standards, FAR is not strictly necessary. Our proposal allows the most flexibility in creating homes while still enabling the City to establish controls on height and building form.
- **Cost:** The JSISHL and HAWH approaches could reduce staff time costs by providing additional clarity regarding density controls and density bonus calculations, but could also increase staff time costs by, in certain cases, applying a combination of two (JSISHL) or three (HAWH) different types of density control where only one or two currently apply. Additionally, by potentially reducing the number of units, the JSISHL and HAWH alternatives have the potential to reduce production of inclusionary units and/or the City's receipt of Affordable Housing Mitigation Fees. Both of these would have the potential to indirectly increase the need for City expenditures on the provision of affordable housing in order to meet RHNA goals. Our approach seeks to reduce staff time, provides clarity around density controls and calculations, *and* would increase the potential for more affordable housing inclusionary fees or affordable units.
- **Environmental sustainability:** The HAWH alternative would potentially result in worse sustainability outcomes relative to the status quo because it would tend to reduce the number of new homes that could be provided by imposing hard caps on the allowable number of units per acre and/or by setting a maximum FAR. JSISHL's FAR proposal would tend to reduce the amount of livable space that could be constructed from what would otherwise be allowed by the building envelope created purely by standards regarding height, setback, stepback, and lot coverage. Our proposal is the most environmentally sound, given that infill housing near jobs and transit remains one of Berkeley's most effective means of reducing greenhouse emissions relative to business as usual, and any reduction in housing capacity would undermine the City's established sustainability/climate action goals.<sup>27</sup>

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<sup>27</sup> This finding is generally consistent with the analysis presented in the recent Draft Environmental Impact Report (DEIR) for the North Berkeley and Ashby BART projects, which found that allowing additional residential units represented the environmentally superior alternative.

- **Racial and social equity:** Hard limits on the number units per acre have been a hallmark of exclusionary zoning. Such limits tend to reduce the number of homes provided and increase the size of units, making them less affordable. Therefore the HAWH approach of universally applying units per acre density limits would tend to be worse for racial and social equity than the status quo and our recommendation of not doing so. The impact of the JSISHL alternative is indeterminate but would tend to decrease capacity for new affordable homes, and would therefore have a less positive impact on racial and social equity than our proposal.
- **Administrative Considerations:** None of the alternatives pose significant administrative challenges in terms of drafting and adoption because development standards are *already* part of the work plan and currently being discussed as part of the 2023–2031 6th Cycle Housing Element Update. However, as discussed above under cost considerations, imposition of additional types of density control on project approvals could require additional staff time for analysis.

**Recommendation:**

Refer to the City Manager and Planning Commission to consider, as part of a comprehensive approach to the Housing Element Update rezoning, the following approaches:

- Eliminate units-per-acre restrictions on the creation of new homes (this would serve to maximize production of and flexibility for new homes within allowed building envelopes)
- Establish *minimum* units-per-acre requirements to ensure adequate baseline capacity and provide appropriate housing capacity buffers (this would ensure that adequate capacity is provided to meet RHNA targets and achieve Housing Element compliance)
- Apply height limits, lot coverage limits, and minimum setbacks and stepbacks as the primary means of controlling density/bulk (this would serve to control the form of buildings while not codifying the assumption that providing additional livable space is inherently undesirable)
- Evaluate in which areas of Berkeley, if any, it may be appropriate to use FAR as an additional development standard for limiting overall bulk (this would serve to preserve FAR as an option for consideration in areas that may be particularly environmentally sensitive)

**SUNLIGHT/SHADOWS**

**Discussion**

The use of “Daylight Plane” requirements on the University Avenue corridor has tended to reduce the potential to create new homes and imposed potentially expensive architectural requirements on new buildings. On the north side of University Avenue, where daylight plane requirements have been most impactful, many parcels remain underutilized; and those parcels that have been redeveloped have tended to feature fewer new homes relative both to what would have been achievable without these requirements and to comparable parcels along other major thoroughfares. Additionally, by requiring a tiered, “wedding-cake” like approach to building form, daylight plane and shadow requirements tend to reduce alignment between building stories, which can increase the cost of routing plumbing/utilities and increase building surface area, which lowers energy efficiency.

It is therefore recommended that solar/shadow regulations be based on simple development standards (i.e. generalized height, setbacks, setbacks, etc.) to ensure maximization of two major City goals: housing production and decreases in travel-associated GHG emissions.

**The Joint Subcommittee on the Implementation of State Housing Laws (JSISHL) took the following action on shadow standards:**

- **Recommended** that the Planning Commission and staff review and refine the following shadow standards:
  - Applicability of Shadow Impacts:
    - Shadow impacts would not be considered when a proposed new building or new construction meets all base development standards.
    - 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.
    - 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.
    - 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.
    - 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.
  - Elements of consideration for Shadow Impact:
    - 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.

- 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.
    - 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.
- The Joint Subcommittee on the Implementation of State Housing Laws (JSISHL) **rejected:**
  - Using 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.
  - Applying shadow standards for a Use Permit, Administrative Use Permits, waivers or density bonuses to exceed the "base" residential and commercial zoning district development standards that are in effect as of 7/1/20.
  - Considering impacts on light and air and existing windows and door openings of the applicable adjacent buildings will be taken into consideration
  - Protecting existing rooftop solar panels from shadowing by new development on adjacent and nearby parcels.
  - Limiting shadowing of residential buildings by new development on adjacent or nearby parcels 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.
  - Protecting open, currently unshadowed areas of public parks and unshadowed areas of school grounds that are used for student recreation.

**The Hahn, Arreguín, Wengraf and Harrison (HAWH) Alternative recommends the following action on shadow standards:**

- Developing standards for shadowing and solar impacts should be proposed for all Commercial (C-) and the Mixed Use Residential (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.

**Analysis of the alternatives using the criteria listed above:**

- **Housing production:** Both the JSISHL and HAWH alternatives could result in substantial decreases to housing production relative to the status quo of not applying broad/citywide daylight plane and/or shadow study requirements —both of which have the potential to lower parcel housing capacity and significantly increase design complexity and development costs. Our proposal would instead improve predictability, simplicity, and feasibility by forgoing an additional layer of regulation and instead relying on pre-defined, quantitative development standards (height, setback, stepback, etc.).
- **Cost:** The JSISHL and HAWH alternatives would both have the potential to increase development costs and costs related to staff time. Daylight planes and shadow standards increase design complexity and costs, while also increasing construction costs by requiring more complex building envelopes, utilities systems, etc. Shadow studies directly increase design costs through the need to perform modeling and possible revisions to the building envelope. Both options increase staff time by increasing the complexity of determining project compliance. Additionally, by reducing the potential number of units, the JSISHL and HAWH alternatives have the potential to reduce production of inclusionary units and/or the City's receipt of Affordable Housing Mitigation Fees. Both of these would have the potential to indirectly increase the need for City expenditures on the provision of affordable housing. Our approach, by reducing layers of regulation and avoiding potential reductions to the number of units allowed on a parcel, would reduce design/construction costs and potentially result in reduced need for the City to finance affordable units.
- **Environmental sustainability:** Both the JSISHL and HAWH alternatives would potentially result in worse sustainability outcomes relative to the status quo and our proposal because both alternatives would tend to reduce the number of new homes that could be provided on commercial and mixed use residential corridors by potentially requiring reductions in the buildable envelope to meet daylight plane or shadow

requirements. It is true that increased shading created by new buildings could somewhat reduce Berkeley's local generation of renewable energy. However, given that overall electricity generation is transitioning toward renewable sources of electricity, and given that infill housing near jobs and transit remains Berkeley's single most effective means of reducing greenhouse emissions relative to business as usual, any reduction in housing capacity would represent a greater negative impact to the City's achievement of its sustainability/climate action goals.<sup>28</sup>

- **Racial and social equity:** The impacts of the HAWH alternative on racial/social equity would rest heavily on what specific daylight planes or shadow standards are adopted and where/how they are applied. For example, if applied only to projects that encompass a very large parcel or even an entire block, there may be sufficient onsite flexibility to ensure daylight planes or shadow standards would not result in a reduction in the provision of housing and affordable housing. On the other hand, if applied to a small parcel, daylight planes or shadow standards could have a significant effect on the number of units/affordable units the site could accommodate--especially if the site is too small to accommodate flexible location of taller project elements. The JSISHL alternative would have extremely negative impacts to racial and social equity because, as currently conceived, it would require *all* density bonus projects to conduct a shadow study, thereby subjecting projects that include affordable units to greater regulatory burden than projects without affordable units.
- **Administrative Considerations:** By requiring the City Manager and staff to act immediately on its recommendations for solar planes, the HAWH and JSISHL alternatives would serve to limit options for comprehensively addressing these zoning questions as part of the Housing Element Update and potentially induce staff to immediately deprioritize other efforts in pursuit of its recommendations.<sup>29,30</sup> Our alternative offers flexibility for these questions to be addressed while the comprehensive zoning changes are under consideration during the Housing Element Update.

### **Recommendation:**

Refer to the City Manager and the Planning Commission to consider, as part of a comprehensive approach to the Housing Element rezoning, the following approaches:

- Eliminate burdensome project-level shadow study requirements for creating new homes (this would increase development certainty, improve the ability of small and local developers to participate in the creation of new homes, reduce predevelopment costs, and shorten pre-development timelines)

<sup>28</sup> <https://coolclimate.berkeley.edu/calculator>

<sup>29</sup> From the HAWH item, as presented in Supplemental materials for the 10/26/2021 meeting: "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**.[emphasis added]"

<sup>30</sup> From the JSISHL Recommendation: "Additional staff time amounting to \$100,000 would have to be covered by re-arranging staff priorities within existing resources to support the effort."

- Rely on development standards such as height limits, lot coverage, setbacks, and stepbacks as the metrics for adjudicating whether shadow impacts would be “excessive” (this would increase development certainty and serve to establish acceptable shadow impacts on a programmatic rather than project level)
- If and to the extent shadow studies remain a component of the approvals process, require that the net shadow impacts of proposed development be considered in the context of existing vegetation and its reasonably projected growth (this would serve to ensure that new housing projects are not unfairly penalized for creating new shadows in areas that are already shaded by vegetation)
- Avoid and/or eliminate zoning code provisions that conflict with the human right to housing by reducing or obstructing housing creation for the purpose of privatizing sunlight and solar energy (this would serve to ensure that the human right to housing is not being made secondary to private solar energy generation)

### **BUILDING FORM AND BASIC DESIGN ELEMENTS**

Background materials for the HAWH item correctly indicate that Berkeley currently allows for a variety of architectural styles and design choices, and this proposal concurs that the City should continue to do so. Additionally, this item concurs that certain development standards are useful for ensuring the creation of a convenient and engaging streetscape and pedestrian realm, most importantly along major commercial/mixed use corridors. However, the HAWH and JSISHL alternatives also reference [other design standards](#) that relate more to aesthetic preferences/tastes and which arguably do not merit codification through objective standards.

Rigidly imposing these standards would effectively render illegal some of Berkeley’s most iconic buildings, were they proposed today. Furthermore, had they been in place at the time they were proposed, some of Berkeley’s most innovative new buildings would have been stymied by these standards. For example, Transform’s GreenTRIP award-winning 2201 Dwight project, which incorporated modular construction and a rooftop garden, would be incapable of meeting HAWH’s and JSISHL’s recommended requirements for base and rooftop articulation as well as mixed materials. Additionally, there are some design standards that have heretofore been favored by existing design guidelines and the Design Review Committee—namely, facade articulation—that negatively impact construction costs, building energy efficiency, and unit layouts.

This alternative approach therefore advocates taking a lighter touch, to allow for creativity, while still seeking to preclude certain negative design choices in the pedestrian realm.

The Joint Subcommittee on the Implementation of State Housing Laws (JSISHL) took the following action on Design Standards:

- the Design Review Committee and Planning Commission review the [staff matrix](#) on
  - Neighborhood context
  - Building design
  - Ground floor design
  - Parking lots, garages, and driveways



- Building Accessories
- Street Trees
- Signs and Awnings

The Hahn, Arreguín, Wengraf and Harrison (HAWH) Alternative recommends the following action on design standards:

- Refine the [staff-proposed matrix of base standards](#) and include consultation with the Design Review Committee and Zoning Adjustments Board as well as review of standards adopted or proposed in other similar California jurisdictions.
- Consider “special standards” where C- and MU-R Districts meet each other or meet overlays or Residential areas to avoid “deleterious impacts” and serve “neighborly functions.”
- Create provisions to allow buildings that do not conform with these standards to be able to receive permits on a “case by case basis.”
- Review recent case law to ensure compliance with evolving legal standards for objective elements.

**Analysis of Status Quo, JSISHL and HAWH alternatives using the criteria listed above:**

- **Housing production:** Both the JSISHL and HAWH alternatives could result in a potentially substantial decrease in housing production as a result of increasing design/construction cost, increased staff effort necessary to review development proposals for compliance, and a narrower pool of potential homebuilders capable of meeting such requirements. It should be noted that the HAWH proposal’s allowance of exceedance of standards “on a case by case basis,” without defining objective standards for the allowance of exceedances could represent an impermissible “subjective” standard depending on the exact implementation, and further delay projects.
- **Cost:** The JSISHL and HAWH alternatives could increase design, labor, and materials costs for development. Additionally, by reducing the potential overall number of housing units built, the JSISHL and HAWH alternatives have the potential to reduce production of inclusionary units and/or the City’s receipt of Affordable Housing Mitigation Fees. Both of these would have the potential to indirectly increase the need for City expenditures on the provision of affordable housing. Moreover, the application of design standards to the City’s own affordable housing projects could substantially increase design and construction costs.
- **Environmental sustainability:** Both the JSISHL and HAWH alternatives would potentially result in worse sustainability outcomes because both alternatives would tend to impose requirements that decrease energy efficiency and to reduce design flexibility to allow for green building features. Our proposal avoids imposing inefficient building massing, and instead offers the greatest flexibility to incorporate green building features and design for overall sustainability.
- **Racial and social equity:** Aesthetic concerns and exacting architectural requirements have been a hallmark of exclusionary zoning.<sup>31</sup> Such requirements tend to increase

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<sup>31</sup> As discussed in the following report, stringent design/materials requirements have been used to discourage the creation of more affordable homes. In one particularly egregious example, the town of

development costs, making housing less affordable. Therefore the JSISHL and HAWH approaches of greatly increasing the specificity of Berkeley design standards would have the potential to worsen outcomes with respect to racial and social equity. Our proposal would serve to lower development costs by allowing for greater flexibility with respect to design and construction, relying on building and fire code requirements to ensure building materials and designs that meet minimum health and safety standards.

- **Administrative Considerations:** By requiring the City Manager and staff to act immediately on its recommendations the HAWH alternative would serve to limit options for comprehensively addressing these design/zoning questions as part of the Housing Element Update and induce staff to immediately deprioritize other efforts in pursuit of its recommendations. By allowing its recommendations to be further considered by the Council, Design Review Committee and Planning Commission, with no specific mention of timing or deadlines, the JSISHL alternative would allow staff and commissions to potentially address these issues comprehensively. Our alternative also offers flexibility for these questions to be addressed at an appropriate time when other zoning changes are under consideration and in a manner that—while still making recommendations for consideration—avoids presupposing what the optimal approach will be in the face of myriad and potentially competing considerations.

### **Recommendation:**

Refer to the City Manager and the Planning Commission to consider, as part of a comprehensive approach to the Housing Element rezoning, the following approaches:

- Maintain or establish objective design or other standards regarding the following:
  - Ground floor transparency along major roadways/commercial corridors (to provide eyes on the street, increase visual interest, avoid blank walls, and enhance commercial/mixed-use district vitality)
  - Ground floor height in commercial/mixed use districts (to create high-quality commercial spaces that are more likely to appeal to retailers and other tenants)
  - Location of storefronts and pedestrian entrances (to maintain/increase pedestrian convenience)
  - Location/screening/lighting/ventilation of garage areas (to reduce impacts to pedestrians and visual/noise impacts of automobiles)
  - Location of garage doors, loading docks/areas, and utility access (to maintain/increase pedestrian convenience and reduce risk of collisions)
  - Overall reduction/avoidance of curb cuts (to maintain/increase pedestrian convenience, reduce risk of collisions, and increase sidewalk space available for street furniture and other amenities)
  - Planting of street trees and/or other landscaping (to increase shade, provide habitat, and enhance street appearance)
  - Provision of exterior lighting (to ensure nighttime safety and enhance building appearance)

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Tuttle, Oklahoma passed an ordinance banning the use of vinyl siding. Another example is Bryan County, Georgia. <https://www.nahb.org/-/media/NAHB/advocacy/docs/industry-issues/land-use-101/state-local-affordability/residential-design-standards-072020.pdf>

- Provision of exterior bike racks and provision of interior bike parking (to enhance convenience of bicycle transportation)
- Avoid, minimize, or eliminate objective design standards related to the following:
  - Building color (to avoid potentially confusing and subjective disagreements over the quality or merits of particular colors or shades and to prevent architectural monotony)
  - Exterior Materials/Cladding (to avoid: architectural monotony, increasing construction/housing costs, precluding the use of innovative materials, subjective judgements about the relative “quality” of materials, and expenditure of staff time on evaluation of materials choices beyond what is necessary for building/fire code compliance and public health/safety)
  - Base articulation—aside from minimum ground floor heights in commercial districts (to avoid architectural monotony and/or the preclusion of innovate/modular construction types)
  - Roofline articulation (to avoid unnecessary reductions to livable space, and/or preclusion of innovative construction types)
  - Facade articulation (to avoid inefficient building design, increased construction costs, decreased building efficiency, and suboptimal unit layouts)
  - Minimum or maximum windows—aside from that required by building/fire code for public health and safety (to avoid architectural monotony and/or precluding innovative/energy efficient design)
  - Awnings/canopies (to allow flexibility for new structures to reflect existing buildings, which include a mix of awnings, canopies, and no coverings and avoid visual clutter, reduce maintenance costs and the likelihood of damage/vandalism)
- Develop voluntary city-wide or district-level design guidelines that clearly and comprehensively explain community design preferences, but avoid the one-size-fits-all approach of codifying an exhaustive variety of standards/considerations.

### **VIEWS AND PRIVACY**

Consistent with the overall approaches outlined in the HAWH and JSISHL alternatives, this proposal recommends that views and privacy generally not be a major consideration in the development of objective development and design standards.

### **FISCAL IMPACT**

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

Developmental standards are currently under consideration for the 2023–2031 6th Cycle Housing Element Update. These developmental standards will address the bulk and density that creates shadowing on adjacent parcels.

### **Contact Information**

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### Links

<https://www.berkeleyside.org/wp-content/uploads/2017/07/2017-07-11-Item-29-Housing-Accountability-NEW.pdf>

[https://www.cityofberkeley.info/Clerk/City\\_Council/2018/06\\_June/Documents/2018-06-12\\_Item\\_34\\_Defining\\_Objective\\_Standards\\_for\\_Views.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/06_June/Documents/2018-06-12_Item_34_Defining_Objective_Standards_for_Views.aspx)

<https://www.berkeleyside.org/wp-content/uploads/2017/06/MPA-ISO-Motion-to-Enforce-05.25.17.pdf>

### **Images/descriptions of buildings impermissible under [objective design standards matrix](#)**

#### **Impermissible: Shattuck Hotel - 2086 Allston Way (City of Berkeley landmark)**



- Buildings over three stories tall shall have major massing breaks at least every 100 feet along every building frontage 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
- Provide balconies or upper facade projections or recesses every 25 to 30 feet. Upper facade projection or recess - Any balcony, window box, window articulation that either creates a recess in or projects out from the building face.
- At least one publicly-accessible street-level entrance shall be provided for every 40 feet along a streetfacing property line. [South side of the building fails this test]



**Impermissible: Kroeber Building - 2054 University Ave (City of Berkeley landmark)**



- A primary building entrance must have a roofed projection in the form of either a canopy or the extension of a vertical bay, or recess with a minimum depth of 5 feet and a minimum area of 60 sq. feet.

**Impermissible: Berkeley Art Museum / Pacific Film Archive - 2155 Center St (City of Berkeley landmark)**



- 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.
- A primary building entrance must have a roofed projection in the form of either a canopy or the extension of a vertical bay, or recess with a minimum depth of 5 feet and a minimum area of 60 sq. feet.
- All lighting shall be downcast and not cause glare on the public right of way or neighboring parcels.
- Differentiate the base. A base shall visually carry the weight of the building.

**Impermissible: La Casitas Apartments - 1619 Walnut St  
(City of Berkeley Structure of Merit)**



- 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 street facing building facade.
- At least one publicly-accessible street-level entrance shall be provided for every 40 feet along a streetfacing property line.
- Differentiate the base. A base shall visually carry the weight of the building.

**Impermissible: Mobilized Women of Berkeley Building - 1007 University Avenue  
(City of Berkeley landmark)**



- At least one publicly-accessible street-level entrance shall be provided for every 40 feet along a streetfacing property line.

- 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 street facing building facade.

**Impermissible: Garden Village - 2201 Dwight way**



- At least one publicly-accessible street-level entrance shall be provided for every 40 feet along a streetfacing property line.
- 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 street facing building facade.
- Differentiate the base. A base shall visually carry the weight of the building.

**Impermissible: Berkeley Way Housing Project (under construction)**



- Differentiate the base. A base shall visually carry the weight of the building.





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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).<sup>1</sup> 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.<sup>2</sup>

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

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<sup>1</sup> 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.

<sup>2</sup> 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.<sup>3</sup>

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.*<sup>4</sup> 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.<sup>5</sup> Staff or ZAB take a second look and determine whether exceeding those base standards would be

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

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

<sup>5</sup> See footnote 1

detrimental to adjacent properties, the neighborhood or the community.<sup>6</sup> 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)<sup>7</sup> 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

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<sup>6</sup> "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.

<sup>7</sup> **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,<sup>8</sup> 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.*

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<sup>8</sup> 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.

JSISHL<sup>9</sup> 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.

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<sup>9</sup> 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.

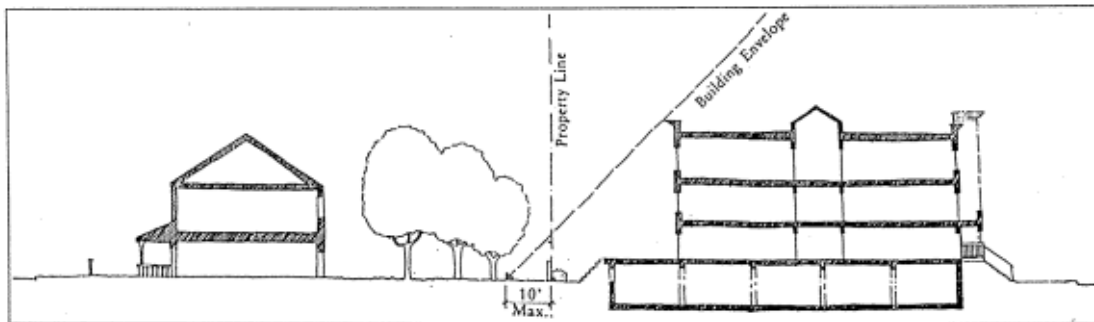
## SUNLIGHT/SHADOWS

### DISCUSSION:

~~One option for creating objective shadowing standards is the "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:



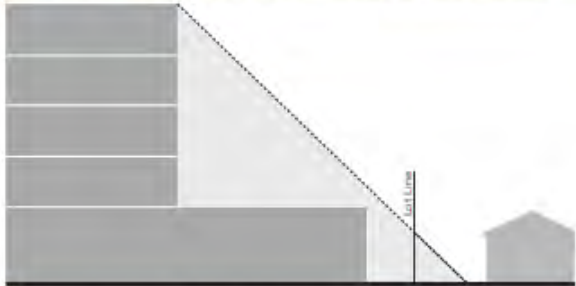
down as it approaches the rear property line, so as not to obstruct direct sunlight to adjacent

*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**

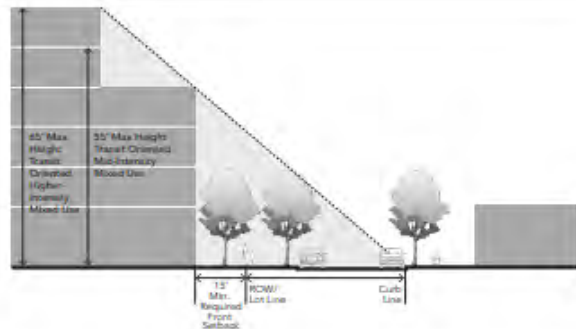
**Rear and Upper Floor Rear Setback Adjacent to Residential Lot**



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](#).<sup>10</sup> 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.

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<sup>10</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2021/03\\_Mar/Documents/2021-03-23\\_Supp\\_3\\_Reports\\_Item\\_17\\_Supp\\_Planning\\_pdf.aspx](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,<sup>11</sup> 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](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](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](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Commissions/JSISHL/2020-07-22_JSISHL_Item%2010.pdf)

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<sup>11</sup> 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.<sup>1</sup>

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.*<sup>2</sup> Base standards *do not operate as a bar to approval of a*

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

<sup>2</sup> “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.<sup>3</sup> 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.<sup>4</sup> 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)<sup>5</sup> 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

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<sup>3</sup> See footnote 1

<sup>4</sup> "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.

<sup>5</sup> **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,<sup>6</sup> 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.*

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<sup>6</sup> 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.

JSISHL<sup>7</sup> 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**

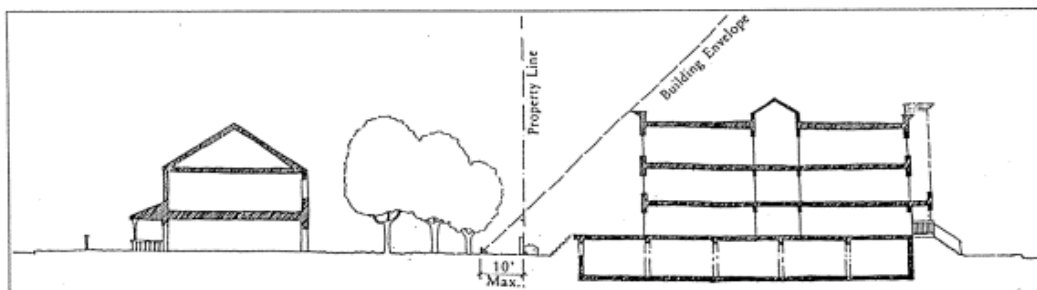
**DISCUSSION:**

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<sup>7</sup> 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.



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](#).<sup>8</sup> 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:**

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<sup>8</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2021/03\\_Mar/Documents/2021-03-23\\_Supp\\_3\\_Reports\\_Item\\_17\\_Supp\\_Planning\\_pdf.aspx](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,<sup>9</sup> 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]

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<sup>9</sup> 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](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](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](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)

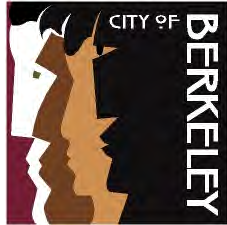
**23D.24.020 - ES-R - Purposes**

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><b>Massing</b></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><b>Materials</b></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><b>Rooflines</b></p> <p>Goal: Vertically break up building mass at the roofline.</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>	Roofline - Top termination of the massing.	3
	<p><b>Façade Design</b></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><b>Windows</b></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><b>Residential Lobbies</b></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><b>Ground Floor Height</b></p> <p>Goal: Enhance ground floor experience.</p>	Ground floor <i>commercial spaces</i> shall have a minimum interior height of <i>13 feet</i> .		7
	<p><b>Storefronts</b></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><b>Public Service Street Frontages</b></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>*reference Figure 43: Public Serving Frontages on page 61 of the Downtown Design Guidelines for applicability.</p>		9
4. Parking Lots, Garages and Driveways	<p><b>General Guidelines</b></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><b>Surface Lots</b></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><b>Garage Lighting and Ventilation</b></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><b>Lighting</b></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><b>Security and Fences</b></p> <p>Goal: Reduce visual impact.</p>	Security devices and grillwork visible from the street shall be integrated into the overall building design.	Perimeter fencing utilized along public street shall be constructed of decorative iron, pre-painted welded steel, or wood picket material.	14
	<p><b>Trash Service, Mechanical and Utilities</b></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	Goal: Preserve and/or add street trees.	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	Goal: Cohesive sign program that is in keeping with the building design	<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 code<sup>1</sup>, 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 Projects<sup>2</sup> within the Downtown Mixed-Use District (C-DMU) that are between 60 and 75 feet tall. Shadow analysis for these projects must show that:

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

<sup>2</sup> 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:**

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 FURTHER 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:

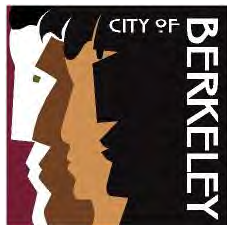
Ayes: Davila, Droste, Hahn, Harrison, Maio, Wengraf, Worthington and Arreguin.

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.

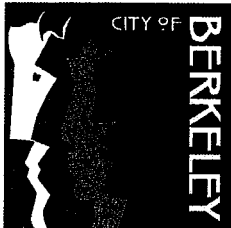


Mayor Jesse Arreguin  
 Councilmember Sophie Hahn, District 5

### **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

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## 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](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**





Planning and Development Department  
Land Use Planning Division

## STAFF REPORT

DATE: March 2, 2022  
TO: Members of the Planning Commission  
FROM: Alisa Shen, Principal Planner, Land Use Planning Division  
SUBJECT: Citywide Affordable Housing Requirements Update

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### RECOMMENDATION

Conduct a public hearing on proposed amendments to comprehensively update the City's affordable housing requirements and provide a recommendation to the City Council to:

- Amend Berkeley Municipal Code (BMC) Chapter 23.328, updating the citywide Affordable Housing Requirements (AHR) in the Zoning Ordinance;
- Repeal existing administration and zoning code sections that refer to affordable housing requirements, BMC Section 22.20.065, and Section 23.312.040(A)(6);
- Rescind Resolution No. 68,074-N.S. related to fees, exemptions, and administration of inclusionary affordable housing and in-lieu programs;
- Adopt a Resolution addressing regulations for a voucher program and establishing an in-lieu fee pursuant to BMC Section 23.328.020(A)(2).

### BACKGROUND

The City of Berkeley has a strong history of programs and initiatives to retain existing affordable and rent controlled tenant housing, protect tenants from displacement, and create new affordable housing including deed-restricted income-qualified housing. City Council has adopted multiple, interrelated referrals to staff and Commissions to explore revisions to the City's affordable housing requirements for new development that are currently codified in several sections of the Berkeley Municipal Code, including:

- BMC 21.28: Condominiums and Other Common Interest Subdivisions
- BMC 22.20: Mitigations and Fees—Conditions of Approval for Development Projects
- BMC 23.326: Demolition and Dwelling Unit Controls<sup>1</sup>

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<sup>1</sup> Recently adopted revisions to the City's Zoning Ordinance (Title 23 of the Berkeley Municipal Code) went into effect December 1, 2021. The new Zoning Ordinance is still under Title 23 of the Berkeley

- BMC 23.328: Inclusionary Housing
- BMC 23.312: Live/Work
- BMC 13.76: Rent Stabilization and Eviction for Good Cause

There have also been changes to State laws that govern affordable housing requirements, streamlining, dwelling unit replacement, and density bonus incentives. There are also numerous locally adopted implementing resolutions that set fee amounts and exemptions. In addition, the City has administrative guidelines and practices to implement the State and local requirements.

Based on the complexity of various Council referrals, State laws and local regulations, the City engaged the consulting firm Street Level Advisors to evaluate existing regulations and potential changes in order to comprehensively update the City's affordable housing requirements.

The work to date has included:

- **October 2020:** Street Level Advisors presented a range of identified policy issues and solicited feedback from the public, the Planning Commission and a range of stakeholders including affordable housing developers and advocates, market-rate developers, and the Planning Commission, Housing Advisory Commission, Zoning Adjustments Board, and Rent Stabilization Board.
- **May 2021:** Street Level Advisors prepared a memorandum analyzing 14 categories of potential changes to the City's affordable housing requirements based on Council referrals and stakeholder and public feedback. Staff and Street Level Advisors presented the proposed changes to the Planning Commission and City Council to inform drafting of the attached ordinance and resolution.<sup>2</sup>

## DISCUSSION

Proposed amendments to affordable housing requirements are in response to related City Council referrals, as well as in response to changed State laws that govern affordable housing requirements and density bonus incentives. Amendments will serve to consolidate affordable housing requirements into a single framework and enhance the existing requirements through the standardization and simplification of certain fees and requirements, the provision of new options by which requirements can be met, and through various administrative changes (**Attachment 1**). Proposed changes will also provide regulations for a voucher program and the establishment of a new in-lieu fee

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Municipal Code but has different numbering and better organization. Under the previous or "legacy Zoning Ordinance", the section pertaining to Demolition and Dwelling Unit Controls was BMC Section 23.C.08, the section pertaining to Inclusionary Housing was 23.C.12 and the section about affordable housing requirements for Live/Work units in 23.E.20.

<sup>2</sup> May 5, 2021 Planning Commission Staff Report:

[https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Commissions/Commission\\_for\\_Planning/2021-05-05\\_PC\\_Item%209\(1\).pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2021-05-05_PC_Item%209(1).pdf). May 18, 2021 City Council Work Session Report: [https://www.cityofberkeley.info/Clerk/City\\_Council/2021/05\\_May/Documents/2021-05-18\\_WS\\_Item\\_02\\_Updating\\_Citywide\\_Affordable\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/05_May/Documents/2021-05-18_WS_Item_02_Updating_Citywide_Affordable_pdf.aspx)

calculated on a per-square-foot basis to further support the provision of affordable housing pursuant to BMC Sec. 23.328.020(A)(2) (**Attachment 2**).

These proposed changes are briefly summarized below, along with the corresponding recommendation(s) from the memorandum prepared by Street Level Advisors, which has been updated to reflect input received since the May 2021 Planning Commission and Council Work Sessions (**Attachment 3**). Not all of the proposed changes from the Street Level Advisors memo are included in the final recommendations below, based on further staff review of the policy and practice implications. The Commission is encouraged to review all of the consultant's recommendations to inform the overall discussion.

## A. Summary of Proposed Changes

- 1. Consolidate Affordable Housing Requirements.** As authorized by the passage of Assembly Bill 1505, the proposed ordinance consolidates the City's existing regulations by addressing both rental and ownership projects (including live/work units and Group Living Accommodations) into an amended BMC Chapter 23.328, Affordable Housing Requirements, allowing for the deletion of the sections of the BMC where these topics were originally addressed (BMC Sections 22.20.065, and 23.312.A6). The proposed amendments impose on-site affordable housing requirements and an in-lieu fee as an alternative to on-site units (rather than a mitigation fee).<sup>3</sup>
- 2. Establish a Per-Square-Foot In-lieu Fee.** Instead of the existing method of calculating fees based on a per-unit basis, the proposed ordinance authorizes the Council to set fees, and the proposed resolution sets the affordable housing in-lieu fee at \$45 per gross residential square foot, which was shown to be roughly equivalent to the current fee for projects with typically sized units, collected at the time of Certificate of Occupancy (as opposed to the current practice of providing a discount if paid at time of Building Permit issuance). The fee would be automatically adjusted annually based on change to an established index such as the California Construction Cost Index. It is recommended to conduct a future feasibility study and consider whether to impose a higher or lower fee after a period of changing market trends (e.g., three years or more into the future).<sup>4</sup>
- 3. Incentivize Extremely Low-Income (30% of AMI) Units.** The City's current rules require that 40% of all VLI units be offered first to Housing Choice voucher holders and 40% be offered first to Shelter+Care voucher holders. The proposed

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<sup>3</sup> Street Level Advisors Memorandum (Jan. 2022): Recommendation 1.1, 1.2, 1.3 and 1.4. Note: Staff is in the process of determining the appropriate "effective date" of the draft ordinance and resolution and will add this to the draft documents that are prepared for Council consideration and adoption.

<sup>4</sup> SLA Jan. 2022 Memo, Recommendations 2.1 and 3.1.

changes would require that all of the required VLI units be offered to voucher holders (50% to Housing Choice voucher holders and 50% to Shelter+Care voucher holders) before being marketed to other income eligible households.<sup>5</sup> As noted in the Street Level Advisors' memo, this change along with along with the way that the City's requirements interact with the State Density Bonus will serve to slightly increase the share of ELI tenants served without adding layers of complexity to the program since voucher holders in both programs generally have incomes well below 30% AMI.

- 4. Retain a Residual Fee for "Mixed Compliance" Projects.** Currently, rental projects that provide 20% of the total project units as affordable units on-site are exempt from paying fees. Half of the required units (or 10% of total units) must be for VLI residents and half (10% of total units) must be for Low Income (LI) residents. Projects that provide less than 20% of the required affordable units on-site are also required to provide at least half of those units restricted to VLI tenants and pay a fee for the residual units according to a formula that gives credit for those units that are provided on-site. The proposed ordinance continues the current requirements, and provides that projects approved pursuant to SB35 (with at least 50% of the total units restricted to LI) must meet the City's VLI standard (10% of total units) to satisfy the inclusionary requirement and thus not have any residual fee obligation.<sup>6</sup>
- 5. Standardize Ownership and Rental Fees.** The feasibility analysis prepared by Street Level Advisors found that the City's existing requirements for ownership/condominium projects resulted in an equivalent per-square-foot fee ranging from \$54 to \$75, which is considerably higher than the equivalent per-square-foot fees estimated for rental projects (e.g. \$45 per square foot). The analysis noted that imposing a higher fee would tend to discourage home ownership development. Setting the fee at \$45 per square foot for both rental and ownership projects would "level the playing field" and still generate substantial in-lieu fees per unit because ownership units tend to be larger than rental units. It also simplifies administration as some projects may convert from rental to ownership. The proposed ordinance authorizes the City Council to set fees, and as noted above, the proposed resolution sets the affordable housing in-lieu fee at \$45 per gross residential square foot for both rental and ownership projects.<sup>7</sup>
- 6. Standardize Live-Work Requirements.** The proposed ordinance consolidates the affordable housing requirements for live/work units from BMC 23.312 into BMC 23.328 and removes the exemption for live/work projects from inclusionary and fee requirements, so that the same requirements would apply to live/work

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<sup>5</sup> SLA Jan. 2022 Memo, Recommendation 4.1.

<sup>6</sup> SLA Jan. 2022 Memo: Recommendation 5.2.

<sup>7</sup> SLA Jan. 2022 Memo, Recommendation 6.1.

projects as any other project except for the “affirmative marketing” provision (which was carried forward from the existing requirements).<sup>8</sup>

7. **Add a Land Dedication Option.** The proposed ordinance adds an option for developers to dedicate land, if authorized by the City Manager, for an approved non-profit housing developer. Donated land must be equal or greater in value than the in-lieu fee that otherwise would be required.<sup>9</sup>
8. **Provide a Family-Sized Units Option.** The proposed ordinance allows applicants the option to provide affordable units whose total size is at least 20% of the residential square footage (rather than a unit-for-unit equivalent), if each of the affordable units is either a two-bedroom or three-bedroom unit.<sup>10</sup> In reviewing this proposal, staff identified some implementation concerns:
  - Leasing three-bedroom units to Section 8 and Shelter Plus Care voucher holders has historically been difficult to accomplish. This clause may ultimately undermine the ordinance’s goal to serve Extremely Low-Income Households;
  - There are also concerns regarding establishing reasonable standards for unit sizes for each proposed development.
9. **Remove Exemption for Most Group Living Accommodation (GLA) Projects and Prohibit Provision of On-Site Units in GLAs.** The proposed ordinance would remove the current exemption for Group Living Accommodations (GLAs) from inclusionary and fee requirements. Fraternities, sororities and other specially designated units recognized by the University of California would retain their exemption. The proposed ordinance would also prohibit projects with an average of more than 3 bedrooms per unit from selecting the on-site option in order to reduce administrative burdens; and adopt a local density bonus that enables these projects to access the benefits of the State Density Bonus in exchange for an increased in-lieu fee instead of on-site units.<sup>11</sup>
10. **Reduce Fees for Small / “Missing Middle” Projects.** The proposed ordinance eliminates the exemption for projects of one to four units and replaces it with a tiered fee that steps up for projects with less than 12,000 gross residential square feet by reducing the fee by \$2 per square foot for each 1,000 square foot increment less than 12,000 sf, as shown in the Table below.<sup>12</sup>

<sup>8</sup> SLA Jan. 2022 Memo: Recommendations 7.1.

<sup>9</sup> SLA Jan. 2022 Memo: Recommendation 8.1.

<sup>10</sup> SLA Jan. 2022 Memo: Recommendation 9.1.

<sup>11</sup> SLA Jan. 2022 Memo: Recommendations 7.2, 11.1 and 11.2.

<sup>12</sup> SLA Jan. 2022 Memo: Recommendations 12.1 and 12.2.



**Table 1. Proposed Tiered Square-Foot Based Fee**

Gross Residential Square Feet	Fee per Square Foot
12,000+	\$45
11,000-11,999	\$43
10,000-10,000	\$41
9,000-9,999	\$39
8,000-8,999	\$37
7,000-7,999	\$35
6,000-6,999	\$33
5,000-5,999	\$31
4,000-4,999	\$29
3,000-3,999	\$27
2,000-2,999	\$25
1,000-1,999	\$23
<1,000	\$21

The Planning Commission can also consider a flat fee of \$45 per square foot, the estimated equivalent of the City's current unit-based fee.

At this time, we do not have feasibility analyses for how this fee affects small projects (less than four units).

- 11. Cap Annual Rate of Rent Increases.** The proposed ordinance stipulates that any increase in rent of an affordable unit offered for rent shall be no greater than the increase in the Consumer Price Index for All Urban Consumers (CPI-U) in the San Francisco-Oakland-San Jose region as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics, for the twelve-month period ending the previous December 30 but not to exceed the corresponding increase in AMI for the same calendar year.<sup>13</sup> This is a change from the current ordinance which ties rent increases to the increase in Area Median Income (AMI) only. The goal is to ensure that rent increases do not result in a high housing cost burden or displacement of existing tenants. Over the past decade, annual increases in AMI are generally higher than the average increase in income of lower income households, resulting in unintended adverse impacts to tenants. This is in part due to the displacement of lower income households from the county, coupled with the increase in higher income earners moving to the county. However, while changes in CPI-U has traditionally been more stable than changes to AMI, this may change as we enter into an inflationary cycle. Staff recommends additional analysis to determine the impact of tying rent increases to CPI-U instead of AMI. Further, staff recommends that the method of annual rent increases be removed from the ordinance and incorporated into the administrative regulations.

<sup>13</sup> SLA Jan. 2022 Memo: Recommendation 13.

**12. Administrative Changes.** The proposed ordinance also recommends a number of administrative changes, as outlined below.<sup>14</sup>

- a. Require compliance plans. Developers of new projects will be required to submit an Affordable Housing Compliance Plan indicating their proposed strategy for complying with the City's affordable housing requirements. The Applicant for any Use Permit or Zoning Certificate for a Housing Development Project shall submit an Affordable Housing Compliance Plan to the Zoning Officer. The Affordable Housing Compliance Plan, as modified by the Zoning Officer or Board, may be incorporated as a condition of approval of any Use Permit or Zoning Certificate issued to the Applicant. The Affordable Housing Compliance Plan must be submitted and approved by the City as a condition of approval for any Building Permit.
- b. Authorize administrative citations. The proposed ordinance explicitly authorizes the creation of a proposed schedule of fines for monitoring and compliance violations to be included in the program guidelines.
- c. Deduct required fees/costs from gross rent. Language in the proposed ordinance was clarified to include any other mandatory fees imposed by the property-owner as a condition of tenancy in addition to tenant-paid utilities in determining whether a unit is affordable to Very Low-Income or Low-Income Households.
- d. Increase the amount of administrative set-aside from 10% to 15%. The proposed ordinance states that 15 percent of In-Lieu Fees collected may be used to pay for administration of the In-Lieu Fee or the Housing Trust Fund program, due to the increasing size and complexity of the City's portfolio of BMR units. At least 85% of In-Lieu Fees collected shall be deposited into a fund designated for use in the City's Housing Trust Fund program.

## **B. Topics to Be Addressed In A Separate Process**

In a separate process led by the 4x4 Joint Task Force Committee on Housing, proposed changes to the City's regulation of demolitions are also under discussion. Demolition requirements help protect existing rental-controlled housing by regulating and compensating for the elimination of such units which occurs through modifications to existing housing stock (e.g., removing kitchens, combining units). This 4x4 process involves representatives from the Rent Board and City Council, and the ordinance will be reviewed by the Housing Advisory Commission, Planning Commission, and other interested parties before advancing to City Council for review and possible action.

A number of proposed changes to the City's condominium conversion regulations were presented in the memorandum prepared by Street Level Advisors. These included

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<sup>14</sup> SLA Jan. 2022 Memo: Recommendation 14.1 - 14.4.

simplifying the calculation of the required fee, reducing the fees under certain circumstances and allowing flexibility in the use of the fees (allocating a portion of the fees to administer the condominium conversion program and/or the Housing Trust Fund and the remainder to go into the Housing Trust Fund).<sup>15</sup> These recommendations require additional consideration and may require additional nexus and feasibility analyses. Thus, changes to BMC Chapter 21.28, Condominiums and Other Common Interest Subdivisions, will be considered separately from the proposed changes to BMC Chapter 23.328 (and associated changes to BMC 22.20 and BMC 23.312 that are included in the proposed ordinance).

**NEXT STEPS**

Staff will bring recommendations from the Planning Commission and the Housing Advisory Commission regarding the draft ordinance and resolution to the City Council.<sup>16</sup>

**Attachments:**

- 1: Draft Ordinance Amending Berkeley Municipal Code (BMC) Chapter 23.312 Updating the Citywide Affordable Housing Requirements in the Zoning Ordinance and Repealing BMC Sections 22.20.065, and Section 23.312.040(A)(6); and
- 2: Draft Resolution for Regulations for Voucher Program and Establishing an In-Lieu Fee Pursuant to BMC Section 23.328.020(A)(2) and Rescinding Resolution No. 68,074-N.S.
- 3: Updating Affordable Housing Requirements for the City of Berkeley: Analysis and Recommendations. Prepared by Street Level Advisors, Revised February 2022.

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<sup>15</sup> See SLA Jan. 2022 Memo, Recommendations 10.1 - 10.5.

<sup>16</sup> See Street Level Advisors Jan. 2022 Memo, Recommendations 10.1 - 10.5.

ORDINANCE NO. -N.S.  
AFFORDABLE HOUSING REQUIREMENTS

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

Section 1. That Berkeley Municipal Code Section 21.28.080, Section 22.20.065, and Section 23.312(A)(6) are hereby repealed.

Section 2. That Berkeley Municipal Code Chapter 23.328 is amended to read as follows:

~~23.328.010 Chapter Purpose and Applicability.~~

~~A. *Purpose.* The purpose of this chapter is to: \_\_\_\_\_~~

~~1. Promote Housing Element goals to develop affordable housing for households with incomes below the median, as defined in this chapter, or, in the case of limited equity cooperatives, households with incomes below 120 percent of the median.~~

~~2. Require the inclusion of affordable dwelling units in specified proposed developments ("projects").~~

~~B. *Applicability.*~~

~~1. The following types of projects must comply with the inclusionary housing requirements of this chapter:~~

~~(a) Residential housing projects constructing five or more dwelling units.~~

~~(b) Residential housing projects constructing one to four new dwelling units when:~~

~~i. Such units are added to an existing one to four unit property developed after August 14, 1986; and~~

~~ii. The resulting number of units totals five or more.~~

~~(c) Residential housing projects proposed on lots with a size and zoning designation that allows construction of five or more dwelling units.~~

~~2. This chapter does not apply to dormitories, fraternity and sorority houses, boarding houses, residential hotels, or live/work units.~~

~~3. Live/work units are subject to Low-Income inclusionary provisions in Section 23.312 (Live/Work).~~

~~4. This chapter sets forth specific inclusionary housing requirements for the Avenues Plan Area, which prevails over any conflicting requirements set forth elsewhere. (Ord. 7787-NS § 2 (Exh. A), 2021)~~

~~23.328.020 General Requirements.~~

~~A. Minimum Percent of Units.~~

~~1. Any project subject to this chapter is required to include at least 20 percent of the total number of dwelling units within the project as inclusionary units, except that limited equity cooperatives are required to include at least 51 percent of their units as inclusionary units.~~

~~2. In applying the percentages above, any decimal fraction above a whole number of dwelling units shall be paid as an in-lieu fee as stated in Section 23.328.040 (Requirements Applicable to All Inclusionary Units).~~

~~B. Median Income Levels. For the purpose of determining the median income levels for households under this chapter, the City shall use the Oakland Primary Metropolitan Statistical Area (PMSA) statistical figures that are available to the City from the most recent U.S. Census. (Ord. 7787-NS § 2 (Exh. A), 2021)~~

~~23.328.030 Payment of In-Lieu Fees as an Alternative to Providing Inclusionary Units.~~

~~A. Applicability.~~

~~1. As an alternative to providing inclusionary units required in an ownership project, the applicant may elect to enter in an agreement with the City to pay fees as set forth in this section in-lieu of providing units that are not required to be provided at below market prices pursuant to Government Code Section 65915.~~

~~2. This section applies to projects for which all required permits have already been issued, as long as no units within such a project have been sold.~~

~~B. Deposit. The fee shall be deposited in the City's Housing Trust Fund.~~

~~C. Fee Amount.~~



- ~~1. The in-lieu fee shall be 62.5 percent of the difference between the permitted sale price for inclusionary units and the amounts for which those units are actually sold by the applicant.~~
- ~~2. The fee shall be calculated and collected based on the sales prices of all of the units in a project to which the inclusionary requirement applies, such that the fee as charged shall be a percentage of the difference between the actual sales price for each unit, and the sales price that would have been permitted had that unit been an inclusionary unit.~~
- ~~3. The percentage shall be determined using the following formula: the number of units for which an in-lieu fee is substituted for an inclusionary unit divided by the total number of units to which the inclusionary ordinance applies, multiplied by 62.5 percent.~~
- ~~4. This fee shall only apply to units in a project that are counted in determining the required number of inclusionary units in a project and shall not apply to any units provided as a density bonus.~~
- ~~5. If the City Manager determines that an actual sales price does not reflect the fair market value of a unit, the City Manager shall propose an alternate price based on the fair market value of the unit.~~
- ~~6. If the developer and the City Manager cannot agree on a fair market value, the City Manager shall select an appraiser to prepare an appraisal of the unit and the appraised value shall be used as the market value.~~

~~D. Calculation of Inclusionary Sales Price.~~

- ~~1. The allowable inclusionary sales price for the purpose of calculating the in-lieu fee amount shall be three times 80 percent of the Area Median Income (AMI) last reported as of the closing date of the sale of the unit, with the exception that if the developer has already been authorized to charge an inclusionary sale price based on development costs pursuant to Ordinance 6,790 N.S. (adopted January 27, 2004, sunsetted February 19, 2006) the allowable inclusionary sale price for the purposes of this section shall be the price permitted under that ordinance.~~
- ~~2. Area median income (AMI) shall be calculated in accordance with the affordability regulations established by the City Manager pursuant to Section 23.328.080 (Administrative Regulations).~~

~~E. *Time of Payment of Fee.* The developer shall pay the in-lieu fee no later than the closing date of the sale of a unit as a condition of the closing. (Ord. 7787 NS § 2 (Exh. A), 2021)~~

~~23.328.040 Requirements Applicable to All Inclusionary Units.~~

~~A. *Recipient Requirement.*~~

~~1. All inclusionary units other than those in limited equity cooperatives shall be sold or rented to:~~

~~(a) The City or its designee; or~~

~~(b) Low Income, Lower Income, or very low income households.~~

~~2. Units in limited equity cooperatives shall be sold or rented to households whose gross incomes do not exceed 120 percent of the Oakland PMSA median.~~

~~B. *Agreement.* The applicant shall execute a written agreement with the City indicating the number, type, location, approximate size, and construction schedule of all dwelling units and other information as required to determine compliance with this chapter.~~

~~C. *Timing.* All inclusionary units in a project and phases of a project shall be constructed concurrently with, or before, the construction of non-inclusionary units.~~

~~D. *Criteria.* All inclusionary units shall be:~~

~~1. Reasonably dispersed throughout the project;~~

~~2. Of the same size and contain, on average, the same number of bedrooms as the non-inclusionary units in the project; and~~

~~3. Comparable with the design or use of non-inclusionary units in terms of appearance, materials, and finish quality.~~

~~E. *In-Lieu Fee Requirement.* In projects where calculating the inclusionary requirement results in a fraction of a unit, the fraction shall be paid in the form of an in-lieu fee to the City.~~

~~1. Where Government Code Section 65915 does not apply, the in-lieu fee shall be the fractional value of the difference between development cost (excluding marketing costs and profit) and actual sales price for the average comparable unit in projects.~~

~~2. Where Government Code Section 65915 does apply, the in-lieu fee shall be the difference between affordable cost for an appropriately sized household and the fractional value of the average comparable actual sales price for the fraction of the unit in projects to require a density bonus or equivalent incentive.~~

~~F. Use of In-Lieu Fees.~~

~~1. The in-lieu fee shall be used by the City or its designee (such as a non-profit housing development corporation) to provide, construct, or promote the creation or retention of low income housing in Berkeley.~~

~~2. The use of in-lieu fees for specific housing programs shall be brought before the Housing Advisory and Appeals Board for review and approval.~~

~~G. Exceptions. Where the applicant shows, and the City agrees, that the direct construction and financing costs of the inclusionary units, excluding marketing cost and profit (and also excluding land costs if a density bonus or equivalent incentive is provided), exceeds the sales prices allowed for inclusionary units by this chapter, the Zoning Adjustments Board (ZAB) may approve one or more of the following measures to reduce costs or increase profitability:~~

~~1. Reduce the floor area or the interior amenities of the inclusionary units, provided that such units conform to applicable building and housing codes.~~

~~2. Increase the number of bedrooms in the inclusionary units.~~

~~3. In a home ownership project, construct rental units in a number required to meet the inclusionary provisions of this chapter applicable to rental housing projects.~~

~~4. Waive the in-lieu fees for fractions of units. (Ord. 7787-NS § 2 (Exh. A), 2021)~~

~~23.328.050 Inclusionary Unit Requirements for Rental Housing Projects.~~

~~A. General Rental Requirements.~~

~~1. All inclusionary units shall be occupied by low, lower, or very low income households.~~

~~2. The maximum rental price for inclusionary units shall be affordable to an appropriate sized household whose income is 81 percent of the Oakland PMSA median.~~

~~3. In projects requiring more than one inclusionary unit, at least 50 percent of those units shall be rented at a price that is affordable to low or lower income households, provided that the City can make available rental subsidies through the federal Section 8 Existing Housing Program or an equivalent program.~~

~~4. When there is an uneven number of inclusionary units, the majority of units shall be priced to be affordable to a household at 50 percent of median income if subsidies are available.~~

~~5. If no rental subsidies are available, all inclusionary unit prices shall be affordable to households at 81 percent income of the Oakland PMSA median.~~

~~6. If an applicant agrees to provide 10 percent Lower Income inclusionary units, the rental price for such units shall be affordable to a household with income that is 60 percent of the Oakland PMSA median.~~

~~7. Dwelling units designated as inclusionary units shall remain in conformance with the regulations of this section for the life of the building.~~

~~8. The City or its designee shall screen applicants for the inclusionary units and refer eligible households of the appropriate household size for the unit.~~

~~9. For purposes of occupancy, the appropriate household size standards used by the housing authority for the federal Section 8 Existing Housing Program or any future equivalent program shall be used.~~

~~10. The applicant or owner shall retain final discretion in the selection of the eligible households referred by the City.~~

~~11. The owner shall provide the City with data on vacancies and other information required to ensure the long-term affordability of the inclusionary units by eligible households.~~

~~B. *Affordability Defined.* A unit shall be considered affordable if the rent (including utilities) does not exceed 30 percent of a household's gross income.~~

~~1. Gross household income and utility allowance shall be calculated according to the guidelines used by the Berkeley Housing Authority for the federal Section 8 Existing Housing Program.~~

~~2. For purposes of calculating rent, appropriate household size shall be determined by using the schedule contained in the administrative regulations developed for this chapter. (Ord. 7787-NS § 2 (Exh. A), 2021)~~

~~23.328.060 Inclusionary Unit Requirements for Ownership Projects.~~

~~A. *General Sale Requirements.* Inclusionary units in ownership projects shall be sold as set forth below:~~

~~1. Inclusionary units in ownership projects shall be sold at a price that is affordable to an appropriate-sized household whose income is no more than 80 percent of the area median income reported for the Oakland PMSA for households of that size, unless the cost of development of the unit is greater than the affordable sales price.~~

~~2. Appropriate sizes of household and the ratio of income to sales price for affordable units shall be defined by City Manager regulation.~~

~~3. Inclusionary ownership units shall be affirmatively marketed to tenants with Section 8 housing vouchers, and who are known to be interested in participating in the Section 8 homeownership program, or other equivalent program(s) of the City, which are in effect at the time the units are offered for sale by the developer.~~

~~B. *Right of First Refusal and Purchaser Preference.*~~

~~1. The applicant for a project other than a limited equity housing cooperative is required to give right of first refusal to purchase any or all new inclusionary units to the City or a City designee for a period of not less than 60 days as evidenced by issuance of a certificate of occupancy.~~

~~2. Should the City choose not to exercise its right of first refusal, it shall provide the applicant or owner with a purchaser or with a list of eligible purchasers within a period of not less than 60 days.~~

~~(a) If the list is not provided, the applicant may select a low-income purchaser of the applicant's choice as long as the City verifies income eligibility and the unit is sold at an affordable price as described in this chapter.~~

~~(b) The City shall maintain a list of eligible low-income households and review the assets and incomes of prospective purchasers of the inclusionary units on a project-by-project basis and refer potential purchasers to the applicant or owner.~~



~~3. All purchasers of inclusionary units shall be first-time home buyers from low, lower, or very low-income households.~~

~~4. Purchasers are also required to occupy the unit except that such requirement may be waived with the approval of the City. In such cases, the unit shall be rented to a low, lower, or very low-income household at a rent affordable by such households.~~

~~5. Preference of inclusionary units are as follows:~~

~~(a) First preference will be given to eligible Berkeley residents.~~

~~(b) Second preference will be given to eligible persons employed in Berkeley.~~

~~(c) Other preferences may also be established administratively, with Planning Commission review, to help meet the City's Housing Element goals.~~

~~6. The City shall advise all prospective purchasers on the City's eligibility list of the resale restrictions applicable to ownership of inclusionary units and shall provide purchasers with a Declaration of Restrictions applicable to ownership of inclusionary units.~~

~~7. Purchasers of inclusionary units in limited equity cooperatives at time of first occupancy shall be first-time home buyers with gross incomes no greater than 120 percent of the Oakland PMSA median.~~

~~8. Subsequent purchasers of inclusionary units in limited equity cooperatives shall be first-time home buyers whose yearly gross income is no more than 44 percent of the cost of a unit at the time of sale, provided that such income is no more than 110 percent of the Oakland PMSA median.~~

~~C. *Resale Restrictions.* All inclusionary units developed under this chapter except for those in limited equity cooperatives are subject to the resale restrictions set forth below.~~

~~1. Home ownership inclusionary units offered for sale or sold under the requirements of this chapter shall be offered to the City or its designee for a period of at least 60 days by the first purchaser or subsequent purchasers from the date of the owner's notification to the City of intent to sell.~~

~~2. The resale price of the unit shall not exceed the original price and customary closing costs, except to allow for:~~

~~(a) The lower of any increase of either the Consumer Price Index (CPI) for all urban consumers (as produced by the U.S. Bureau of Labor Statistics or its successor agencies) applicable to the Oakland PMSA; or~~

~~(b) The increase as measured in household income guidelines published annually by the U.S. Department of Housing and Urban Development (or its successor agencies) for the Oakland PMSA.~~

~~3. The resale formula shall supersede and replace the earlier resale formula in deed restrictions executed between February 19, 1987 (adoption date for Ordinance 5791-N.S.) and May 23, 2006.~~

~~(a) The City, or its designee, shall notify each such owner of this change to the resale formula contained in their deed restriction within 60 days of adoption of this section.~~

~~(b) All other terms and conditions of these deed restrictions shall remain in effect.~~

~~4. If the City does not act on its right of first refusal, the same procedure for new inclusionary units shall be used for selection of a purchaser.~~

~~5. The seller shall not levy or charge any additional fees nor shall any finders fee or other monetary consideration be allowed, other than customary real estate commissions if the services of a licensed real estate agent are employed.~~

~~6. The City or its designee may monitor resale of inclusionary units in limited equity cooperatives.~~

~~7. The City or its designee shall monitor the resale of ownership of inclusionary units.~~

~~8. The owners of any inclusionary units shall attach, lawfully reference in the grant deed conveying title of any such inclusionary ownership unit, and record with the County Recorder a Declaration of Restrictions provided by the City, stating the restrictions imposed pursuant to this chapter. Violators of any of the terms may be prosecuted by the City. (Ord. 7787-NS § 2 (Exh. A), 2021)~~

~~23.328.070 Special Requirements for Avenues Plan Area.~~

~~A. *City Council Findings.* The City Council finds and determines that:~~

~~1. The Avenues Plan process identified several regional and Berkeley specific barriers to housing development.~~

~~2. Among the Berkeley specific barriers were:~~

~~(a) High land prices;~~

~~(b) Lengthy, difficult, and uncertain permit processes; and~~

~~(c) Insufficient financing, especially for affordable housing projects.~~

~~3. The Avenues Plan area represents a core area of Berkeley where it is particularly appropriate to encourage housing development because of the area's generally good access to workplaces, transit service, senior services, and retail stores.~~

~~4. The policy to encourage housing in this area is reflected in several documents, including, but not limited to, the City's Housing Element of the General Plan, the Concept Plan for the General Plan revision, the Downtown Plan, the South Berkeley Area Plan, the West Berkeley Plan, and the University Avenue statement of planning of goals.~~

~~5. Despite the City's support for housing in this area, new housing development here has been limited and this has hindered revitalization of the area.~~

~~6. As part of a multi-pronged experimental strategy to create incentives to encourage housing development, relaxation of various inclusionary zoning requirements within the Avenues Plan area as set forth in this section is appropriate.~~

~~7. These changes will also assist the buyer of below market rate inclusionary units, by allowing buyers to gain greater appreciation on their investments (market conditions permitting), making the investment more similar to conventional home ownership, while retaining the long term affordability of inclusionary units.~~

~~8. The changes will also encourage the construction of larger family-sized units, rather than the smaller units which have generally been built in multi-family developments.~~

~~9. These changes in inclusionary zoning will be followed by mechanisms to make more financing available and changes in zoning standards and permit processes.~~

~~10. The success of these changes will be reviewed annually until the five-year time period of the Avenues Plan experiment expires July 1, 2000.~~

~~B. *Applicability.*~~

~~1. This section shall remain in effect until July 1, 2000, at which time the Planning Commission, in consultation with other relevant commissions, shall re-examine its effectiveness. At that time the Commission may initiate modifications to, or an extension of, this section.~~

2. This section applies on the streets and the addresses listed in Table 23.328-1. The area of applicability consists of the entire C-DMU District and portions of the C-C, C-U, C-SA, C-W, C-N, R-2A, R-3, and R-4 districts as indicated in the table. Within this area, this section supersedes any inconsistent provisions in this chapter.

Table 23.328-1. AVENUE AREAS PLAN AREA: STREET AND ADDRESS RANGE

Street	Address
Acton	1940—2100
Addison	841—1145 odd, 1846 up
Adeline	All
Alcatraz Avenue	1700—1937
Allston Way	1901—1999 odd, 2000 up
Ashby Avenue	1830—2117, 2118—2198 even
Bancroft Way	2000—2300
Berkeley Square	All
Berkeley Way	1200—1800 even only, 1800—1920, 1920—2000 even only, 2000 up
Blake	1800—2100
Bonar	2000—2099
Benita	1900—1950 even, 1950—1999
Browning	portion of West Campus only
California	1950—2009
Carleton	2000—2117
Center	All
Channing Way	1800—1850 even, 2000—2200, 2200—2300 odd
Gowper	All
Chestnut	1910—1950 even, 1950 up
Curtis	1900—2100, portion BUSD
Delaware	1041—1112, 2000—2200 even
Derby	2000—2113
Dover	All

Durant Avenue	2000—2300
Dwight Way	1800—1850 even, 1850—2200
Ellis	3124—3320 odd
Emerson	2000—2111
Essex	1901—2106
Fairview	1750 up
Fulton	2200—2400, 2400—2606 even
Grant	1800—1900 odd, 1900—2050, 2501—2599 odd
Harold Way	All
Harmon	1750 up
Harper	2901—3123 odd
Haste	1900—1998 even, 2000—2200
Hearst	1032—1200, 1800—2000 even, 2000—2200
Henry	1900 up
Jefferson Avenue	2000—2050
King	3221 up, odd
Kittredge	All
Martin Luther King Jr. Way	1900—2050, 2051—2199 odd, 2400—2450 even, 2450—2600, 2900 up
McGee Avenue	1900—2050
McKinley Avenue	2400—2500 odd
Milvia	1800—1950 odd, 1950—2199, 2200—2450 odd, 2450—2550, 2550—2900 odd only
Newbury	All
Oregon	2000—2122
Otis	All
Oxford	1800—2200
Parker	1800—1998 even, 2000—2200
Prince	1830—2105
Russell	1820—2000 even, 2000—2117



Sacramento	1900—2000, 2050—2100 even
San Pablo Avenue	1800—2199
Shattuck Avenue	1800 up
Shattuck Square	All
Stuart	2100—2107
Tremont	All
University Avenue	840 up
Walnut	1800 up
West	1950—1999
Whitney	All
Woolsey	1750—2110
6 <sup>th</sup>	1916—2099
7 <sup>th</sup>	1912—2099
8 <sup>th</sup>	1910—2099
9 <sup>th</sup>	1910—2099
10 <sup>th</sup>	1908—2099
62 <sup>nd</sup>	1700 up
63 <sup>rd</sup>	1700 up

C. *Definitions.* For purposes of this section, the following definitions apply:

1. "Project" means the total number of housing units planned to be built on a single lot or on a grouping of contiguous, commonly owned, or controlled lots, regardless of whether those units are all built simultaneously.
2. "Affordable family-sized unit" means a unit which:
  - (a) Is at least 850 square feet in area if two bedrooms or 1,100 square feet if three bedrooms or more;
  - (b) Contains at least two lawful bedrooms;
  - (c) Contains at least as many bathrooms as the corresponding two-bedroom market rate units; and

~~(d) Is sold at a price that is affordable to an appropriate sized household whose income is no more than 80 percent of the metropolitan area median as reported by the Department of Housing and Urban Development (HUD).~~

~~D. *Number of Inclusionary Units Required.*~~

~~1. The number of inclusionary units required are shown in the Table 23.328-2.~~

~~Table 23.328-2. NUMBER OF INCLUSIONARY UNITS REQUIRED~~

<del>Total Number of Units Built</del>	<del>Number of Required Inclusionary Units</del>
<del>10—14</del>	<del>1</del>
<del>15—19</del>	<del>2</del>
<del>Each additional multiple of 5 units</del>	<del>1 additional</del>

~~2. For every five units which the applicant can show with bona fide sales documents have been sold at a price at or below that affordable to an appropriately sized household with an income of 100 percent of metropolitan area median, the applicant is released of the obligation to provide one inclusionary unit.~~

~~3. For every 10 affordable family-sized units, the applicant is released of the obligation to provide one inclusionary unit sold at a price at or below that affordable to an appropriately sized household with an income of 100 percent of metropolitan area median.~~

~~4. Within the area of applicability for that portion of a project wherein both the inclusionary and the non-inclusionary units contain at least as many bathrooms as the corresponding two-bedroom market rate units, only 10 percent of units must be inclusionary.~~

~~E. *Pricing Requirements.*~~

~~1. The first inclusionary unit in projects with units for sale shall be sold at a price that is affordable to an appropriately sized household whose income is no more than 80 percent of the Oakland PMSA median as reported by HUD.~~

~~2. Except as otherwise provided in Section 23.328.070.C.2.d above, the second inclusionary unit shall be sold at a price that is affordable to an appropriate sized household whose income is no more than 100 percent of the PMSA median and subsequent inclusionary units shall be sold alternately at these price levels.~~

~~3. Inclusionary sale units in projects in the Avenues Plan Area shall be sold at a price such that first year housing cost (including homeowners' association dues, if any) for a household of appropriate size with an income at the targeted level shall not exceed 33 percent of income.~~

~~4. This cost shall be calculated assuming that the buyer makes a 10 percent down payment, which shall not be considered a portion of the cost.~~

~~5. The housing cost shall be calculated for each project at the time the condominium association budget is approved by the California Department of Real Estate and shall not be changed after that time for that project, regardless of future changes in cost.~~

~~6. The resale price of inclusionary units within the Avenues Plan Area may increase at the rate of increase of the Consumer Price Index for all urban consumers (CPI-U) applicable to the metropolitan area. (Ord. 7787-NS § 2 (Exh. A), 2021)~~

#### ~~23.328.080 Administrative Regulations.~~

~~The City Manager or the City Manager's designee shall promulgate rules and regulations pertaining to this chapter, including but not limited to setting and administering gross rents and sale prices, requiring guarantees, entering into recorded agreements with applicants and taking other appropriate steps necessary to ensure that the required Low-Income and very Low-Income dwelling units are provided and occupied by Low-Income households. (Ord. 7787-NS § 2 (Exh. A), 2021)~~

#### ~~23.328.090 Fees.~~

~~The City Council, by resolution, may establish fees for the administration of this chapter. (Ord. 7787-NS § 2 (Exh. A), 2021)~~

#### **23.328.010 Findings.**

A. The State of California has established a Regional Housing Needs Allocation (RHNA) process under which it allocates a "fair share" of the regional housing need, updated periodically, to each local jurisdiction. The "fair share" allocated to Berkeley increased significantly based on the regional housing needs determination finalized in late 2021. The sixth cycle of the RHNA for the San Francisco Bay Area allocates to Berkeley a "fair share" that calls for adequate sites for 8,934 housing units for the period from 2023 to 2031, including sites for 2,446 Very Low-Income units, 1,408 Lower-

Income units, and 1,416 Moderate Income units. Under the state Housing Element Law, the City must update its Housing Element to provide adequate sites for its updated “fair share” allocation by 2023.

B. The Bay Area suffers from a shortage of affordable housing. As the Bay Area region experiences increased economic growth and a high demand for housing, housing prices continue to rise, which leads to displacement of low-income residents and exacerbates the shelter crisis that has led to unacceptably high rates of homelessness in the City of Berkeley and the Bay Area region.

C. In 1990, the City established the Housing Trust Fund program to pool available funding for affordable housing development. The Housing Trust Fund program is funded by federal, state, and local revenues, including by in-lieu fees paid by developers of market-rate housing projects under the City’s existing affordable housing ordinances.

D. The City Council hereby finds that there is a legitimate public interest in the provision of affordable housing to address the crises of displacement, homelessness, and lack of housing affordability in the City, and that there is a significant and increasing need for affordable housing in the City to meet the City’s regional share of housing needs under the California Housing Element Law.

E. The City Council further finds that the public interest would best be served if new affordable housing were integrated into new market-rate residential developments to facilitate economically diverse housing, while providing alternative options to the on-site construction of affordable housing to replenish the City’s Housing Trust Fund program or allow for the construction of affordable housing on land dedicated by market-rate housing developers.

### **23.328.020 Definitions.**

A. “Affordable Unit” means a Residential Unit that is in perpetuity affordable to Very Low-Income Households or Lower-Income Households, as defined in California Health and Safety Code sections 50052.5 and 50053.

B. "Affordable Housing Compliance Plan" means an enforceable commitment by an Applicant to comply with the requirements of this Chapter that identifies the number and type of Affordable Units, the amount of In-Lieu Fees, and/or the parcels of land (or portions thereof) that will be provided and/or paid by the Applicant to comply with those requirements.

C. "AMI" means the area median income applicable to the City of Berkeley, as defined by the U.S. Department of Housing and Urban Development, or its successor provision, or as established by the City of Berkeley in the event that such median income figures are no longer published by the U.S. Department of Housing and Urban Development.

D. "Applicant" means any individual, person, firm, partnership, association, joint venture, corporation, entity, combination of entities or authorized representative thereof, who undertakes, proposes and/or applies to the City for, any residential development.

E. "Housing Development Project" means a development project, including a mixed-use project, involving the construction or title conversion of one or more Residential Units.

F. "Housing Trust Fund" means the program to finance low- and moderate-income housing established by Resolution No. 55,504-N.S., or any successor fund established for the same purpose.

G. "Lower-Income Household" shall mean a household whose income does not exceed the low-income limits applicable to Alameda County, as defined in California Health and Safety Code section 50079.5 and published annually pursuant to Title 25 of the California Code of Regulations, Section 6932 (or its successor provision) by the California Department of Housing and Community Development.

H. "Residential Unit" means, for purposes of this Chapter, any Dwelling Unit, any Live-Work Unit, or any bedroom of a Group Living Accommodation (GLA) except a GLA in a University-recognized fraternity, sorority or co-op; provided, however, that for purposes of this Chapter, "Residential Unit" shall not include any Accessory Dwelling



Unit or Junior Accessory Dwelling Unit that is accessory to a Single Family Dwelling. Residential Units shall not include any density bonus units that an Applicant is entitled to construct under Government Code section 65915.

I. "Very Low-Income Household" shall mean a household whose income is no more than 50% of AMI, as defined in California Health and Safety Code section 50105.

### **23.328.030 Affordable Housing Requirements.**

#### **A. Requirement to Construct Affordable Units**

1. Except as otherwise provided in this Chapter, no permit for the construction of any Housing Development Project shall be issued unless at least 20% of the Residential Units are Affordable Units.

2. In lieu of providing Affordable Units pursuant to Paragraph 1, an Applicant may comply with this Chapter by providing Affordable Units that comprise at least 20% of the residential square footage of the Housing Development Project, provided that each of the affordable units is either a two-bedroom or three-bedroom unit.

3. Affordable Units shall be (a) reasonably dispersed throughout the Housing Development Project; (b) on average, the same size as and contain the same number of bedrooms as other Residential Units in Housing Development Project (provided, however, that no affordable unit may have more than three bedrooms); and (c) comparable to other Residential Units in the Housing Development Project in terms of appearance, materials, and finish quality. Residents of Affordable Units shall have access to the same common areas and amenities that are available to residents of other Residential Units in the Housing Development Project.

4. At least 50% of the required Affordable Units in the Housing Development Project shall be offered for rent at a rent that is affordable to Very Low-Income Households, up to a maximum requirement of 10% of the total units in the

Housing Development Project if the project provides more Affordable Units than are otherwise required by this Chapter.

5. In determining whether a unit is affordable to Very Low-Income or Low-Income Households, maximum allowable rent for any affordable unit shall be reduced by an amount equal to the value of the City-published utility allowance provided for Tenant-paid utilities and any other mandatory fee imposed by the property owner as a condition of tenancy.
6. Any increase in rent of an occupied Affordable Unit shall be no greater than the increase in the Consumer Price Index for All Urban Consumers (CPI-U) in the San Francisco-Oakland-San Jose region as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics, for the twelve-month period ending the previous December 30 but not to exceed the corresponding increase in AMI for the same calendar year.
7. All Affordable Units shall be subject to a recorded affordability restriction requiring in perpetuity that each Affordable Unit be sold at an affordable sales price or offered for rent at an affordable rent, as defined this Chapter.
8. The City Manager or their designee shall adopt rules and regulations (a) establishing the affordable sales price or affordable rent for each Affordable Unit, consistent with the requirements of Health and Safety Code sections 50052.5 and 50053; and (b) ensuring that Affordable Units are sold or rented to Very Low-Income and Lower-Income Households, consistent with the requirements of this Chapter.
9. Affordable Units designated for Very Low-Income Households shall be offered for rent to tenants receiving assistance under the Section 8 Program (42 U.S.C. Section 1437f), the Shelter Plus Care Program (42 U.S.C. Section 11403 *et. seq.*), or any similar state or federally funded rent subsidy program prior to being offered to other potential tenants.

10. Inclusionary Live-Work Units shall be affirmatively marketed by the developer of a project to income-eligible persons performing a work activity permitted in the district where the project is located whose type of work causes them to have a requirement for a space larger in size than typically found in residential units.

11. The owner of any Affordable Unit offered for rent must report to the City annually the occupancy and rents charged for each Affordable Unit, and any other information required pursuant to rules and regulations adopted by the City Manager or their designee.

12. An Affordable Unit that is constructed to qualify for a density bonus under Government Code section 65915 that otherwise meets the requirements of this Chapter shall qualify as an Affordable Unit under this Chapter.

B. Option to Pay In-Lieu Fee

1. In lieu of providing some or all of the Affordable Units required under this Chapter (including any fractional units), an Applicant may elect to pay a fee, the amount of which the City Council may establish by resolution (“In-Lieu Fee”). The City Council may by resolution differentiate among types, classes, and locations of Housing Development Projects to the maximum extent permitted by law; may establish separate fees and criteria for the provision of units that are affordable to Very Low-Income Households and units that are affordable to Low-Income Households; and may establish the method for calculation of the In-Lieu Fee.

2. Up to 15 percent of In-Lieu Fees collected may be used to pay for administration of the In-Lieu Fee or the Housing Trust Fund program. At least 85% of In-Lieu Fees collected shall be deposited into a fund designated for use in the City’s Housing Trust Fund program.

3. All In-Lieu Fees shall be paid prior to the issuance of a Certificate of Occupancy, or if no Certificate of Occupancy is required, prior to the occupancy of the Housing Development for any purpose.

C. Land Dedication Option

1. The requirements of this Chapter may be satisfied by the dedication of land in lieu of constructing Affordable Units within the Housing Development Project if the City Manager or their designee determines that all of the following criteria have been met:

- a. Marketable title to the site is transferred to the City, or an affordable housing developer approved by the City, prior to the commencement of construction of the Residential Development pursuant to an agreement between the Applicant and the City.
- b. The site has a General Plan designation that authorizes residential uses and is zoned for residential development at a density to accommodate at least the number of Affordable Units that would otherwise be required under Paragraph A.
- c. The site is suitable for development of the Affordable Units, taking into consideration its configuration, physical characteristics, location, access, adjacent uses, and applicable development standards and other relevant planning and development criteria including, but not limited to, factors such as the cost of construction or development arising from the nature, condition, or location of the site.
- d. Infrastructure to serve the dedicated site, including, but not limited to, streets and public utilities, are available at the property line and have adequate capacity to serve the maximum allowable residential density permitted under zoning regulations.
- e. The site has been evaluated for the presence of hazardous materials and for the presence of geological hazards and all such hazards are or will be mitigated to the satisfaction of the City prior to acceptance of the site by the City.

f. The value of the site upon the date of dedication is equal to or greater than the in-lieu fee that would otherwise be required under Paragraph A.

2. The City shall solicit proposals from affordable housing developers to construct restricted income units on the site dedicated to the City, but if the City is unable to obtain a qualified affordable housing developer to construct a viable affordable housing development on the property within two years of its solicitation or to commence construction within five years, the City may sell, transfer, lease, or otherwise dispose of the dedicated site for any purpose. Any funds collected as the result of a sale, transfer, lease, or other disposition of sites dedicated to the City shall be deposited into a fund designated for use in the City's Housing Trust Fund program.

D. **Optional Density Bonus for Small Projects.** A Housing Development Project having 20 or fewer Residential Units (including any density bonus units authorized under this Paragraph) shall be entitled to a density bonus of 35 percent, provided that the Applicant complies with the requirements of this Section solely by paying an In-Lieu fee, the amount of which shall be established by resolution of the City Council. An applicant that elects to use the optional density bonus for small projects shall not be permitted to combine the bonus available under this paragraph with a State Density Bonus pursuant to Gov. Code section 65915 et seq. For purposes of this Paragraph, a "density bonus" means a density increase over the otherwise maximum allowable gross residential density under the zoning ordinance as of the date an application is complete or, if applicable, a preliminary application is submitted.

#### **23.328.040 Waiver or Modification of Affordable Housing Requirements.**

A. The City Manager or their designee may waive or modify the requirements of this Chapter at their sole discretion where any of the following conditions are established:

1. A project providing low- or moderate-income housing is funded in whole or in part by the City's Housing Trust Fund program;



2. The implementation of the requirements of this Chapter would violate the rights of any person under the California or United States Constitutions, any federal law, or any state law governing a matter of statewide concern and applicable to a charter city; or

3. The benefits of the project to the City outweigh the detriment of foregoing the provision of Affordable Housing or the contribution of In-Lieu fees to the Housing Trust Fund program. In weighing the benefits and detriment to the City, the following factors may be considered:

- a. The impact of the requirements of this Chapter on the feasibility of a Housing Development Project;
- b. Other economically beneficial uses of the Applicant's property;
- c. The burdens the Housing Development Project places on the City in terms of increased demand for affordable housing, child care, public facilities or amenities, or other impacts which reasonably may be anticipated to be generated by or attributable to the Housing Development Project; and
- d. The impact on the Housing Trust Fund program of foregoing the payment of any In-Lieu fee that would otherwise be made.

B. The Applicant shall bear the burden of proof to establish eligibility for a waiver or modification of the requirements of this Chapter.

#### **23.328.050 Implementation.**

A. The Applicant for any Use Permit or Zoning Certificate for a Housing Development Project shall submit an Affordable Housing Compliance Plan to the Zoning Officer. The Affordable Housing Compliance Plan, as modified by the Zoning Officer or Board, may be incorporated as a condition of approval of any Use Permit or Zoning Certificate issued to the Applicant. The Affordable Housing Compliance Plan must be submitted and approved by the City as a condition of approval for any Building Permit.

B. The City Manager or their designee may promulgate additional rules and regulations consistent with the requirements of this Chapter.

C. The City Council may by resolution establish fees for the implementation and administration of this Chapter and may establish administrative penalties for violations of this Chapter.

Section 5. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

## RESOLUTION NO. \_\_\_\_\_

ADOPTING REGULATIONS FOR VOUCHER PROGRAM AND ESTABLISHING AN IN-LIEU FEE TO SUPPORT THE PROVISION OF AFFORDABLE HOUSING PURSUANT TO BERKELEY MUNICIPAL CODE SECTION 23C.12.030.B and RESCINDING RESOLUTION 65,074-N.S.

WHEREAS, Berkeley Municipal Code (“BMC”) Section 23.328 establishes a requirement that 20% of Residential Units (as defined) in market-rate developments be offered for rent or sale at affordable rents or prices, as defined (“Affordable Units”);

WHEREAS, BMC Section 23.328 authorizes the City Council to establish by resolution preferences for renting Affordable Units offered for rent to tenants receiving assistance under the Section 8 Program (42 U.S.C. Section 1437f), the Shelter Plus Care Program (42 U.S.C. Section 11403 *et. seq.*), or similar state or federally funded rent subsidy program;

WHEREAS, BMC Section 23.328 authorizes developers of market-rate housing to pay a fee in lieu of complying with the requirement to provide on-site affordable housing (“In-Lieu Fee”);

WHEREAS, BMC Section 23.328 authorizes the City Council to establish the In-Lieu Fee by resolution, and further authorizes the Council to differentiate among types, classes, and locations of Housing Development Projects to the maximum extent permitted by law; to establish separate fees and criteria for the provision of units that are affordable to Very Low Income Households and units that are affordable to Low Income Households; and to establish the method for calculation the In-Lieu Fee;

WHEREAS, the City retained Street Level Advisors to provide analysis and recommendations for updating the City’s affordable housing requirements, the scope of which included a financial feasibility study of the City’s affordable housing mitigation fees;

WHEREAS, Street Level Advisors prepared a Financial Feasibility Analysis dated April 27, 2021, which determined that an affordable housing fee of \$45 per residential square foot would be financially feasible;

WHEREAS, Street Level Advisors recommended certain modifications to the \$45 per residential square foot affordable housing fee that would not adversely impact the financial feasibility of housing development projects, including (1) differentiating between fees for units that are affordable to Very Low-Income Households and Low-Income Households (“Very Low-Income Units” and “Low-Income Units,” respectively); and (2) charging a lower / tiered fee for smaller projects.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley as follows:

1. The In-Lieu Fee authorized and provided for by BMC Section 23.328 shall be \$45 per Residential Square Foot (defined as the gross square footage within all of the dwelling units, less any credit for on-site Affordable Housing Units), and shall be automatically increased annually based on changes the California Construction Cost Index unless otherwise provided for by BMC Section 23.328 or by this Resolution.
2. For Housing Development Projects having a Residential Square Footage of less than 12,000 square feet, the In-Lieu Fee shall be calculated as follows:

Gross Residential Square Feet	Fee per Square Foot
12,000+	\$45
11,000-11,999	\$43
10,000-10,000	\$41
9,000-9,999	\$39
8,000-8,999	\$37
7,000-7,999	\$35
6,000-6,999	\$33
5,000-5,999	\$31
4,000-4,999	\$29
3,000-3,999	\$27
2,000-2,999	\$25
1,000-1,999	\$23
<1,000	\$21

3. All Very Low-Income Units must be offered to tenants receiving assistance under the Section 8 Program (42 U.S.C. Section 1437f) or the Shelter Plus Care Program (42 U.S.C. Section 11403 *et. seq.*) before being marketed to other income-eligible households. The allocations shall be divided equally between the Section 8 Program (50%) and the Shelter Plus Care Program (50%). The majority of the Very Low-Income units shall be designated for the Shelter Plus Care Program when there is an uneven number of units.
4. Exemptions. The In-Lieu Fee shall be waived for the following Housing Development Projects:
  - a. Residential Units offered at no cost to support nonprofit public benefit activities.
  - b. A Residential Unit that replaces a unit that has been destroyed by fire, earthquake or other disaster, if the applicant files a complete permit application within two years after destruction of any such Residential Unit; provided, however, the In-Lieu Fee shall be assessed on any net increase in gross Residential Square Footage.
  - c. A Residential Unit that is expanded, renovated, or rehabilitated unless the unit was vacant for more than two years before the applicant filed a complete permit application for such expansion, renovation or rehabilitation, in which case the fee will apply to the net new Residential Square Footage.
5. Notwithstanding anything to the contrary, the City Manager or their designee may waive all or part of the In-Lieu Fee adopted by this Resolution pursuant to BMC Section 23.328.

BE IT FURTHER RESOLVED that Resolution 65,074-N.S. is hereby rescinded.



**Street Level Advisors**

**Updating Affordable Housing Requirements for  
The City of Berkeley, CA  
Analysis and Recommendations**

Revised February 2022<sup>1</sup>

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<sup>1</sup> Previous version: 4/27/21. See 5/5/21 PC Meeting - Item 9 – Attachment 1:  
[https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Commissions/Commission\\_for\\_Planning/2021-05-05\\_PC\\_Item%209\(1\).pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2021-05-05_PC_Item%209(1).pdf)



# Table of Contents

<b>Table of Contents</b>	2
<b>Summary of Proposed Changes</b>	3
<b>Overarching Goals for Updating Requirements:</b>	4
Center racial and economic equity by reversing exclusionary zoning	4
Encourage a mix of units and fees	6
Continue Berkeley's legacy of value capture	7
Continue progress on housing goals	8
Work within the City's existing administrative capacity	10
<b>Proposed Changes in Detail:</b>	11
Consolidate affordable housing requirements into a single framework	11
Calculate the fee on a per foot basis	12
Evaluate the potential for higher fees when the market is stronger	16
Incentivize Extremely Low-Income (30% of AMI) units	17
Adjust the residual fee for mixed compliance projects	19
Standardize ownership fees	20
Standardize live-work requirements	23
Add a land dedication option	24
Provide a family-sized units option	25
Simplify the requirements for condominium conversions	26
Prohibit on-site units for Group Living Accomodations	28
Change requirements for small projects/missing middle projects	29
Cap the annual rate of rent increases for BMR units	31
Administrative changes	32
<b>Appendix A: Financial Feasibility Analysis</b>	34

# Summary of Proposed Changes

	CURRENT	PROPOSED OPTION(S)
Ordinance	<b>Rental:</b> Affordable Housing Mitigation Fee (BMC 22.20.065)	Affordable Housing Requirements Ordinance (one ordinance that addresses requirements for rental, ownership and live/work units)
	<b>Ownership:</b> Inclusionary Housing Requirements (BMC 23C.12)	
On-site Unit Income Targets	<b>Rental:</b> 10% of total units @ 50% of AMI, 10% of total units at 80% of AMI	No change
	<b>Ownership:</b> 20% of total units @ 80% of AMI	
Base Fee	<b>Rental:</b> \$39,746 per market rate unit	\$45 per gross residential square foot
	<b>Ownership:</b> 62.5% of the difference between market and affordable price for inclusionary unit.	
VLI Incentive	40% of VLI units marketed to Housing Choice Voucher holders, 40% to Shelter+Care holders.	All VLI Units must be offered to voucher holders first (50% to Housing Choice and 50% to Shelter + Care).
Mixed Compliance Incentive	Projects that provide less than 20% on-site receive the same reduction in fee whether units are VLI or LI	More expensive/higher need VLI units reduce remainder fee by more than LI units.
Live Work and GLA	Live Work Ordinance (BMC 23E.20) exempts projects from IH and AHMF, requires 20% of live work units be affordable at 80% of AMI. Units with Group Living Accommodations (GLA) occupancy are also exempt.	Remove special exemption for Live Work and GLA units. Affirmative marketing of Live Work units to artists/others who need larger units still required.
Land Dedication	None	Create new Land Dedication Option
Family Size Unit Incentive	None	Projects that provide 2 and 3-bedroom BMR units may choose to provide 20% of total Residential Square Feet instead of 20% of units.
Condo Conversion	Nexus Fee calculation or 8% of market value. 50% reduction in fee for owner occupied units	8% of market value. 50% reduction expanded to include tenants who buy units at conversion, and nonprofit/cooperative/cohousing projects
Maximum Unit Size	None	Projects with average unit size >3BR may not choose on-site unit option
Small Project Exemption	Projects with <5 units are exempt	Exemption removed; Reduced fee for projects with fewer than 12,000 gross residential square feet, phased in as size increases. Offer a local density bonus to projects providing <5 BMR units that

		choose in lieu fee.
Cap on rent increases	BMR Unit rents increase along with HUD Area Median Income	Limit annual rent increases to the change in the Consumer Price Index

## Overarching Goals for Updating Requirements:

### Center racial and economic equity by reversing exclusionary zoning

Berkeley has committed to pioneering policies that attempt to undo some of the harm caused by exclusionary zoning practices. In addition to its rent control and tenant protection policies, the City’s Inclusionary Housing requirements are central to its efforts to build a more racially and economically integrated future.

Two key goals of the program are to ensure that affordable housing is included in all parts of the City and to promote the inclusion of affordable units within market-rate housing.

There has been quite a bit of academic research into the benefits of economic integration and the emerging consensus is that the location of affordable housing matters.<sup>2</sup> Much of the City’s affordable housing is concentrated in neighborhoods with the greatest health and safety challenges and the least economic opportunity. Integrating affordable housing into every neighborhood offers significant health and economic advantages, particularly for low-income children. While the same research has consistently not found additional benefits from locating affordable units in the same buildings as market rate housing (beyond the neighborhood benefits), requiring affordable units in new market rate buildings has been a key way that cities have succeeded in locating affordable housing in certain ‘high opportunity’ neighborhoods.

Currently, both the Affordable Housing Mitigation Fee (AHMF) and Inclusionary Housing Requirements (IHO) ordinances allow developers to choose to either provide on-site units or pay a fee into the City’s Affordable Housing Trust Fund program. Several recent Council referrals have focused on either reducing or eliminating the fee option in order to encourage more on-site affordable housing units in mixed income buildings. Other council referrals have called on the City to encourage payment of fees, which allow investment in non-profit owned 100% affordable projects. These projects leverage outside affordable housing funding to build more units at deeper levels of affordability and also offer critical social services.

While increasing the share of on-site affordable units continues to be an important community goal, it is important to note that this is not the only way that Berkeley is achieving the goal of

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<sup>2</sup> The Urban Institute compiled a very helpful summary of several dozen research studies on the benefits of mixed income communities. [urban.org/uploadedpdf/412292-effects-from-living.pdf](https://www.urban.org/uploadedpdf/412292-effects-from-living.pdf)

overcoming the legacy of segregation. Most of Berkeley falls into what is generally considered a moderate- to high-opportunity area, in part because the City offers high-quality schools to students regardless of which neighborhood they live in. At the same time, Berkeley has been successful in locating nonprofit affordable housing in most parts of the City. These broader realities reduce the pressure on the City's inclusionary housing policy to produce affordable units on-site in every building and allow the City to pursue a balanced strategy of private and publicly sponsored provision of affordable housing in every neighborhood. An appropriate goal might be for the City to target a mix of on-site units in most market rate buildings while maintaining the collection of critical fees to support nonprofit affordable properties.

Though our analysis confirmed that Berkeley's current rules appear to strongly favor payment of the fee, the actual record of projects over the past few years paints a different picture and shows that Berkeley's current policy is already achieving this kind of mix, with the majority of projects providing on-site units and paying a prorated fee.

Currently, providing an on-site affordable unit is generally far more costly to a developer than paying the associated fee. Just as an example, Street Level Advisors calculated that for a hypothetical Berkeley rental property, providing one on-site Very Low Income unit would reduce the resale value of a building by about \$483,000. One on-site Low Income unit would reduce the building value by \$340,000. Opting out of providing either of those units would require payment of an Affordable Housing Mitigation Fee totaling only \$198,730.<sup>3</sup> While the specifics differ for each building based on the local market rents, in this example on-site costs more than twice as much as paying the current fee.

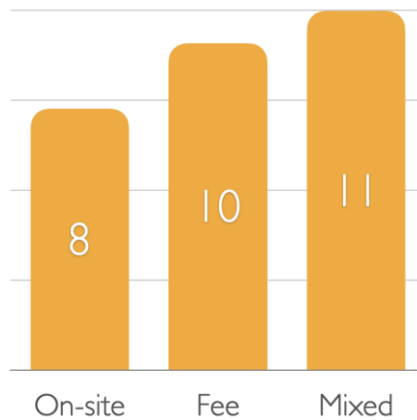
We estimate that the current AHMF costs roughly \$45 per gross residential foot, and the on-site requirements cost a typical project roughly \$114 per foot.

In spite of this, between 2012 and 2020 nearly two-thirds of Berkeley's projects have included some affordable units on-site and just under one-third have fully complied through the on-site option. Figure 3 shows that the mixed compliance option (some units plus some fee) has been the most popular option. There are likely several reasons for this, including political pressures, but one clear factor is the State Density Bonus (SDB). The State requires cities to allow developers who include affordable units to build more units on a site than would otherwise be allowed and to take advantage of certain planning and zoning concessions which make it easier to get projects built. Under the current rules, projects that provide at least 11% of their base project units affordable to Very Low-Income residents qualify for the maximum benefit under the Density Bonus. These benefits cause many Berkeley projects to include 11% affordable units on-site and pay the fee for the remaining units. A recent change to state law will allow a 50% density bonus to projects that provide 15% VLI units (among other options). This change should result in even more on-site units in Berkeley even under the current City ordinance.

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<sup>3</sup> Because Berkeley requires \$39,746 per unit or 1 on-site unit for every 5 units (20%), every on-site unit that is included reduces the fee by 5 times \$39,746.

FIGURE 1: Compliance Option Selected 2012 - 2020



### Encourage a mix of units and fees

The changes proposed below clarify Berkeley's policy to make on-site affordable units the preferred default requirement for both rental and ownership projects but allow payment of a fee as an alternative in order to:

- 1) continue to generate significant fee revenue to support nonprofit affordable housing projects throughout the City, and
- 2) offer flexibility for projects to choose between multiple compliance options depending on different circumstances.

Ideally, the proposed changes will encourage a mix of fees and units over time with fees coming primarily from projects where on-site units would be less feasible (e.g. due to economies of scale) or more difficult to monitor.

The proposed Affordable Housing Requirements ordinance would be structured so that providing on-site units is the default requirement for nearly all projects, with an exception for small projects and co-living type projects which would be encouraged to pay the fee. It might be possible to remove the fee option entirely, but state law requires cities to offer multiple compliance options such as a fee in their inclusionary housing ordinances. Ideally, the program would be structured such that the cost to a project of providing units on-site is more similar to the cost of paying the fee. This would maintain flexibility but reduce the incentive to pay the fee rather than provide units.

Over time, strong demand for housing in Berkeley should mean that higher fees are practical, but our analysis of current market conditions suggests that 2021 is a particularly risky time to raise Berkeley's housing fees. The Covid-19 pandemic has created uncertainty in the real estate market and led to falling rents throughout the region. The multi-family rental prototypes we studied earned returns that were just barely above the minimums required for financial feasibility. The recommendations below call for restructuring the fee to be calculated on a per square-foot basis but setting it, for the moment, at a level which is financially comparable to



the current fee for most projects. Once the housing market has recovered from the effects of the pandemic, we recommend evaluating a fee increase which would bring the cost of the fee option closer to the cost of on-site compliance.

More immediately, the proposed changes recognize the growing popularity of mixed compliance based on the State Density Bonus and aim to increase the number of on-site units primarily by increasing the prevalence of these mixed compliance projects. Together these changes should increase the number of affordable units provided on-site within market rate projects throughout Berkeley without dramatically reducing the affordable housing fee revenue that the City's HTF program receives.

### **Continue Berkeley's legacy of value capture**

A key goal of Berkeley's inclusionary housing ordinance and Affordable Housing Mitigation Fee has been to ensure that new real estate development projects in Berkeley contribute benefits for the whole community. This principle of Public Value Capture (or Land Value Capture) calls on the City to closely evaluate the profitability of real estate projects and set its housing requirements at a level which captures a share of the profits to support housing for our lowest income residents. Careful value capture requires close attention to the financing and economic realities of development in order to ensure that the City is capturing the appropriate amount of financial returns.

Appendix A contains a detailed description of Street Level Advisors financial feasibility study. Building on past studies conducted in support of Berkeley's Affordable Housing Mitigation Fee, we analyzed a single hypothetical rental and a single condominium building prototype in order to better understand the financial feasibility of these projects under the current program and under the proposed changes described below.

For rental projects, our model suggests that most projects would not be able to feasibly comply with the current 20% on-site requirement but that projects that choose to pay the fee or access the State Density Bonus by providing some units on-site and paying a partial fee would both earn returns that are just barely above the threshold we identified for feasibility (5% yield on cost). The returns for density bonus projects are comparable to the fee alternative because the additional cost of providing some units on-site is offset by the additional benefit of building more units on the same site.

For our rental prototype (described in Appendix A), the proposed fee of \$45 per gross square foot results in a virtually identical return to what the project would see under the current fee. A higher fee (\$55 per square-foot) would result in a marginal return. The proposed approach of providing more 'credit' for projects that provide on-site VLI units than those that provide LI units results in modest increases in the returns available to mixed compliance projects that take advantage of the State Density Bonus. While this small difference is not critical for this prototype, it is likely that there would be projects where this difference would result in on-site

affordable units in projects that would otherwise have paid the fee entirely (or not moved forward at all).

**Figure 2: Comparison of Returns - Rental**

Scenario	Base Units	Bonus Units	LI Units	VLI Units	Fee \$	Yield on Cost	% of Base	% of Total
<b>Current Policy</b>								
\$39,746 Per Unit Fee	72	0	0	0	\$2,861,712	5.08%	0%	0%
Onsite Units	72	0	7	7	\$0	4.94%	19%	19%
Mixed Compliance - 11% VLI	72	25	0	8	\$2,265,522	5.07%	11%	8%
Mixed Compliance - 15% VLI	72	36	0	11	\$2,106,538	5.10%	15%	10%
<b>Proposed Alternatives</b>								
\$45 Per Foot Fee	72	0	0	0	\$2,967,750	5.07%	0%	0%
\$55 Per Foot Fee	72	0	0	0	\$3,627,250	4.99%	0%	0%
Mixed Compliance (Weighted) - 11% VLI	72	25	0	8	\$2,350,809	5.10%	11%	8%
Mixed Compliance (Weighted) - 15% VLI	72	36	0	11	\$2,184,925	5.12%	15%	10%

For ownership projects, there is no Yield on Cost metric; feasibility is generally evaluated based on the profit from sales as a percent of the total development cost. Because there have been very few recent condo projects in Berkeley, it is not possible to identify the exact threshold for feasibility. One common benchmark considers projects that earn more than 10% profit to be “feasible.” We found that neither the current fee nor the current on-site requirement resulted in profit as a percent of development cost above this 10% threshold. The proposed switch to a \$45 per square-foot fee would result in profit just above 10% while a higher \$55 per square-foot fee would result in profit closer to 9%.

**Figure 3: Comparison of Returns - Ownership**

Scenario	Total Units	LI Units	Fee \$	Profit % of Cost
<b>Current Policy</b>				
Current Fee (based on sale prices)	56	0	\$3,810,847	8.00%
Onsite Units	56	11	\$0	1.13%
<b>Proposed Alternatives</b>				
\$45 Per Foot Fee	56	0	\$2,767,050	<b>10.88%</b>
\$55 Per Foot Fee	56	0	\$3,381,950	9.16%

## Continue progress on housing goals

The Bay Area and the Berkeley community need more housing. Rapidly rising housing costs and growing displacement pressures are the result of a systemic shortage of housing. While building more housing alone would not be sufficient to address the current inequities, we cannot

overcome our housing challenges without building significantly more housing. The Regional Housing Needs Allocation (RHNA) requires Berkeley to permit nearly 9,000 new homes at all income levels during the period from 2023 to 2031.

To meet this historic challenge, Berkeley's affordable housing policies must balance two critical but competing goals.

- 1) We must set affordable housing requirements high enough to produce meaningful levels of affordable housing, and
- 2) We must ensure that they are not too high for developers to accommodate.

If Berkeley sets its requirements too low, it may see construction that only serves to further existing inequity and racial exclusion. But if requirements are set too high, the result could be that little or no new housing is built, which would itself perpetuate the inequities which drive ongoing displacement of existing residents and push prices and rents up to levels which effectively prevent new low- and moderate-income households, including many households of color, from moving to Berkeley.

Berkeley's current affordable housing requirements (both the on-site requirements and the fee options) are somewhat higher than other East Bay jurisdictions (see Figure 6 below). But in spite of the relatively high costs, construction is continuing in Berkeley. Even during the pandemic, builders continue to undertake new residential projects. This suggests that Berkeley's requirements do not dramatically overburden development. However, Street Level Advisors' feasibility analysis (Appendix A) finds that the current requirements are only marginally financially feasible in today's environment. This suggests that Berkeley could see more building overall - including more affordable housing development - by slightly reducing the cost of compliance for some projects.

The proposed changes include many small adjustments to current requirements intended to make it easier for developers to understand and comply with program rules and for the City to oversee and administer. This will also facilitate transparency for the community at large. These changes are explicitly intended to make it easier to build the new housing that Berkeley desperately needs. However, the proposed changes attempt to achieve this while simultaneously maintaining or increasing the overall contribution that new market-rate housing makes to the provision of affordable housing in Berkeley.

Under the proposed changes, some types of projects are asked to contribute more and others less (relative to the existing inclusionary requirements), but the goal is to maintain or increase the number of on-site units and the amount of fees available to the HTF program. The proposed changes do this by reducing the fee assessed to projects with relatively smaller units and increasing the fee on projects with large or extra large units. They will also slightly reduce the fee due from projects that provide some units on-site. These changes should encourage more projects to build some units on-site while also improving overall feasibility so that more housing projects are able to move forward.

## Work within the City's existing administrative capacity

Berkeley's current affordable housing requirements are among the most complex in the region, but the City has fewer administrative staff than many other jurisdictions. HHCS currently has a total of 1.3 FTE to implement the BMR program:

- 0.20 FTE to work on new projects (apply requirements, meet with applicants, draft and execute regulatory agreements);
- 1.0 FTE monitor for completed projects, funded by an annual monitoring fee on BMR units; and
- 0.10 FTE related policy work and program supervision.

Adopting changes to the City's affordable housing requirements that increase administrative requirements would only be possible if new General Funds could be identified to support the implementation. As the City's BMR portfolio expands, funding for an additional monitor should be a consideration as well. Implementing local affordability requirements is not an eligible use of federal funds, so local funds are required to support this activity.

The proposed changes described below add complexity to the rules in several places but attempt to offset the complexity by streamlining and eliminating administrative challenges in several other places. The goal is to design a program which the City can successfully implement with existing staffing resources.

## Proposed Changes in Detail:

### 1. Consolidate Affordable Housing Requirements into a single framework

#### Proposed Changes:

- 1.1. Combine the requirements of the Affordable Housing Mitigation Fee (AHMF) and Inclusionary Housing (IH) ordinances into a single “Affordable Housing” ordinance which would impose on-site affordable housing requirements for both ownership and rental projects.
- 1.2. The fee would be structured as an “in lieu fee” offered as an alternative to on-site units, rather than as a mitigation fee.
- 1.3. The new ordinance would also replace the affordable housing requirements sections of the Condo Conversion and Live/Work ordinances.
- 1.4. To the extent possible, standardize the requirements that are applied to different projects to simplify implementation of the program.
- 1.5. The new ordinance would apply to all new project applications received after a date specified several months after adoption.

#### Background and Analysis:

Prior to 2009, Berkeley had a single Inclusionary Zoning Ordinance (BMC Chapter 23C.12) which applied to both ownership and rental projects. In 2009, a Court of Appeals decision known as *Palmer/Sixth Street Properties LP v. City of Los Angeles* prevented California jurisdictions from enforcing inclusionary housing requirements on rental properties. Like many other cities, Berkeley responded by adopting an Affordable Housing Mitigation Fee (AHMF) (BMC section 22.20.065). Instead of requiring on-site units and then offering an in lieu fee as an alternative, the AHMF ordinance requires payment of a fee and allows the provision of on-site units as an alternative. This approach allowed Berkeley to achieve its policy goals without violating the restrictions imposed by the Palmer decision. But it created a situation in which the City had two different ordinances that attempt to impose similar requirements. The provisions of the Inclusionary Housing Ordinance that applied to rental housing remained in the Berkeley Municipal Code but were unenforceable and superseded by the AHMF ordinance.

In 2018, the California Legislature passed AB1505 which effectively overturned the Palmer decision and authorized the implementation of inclusionary housing requirements applied to rental properties. This legislation has allowed a number of cities to update their programs to combine rental and ownership requirements under a single inclusionary housing ordinance.

For example, in June 2019, the Mountain View City Council completed a two-phase process to update its Below Market Rate Program requirements. Mountain View now requires any new residential development, whether rental or ownership, to provide 15% of its units at affordable



rents.<sup>4</sup> Similarly, after suspending its inclusionary rental housing requirement in 2011 to comply with the Palmer decision, the City of Menlo Park updated its Below Market Rate Housing Program to subject all new residential developments to its affordable housing requirements.<sup>5</sup>

Berkeley's new Affordable Housing Requirements (AHR) ordinance would address both rental and ownership projects (including Live/Work and Group Living Accommodations) and would impose an on-site affordable housing requirement for both while allowing payment of an in lieu fee.

## 2. Calculate the fee on a per square-foot basis

### Proposed Change:

- 2.1. Calculate affordable housing fees on a per square-foot basis instead of per unit. Initially set the fee at \$45 per gross residential square foot, which is roughly equivalent to the current fee for projects with typically sized units. Collect the fee at the time of Certificate of Occupancy eliminating the current discount for earlier payment. Increase the fee amount automatically based on the change in the California Construction Cost Index.

### Background and Analysis:

Some stakeholders have expressed concerns that projects that propose units with large numbers of bedrooms are not being required to pay an appropriate fee. Because Berkeley charges its AHMF on a per unit basis, a project that chooses to include a number of 5-bedroom units for example, would pay far less proportionally than a similarly sized project with studio, 1- and 2-bedroom units. It is not clear whether this savings is enough to cause developers to choose much larger bedroom configurations since these large unit 'co-living' projects are a trend nationwide. But it is clear that Berkeley's ordinance creates an incentive for projects that select this configuration and there does not seem to be a public policy reason for Berkeley to prefer these extra-large units. While there are benefits to projects that include 'family sized' 2 and 3-Bedroom units (discussed in proposed change #9 below), beyond 3 bedrooms, new units are generally housing multiple unrelated individuals rather than families.

A number of cities have changed to calculating in lieu fees on a per square-foot basis. San Francisco and Santa Barbara both made this change in 2019 and San Jose made a similar change in early 2021. Instead of charging a flat fee per unit, the City would charge the fee for each square foot of residential space in the building regardless of how the building is divided up into

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<sup>4</sup> City of Mountain View, Below Market Rate Program, <https://www.mountainview.gov/depts/comdev/preservation/homebuying/bmrhousing/default.asp>

<sup>5</sup> City of Menlo Park, BMR Requirements for Residential Developers, <https://www.menlopark.org/DocumentCenter/View/1493/BMR-Requirements-for-Residential-Developers>

units. As an example, a 25,000 square foot building would pay the same fee whether it was split up into 50 small studios or 15 multi-bedroom co-living units.

Currently, in Berkeley, every rental project would pay \$39,746 per unit (assuming that they provided no units on-site). For a typical project, this is equivalent to a fee of \$45 per gross residential square foot, as illustrated in the table below.

“Gross Square Feet – Residential” is defined as all of the square footage of a new building (as defined in BMC 23F.04.010 ) minus any exclusively commercial space or indoor parking area. In a typical project, the gross square footage is roughly 1.25 times the net square footage.

We conducted a market analysis in order to estimate a per square-foot fee which would be equivalent to the current AHMF. We collected data on the unit sizes of 18 recent Berkeley projects. We then multiplied the average unit sizes by 1.25 to estimate the gross square footage of each of these projects. For each project, we calculated an ‘equivalent per square-foot fee’ by dividing the fee that the project would have paid under the current rules (assuming no on-site units) by the gross square footage. The equivalent per square-foot fees ranged from \$38 to \$65. The typical fee was approximately \$45 which corresponds to an average unit size of 705 square feet.<sup>6</sup> Figure 4 shows the distribution of average unit sizes and equivalent square foot fees.

**Figure 4: Impact of unit size on equivalent square foot fee calculation**

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<sup>6</sup> This excludes several outlier projects with very large or very small units.

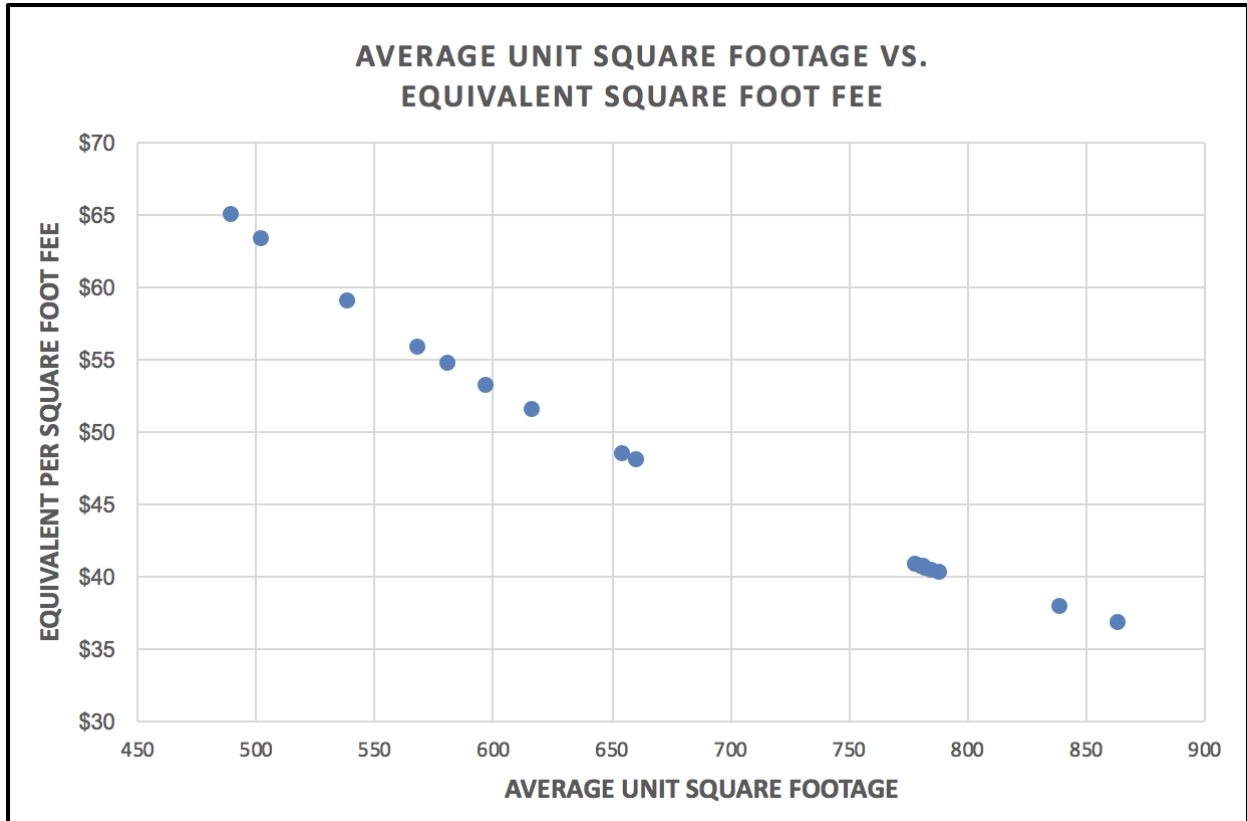


Figure 5 shows a sample of recent projects in order to illustrate the impact of switching to a per square-foot fee. Under the current per unit fee, projects that have the same number of units like Avalon and Hillside Village would pay the same amount of fee. The equivalent per square-foot fees (\$37.91 vs. \$48.14) show that Avalon is getting a much better deal by paying less relative to its size.

The per square-foot fee adjusts for the difference in project sizes. If Berkeley switched to a standard fee of \$45 per square-foot, projects with small units such as the Delaware Apartments would pay a lower total fee while projects with large units such as Higby would pay higher total fees.

Figure 5: Equivalent per foot fees for recent projects - Examples

Project Name	Total Units	Average Unit Square Footage	Current Fee (Assuming \$39,746 per unit)	Equivalent Per square-foot Fee	Projected Fee (assuming \$45/sq.foot)
Higby	98	864	\$3,895,108	\$36.82	\$4,760,145
Avalon	94	839	\$3,736,124	\$37.91	\$4,434,615
Stonefire	98	782	\$3,895,108	\$40.65	\$4,311,900
Hillside Village	94	661	\$3,736,124	\$48.14	\$3,492,405
The Dwight	99	617	\$3,934,854	\$51.57	\$3,433,680
The Delaware	51	581	\$2,027,046	\$54.72	\$1,667,025

For comparison, Figure 6 provides fee levels for nearby jurisdictions.

**Figure 6: Comparison of Inclusionary Housing Requirements and Fee Levels for Other Jurisdictions**

City	% Affordable Housing Required On-site	Fee	Notes
Alameda	15% for all multifamily projects	\$20,342 Per Unit	No alternative to fee for buildings of 9 or fewer units
Emeryville	20% for all multifamily projects	\$31,032 Per Unit	
Fremont	12.9% for rental	\$27.00 Per Residential Square Foot	
Hayward	6% for rental, 10% for ownership	\$19.37 Per Residential Square Foot	Lower fees for high-density condos
Livermore	10% downtown, 15% everywhere else	\$29.23 Per Residential Square Foot	Projects with 10 or more units may not pay fee
Oakland	10% if low- or moderate- income units, 5% if very low-income units	For multi-family: \$22,000 per unit in Zone 1, \$17,750 in Zone 2, \$12,000 in Zone 3	
Pleasanton	15% for all multifamily projects	\$45,083 per unit	
San Francisco	20% for small projects, 25% for large rental, 33% for large ownership	\$199.50 Per Gross square foot times affordable percent	Equivalent to \$60 per square-foot for many projects.
San Jose (proposed)	15% for all multifamily projects	Moderate Market Areas: \$18.26 per net residential foot Strong Market Areas: \$43	

The current AHMF ordinance allows developers to choose between paying a higher fee (currently \$39,746) at the Certificate of Occupancy when a project is nearly complete or a reduced fee (currently \$36,746 ) earlier when a project receives a building permit. Nearly all projects have selected the higher fee because of the high value that developers place on the ability to pay the fee later. Paying later reduces their financing costs and lowers their overall financial risk. Removing the option to pay early would recognize this reality and eliminate an additional element of administrative complexity and communication challenge.

The existing Affordable Housing Mitigation Fee is automatically adjusted by the annual percentage change in the California Construction Cost Index published by the California Department of General Services, every other year. The automatic adjustment is applied to all projects that have not received final approval by the City of Berkeley prior to the date of the automatic adjustment. This automatic adjustment ensures that the fee keeps pace (roughly) with what it costs the City and its nonprofit partners to construct new affordable housing using the fee revenue. This method should remain in place.

### **3. Evaluate the potential for higher fees when the market is stronger**

#### **Proposed Change:**

- 3.1. In order to encourage more on-site units, phase in a slightly higher fee once the housing market has stabilized. Conduct an updated feasibility analysis within 3 years, increase the per square-foot fee if the analysis shows that typical projects could support the higher fee.

#### **Background and Analysis:**

Under current market conditions, Berkeley's on-site compliance option (20%) is significantly more costly for most projects relative to the cost of the Affordable Housing Mitigation Fee or In-lieu Fee. This creates an incentive for projects to choose to pay the fee instead of providing units on-site. In spite of this incentive, the majority of projects have provided some level of on-site units because the State Density Bonus provides an even stronger incentive to include affordable units on-site, and the units count against the fee obligation as well.

Ideally, the on-site unit and in-lieu fee requirements would be more closely aligned so that they represented similar costs for most projects. This kind of alignment would likely result in a higher number of on-site units without entirely eliminating the fee revenue which is critical to Berkeley's HTF program. Aligning the economics of these two options would require either raising the fee or lowering the on-site requirement considerably.



In rough terms, the on-site requirement would need to be lowered to about 15% in order to represent a cost to most rental projects that was equivalent to the cost of the current AHMF. However, none of the local stakeholders we spoke with suggested that there would be public support for lowering Berkeley's on-site requirement.

A number of stakeholders, on the other hand, suggested raising the fee. This seems to be the more obvious path to aligning the cost of the two options and increasing the share of units on-site. However, our feasibility analysis (Appendix A) suggests that 2021 would be a particularly risky time to raise the affordable housing fee. The Covid-19 pandemic has created uncertainty in the real estate market. Rents in Berkeley have fallen significantly and rents in high-cost newly constructed buildings may have fallen more than the average. At the same time, construction costs have not (yet) fallen leaving most multi-family housing developments in a precarious position. Builders are still moving forward with new rental buildings in Berkeley but the City's volume of new applications has fallen relative to recent years. It seems likely that Berkeley will continue to be a desirable location for new housing over the long term but it is not yet clear whether there will be a protracted slow down in new building throughout the region following the pandemic.

While the level of local fees, including affordable housing fees, is just one small factor that developers consider when they decide whether or not to move forward with a project, Berkeley already charges more than most other East Bay jurisdictions and increasing the fee at this time could contribute to a greater slow down in new building.

For this reason, we are recommending that Berkeley allow for a period of housing market recovery before considering an increase in the Affordable Housing Fee. The City could plan on an update to the feasibility analysis in one to three years or wait for evidence that either rents have begun increasing or that construction costs have begun to fall before reconsidering the level of the fee.

#### **4. Incentivize Extremely Low-Income (30% of AMI) units**

##### **Proposed Changes:**

- 4.1. Require all VLI Units to be offered to voucher holders (50% to Housing Choice Voucher Holders and 50% to Shelter + Care Voucher Holders) before being marketed to other income eligible households.

##### **Alternative:**

- 4.2. Retain the current rules which require 40% of VLI units be offered first to Housing Choice Voucher Holders and another 40% be offered first to Shelter + Care Voucher Holders.

**Background and Analysis:**

A number of local stakeholders have expressed a desire to see Berkeley's program provide relatively more units to serve Extremely Low-income (ELI) households (below 30% of Area Median Income) who face the most acute housing challenges.

Some cities achieve this by creating a formula which allows developers to substitute a smaller number of units targeting Extremely Low Income residents for some portion of otherwise required on-site BMR units. Los Angeles's Transit Oriented Communities (TOC) program requires affordable units in exchange for a significant density bonus. The TOC program allows developers to choose between providing a greater number of low-income units or a smaller number of more deeply affordable Extremely Low Income units. Even though the rents on the ELI units are much lower, many developers have chosen this option because they can provide fewer affordable units (and more market rate units). Between 30% and 50% of the BMR units produced through the program have targeted ELI households and this program has driven a significant increase in the total number of income restricted ELI units produced in LA. In 2020, 34% of new BMR units in LA were restricted to ELI tenants.

While this type of approach might increase the number of ELI units in Berkeley, it is worth noting that Berkeley is already a national leader in serving ELI households through inclusionary housing. *Currently 29% of Berkeley's BMR tenants have incomes below 30% of AMI* and the share of ELI tenants is likely to increase noticeably under current rules. Berkeley's AHMF requires that at least half of BMR units must target 50% of AMI and, *of those, 40% must be offered first to Housing Choice voucher holders from the Housing Authority and another 40% must be offered first to Shelter Plus Care voucher holders managed by the City's Housing and Community Services division.* Voucher holders in both programs generally have incomes well below 30% of AMI. And because of the acute shortage of inexpensive market rate housing, most of the households that receive vouchers in Berkeley are unable to use them in the market. This approach has benefits for developers as well. The City allows the property to receive the contract rent offered by the subsidy program as long as the tenant's share of rent is below the BMR limit. The contract rents are generally far below the market rent for brand new buildings but also quite a bit higher than the BMR affordable rent for 50% AMI units. Because of the voucher, the ELI tenants, on the other hand, generally pay much less than the 50% AMI affordable rent.

In addition, because of the way Berkeley's requirements interact with the State Density Bonus (SDB), developers tend to favor the 50% AMI units. As a result, 77% of Berkeley's BMR units approved since 2012 have been regulated as 50% AMI units. If this pattern continues and, going forward, 80% of these units are reserved for voucher holders, then we would expect voucher holders to make up 62% of new BMR tenants.

A 2020 State law (AB 2345) expands the SDB beginning in January 2021. Developers will now be allowed to build 50% more units if they provide at least 15% VLI units (among other options). This new law should result in a greater number of on-site VLI units and, as a result, a greater number of ELI/voucher tenants. At some point, it is likely that the City would exhaust

the supply of unused vouchers and some of these units would ultimately be leased to Very low Income tenants (below 50% of AMI) instead.

In addition to its success in serving ELI tenants in BMR units, the City currently requires that at least 20% of units in all projects funded with the Housing Trust Fund be affordable to ELI tenants.

Requiring that all VLI units first be offered to voucher holders would slightly increase the share of ELI tenants housed going forward while also removing an element of complexity from the program and simplifying otherwise complex rounding issues.

## 5. Adjust the residual fee for mixed compliance projects

### Proposed Change:

- 5.1. Encourage more mixed compliance projects by changing the calculation of the remaining fee due when projects provide less than 20% affordable units on-site. Restructure the remainder fee so that providing VLI (50% AMI) units reduces the fee due by more than providing LI (80% AMI) units.

### Alternative:

- 5.2. Continue the current practice of providing the same reduction in fee for any units, whether they serve VLI tenants or LI tenants.

### Background and Analysis:

Currently rental projects that provide 20% affordable units on-site are exempt from the Affordable Housing Mitigation Fee (AHMF). Half of these units must be for Very Low Income (VLI) residents earning less than 50% of AMI and half must be for Low Income (LI) residents earning less than 80% of AMI. When a developer provides a portion of the required units on-site, the City has a formula that is used to determine the remaining fee. For example, if a project provides half of the required on-site units, they also owe half of the fee that would have been due. In order to access the benefits of the State Density Bonus, the majority of recent projects have selected this mixed compliance option.

Under the current rules, providing any on-site affordable housing unit reduces the fee that is due by the same amount regardless of whether the unit provided is a LI or a VLI unit. But because the VLI units rent for much less, they are much more costly to provide on-site. When a developer agrees to provide any permanently affordable unit, they will receive less rental income from that unit throughout the life of the project than they would from a market-rate unit. As a result, each affordable unit in a project decreases the value of a building - the amount that a building could be sold for. Street Level Advisors estimated the cost of providing these units on-site for a hypothetical six story project and found that a VLI unit reduces the value by \$483,000 while a LI unit reduces value by \$340,000.

One way to encourage more projects to provide some units on-site would be to restructure the remainder fee so that providing VLI (50% AMI) units reduces the fee due by more than providing LI (80% AMI) units. Based on the relative affordable rents, providing 10% VLI units could relieve the developer of \$30 of the \$45 per square-foot remainder fee, while providing 10% LI units could relieve them of only \$15 of the \$45 per square-foot fee. Projects providing fewer than the 10% of units required in either category would pay a fee adjusted proportionally.<sup>7</sup>

**Figure 7: Examples to illustrate partial compliance - 100 unit project**

<u>Example</u>	<u>VLI units</u>	<u>LI Units</u>	<u>Fee</u>
On-site Only	10	10	\$0
Fee Only	0	0	\$45
Only VLI	10	0	\$15
Only LI	0	10	\$30
Half Each	5	5	\$22.50
11% VLI	11	0	\$12
15% VLI	15	0	\$0

This change would increase the feasibility of the mixed compliance options and should result in on-site units from some projects that would have otherwise selected to pay the fee. However it is important to note that this mixed compliance option is already the most popular option and appears to be financially feasible without this change.

## 6. Standardize ownership fees

### Proposed Change:

- 6.1. Apply the same per square-foot fee for both rental and ownership units. Continue to require different income targeting for ownership units.

<sup>7</sup> The formula for calculating the reduction in fee could be  $(\text{Full Fee} * 1.33 / 20) * (\text{actual \% of VLI units}) + (\text{Full Fee} * .67 / 20) * (\text{actual \% of LI units})$ . If the full fee is \$45 per square-foot, then each 1% of VLI units would reduce the fee due by \$3 per square-foot and each 1% of LI units would reduce the fee by \$1.50 per square-foot.

**Alternative:**

- 6.2. Charge any project that chooses to record a Condominium Map a higher fee of \$55 per square-foot.

**Background and Analysis:**

Many local stakeholders are under the impression that Berkeley’s current Inclusionary In-Lieu Fee for ownership projects is higher than the Affordable Housing Mitigation Fee for rental projects. Berkeley has seen very few ownership projects in recent years, so it is difficult to directly compare, but our analysis suggests that this is true, both on a per unit and per square-foot basis.

In lieu of each affordable unit, the current Inclusionary Housing Ordinance allows payment of a fee equal to 62.5% of the difference between the market price and the “affordable” price. To estimate the equivalent per square-foot fee that this rate yields, we used proprietary data from Property Radar to calculate average square footages and market values for Berkeley condos, shown in Figure 8.

**Figure 8: Condo pricing estimates**

Berkeley Condo Sales 2021			Prototype (New Building)
Unit Size	Avg Sqft	Avg Value	Projected Value
Studio	646	\$620,752	
1-BR	814	\$703,556	\$725,000
2-BR	1117	\$853,125	\$925,000
3-BR	1571	\$995,797	\$1,100,000

It is likely that newly built condos would sell for higher than average prices but there have not been enough Berkeley condo projects in recent years to calculate appropriate projections for new buildings only. We have assumed sale prices for newly built condo units would be roughly 5 to 10% higher than the citywide average condo sales prices.

The IHO defines the affordable price for the purpose of calculating the fee as three times (3x) the Area Median Income (AMI) adjusted for household size. We used those prices to estimate in lieu fees. We then multiplied those numbers by 20% to yield the equivalent per unit fee, which range from \$48,000 to \$85,000. This suggests that the fees required for ownership projects in the IHO are indeed higher than the \$39,746 per unit currently required for rental



projects under the AHMF. Our estimates for the equivalent per square-foot fees for ownership projects range from \$54 to \$75, which is higher than the typical equivalent per square-foot fees that we found for rental projects. Projects with very high cost condo units would face even higher fees.

**Figure 9: Estimated BMR Ownership Fees 2021**

Unit Size	Sq Ft	Market Price	Affordable Price	In Lieu Fee	In Lieu Fee Per Unit	In Lieu Fee per Sq Ft
Studio	646	\$620,752	\$234,960	\$241,120	\$48,224	\$75
1BR	814	\$703,556	\$250,650	\$283,066	\$56,613	\$70
2BR	1117	\$853,125	\$282,000	\$356,953	\$71,391	\$64
3BR	1571	\$995,797	\$313,200	\$426,623	\$85,325	\$54

Note that the median condo value in Berkeley has risen dramatically in recent years, from a low of \$364,000 in 2012 to \$900,000 in January 2021.<sup>8</sup> Because prices have risen much faster than income, the in lieu fee has risen too.

We analyzed the financial feasibility of the current fees for hypothetical affordable ownership projects (Appendix A) and found that the current fees resulted in profits that fall below commonly used benchmarks for necessary profit. High cost condos might be able to pay the fee and earn the minimum required profit but projects with sales prices closer to Berkeley's average condo prices were not. However, under current conditions, more typically priced condos were able to pay the proposed rental fee of \$45 per square-foot and remain financially feasible. While there have not been enough condo projects in Berkeley recently to draw strong conclusions, this exercise lends support to the assertion that the relatively high level of Berkeley's fee for ownership projects is contributing to developer's choice to build rental rather than ownership housing.

The current policy appears to discourage homeownership development. Some local stakeholders have expressed an interest in adjusting the policy to give developers, and ultimately Berkeley residents, more choice between rental and homeownership housing. Setting the fee at \$45 per square-foot for both types of project would level the playing field considerably. The typical ownership unit would still pay more because ownership units tend to be larger. As an alternative, many cities charge homeownership units slightly more. Setting

<sup>8</sup> Zillow Home Value Index for Condos/Co-ops, <https://www.zillow.com/berkeley-ca/home-values>

Berkeley's fee at, for example, \$55 per square-foot for ownership projects would slightly disincentivize ownership but by less than the current fee approach.

***Addressing rental projects that record condo maps***

Another reason to consider standardizing the fee between rental and ownership projects stems from the fact that a growing number of new multi-family buildings are recording condominium maps but opening initially as rental housing projects. This gives project owners the flexibility to later sell the rental units as condos if housing market conditions change. The added flexibility makes it easier for developers to access project financing or to access financing on better terms.

For projects that provide on-site affordable rental units, the City records restrictions which require that the BMR units remain affordable rentals for the life of the project. But the potential for projects that are initially rental and pay the AHMF but later convert to ownership is not addressed in Berkeley's current code. Projects that paid the AHMF as rental projects and later sold condo units would owe an additional fee, but monitoring and collecting this fee is administratively and legally challenging.

Some cities have responded to this trend by requiring projects that record a condo map when they are first built to pay a higher affordable housing fees that would be due for ownership projects even if the building is initially operated as rental housing. This would not be practical under Berkeley's current approach because the ownership in lieu fee is set based on the actual sale price of units but those may not be determined for many years (if ever). Setting a single in lieu fee that would be applied to both rental and ownership projects at the time of development would eliminate this complexity. Alternatively, setting a higher fee per square-foot for projects with a Condo Map would also provide a practical alternative, though it might increase costs on rental projects that are not likely to ever actually convert to ownership but need the Condo Map in order to access certain financing sources.

## **7. Standardizing Live Work and GLA requirements**

**Proposed Change:**

- 7.1. Remove the exemption for Live / Work projects from IHO/AHMF ordinances; apply the same requirements to Live / Work projects as any other project except for the "affirmative marketing" provision
- 7.2. Remove the exemption for units with Group Living Accommodations (GLA) tenancy (and consider retaining an exemption for University-recognized GLAs)

**Background and Analysis:**

A 2018 Council Referral (2018-09-12, Item 17) called for the elimination of the affordable housing requirements in the Live Work Ordinance and removal of the live/work exemptions

from both the IHR and AHMF ordinances. This action would simply apply the Inclusionary Housing or AHMF ordinances to Live Work exactly as they are applied to other projects.

Live/Work units are currently exempt from both the Inclusionary zoning ordinance and the Affordable Housing Mitigation fee. Instead, Berkeley's Live Work Ordinance (Berkeley Municipal Code 23E.20) requires projects that create 5 or more Live/Work units to include 1 inclusionary unit affordable to 80% of AMI for every 5 Live/Work units created. The inclusionary requirements in the Live/Work ordinance differ from the requirements applied to other projects. Affordable units under the Live/Work ordinance are all targeted to 80% of AMI. In addition, the Live Work Ordinance specifically allows inclusionary Live/Work units to be smaller, have lesser finishes and be located anywhere in a project while both the IHR and AMHF ordinances require units to be the same size, have comparable finishes and be distributed throughout a project.

There is one provision of the Live/Work ordinance which is specific to Live/work affordable units which it would make sense to retain or move to the new ordinance. Inclusionary live/work units must be affirmatively marketed to "income-eligible persons performing a work activity permitted in the District where the project is located whose type of work causes them to have a requirement for a space larger in size than typically found in residential units." The ordinance currently provides no standards for documenting tenants' need for live/work space or rules for waiving this requirement in the event that a tenant with this need cannot be found within a reasonable period.

The ordinance currently exempts Group Living Accommodations (GLA) units, but because this classification represents a type of tenancy rather than a specific type of unit, it would make sense to subject GLA units to the Affordable Housing Requirements like any other unit. Fraternities, sororities, and other specially designated units managed by the University would retain their exemption. Further study could be necessary to assess the impact of this change on project feasibility.

## 8. Add a land dedication option

### Proposed Change:

- 8.1. Add a land dedication option which authorizes the City Manager to approve donation of land to the City or an approved nonprofit housing developer. Donated land must be appraised for a value of at least 75% of the in lieu fee which would otherwise be due, be sufficiently sized and zoned to support multifamily housing development and otherwise be suitable for affordable housing development.

### Alternative:

- 8.2. Don't add a land dedication option - continue with two compliance options; on-site units or in lieu fee, though this would leave projects newly excluded from the on-site option with only one compliance option.

**Background and Analysis:**

Some stakeholders have suggested that the program would be stronger if Berkeley allowed developers to comply by providing off-site affordable projects, preserving existing ‘naturally occurring affordable housing’ or dedicating land for affordable housing development. We evaluated the feasibility of adding off-site and preservation options and concluded that Berkeley currently lacks the staff capacity necessary to effectively implement these complex options. However, it is worth noting that the City can and does use in lieu fee revenue collected to finance both off-site projects and preservation/rehabilitation projects. By collecting fees and then going through the existing procedures for the HTF and Small Sites programs, the City avoids the need to develop new detailed rules and closely monitor developer implementation of these alternatives.

The third option, land dedication, however, provides an outcome which the City cannot achieve on its own through the use of fee revenue. While this option also would require detailed rules to avoid abuse, it may be less challenging than off-site or preservation options and is likely to be used in far fewer cases.

Access to sites is one of the key barriers facing affordable housing developers. Market rate developers sometimes end up with control over sites which could be better used for affordable housing. Sometimes market rate projects are large enough to set aside a portion for affordable housing. In these, somewhat rare, cases, it is sometimes more affordable for the developer to donate land for affordable housing than to build on-site units or pay an in lieu fee. If the donated site is appropriate for affordable housing, it can save significant time and make new projects possible. Of course, if sites are not appropriate, land donation can result in a significant burden on City resources. If the policy were to include a land dedication option, the City would need to develop detailed guidelines which outlined site requirements and retain the option to only accept sites when there is a high probability that they will be developable for affordable housing including, for example, expressions of interest from local affordable housing developers.

**9. Provide a family sized units option****Proposed Change:**

- 9.1. In lieu of providing 20% of units at affordable prices, allow projects to provide affordable units comprising 20% of the Gross Residential Floor Area in the project provided that at least 50% of those units are in 2 or 3 bedroom units.

**Background and Analysis:**

Berkeley’s IHR and AHMF ordinances currently require that on-site BMR affordable units be of the same type and size as market rate units in the property. As the cost of construction has risen, there has been a trend for market rate projects to include smaller and smaller

apartments and this has meant that the BMR units have been shrinking as well. Some stakeholders have asked the City to consider ways to incentivize more ‘family sized’ units even in buildings where the market rate units are quite small. This request has been made at the same time that other stakeholders have called for the City to actively discourage units with high bedroom counts (i.e., co-living units).

It seems that in the current context the City should be encouraging 2 and 3-bedroom units but not larger ones. One way to achieve this is to require that projects set aside a given percentage of floor area for affordable housing instead of a percentage of units if the majority of those units are 2 and 3-bedroom units.

When New York City adopted their Mandatory Inclusionary policy for the first time in 2016, rather than requiring a percentage of units be affordable, they required that the affordable units make up a percentage of net residential floor area.<sup>9</sup> This allows developers to include larger or smaller affordable units. Projects offering smaller BMR units may need to provide more units and projects offering larger units would provide fewer units. Cambridge, MA, a city with size and demographic similarities to Berkeley, also switched to this method in 2017, but with the additional condition that large developments (30,000 square feet or more) are required to include 3-bedroom affordable units.<sup>10</sup> Both of these approaches would add considerable complexity to already complex rules in Berkeley. The proposed change would continue to require 20% of units for most Berkeley projects, but would add an alternative for projects that chose to offer mostly 2 and 3 bedroom BMR units.

## 10. Simplify the requirements for condominium conversions

### Proposed Changes:

- 10.1. Calculate the Condo conversion fee at 8% of the market value of converted units.
- 10.2. Reduce the conversion fee to 4% for any unit that is and has been occupied by an owner as his or her principal place of residence for at least 5 consecutive years immediately prior to the date that the fee is paid, including as a tenant in that unit immediately prior to ownership.
- 10.3. Also reduce the conversion fee to 4% for any co-housing unit, any unit that is part of a housing cooperative, or conversion undertaken by a nonprofit developer.
- 10.4. Continue to allow a further 25% discount in the fee if it is paid at the time of conversion rather than at the time of sale of condo units.
- 10.5. Add flexibility in the use of conversion fees. Allow up to 10% of conversion revenue to be used for Condominium Conversion program delivery and/or Housing Trust

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<sup>9</sup> New York City Mandatory Inclusionary Housing Program,  
<https://www1.nyc.gov/site/planning/plans/mih/mandatory-inclusionary-housing.page>

<sup>10</sup> City of Cambridge Inclusionary Housing,  
<https://www.cambridgema.gov/CDD/housing/inclusionaryhousing>



Fund program and project monitoring and enforcement or related program administrative costs with the remaining 80% placed into the Housing Trust Fund.

**Background and Analysis:**

Berkeley's Condominium conversion ordinance (CCO) (Berkeley Municipal Code [BMC] Chapter 21.28 et seq.) requires payment of an Affordable Housing Mitigation Fee at the time that rental properties are converted to condominium ownership. Between 1992 and 2009 this mitigation fee recaptured essentially the entire difference in affordability that resulted from conversion. This had the effect of discouraging conversions. In 2005, the state Court of Appeal held that cities could not prohibit conversion of rental units to Tenants in Common ownership (TIC). Since then, the City has sought to encourage conversion of rental units to condominiums rather than TICs because of difficulties that can arise for people who invest in TIC properties. It has done so by imposing a de facto cap on the affordable housing mitigation fee charged for conversion to condominiums since 2009.

**Nexus Fee Calculation:** Under the current ordinance the AHMF for condo conversions is calculated through a complex 'nexus formula' that considers costs of ownership, rental and mortgage rates. Alternatively, owners can choose to pay 8% of the sales price (or 4% for 2-unit buildings) instead of the Nexus Fee if they agree to limit rent increases for any existing tenants. This alternative calculation generally results in much lower fees. As a result, the nexus-based fee method has been used very rarely. We recommend that all condominium conversions be subject to the 8%/4% fee, and that all sitting tenants be provided protections and an opportunity to purchase.

Examples:

**Nexus Formula:** Rental Costs = \$1,500 per month x 12 months/year = \$18,000 annually  
Ownership Cost (including principal, interest, taxes, insurance, and homeowners' association dues) = \$2,700 per month x 12 = \$32,400 Assume a mortgage rate of 6.5 percent. Increased housing cost due to ownership conversion of the unit = \$32,400 - \$18,000 = \$14,400 Mitigation Fee = \$14,400/0.065 = \$221,538

**Alternative Formula:** Sale price for converted unit = \$400,000. If owner agrees to limit rents to existing or future tenants. Mitigation fee = 8% x \$400,000 = \$32,000.

**Discount for Owner Occupants/Tenant Conversion:** Currently, the condo conversion ordinance provides a 50% reduction in the fee to owners who have lived in their units for the 5 prior years. However, only owners who resided in their units on June 30, 2010 are currently eligible.

*If the property contains three or more units, the affordable housing mitigation fee for a unit that is occupied by an owner as their principal place of residence for at least 5 consecutive years immediately prior to the date of sale, including as a tenant in that unit immediately prior to ownership, shall be reduced by 50 percent, but only if the owner owned and resided in the unit as of June 30, 2010.*

A Council referral had proposed to extend the 50% reduction to tenants in addition to owners who have lived in a unit for at least 5 years prior to conversion so long as the building was 4 or fewer units.

*If the property contains 4 units or fewer, the affordable housing mitigation fee for a unit that is and has been occupied by an owner as his or her principal place of residence for at least 5 consecutive years immediately prior to the date of conversion or sale, including as a tenant in that unit immediately prior to ownership, shall be reduced by 50 percent.*

It is not clear why this tenant conversion benefit should be limited based on building size. The current ordinance is limited to properties with 3 or more units while the referral was limited to 4 or fewer units. The proposed change would apply to owner occupied or tenant purchased units in buildings of any size.

Although instances of condominium conversion by nonprofits, in co-housing projects, or in housing cooperatives are quite rare, it makes sense to extend the fee reduction to these cases as well.

**Use of Fee Revenue:** The current condo conversion ordinance does not allow any of the Mitigation Fee revenue to be used for program administration, but the program can be staff-intensive to implement. The AMHF and IHR Ordinances allow a portion of fee revenue to be used for program administrative staffing.

## 11. Prohibit on-site units for Group Living Accommodation (GLA)

### Proposed Change:

- 11.1. Prohibit projects with an average of more than 3 bedrooms per unit from selecting the on-site option in order to reduce administrative burdens.
- 11.2. Adopt a local density bonus that enables these projects to access the benefits of the State Density Bonus in exchange for an increased in lieu fee instead of on-site units.

### Background and Analysis:

**Group Living Projects:** It is challenging to regulate and monitor BMR units in co-living and group living projects where individuals generally lease bedrooms not apartments. It is difficult to find eligible households who can both qualify for and afford 4-bedroom or larger BMR units and the households that would most benefit from large BMR units might be less interested in living in a building that was primarily targeting students and young adults. Additionally, it is typical for groups of unrelated adults renting larger units together to change composition frequently, which makes maintaining current documentation of eligibility more complicated for owners and therefore compliance more difficult for the City to monitor.

Local Density Bonus: Berkeley cannot prevent developers from providing on-site affordable units in order to qualify for the benefits of the State Density Bonus (SDB). It would be possible for the City to simply require some projects to pay the full fee even if they provide on-site units for the purpose of accessing the density bonus but this would impact the feasibility of small projects and projects that provide large bedroom count units. An alternative would be for the City to adopt a limited local density bonus program for these projects that are not allowed to provide on-site units under the City's ordinance. This local bonus could provide access to all of the benefits of the State Density Bonus (including additional density and other planning concessions) in exchange for a fee rather than on site units. We calculated that, for a typical rental project, providing 11% (of base units) on-site increases the cost of compliance relative to paying the fee only by \$10 per square-foot. If a local density bonus offered the benefits of 35% increased density and other concessions to projects that paid \$55 per square-foot (instead of \$45) this option would be no more or less attractive to developers than the current State Density Bonus option. In other words, if a co-living project could access the density bonus in exchange for a fee of \$55 per square-foot they would generally choose that option rather than provide on-site units.

## 12. Change requirements for small projects/missing middle projects

### Proposed Changes:

- 12.1. Eliminate exemption for 1-4 unit projects and replace it with a tiered fee that steps up gradually for projects with less than 12,000 gross residential square feet, by reducing the fee by \$2 per square-foot for each 1000 square foot increment less than 12,000.
- 12.2. Offer a local density bonus, equal to the State Density Bonus, to projects providing <5 BMR units that choose the in lieu fee.

### Alternative:

- 12.3. Eliminate exemption for 1-4 unit projects and expect even very small projects to contribute the full fee.

### Background and Analysis:

Currently both the AHMF and the Inclusionary housing ordinance exempt buildings with 1-4 units. Presumably this exemption was motivated by a sense that very small projects would have a harder time absorbing the cost of including affordable housing into their budgets. While this is often, but not always true, there is no reason to think that suddenly at 5 units a project budget can easily afford to comply. There is a much wider range of "missing middle"-type projects that may be feasible in Berkeley at a small scale which may also struggle to meet the City's requirements. Many of these projects may be larger than 5 units.

At the same time there has been significant concern in Berkeley about the potential that developers may segment larger projects into several smaller 4-unit projects in order to circumvent the inclusionary housing or AHMF ordinance. By exempting very small projects but

then suddenly imposing the full requirement at a certain point, the current ordinance creates an incentive to build projects in 4-unit increments.

One approach to this challenge would be to impose the fee (at some level) on every project (with the exception of Accessory Dwelling Units), but to reduce the fee for small projects. Many cities just impose a lower fee for smaller projects. San Jose just amended their program to set the fee at a level that is 50% lower for projects with fewer than 20 units. However, this approach still creates a big step up at 20 units. An alternative is to gradually phase in higher fees as the size of the project increases. Figure 10 shows the schedule that would result from a \$2 decrease in the fee for each increment of 1000 gross residential square feet below 12,000.

**Figure 10: Proposed schedule for small project phase-in**

Gross Residential Square Feet	Fee per square-foot
12,000+	\$45
11,000-11,999	\$43
10,000-10,000	\$41
9,000-9,999	\$39
8,000-8,999	\$37
7,000-7,999	\$35
6,000-6,999	\$33
5,000-5,999	\$31
4,000-4,999	\$29
3,000-3,999	\$27
2,000-2,999	\$25
1,000-1,999	\$23
<1,000	\$21

Reducing the fee for small projects would have an uncertain impact on Berkeley’s future fee revenue. The City would collect less revenue from small projects with at least 5 units, but would begin collecting fees from 1 to 4 unit projects. Offering a local density bonus to projects providing less than 5 BMR units that choose the in lieu fee would likely reduce the number of projects with a small number of on-site BMR units that need to be monitored while also increasing total fee revenue.

Small projects pose a special challenge for program administration and monitoring. Monitoring compliance for a building with one or two regulated units requires a similar investment of staff time as a project with 20 BMR units. Often the owners of smaller buildings have fewer resources and less outside professional property management support and as a result, they often find the burdens of compliance more challenging, and require relatively more intervention and training from City staff.

Many cities address this by encouraging developers of small properties to select the fee or other option rather than providing on-site BMR units which may prove difficult to monitor.

Redwood City prohibits the on-site units option for projects with fewer than 20 total units, effectively requiring these projects to pay the in lieu fee.

In Berkeley, however, because so many projects select mixed-compliance, there is a real risk that projects with more than 20 total units could end up including only a very small number of on-site BMR units. For example a 40 unit project selecting on-site compliance (20%) would provide 8 BMR units but if they chose to only provide 10% on-site and pay a fee for the remainder they would only provide 4 BMR units on-site. Removing the on-site option for projects that would result in fewer than 5 BMR units would force these projects to either pay the fee entirely or fully comply through the on-site option. Either option would simplify monitoring enormously.

### 13. Cap the annual rate of rent increases

#### **Proposed Change:**

13.1. Limit the annual increase in BMR affordable rents for occupied units to no more than the annual change in the Consumer Price Index. Allow rents to be marked up to the maximum 'affordable' rents based on HUD AMI calculations whenever units turn over.

#### **Alternative:**

13.2. Limit the annual rent increase to no more than 10% in any single year.

#### **Background and Analysis:**

Sudden increases in the Area Median Income can result in large changes in the allowable affordable rent which can negatively impact BMR tenants. Similarly, some property owners fail to annually adjust rents as allowed by the current ordinance. They are allowed to 'catch up' by raising the rents by a larger amount later but this too can cause sudden shocks in rent for vulnerable tenants.

Limiting the amount that rent can be increased for occupied BMR units would provide stability and predictability for tenants. This change, however, will have a real impact on the operating budgets of projects with on-site BMR units. The current rules tie rents to changes in the Area Median Income (AMI). Over the past several decades the AMI has risen quite a bit faster than the Consumer Price Index. While the AMI is generally a measure of what people in the area earn, the rapid increase in the AMI has been driven, in part, by the growth of high paying jobs and the influx of higher income residents throughout the Bay Area rather than a rise in the wages and other income that lower-income residents earn. As a result, 'affordable' rents have risen faster than what many low-income tenants can comfortably 'afford.'

Limiting the rate of rent increases will have a real impact on the operating budgets of buildings that include on-site units. As long as units remain occupied, the rents may rise



more slowly than building operating costs. It is likely that this change in policy will make the on-site option slightly less attractive to developers and increase the likelihood of projects selecting to pay the fee in lieu. However, a growing number of Berkeley projects are including on-site VLI units and then filling those units with residents who hold housing vouchers. The policy should continue to allow these properties to collect the full voucher payment standard which might increase faster than CPI without impacting affordability for the residents. This reliance on vouchers should mean that many density bonus projects would not be impacted by a rule tying rent increases to CPI.

## 14. Administrative changes

### a. Require compliance plans

#### **Proposed Change:**

14.1. Require developers of new projects to submit a simple Affordable Housing Compliance Plan at the time of Building Permit application indicating their proposed strategy for complying with the requirements of the AHR ordinance. Allow revisions to this plan at any time prior to the Certificate of Occupancy.

#### **Background and Analysis:**

Currently developers can wait until their projects are built and applying for a Certificate of Occupancy to inform the City of their intended strategy for complying with the AHMF or Inclusionary Housing Ordinance, including whether they intend to pay the fee or provide some or all of the required on-site units. Requiring developers to indicate a proposed strategy earlier in the process a) allows city staff to make plans for monitoring units or project fee revenue so that it can be invested quickly and b) ensures that developers are fully understanding Berkeley's requirements early in the development. Many cities provide a simple fill in the blanks template for this purpose and allow projects to change their plans at a later date by simply submitting a revised plan.

### b. Authorize administrative citations

#### **Proposed Change:**

14.2. Explicitly authorize the creation of a proposed schedule of fines for monitoring and compliance violations to be included in the program guidelines.

#### **Background and Analysis:**

Other jurisdictions have found that having the ability to impose monetary fines is an effective tool for encouraging developer and property manager compliance with

monitoring requirements. Explicitly authorizing citations in the ordinance might help clarify staff's authority to impose these penalties.

***c. Authorize annual monitoring fee for ownership units***

**Proposed Change:**

14.3. Explicitly authorize the City to charge a fee annually to BMR Homeowners to offset monitoring costs. The fee would be assessed only on new owners going forward. The fee would be included as a housing cost in calculation of the affordable sales prices so that buyers will pay less for their units in order to make the fee affordable.

**Background and Analysis:**

The City currently charges owners of rental properties an annual monitoring fee but no fee is charged to BMR homeowners.

***d. Deduct required fees/costs from gross rent***

**Proposed Change:**

14.4. Clarify this language in the ordinance to make it clear that mandatory fees or costs must be deducted from the maximum allowable rent for BMR rental units.

**Background and Analysis:**

Currently the AHMF ordinance calls for reduction in the maximum rent based on the anticipated cost of tenant paid utilities. Some properties impose other mandatory costs such as renter's insurance or administrative fees. Current practice is to deduct any cost which is mandatory for BMR tenants from the maximum gross rent to calculate the affordable rent but this requirement is not currently outlined in the ordinance.

# Appendix A: Financial Feasibility Analysis

## Overview:

The City of Berkeley retained Street Level Advisors to recommend changes to its existing affordable housing requirements. Our policy recommendations are intended to increase the construction of affordable units while maintaining the financial feasibility of market-rate development. We conducted a financial feasibility study in order to understand the current housing development environment and predict how our recommended policies might affect this environment. Our study relies on a static pro forma analysis to estimate the return on investment that can be generated by typical residential developments in Berkeley.

For the rental prototype, we used a common measure of return known as yield on cost (YOC), or a project's net operating income divided by the total development cost. Based on a review of current market conditions in Berkeley and the East Bay, we concluded that projects earning a yield of at least 5.0% would be "feasible" meaning that they would likely be able to secure investment. Projects earning slightly less (between 4.5% and 5%) would be considered "marginal" meaning that some projects in this category might be able to obtain financing while others might not. Projects earning less than a 4.5% yield we considered "infeasible."

For ownership projects, the Yield on Cost cannot be calculated so we used a different measure of profitability: Profit as a percent of development cost, also called Return on Cost. Because of the lack of recent condo projects in Berkeley, we were unable to objectively determine the minimum necessary profit as a percent of cost for local ownership projects. As a point of reference, a common rule of thumb used in other studies considers projects "feasible" when profit exceeds 10-15% of development cost.

Our rental prototype is a 6-story, 72-unit development with a small amount of commercial space on the ground floor and one parking space for every two housing units. We estimate that under current conditions, rental projects that choose to pay Berkeley's Affordable Housing Mitigation Fee (AHMF) earn a Yield on Cost of 5.08% - just barely above the feasibility threshold. Projects that provide on-site units earn a yield of 4.94% just under the threshold into the marginal category. However, economic conditions are in flux due to the COVID-19 pandemic, and new projects could become more feasible in the near future.

Our prototype, revenue, and cost assumptions are based on prior studies, comparable projects, and other market research. The remainder of this memo describes these assumptions and our methodology in more detail.

**Prior Studies:**

Over the past decade, the City of Berkeley has evaluated the financial feasibility of its affordable housing requirements several times. Our analysis builds on the feasibility studies conducted by these consultants.

The 2015 Bay Area Economics Nexus Study contains one section that addresses the financial feasibility of new rental housing. BAE estimated the Return on Cost for a four-story, mixed-use development in the C-W zoning district at two different fee levels. In their simplified model, all 81 units are 900 square foot two-bedrooms. BAE's analysis suggested that the fee could be increased to \$34,000 while maintaining the minimum necessary return on cost.

The 2016 Strategic Economics Feasibility Analysis tested a wider range of fee levels. Using a four-story model that is almost identical to the BAE model, they estimated the Yield on Cost at six fee levels between \$0 and \$84,391. Strategic Economics considered Yield on Cost because it is a more accurate measure of feasibility for rental housing than Return on Cost. The minimum Yield on Cost required for feasibility in their analysis was 6.5% reflecting the higher interest rate environment in 2016. They found that new developments would be marginally feasible if the fee was \$45,000 and infeasible if the fee was any higher.

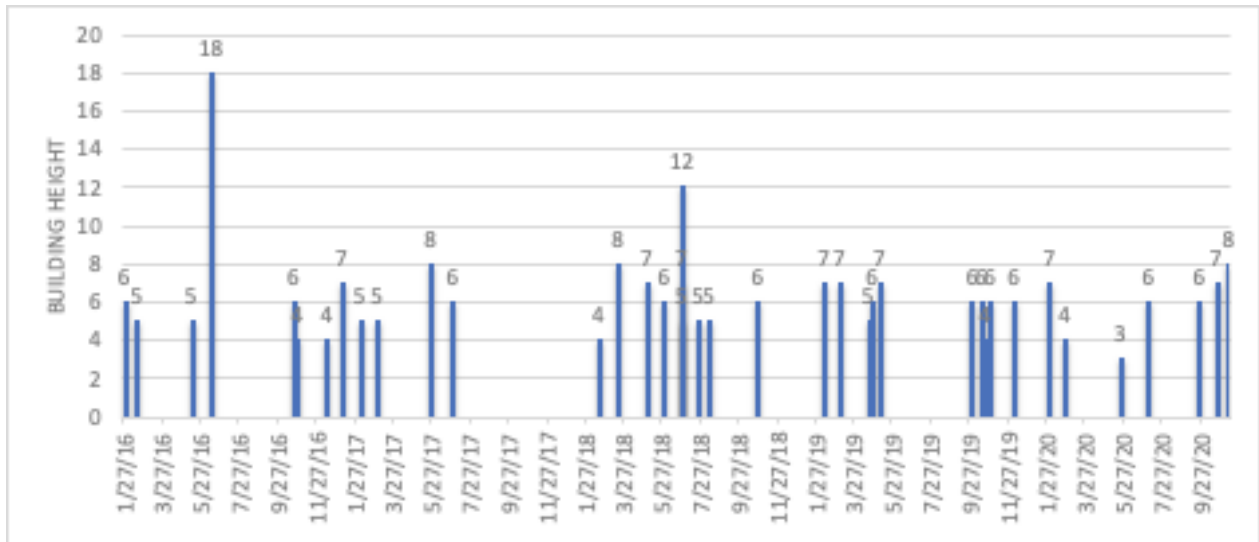
Together, the BAE and Strategic Economics analyses suggested that new rental development would be feasible at fee levels equivalent to and above the current level.

**Prototypes Studied:**

Rents and construction costs have escalated dramatically since the Strategic Economics analysis was published. Our recent data shows that rents are over 30% higher and the construction costs per square-foot in our model below are nearly double those in the Strategic Economics report. Our specific revenue and cost assumptions are described in the next section.

Because of these trends, the type of development project that both BAE and Strategic Economics used as their example would no longer be financially feasible in Berkeley. Driven by these same trends, the types of development projects being undertaken in Berkeley have shifted. Developers have responded to rising construction costs by building smaller units, fewer parking spaces and taller buildings on smaller lots. Figure 1 shows that developers of multi-family buildings in Berkeley have been primarily proposing 5-8 story buildings in recent years.

Figure 1: Permit applications for residential project with >20 units 2016 – 2020



Following these trends, we have used a slightly different prototype to test feasibility in today’s market. Our prototype is a 6-story building with wood frame residential over a concrete podium. Where BAE and Strategic Economics assumed a 1-acre lot, we have assumed a half-acre. Our prototype includes 72 housing units and 3,000 square feet of commercial space (see Figure 2). Our model is taller but contains fewer units and less commercial space than the 4-story, 81-unit Strategic Economics prototype. The units in our model are also smaller than the units in the Strategic Economics analysis. Based on a detailed study of recent projects in Berkeley we have assumed a mix of 450 square-foot studios, 725 square-foot one-bedrooms, and 925 square-foot two bedrooms where Strategic Economics had assumed that all units would be 900 square-foot two-bedrooms.

Recent data also suggests that the capitalization rate for residential development is 4.0-4.25%, significantly lower than the cap rate of 5.0% which Strategic Economics used in 2016. Additionally, the parking ratio of 1 space per unit in the Strategic Economics study reflects the minimum parking requirements in much of the city at the time their study was published. As parking minimums have recently been eliminated, we assume a more modest parking ratio of 0.5 spaces per unit, consistent with observed occupancy rates.



Figure 2: Rental Prototype Details

Prototype Feature	Value
<b>Project</b>	
Construction Type	Wood Frame over Concrete Podium
Stories	6
Site Area in Acres	0.5
Gross Sq Ft	68,950
Residential Sq Ft	52,750
Common Area Sq Ft	13,200
Commercial Space Sq Ft	3,000
<b>Residential Units</b>	
Number of Units	72
Number of Studios	14
Number of 1BD Units	36
Number of 2BD Units	22
Studio Sq Ft	450
1BD Sq Ft	725
2BD Sq Ft	925
<b>Parking</b>	
Parking Ratio (Spaces / Units)	0.5
Number of Spaces	36

For the ownership prototype, we assumed larger average unit sizes. In order to facilitate comparison, we assumed a building of the same overall size (square feet) but with fewer units of larger size. We also assumed the same parking ratio (.5) as our rental prototype in order to facilitate comparison, though it is more likely that a condo project would provide 1 space per unit which would lower overall returns.

Figure 3: Ownership Prototype Details

Prototype Feature	Value
<b>Project</b>	
Construction Type	Wood Frame over Concrete Podium
Stories	6
Site Area in Acres	0.5
Gross Sq Ft	61,490
Residential Sq Ft	52,290
Common Area Sq Ft	9,200
Commercial Space Sq Ft	0
<b>Residential Units</b>	
Number of Units	56
Number of 1BD Units	35
Number of 2BD Units	18
Number of 3BD Units	3
1BD Sq Ft	850
2BD Sq Ft	1,025
3BD Sq Ft	1,365
<b>Parking</b>	
Parking Ratio (Spaces / Units)	0.5
Number of Spaces	28

### Revenue and Cost Assumptions:

The revenue and cost assumptions used in our pro forma analysis are shown in Figure 4. The main inputs that influence project revenue are the residential rents. Our analysis of data from CoStar, RealPage, and Berkeley's Rent Stabilization Board led us to estimate that typical rents for newly built apartments in Berkeley would be approximately \$3,100 for studios, \$4,000 for one-bedrooms, and \$4,500 for two-bedrooms. Other revenues include commercial rents of \$3 per square-foot and parking revenue of \$200 per space per month. These assumptions reflect rents that would have been assumed by projects prior to the pandemic. During the pandemic, rents throughout the region have fallen dramatically with some estimates showing rent in Berkeley down by 5 to 10% along with significant increases in apartment vacancy rates. The best available evidence suggests that these decreases are likely temporary. Developers in

Berkeley are moving forward on construction of new apartments which would not be financially feasible if the pandemic rents and vacancy rates were permanent.

The key input driving costs is the construction cost estimate of \$400 per gross square foot. This assumption is based on actual construction costs for comparable East Bay projects and studies that estimate the construction cost inflation rate. Other important development cost assumptions include land at \$8,000,000 per acre and parking construction costs at \$50,000 per space. We assume that soft costs - which include architecture, engineering, and inspection fees – equal 22% of hard costs. Our estimates for land, parking, and soft costs rely on data from several comparable Berkeley projects but, of course, these figures vary quite a bit between actual projects. Financing costs include the construction loan interest rate of 4.5% and the initial construction loan fee of 1.0%. Our financing cost assumptions are based on independent estimates of prevailing interest rates and data from comparable Berkeley projects.

The current inclusionary housing rules require that 80% of on-site VLI units be offered first to housing voucher holders. Berkeley allows developers to charge the full Housing Authority Payment Standard rent for these units even when it exceeds the rent that could be charged to a VLI tenant with no voucher. We have assumed these slightly higher rents for 80% of any VLI units on-site.

Note: The COVID-19 pandemic caused an uncommon economic crisis that the US is only beginning to recover from. It is unclear what persistent impacts the pandemic will have on the housing development environment and consequently on our model. We cannot be certain how inputs such as construction costs and rents will change or how investors that finance development will respond to this uncertainty. Over the past year construction costs have continued to rise while rents have fallen across the Bay Area. This combination has made it harder for real estate projects to achieve feasibility, but these trends do not appear to be lasting. Our model reflects conditions as they were at the beginning of 2020.

Figure 4: Revenue and Cost Assumptions

Revenue/Cost	Assumption	Unit of Measure
<b>Residential Revenue</b>		
Studio Rent	\$3,100	per unit per month
1BD Rent	\$4,000	per unit per month
2BD Rent	\$4,500	per unit per month
<b>Ownership Revenues</b>		
1BD Price	\$725,000	per unit
2BD Price	\$925,000	per unit
3BD Price	\$1,100,000	per unit
<b>Other Revenues</b>		
Commercial Rent	\$3.00	per sq ft per month
Parking Revenue	\$200	per space per month
<b>Development Costs</b>		
Construction Costs	\$400-\$415	per gross sq ft
Land Costs	\$8,000,000	per acre
Parking Costs	\$50,000	per space
Soft Costs	20-22%	of hard costs
<b>Financing Costs</b>		
Construction Loan Interest Rate	4.5%	annual rate
Loan to Cost Ratio	70%	of total cost
Period of Initial Loan	24	months
Initial Construction Loan Fee	1.0%	of loan
Average Outstanding Balance	60%	of loan
<b>Operating Costs</b>		
Rental Vacancy Rate	4%	of units unoccupied
Rental Operating Cost	35%	of revenues

### Policy Scenarios:

We built a financial model using the project prototypes described above in order to test the impact of potential changes to the City's affordable housing requirements on the feasibility of

residential development. We ran the model for the same hypothetical projects under a number of different policy assumptions. First, we established the returns that would be available under the current law depending on which performance option the project selected.

### Current Program Scenarios

#### Rental

**Current Fee:** Under this alternative, we assume the hypothetical project elects to pay Berkeley's current Affordable Housing Mitigation Fee (AHMF) of \$39,746 for each unit in the building. A project paying the fee would not be eligible for the density bonus.

**Current On-site Units:** Under this alternative, we imagine the project selecting instead to provide on-site units as provided under the current AMHF ordinance. The project would provide 7 Very Low Income (VLI) units (10%) and 7 Low Income (LI) units (10%). For the sake of comparison, we have assumed that the project does not access the density bonus though it would likely qualify.

**Current Mixed Compliance – 11% VLI:** The most common approach in recent years has been for projects to provide enough units on-site in order to maximize the benefits of the State Density Bonus and pay a fee to cover the remainder of their obligation under Berkeley's AHMF. Prior to 2021, projects that provided 11% of base units as restricted Very Low Income units on-site would receive the maximum 35% density bonus. We have assumed that our hypothetical project could increase the total number of housing units by 35% (from 79 to 97) with no increase in land costs<sup>11</sup>.

**Current Mixed Compliance – 15% VLI:** In 2020 the State Legislature approved an expansion of the State Density Bonus which allows greater increases in density in exchange for more affordable housing units on-site. Now a developer can request a 50% increase in residential density if they provide, for example, at least 15% Very Low Income units. We have analyzed the profitability of a hypothetical

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<sup>11</sup> Our analysis does not attempt to capture the full financial value of the density bonus. In addition to the right to build more housing units on a given site, state law allows developers to request a number of planning concessions based on the amount of affordable housing that they provide. These concessions clearly provide real value which can increase the profitability of projects. However, because the dollar value of concessions is abstract and highly dependent on the particular project, we have not attempted to include this in our financial modeling. As a result, our conclusions are likely to slightly understate the difference between the returns from density bonus and other types of projects.

project assuming a 50% increase in units with 15% of base units (10% of total units) restricted to VLI residents under current rules.

**Ownership**

**Current On-site Compliance:** A for-sale project that elected to provide on-site affordable units would be required to provide 20% of units to be affordable to and occupied by Low Income households earning less than 80% of AMI.

**Current In Lieu Fee (Based on Sales Prices):** Alternatively, a developer may pay an in lieu fee calculated based on 62.5% of the difference between the market price and the affordable price. This approach results in a different level of fee for different projects depending on the market prices of units in the project. For the sake of illustration, we estimated a range of current market prices based on average condo sales prices listed on Zillow.com and calculated the fee which would be due.

**Figure 5: Condo Pricing Assumptions**

Estimated BMR Ownership Fees 2021						
Unit Size	Sq Ft	Estimated Market Price	Affordable Price	In Lieu Fee	In Lieu Fee Per Unit	In Lieu Fee per Sq Ft
1BR	814	\$703,556	\$250,650	\$283,066	\$56,613	\$70
2BR	1117	\$853,125	\$282,000	\$356,953	\$71,391	\$64
3BR	1571	\$995,797	\$313,200	\$426,623	\$85,325	\$54

**Alternative Policy Options**

In addition to evaluating the performance of the prototype under the current policy rules, we considered several alternative scenarios based on the proposed policy changes.

**Rental**

**\$45 Per square-foot Fee:** Under this alternative, we assumed that the City adopted a fee of \$45 per gross square foot (excluding parking and commercial space) and we evaluated the returns for a prototype project that elected to pay this fee in full with no on-site BMR units.



**\$55 Per square-foot Fee:** This alternative assumes full payment of a higher fee per square-foot.

**Mixed Compliance (Weighted)– 11% VLI:** In this alternative we have assumed a \$45 per square-foot fee is adopted along with an adjusted formula for determining the remainder fee for mixed compliance projects. We assumed that each 1% of VLI units provided would reduce the fee due by \$3 per square-foot and each 1% of LI units would reduce the fee by \$1.50 per square-foot. In this alternative, we assume a project that provides 11% of the base units (equivalent to 8% of total units) as VLI in order to receive a 35% density bonus.

**Mixed Compliance (Weighted)– 15% VLI:** In this alternative we assume a project that provides 15% of the base units (equivalent to 10% of total units) as VLI in order to receive a 50% density bonus under state law. As with the scenario above, this alternative assumes that the formula for calculating the remaining fee for mixed compliance provides greater reductions for projects that provide VLI units.

### Ownership

**\$45 Per Square-foot Fee:** In this scenario, we have assumed that the City adopts a single per square-foot rate of \$45 which would be applied to all projects whether rental or ownership.

**\$55 Per Square-Foot Fee:** This alternative assumes that the City adopts a higher per square-foot fee for ownership projects (or any project that records a condominium map).

### **Findings:**

For rental projects, our model suggests that most projects would not be able to feasibly comply with the current 20% on-site requirement but that projects that choose to pay the fee or access the State Density Bonus by providing some units on-site and paying a partial fee would both earn returns that are just barely above the threshold which we identified for feasibility (5% yield on cost). The returns for density bonus projects are comparable to the fee alternative because the additional cost of providing some units on-site is offset by the additional benefit of building more units on the same site.

For this prototype, the proposed fee of \$45 per gross square foot results in a virtually identical return. A higher fee (\$55 per square-foot) would result in a marginal but very close to feasible

return. The proposed approach of providing more 'credit' for projects that provide on-site VLI units than those that provide LI units results in modest increases in the returns available to mixed compliance projects that take advantage of the State Density Bonus. While this small difference is not critical for this prototype, it is likely that there would be projects where this difference would result in on-site affordable units in projects that would otherwise have paid the fee entirely (or not moved forward at all).

**Figure 6: Comparison of Returns - Rental**

Scenario	Base Units	Bonus Units	LI Units	VLI Units	Fee \$	Yield on Cost	% of Base	% of Total
<b>Current Policy</b>								
\$39,746 Per Unit Fee	72	0	0	0	\$2,861,712	5.08%	0%	0%
Onsite Units	72	0	7	7	\$0	4.94%	19%	19%
Mixed Compliance - 11% VLI	72	25	0	8	\$2,265,522	5.07%	11%	8%
Mixed Compliance - 15% VLI	72	36	0	11	\$2,106,538	5.10%	15%	10%
<b>Proposed Alternatives</b>								
\$45 Per Foot Fee	72	0	0	0	\$2,967,750	5.07%	0%	0%
\$55 Per Foot Fee	72	0	0	0	\$3,627,250	4.99%	0%	0%
Mixed Compliance (Weighted) - 11% VLI	72	25	0	8	\$2,350,809	5.10%	11%	8%
Mixed Compliance (Weighted) - 15% VLI	72	36	0	11	\$2,184,925	5.12%	15%	10%

For ownership projects, we found that neither the current fee nor the current on-site requirement resulted in profit as a percent of development cost above the benchmark of 10%. The proposed switch to a \$45 per square-foot fee would result in profit just above 10% while a higher \$55 per square-foot fee would result in profit closer to 9%.

**Figure 7: Comparison of Returns - Ownership**

Scenario	Total Units	LI Units	Fee \$	Profit % of Cost
<b>Current Policy</b>				
Current Fee (based on sale prices)	56	0	\$3,810,847	8.00%
Onsite Units	56	11	\$0	1.13%
<b>Proposed Alternatives</b>				
\$45 Per Foot Fee	56	0	\$2,767,050	10.88%
\$55 Per Foot Fee	56	0	\$3,381,950	9.16%

### Sensitivity Analysis:

**Revenues and Costs:** The feasibility projections above are highly sensitive to assumptions about rents and construction costs. These assumptions are different from one project to the next and change in somewhat unpredictable ways over time. The heat table in Figure 8 below shows the

yields on cost that our model predicts for a range of different scenarios in regard to construction costs and rents for our prototype. This table shows returns for a 6-story rental project that selects the proposed \$45 per square-foot fee option. The axes indicate how these scenarios compare with current construction cost and rent levels. The (0%, 0%) cell in the center of the table represents the estimated yield on cost for projects given today’s rents and construction costs. The (-10%, 10%) cell in the top right represents the yield for projects if rents decrease 10% and construction costs increase 10% relative to current levels. Green cells represent situations in which projects will be feasible, with expected yields on cost at or above 5%. The redder a cell is, the less feasible projects will be. A rise in construction costs will increase the total development cost of a project, making it less feasible. A drop in market rents will decrease the rental income a project can expect, also making it less feasible.

**Figure 8: Yield on Cost Sensitivity to Rents and Construction Costs**

		Construction Costs										
		-10%	-8%	-6%	-4%	-2%	0%	2%	4%	6%	8%	10%
Rents	-10%	5.07%	4.96%	4.85%	4.75%	4.65%	4.56%	4.47%	4.38%	4.30%	4.22%	4.14%
	-8%	5.18%	5.07%	4.96%	4.85%	4.76%	4.66%	4.57%	4.48%	4.40%	4.32%	4.24%
	-6%	5.29%	5.18%	5.07%	4.96%	4.86%	4.76%	4.67%	4.58%	4.49%	4.41%	4.33%
	-4%	5.40%	5.29%	5.17%	5.07%	4.96%	4.86%	4.77%	4.68%	4.59%	4.50%	4.42%
	-2%	5.52%	5.40%	5.28%	5.17%	5.07%	4.96%	4.87%	4.77%	4.68%	4.60%	4.51%
	0%	5.63%	5.51%	5.39%	5.28%	5.17%	5.07%	4.97%	4.87%	4.78%	4.69%	4.61%
	2%	5.74%	5.62%	5.50%	5.38%	5.27%	5.17%	5.07%	4.97%	4.87%	4.78%	4.70%
	4%	5.85%	5.73%	5.60%	5.49%	5.38%	5.27%	5.17%	5.07%	4.97%	4.88%	4.79%
	6%	5.97%	5.84%	5.71%	5.59%	5.48%	5.37%	5.26%	5.16%	5.07%	4.97%	4.88%
	8%	6.08%	5.95%	5.82%	5.70%	5.58%	5.47%	5.36%	5.26%	5.16%	5.07%	4.97%
	10%	6.19%	6.06%	5.93%	5.80%	5.69%	5.57%	5.46%	5.36%	5.26%	5.16%	5.07%

With current rents and construction costs, projects are just barely feasible with estimated yields of 5.07%. However, if rents rise by just 2% and construction costs remain flat, projects will become more feasible with expected yields of 5.17%. As expected, yields increase as rents rise and decrease as construction costs rise. Yield on cost is just slightly more sensitive to construction costs than rents. Construction costs falling by 10% will increase yields a bit more than rents rising by 10%.

*Parking:* The feasibility of new rental development in Berkeley is also highly sensitive to assumptions about the amount of parking provided. The parking ratio is the number of parking spaces divided by the number of residential units. Before 2021, Berkeley’s zoning regulations mandated projects in some districts to have parking ratios of at least 1. Berkeley recently eliminated minimum parking requirements, making parking ratios of 0 possible.

Figure 9 shows the yields on cost that our model predicts for a range of parking scenarios. In our model, parking ratios are used to describe the amount of parking provided by a project. Creating parking spaces is expensive and limits the area available for the project’s residential or amenity space. As a result, higher parking ratios reduce a project’s yield on cost and projected feasibility. Our model predicts that projects that provide no parking will be solidly financially feasible while projects that provide 1 space per unit are not currently feasible.

Figure 9: Yield on Cost Sensitivity to the Parking Ratio

Parking Ratio				
0.00	0.25	0.50	0.75	1.00
5.34%	5.20%	5.07%	4.94%	4.82%

Even with strong financial incentives and no City parking requirements, most projects are likely to include significant amounts of parking. Depending on the location of the project, tenants may see parking as a necessary building amenity. In other cases, project investors insist on some level of parking. When Seattle eliminated parking requirements in many parts of the city, [one study](#) found that most projects still included parking. In areas with no parking requirement, nearly 30% of new buildings provided no parking after the mandate was removed. But the remaining 70% provided parking even though it was not required by the city. Figure 10 shows that the average project provided .49 parking spaces per unit.

Figure 10: Seattle parking reform results

Minimum Number of Required Parking Spaces/Unit	Number of Development Projects	Average Parking Ratio	Buildings That Exactly Met Requirement	Buildings That Provide Parking Above Requirement		
				<0.5 Spaces/Unit	0.5-1.0 Spaces/Unit	>1.0 Spaces/Unit
0	570 (65.6%)	0.49	29.5%	24.2%	39.0%	7.4%



Office of the City Manager

01

WORKSESSION

March 15, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Jordan Klein, Director, Planning and Development Department  
 Subject: Housing Element Update and Residential Objective Standards

SUMMARY

The City of Berkeley's Housing Element Update for the Statewide "6<sup>th</sup> Cycle" is underway alongside its counterpart project, Multi-Unit Residential Objective Standards ("Objective Standards"). This report follows up on the December 9, 2021 Council worksession on the Housing Element and provides an update on progress to date. The purpose of this report and worksession is to:

1. Share the feedback from recent public engagement efforts.
2. Present the preliminary sites inventory and describe the environmental review process.
3. Present on the analysis and draft development standards for two- to four-unit projects in the R-1, R-1A, R-2, R-2A, and MU-R Districts outside of the Hillside Overlay.
4. Describe the preliminary methodology for analyzing and drafting development standards for residential projects with five or more units and mixed-use projects.
5. Receive direction from the City Council on Housing Element policy, zoning standards for missing middle housing, and development criteria for residential projects with five or more units.

CURRENT SITATUTION AND ITS EFFECTS

**Public Outreach Feedback**

At the time this report was written, the Housing Element team had made presentations to 13 Berkeley boards, commissions, and committees<sup>1</sup>, conducted 18 stakeholder

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<sup>1</sup> Planning Commission (9/1/2021); Homeless Services Panel of Experts (9/1/2021); Commission on Disability (9/1/2021); Landmarks Preservation Commission (9/2/2021); Zoning Adjustments Board (9/9/2021); Commission on Aging (9/15/2021); Energy Commission (9/22/2021); Children, Youth, and Recreation Commission (9/27/2021);

interviews, met with Housing Commission representatives from the Associated Students of the University of California (ASUC), held two public workshops with more than 60 participants each, and released two citywide online surveys.

Since the December Council Housing Element work session, the project team held a public workshop, completed a citywide online survey and held two concurrent meetings of the Planning Commission and Zoning Adjustments Board subcommittees. The following are key takeaways from these outreach efforts:

1. **Public Workshop.** The second public workshop occurred over Zoom on January 27, 2022. The goal for the workshop was to share insights from community engagement efforts, update the Berkeley community on Housing Element sites inventory methodology, introduce the Residential Objective Standards project, and receive input on zoning standards to facilitate housing production.

An invitation and registration link for the public workshop was sent to over 340 subscribers of the Housing Element email list and attended by approximately 60 participants, comparable to the first public workshop in September 2021.

During the second public workshop, several key themes were reiterated:

- a. *Locations to facilitate housing production.* Participants identified both higher density neighborhoods (Downtown, Southside) and lower density neighborhoods (West, North, and South Berkeley) as locations to consider for increasing housing capacity through added height and/or density. Several comments highlighted the desire to avoid clustering affordable housing primarily along high traffic corridors.
- b. *Housing criteria.* Proximity to community resources, including grocery stores and retail, are important criteria. Several participants commented on the need for active ground floor uses and more mixed-uses to further foster a walkable environment.
- c. *Multi-Unit 2-4.* Participants generally supported the concept of increasing allowable density in low-density residential districts, particularly if constructed with objective standards to maintain appropriate neighborhood scale and adequate planting, landscaping, and open space.
- d. *Multi-Unit 5+ and Mixed Use.* Participants shared support for encouraging innovative and creative design, as well as incentivizing community and shared open spaces, particularly for multi-family projects. Several commenters expressed that developments should minimize solar impacts on adjacent residential units.

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Housing Advisory Commission (9/30/2021); Rent Stabilization Board (11/18/2021); Zoning Ordinance Revision Project Subcommittees (12/15/2021 and 2/16/2022); Civic Arts Commission (1/19/2022); City/UC/Student Relations Committee (1/28/2022).



2. Downtown and West Berkeley Tour and Online Survey. Two residential walking tours and online surveys were made available from November 24, 2021 through January 31, 2022. The goal of the tours was to inform and get feedback from community members on the diversity of housing types and building sizes in the City and to understand what makes residential development compatible with neighborhood scale.

The walking tours and surveys were advertised at the December 9, 2021 Council work session, on the flyer for the January Housing Element workshop, and emailed to more than 330 subscribers of the Housing Element email list in November, early January, and late January. They were also announced at the December and January Planning Commission meetings, at December subcommittee meetings of the Zoning Adjustments Board and the Planning Commission and the January 4x6 meeting.

- a. *The Downtown Walking Tour* received a total of 23 survey responses and included 11 tour stops, primarily mixed-use residential projects with five or more units in addition to two smaller residential-only developments. The most common features that participants found to be compatible were building height, massing, and design features such as building articulation, color and materials, and windows. Features that would establish more compatibility included additional landscaping, planting, architectural details, and vehicular access and loading.
  - b. *The West Berkeley walking tour* received a total of 26 survey responses and included 12 tour stops, with a range of “missing middle” housing types including multiple detached units on one lot, cottage court housing, and mixed-use projects. The most common features that survey participants found compatible were placement of structures (setbacks and location on lot), heights, and overall building shape, size, and form. The features that would create more compatibility included building and parking orientation, and additional landscaping and planting.
3. Subcommittee meetings of the Planning Commission and the Zoning Adjustments Board. These concurrent meetings occurred over Zoom on December 15, 2021 and February 16, 2022. The goal for the meetings was to introduce the Objective Standards project, discuss an analysis of Berkeley’s development standards for two- to four-unit residential projects and receive targeted feedback on a number of key issues. Analysis involved development of two to four-unit housing prototypes and an assessment of project feasibility based on current development standards. Over 25 members of the public attended the February meeting – many of whom were design professionals or interested residents – providing feedback on the technical nature of the material. There was general support for ministerial approval of projects that met objective standards and tiered standards that incentivized density and preservation of

existing housing stock. Commissioners and the public requested refinements or further research to:

- Create more flexible open space requirements.
- Understand shadow impacts to solar.
- Incentivize smaller units / denser projects which naturally encourage housing that is more affordable.
- Model adjacent and abutting lots for improved neighborhood context.

### **Preliminary Sites Inventory Capacity and Environmental Review**

The City is required by the State Department of Housing and Community Development (HCD) to meet its Regional Housing Needs Allocation (RHNA) and identify sufficient sites to accommodate 8,934 residential units to meet the anticipated population growth between 2023 to 2031. In addition, HCD recommends that cities identify a “buffer” of 15% to 30% above RHNA for lower- and moderate-income categories to account for No Net Loss (AB 166)<sup>2</sup>. Thus, the overall sites inventory must accommodate between approximately 9,750 and 10,500 units. The sites must be zoned to allow for residential uses and the zoning standards must allow for the unit capacities assumed in the sites inventory.

The sites inventory process assessed capacity in three categories:

1. Likely Sites include projects that received their land use entitlement after 2018 but have not received their certificate of occupancy. For these projects, the affordability breakdown reflects actual project plans, including density bonus units. HCD also allows jurisdictions to include accessory dwelling units (ADUs) in the “likely sites” category based on recent development trends and assumed levels of affordability based on ABAG’s Affordability of ADUs report<sup>3</sup>. The North Berkeley and Ashby BART stations are included under “likely sites” based on current planning efforts. The site inventory estimates 1,200 units to be developed at those sites during the 6<sup>th</sup> cycle, with 35% affordability split evenly between Very Low- and Low-Income affordability levels. *The preliminary assessment of “likely sites” to develop account for over 5,100 units towards our 8,934 RHNA goal, and 33 percent of the lower income allocation.*
2. Pipeline Sites include projects that are under review or actively engaging with the City in anticipation of submitting an application for review. Affordability levels reflect proposed project plans to the extent they are known. *The preliminary*

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<sup>2</sup> AB 166 requires cities to demonstrate capacity is available for affordable units in the case that development on a specific site results in fewer units (total number and by income category) than assumed in the Housing Element.

<sup>3</sup> September 8, 2021. Draft Affordability of Accessory Dwelling Units. ABAG. <http://21elements.com/documents-mainmenu-3/housing-elements/rhna-6-2022-2030/1327-draft-adu-affordability-report-sep-8-2021-1/file>

*assessment of “pipeline sites” account for over 2,400 units, and 10 percent of the lower income allocation.*

3. Opportunity Sites are not associated with actual development proposals. These parcels are identified as “opportunity sites” or potential sites for future housing development using HCD’s criteria and methodology (outlined below). Berkeley’s zoning districts, with the exception of the C-AC district, do not have maximum density standards expressed in “dwelling units per acre”. As a result, unit assumptions for opportunity sites were calculated using the average mean of the *base density* from recent entitlement projects within the district (or districts with similar zoning standards if there were no recent projects within the district to analyze). *The preliminary assessment of “opportunity sites” account for over 9,000 units distributed across 364 parcels, and accommodates 86 percent of the lower income RHNA goal.*

AB 1397 requires that 5th cycle opportunity sites re-used in the 6th cycle and identified to accommodate lower income units (Very Low-Income and Low-Income) be subject to by-right approval if projects include 20% affordable units for lower income households on-site. Preliminary analysis shows that this will affect approximately 18 opportunity sites (1,419 units), located along commercial corridors.

HCD’s criteria for selecting opportunity sites includes:

- a. *Vacant*. Land is identified as vacant in the Alameda County Assessor’s land use data.
- b. *Underutilized*. Parcel has an improvement-to-land assessed value ratio of 0.75 or less.
- c. *Older*. Buildings on the parcel are greater than 30 years old for non-residential buildings and greater than 40 years old for residential buildings.
- d. *Jurisdiction*. Parcel is not Federal-, State- or county-owned.
- e. *Historic or Landmarked*. Parcel does not contain historic buildings or landmarked resources.
- f. *Existing Residential*. Parcel does not contain condos, large apartment buildings, or rent-controlled units.
- g. *Supermarkets*. Unless a developer has expressed interest in a particular site, HCD typically does not accept supermarkets as potential opportunity sites due to their long-term leases and community need.

HCD’s affordability assumptions are based on the premise that affordable units are more likely to be developed on larger sites that allow for higher densities and a greater total number of units. For the purposes of affordability assumptions on opportunity sites, HCD’s methodology combines the “lower income” categories,

Very Low- and Low-Income. The affordability assumptions, based on the State's guidance, are:

- a. *Parcel Size*. On sites that are less than 0.35 acres, the potential unit capacity is included solely in the moderate and above-moderate categories. On sites that are greater than 0.5 acre, the affordability distribution is then dependent on the resulting density and unit capacity calculations. Note, adjacent parcels under the same ownership are included and consolidated to achieve a minimum 0.5 acre threshold.
- b. *Density*. The potential unit capacity from opportunity sites where the assumed density is less than 75 units per acre are placed in the Above Moderate-Income category. On sites where the assumed density is greater than or equal to 75 units per acre, the potential units are split among the three affordability categories (Lower-, Moderate-, and Above Moderate-Income) based on the number of units that can be accommodated on the site.
- c. *Unit Capacity*. If a site can accommodate up to 30 units, then the potential capacity is categorized in the Above Moderate-Income category. If a site can accommodate between 31 and 50 units, the potential capacity is categorized in the Moderate-Income category. If a site can accommodate more than 50 units, the potential units are categorized in the Lower-Income category.

*Preliminary analysis of Berkeley's "Likely Sites", "Pipeline Sites", and "Opportunity Sites" using HCD's methodology yields over 16,500 units and meets RHNA requirements within each income category.* This suggests that the City's existing zoning is adequate to meet HCD requirements for a compliant Housing Element.

Recent development activity, however, suggests current zoning alone does not deliver the level of deed-restricted affordable housing and economic diversity that the City aims to achieve. Density Bonus and inclusionary units have fallen short of providing the overall 20% Very-Low and Low-Income units expressed in the City's inclusionary housing ordinance in part because projects typically pay a fee in lieu of providing all or part of the inclusionary requirement.

City Council has provided direction on where and how to encourage additional housing, particularly affordable housing that supports a diversity of income levels and household types (see Attachment 1, Council Housing Referrals). Based on Council's referrals and resolutions, the City is preparing a programmatic Draft Environmental Impact Report

(DEIR) that will study potential environmental impacts that could result from up-zoning and new policies in the following areas, by traffic analysis zone (TAZ)<sup>4</sup>:

1. North Berkeley and Ashby BART TOD projects assumed a maximum of 2,400 units in its EIR<sup>5</sup> and the Housing Element EIR will match that assumption. The Sites Inventory estimate currently assumes 1,200 units will be permitted during the Housing Element 2023-2031 cycle.
2. R-1 and R-1A districts are anticipated to increase in density based on SB 9 and zoning amendments in response to Council's referral for missing middle housing<sup>6</sup> and resolution to end exclusionary zoning<sup>7</sup>. The Turner Center's SB 9 modeling indicates that the City of Berkeley could anticipate approximately 1,100 new market-feasible units through SB 9<sup>8</sup>. Using HCD's 70<sup>th</sup> percentile methodology, the EIR assumes 770 additional units distributed throughout the R-1 and R-1A districts for the 2023-2031 period.
3. Southside Zoning Modification Project proposed an expansion of approximately 800 units over existing Southside Plan Area zoning in its July 2020 Initial Study<sup>9</sup>. Given past development trends and the limited number of opportunity sites in the Southside, the Housing Element EIR assumes approximately 1,200 units total to accommodate up-zoning in the C-T, R-S and R-SMU districts.

As part of the environmental review process, the Housing Element team will be evaluating foreseeable physical impacts as well as a reasonable range of alternatives and mitigation strategies to reduce or avoid potential environmental effects. The alternatives may consider increases in allowed heights and densities or find that higher unit capacities result in greater potential impacts. Ultimately, the EIR must study a realistic development potential for the eight-year period of the Housing Element Update

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<sup>4</sup> July 2014. Final Traffic Analysis Zones (TAZs) Map. Alameda County Transportation Commission (ACTC)  
[https://www.alamedactc.org/wp-content/uploads/2018/12/ModelFinalTAZ\\_North-1.pdf](https://www.alamedactc.org/wp-content/uploads/2018/12/ModelFinalTAZ_North-1.pdf)

<sup>5</sup> October 2021. Ashby and North Berkeley BART Station TOD EIR.  
[https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Land\\_Use\\_Division/Ashby%20and%20North%20Berkeley%20BART%20Stations%20Zoning%20Project%20DEIR%20October%202021.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Land_Use_Division/Ashby%20and%20North%20Berkeley%20BART%20Stations%20Zoning%20Project%20DEIR%20October%202021.pdf)

<sup>6</sup> April 23, 2019. Missing Middle Housing Report. Berkeley City Council.  
[https://www.cityofberkeley.info/Clerk/City\\_Council/2019/04\\_Apr/Documents/2019-04-23\\_Supp\\_2\\_Reports\\_Item\\_32\\_Rev\\_Droste\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2019/04_Apr/Documents/2019-04-23_Supp_2_Reports_Item_32_Rev_Droste_pdf.aspx)

<sup>7</sup> February 23, 2021. Resolution to End Exclusionary Zoning in Berkeley. Berkeley City Council.  
[https://www.cityofberkeley.info/Clerk/City\\_Council/2021/02\\_Feb/Documents/2021-02-23\\_Item\\_29\\_Resolution\\_to\\_End\\_Exclusionary.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/02_Feb/Documents/2021-02-23_Item_29_Resolution_to_End_Exclusionary.aspx)

<sup>8</sup> July 21, 2021, Will Allowing Duplexes and Lot Splits on Parcels Zoned for Single-Family Create New Homes? Turner Center. <https://turnercenter.berkeley.edu/wp-content/uploads/2021/08/Turner-Center-SB9-model-jurisdiction-output.xlsx>

<sup>9</sup> July 2020. Southside Zoning Ordinance Amendments Projects Initial Study.  
[https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Land\\_Use\\_Division/Final%20Southside%20Zoning%20Ordinance%20Amendments\\_Initial%20Study.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Land_Use_Division/Final%20Southside%20Zoning%20Ordinance%20Amendments_Initial%20Study.pdf)

to avoid overestimating impacts and unduly burdening future development projects with increased mitigation measures.

### **Rezoning: Two to Four Unit Residential Objective Standards**

In alignment with the Housing Element Update and EIR, the Objective Standards team is studying modifications to zoning standards for residential development with two to four units in the R-1, R-1A, R-2, R-2A, and MU-R zoning districts outside of the Hillside Overlay. These standards are intended to implement the Council’s direction to eliminate exclusionary zoning and allow for multifamily “missing middle” housing in Berkeley’s lower-density residential districts.

To inform the development of these standards, the City a) illustrated and analyzed existing development standards in the R-1, R-1A, R-2, R-2A, and MU-R districts; and b) prepared four prototype models of example two- to four-unit development projects. These models show a range of configurations for “missing middle” projects in Berkeley and highlight potential conflicts with existing standards (Attachment 2, Illustrated Missing Middle Models).

Key observations from the analysis of existing development standards and prototype feasibility include:

1. Lot Coverage. In R-1, R-1A, R-2, R-2A, the maximum lot coverage varies between 35 percent and 50 percent depending on the location of a lot (internal or corner) and the height of the proposed development (one and two stories or three stories). Maximum lot coverage is a limiting standard, particularly for internal lots, and lot coverage standards that vary by number of stories are more complicated to apply.
2. Open Space. A minimum of 400 square feet of usable open space per dwelling unit is currently required in the R-1, R-1A, and R-2. A minimum of 300 square feet and 150 square feet of usable open space per dwelling unit is required in the R-2A and MU-R, respectively. A minimum width and length of 10 foot by 10 foot is required for ground floor open space; a minimum length of six feet is required for above-ground usable open space. Two of the four prototypes studied do not meet minimum usable open space requirements due to side yard driveways and paved on-site parking area.
3. Height and Stories. In R-1, R-2A, R-2, R-2A, the maximum average height is 28 feet and three stories. A maximum average height of 35 feet is achievable with an administrative use permit (AUP) and is commonly granted by the Zoning Adjustments Board (ZAB) with few—if any—modifications. For some buildings, it is possible to incorporate four stories into a 35-foot average building height, which would increase total habitable floor area.
4. Setbacks. In the R-1 and R-1A, a four-foot side setback is required for all floors, while setbacks in the R-2 and R-2A vary between the first two floors (four-foot side setback) and the third floor (six-foot side setback) and cannot be reduced



with an AUP. MU-R has no minimum side setback requirement. The upper floor setbacks add complexity to three-story construction. Three of the four prototypes studied do not meet the increased third-story interior side setback required in the R-2 and R-2A districts.

5. Floor Area and Floor Area Ratio (FAR). Achievable floor areas based on modeling of existing zoning standards demonstrate a range between 4,881 square feet on an internal lot in the R-2A to 7,800 square feet on a corner lot in the MU-R. There is no maximum FAR standard in the R-1, R-1A, R-2, and R-2A districts; achievable floor area is limited by other standards such as lot coverage, height, stories, and setbacks. In MU-R, the maximum FAR is 1.5, which is a limiting standard where existing standards otherwise allow for 100% lot coverage, up to 10-foot setbacks, 35-foot height and three stories.

Based on the existing standards and prototype analysis, the Objective Standards team drafted proposed standards and alternative options for residential projects with two to four units in the R-1, R-1A, R-2, R-2A, and MU-R districts outside of the Hillside Overlay (Attachment 3, Draft Proposed Multi-Unit 2-4 Development Standards). Proposed standards would apply only to two- to four-unit projects; single-family dwellings will continue to be subject to existing standards. *The standards will be further revised and refined to address ZORP Subcommittees and Council input.*

Key proposed zoning modifications for consideration include:

1. Lot Coverage. To promote housing production and allow for a range of project configurations, the draft proposed standards increase allowed lot coverage as the number of units increases.
2. Open Space. To allow for flexibility in the location and configuration of usable open space while maintaining existing minimum dimensions, the draft proposed standards modify the standards to include outdoor area on the ground within front, street side, or rear setback areas and also above ground (e.g. balconies) used for active or passive recreation use.
3. Height and Stories. To incentivize multi-unit housing production, the draft proposed standards allow maximizing height and increasing the maximum to four stories for projects with three or four units.
4. Setbacks. The draft proposed standards include applying a maximum front setback (*measured from the front property line*) to ensure consistent building placement with adjacent structures, and reducing minimum rear setbacks to be consistent with existing ADU and SB 9 requirements.
5. Step backs. To enhance the feasibility for multi-unit configurations, the proposed draft standards apply a front step back (*measured from the face of the building wall and not the property line*) and removes all other upper-story setback and step back requirements.

6. Floor Area and FAR. The City Council previously directed the City Manager to consider scaling the FAR to increase as the number of units increase on a site. The proposed draft standards increase height, number of stories, and lot coverage as the number of units on the site increases, which effectively increases achievable floor area as number of units increase without creating a new FAR standard.
  7. Preservation. To incentivize preservation of existing housing units, the proposed draft standards consider an option to increase allowable floor area for sites with retained existing habitable space.
  8. Permit Requirements. City Council direction calls for allowing two-to four-unit projects in R-1, R-1A, R-2, R-2A, MU-R zoning districts. The proposed draft standards would allow two- to four-unit projects with a Zoning Certificate in the R-1, R-1A, R-2, R-2A, and MU-R districts. Two- to four-unit projects are currently permitted by-right in the R-1 under SB 9. Three- and four-unit projects are currently not permitted in the R-1A zones. Where permitted, two- to four-unit projects all require a Use Permit and a public hearing.
- **Staff requests City Council’s feedback on the proposed zoning modifications and development standards for two- to four-unit projects in low-density residential districts.**

**Rezoning: Multi-Unit 5+ and Mixed-Use Residential Objective Standards**

The City is in the preliminary stages of developing objective standards for residential projects with five or more units and mixed-use projects (“multi-unit 5+”). The intent of this effort is to add, remove, or modify objective standards as needed to provide clarity and predictability for streamlined projects (e.g. SB 35), reduce the number of use permits a project requires, and to ensure that such projects are compatible with the scale of the surrounding neighborhood.

The following is a summary of the overall methodology for developing multi-unit 5+ standards:

1. Analyze Recent Project Approval Findings. Using residential projects entitled since 2016, the Objective Standards team will compare the current Zoning Ordinance requirements to as-built dimensions and analyze the relevant non-detriment findings in the staff reports to inform potential objective standards. The initial list of development standards to review will be based on the standards currently being evaluated for two- to four-unit projects (e.g. coverage, height, setbacks).
2. Identify Trends by Zoning District and Project type. The Objective Standards team will study recent development trends by zoning district and by residential project type (e.g., mixed-use, multifamily, or group living accommodations) to determine where modifying of existing standards is necessary.

3. Tailoring Draft Standards. Using the findings and trends analysis, the Objective Standards team will develop preliminary draft zoning standards. Draft development standards will recognize the different residential types and scales of multi-unit 5+ projects. For example, a three-story, five-unit residential-only building may require different objective standards from a five-story, 100-unit mixed-use building especially when transitioning between low-density residential neighborhoods and higher density, or mixed-use areas.

Included in this effort is consideration of how new development under revised building envelope standards may impact neighboring rooftop solar access where a Commercial or MU-R district borders a Residential district.

In the initial review of existing development standards for multi-unit 5+, the Objective Standards team has identified key early policy questions that require Council input.

1. Mixed-Use vs. Residential-Only. In all Commercial districts except the C-T, C-DMU, and C-AC, development standards vary between mixed-use residential and residential-only projects, providing significantly greater achievable floor area for mixed-use projects. These regulations were intended to encourage mixed-use development along the City’s commercial corridors; however, this incentive has resulted in unintended ground floor vacancies. This was noted in a 2017 Council referral requesting flexible ground floor uses<sup>10</sup> to fill vacancies.

Modifying the development standards along the commercial corridors outside the nodes would provide residential-only projects the benefits afforded to mixed-use residential projects. This change would provide flexibility of uses while continuing to support areas of commercial activity and increasing housing capacity.

- **Staff requests City Council’s feedback on whether residential-only projects on commercial corridors—outside designated nodes—should have the same built envelope and maximum floor area as mixed-use residential projects.**

2. Height and Stories. In the C-DMU Core, the ZAB may issue a Use Permit to increase the height to a maximum of 180 feet for three buildings and a maximum of 120 feet for two buildings. To-date, one 180-foot building has been constructed, one 120-foot building has been issued building permits, one 180-foot building has been entitled, and one 180-foot building is awaiting entitlement. The Southside Plan’s preliminary environmental analysis projected up to three 12-story buildings that would include up to 500 units.

To provide clarity and predictability for future potential projects, and increase housing capacity in the limited number of identified opportunity sites in the

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<sup>10</sup> April 4, 2017. Referral to allow non-commercial ground floor uses. Wengraf et al. [https://www.cityofberkeley.info/Clerk/City\\_Council/2017/04\\_Apr/Documents/2017-04-04\\_Item\\_21\\_Referral\\_to\\_the\\_Planning\\_Commission\\_to\\_Allow\\_Non-commercial\\_Use.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2017/04_Apr/Documents/2017-04-04_Item_21_Referral_to_the_Planning_Commission_to_Allow_Non-commercial_Use.aspx)

Downtown and Southside areas (approximately 14 parcels in Downtown and nine in Southside), rezoning provides an opportunity to increase maximum heights and/or the number of tall buildings allowed within C-DMU Core and Southside.

- **Staff requests City Council’s feedback on potentially raising maximum heights and/or uncapping the number of tall buildings in Downtown and the Southside once objective standards and programmatic elements to incentivize affordable units are in place.**

**Project Timeline and Implications**

In order to meet the Housing Element’s statutory deadline of January 31, 2023, the EIR timeline and HCD’s review periods, environmental review for this project has been initiated. Berkeley is on target to meet the statutory deadline for the Housing Element with little or no leeway in the timeline due to a 74-day decrease in timeline imposed by AB 215 which came in to effect on January 1, 2022.

The schedule will remain uncertain until the project nears completion. The project team is working diligently to meet the statutory deadline for a compliant Housing Element, but recognizes that final adoption requires various parties, within and outside the City, to act under very tight timelines. The Housing Element EIR will cover rezoning and Residential Objective Standards; however, adoption of these elements can occur a few months after adoption of the Housing Element without penalty from the State if additional time or review is required.

**BACKGROUND**

Berkeley’s 6<sup>th</sup> cycle RHNA is 8,934 residential units<sup>11</sup>. The City is not required to build housing, but it is required to identify and zone sufficient sites to accommodate the anticipated growth over the next eight-year period. If actual housing production is less than the RHNA, eligible affordable housing projects are subject to a streamlined approvals process (SB 35).

**Table 1: Berkeley RHNA Allocation, 5th & 6th Cycles**

Income Level	2015-2023 RHNA Units	2023-2031 RHNA Units
Very Low (< 50% AMI)	532	2,446
Low (50-80% AMI)	442	1,408
Moderate (80-120% AMI)	584	1,416
Above Moderate (>120% AMI)	1,401	3,664

<sup>11</sup> December 16, 2021. Final RHNA Plan: San Francisco Bay Area, 2023-2031. ABAG. <https://abag.ca.gov/tools-resources/digital-library/proposed-finalrhnaallocationreport2023-2031pdf>

<b>Total</b>	<b>2,959</b>	<b>8,934</b>
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ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The Housing Element Update is expected to result in greater infill housing development potential near transit and in employment-rich areas. Prioritizing density and affordable housing in these areas will incentivize community members to use alternative modes of transportation and reduce vehicle miles traveled (VMT), which are critical for reducing greenhouse gas emissions, and will bring the City closer to meeting its Climate Action Plan and Climate Emergency goals.

POSSIBLE FUTURE ACTION

Based on Council direction, project findings, and stakeholder and public input to date, the Housing Element team will prepare and release a public draft Housing Element Update in early Summer 2022. The general public will have 30 days to review and submit comments, and the City must allocate a minimum of two weeks to address and respond to public comments before submitting a Draft Housing Element to HCD for a 90-day review. After incorporating HCD comments, a final Housing Element Update is anticipated to be submitted to Council in early 2023 for local adoption prior to submittal for State certification.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Housing Elements are subject to regulatory oversight by HCD. If the State does not certify the 6<sup>th</sup> Cycle Housing Element prior to May 31, 2023, the City faces a number of penalties and consequences. In addition to significant fines of up to \$100,000 per month, the City can be sued by individuals, developers, third parties, or the State. A court may limit local land use decision-making authority until the City brings its Housing Element into compliance. Failure to comply would also impact Berkeley’s eligibility and competitiveness for federal, state, and regional affordable housing and infrastructure funding sources.

CONTACT PERSON

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Alene Pearson, Principal Planner, Land Use Planning Division, (510) 981-7489

ATTACHMENTS

1. Council Housing Referrals
2. Illustrated Missing Middle Models
3. Draft Proposed Standards for Two- to Four-Unit Residential Development in the R-1, R-1A, R-2, R-2A, and MU-R zoning districts.





## LINKS:

1. December 9, 2021. *Housing Element Update Work Session 2*. Report from City Manager to Berkeley City Council.  
[https://www.cityofberkeley.info/Clerk/City\\_Council/2021/12\\_Dec/City\\_Council\\_12-09-2021\\_-\\_Special\\_Meeting.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/12_Dec/City_Council_12-09-2021_-_Special_Meeting.aspx)
2. November 9, 2021. *Objective Standards for Density, Design, and Shadows. Supplemental Packet 3*. Report to Berkeley City Council, Councilmember Hahn et al.  
[https://www.cityofberkeley.info/Clerk/City\\_Council/2021/11\\_Nov/Documents/2021-11-09\\_Item\\_20\\_Objective\\_Standards\\_Recommendations\\_for\\_Density,\\_Design\\_and\\_Shadows.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/11_Nov/Documents/2021-11-09_Item_20_Objective_Standards_Recommendations_for_Density,_Design_and_Shadows.aspx)
3. November 9, 2021. *Objective Standards for Density, Design, and Shadows. Supplemental Packet 2*. Report to Berkeley City Council, Councilmember Droste et al.  
[https://www.cityofberkeley.info/Clerk/City\\_Council/2021/11\\_Nov/Documents/2021-11-09\\_Supp\\_2\\_Reports\\_Item\\_20\\_Supp\\_Droste\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/11_Nov/Documents/2021-11-09_Supp_2_Reports_Item_20_Supp_Droste_pdf.aspx)
4. September 21, 2021. *Housing Element Update Work Session 1*. Report from City Manager to Berkeley City Council.  
[https://www.cityofberkeley.info/Clerk/City\\_Council/2021/09\\_Sep/City\\_Council\\_09-21-2021\\_-\\_Special\\_\(WS\)\\_Meeting\\_Agenda.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/09_Sep/City_Council_09-21-2021_-_Special_(WS)_Meeting_Agenda.aspx)
5. April 28, 2021. *Housing Element Update and Annual Progress Report*, Off-Agenda Memo from City Manager to Berkeley City Council.  
[https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-\\_General/Housing%20Element%20Update%20042821.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/Housing%20Element%20Update%20042821.pdf)
6. March 25, 2021, *Initiation of Public Process and Zoning Concepts for 2023-2031 Housing Element Update*. Report to Berkeley City Council, Councilmember Droste et al.  
[https://www.cityofberkeley.info/uploadedFiles/Clerk/City\\_Council/2021/03\\_Mar/Documents/Initiation%20of%20Public%20Process%20and%20Zoning%20Concepts%20-%20Mayor%2003-25-21.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/City_Council/2021/03_Mar/Documents/Initiation%20of%20Public%20Process%20and%20Zoning%20Concepts%20-%20Mayor%2003-25-21.pdf)

7. March 25, 2021, *Initiation of Participatory Planning for Berkeley's Regional Housing Needs Allocation (RHNA)*. Supplemental report to Berkeley City Council, Councilmember Hahn et al.  
[https://www.cityofberkeley.info/Clerk/City\\_Council/2021/03\\_Mar/Documents/2021-03-25\\_\(Special\)\\_Supp\\_2\\_Reports\\_Item\\_2\\_Supp\\_Hahn\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/03_Mar/Documents/2021-03-25_(Special)_Supp_2_Reports_Item_2_Supp_Hahn_pdf.aspx)

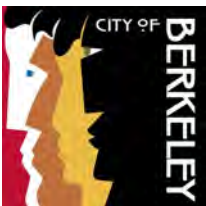
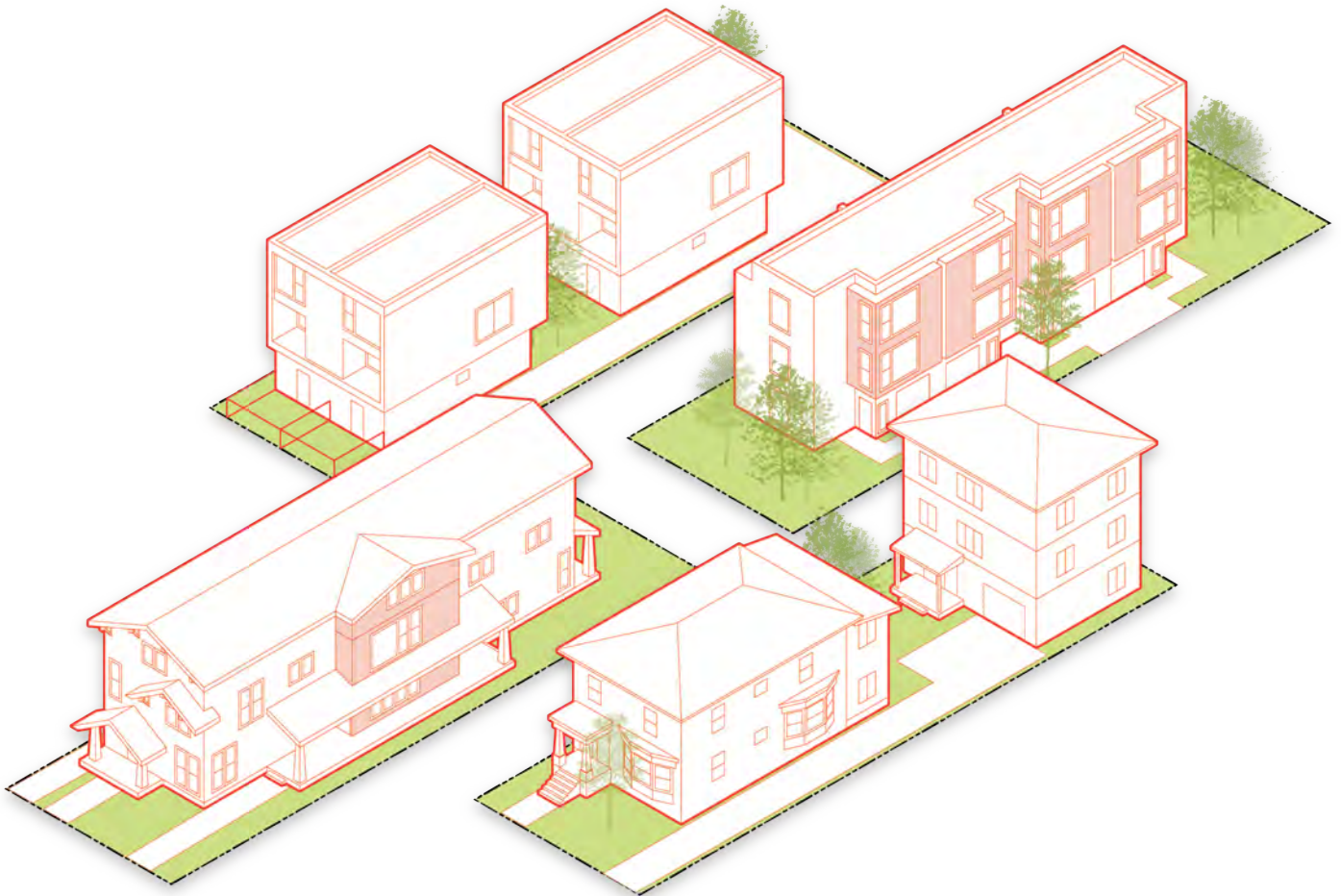
## Table of City Council Housing Referrals

Date	Description
7/12/16	<p>Allow increased development potential in the Telegraph Commercial (C-T) District between Dwight Avenue and Bancroft Avenue and refer to the City Manager development of community benefit requirements with a focus on labor practices and affordable housing.</p> <p><a href="http://records.cityofberkeley.info/Agenda/Documents/DownloadFile/7_12_2016%3b%20CLK%20-%20Report%20(Public)%3b%20DISTRICT%207%3b%20%3b%20REGULAR%3b%20ALLOW%20INCREAS.pdf?documentType=1&amp;meetingId=192&amp;itemId=2338&amp;publishId=6522&amp;isSection=False&amp;isAttachment=">http://records.cityofberkeley.info/Agenda/Documents/DownloadFile/7_12_2016%3b%20CLK%20-%20Report%20(Public)%3b%20DISTRICT%207%3b%20%3b%20REGULAR%3b%20ALLOW%20INCREAS.pdf?documentType=1&amp;meetingId=192&amp;itemId=2338&amp;publishId=6522&amp;isSection=False&amp;isAttachment=</a></p>
4/4/17	<p>Create a citywide Use Permit process to allow non-commercial use on the ground floor in appropriate locations, where commercial might otherwise be required. Consider a pilot project in the C-T District.</p> <p><a href="https://www.cityofberkeley.info/Clerk/City_Council/2017/04_Apr/Documents/2017-04-04_Item_21_Referral_to_the_Planning_Commission_to_Allow_Non-commercial_Use.aspx">https://www.cityofberkeley.info/Clerk/City_Council/2017/04_Apr/Documents/2017-04-04_Item_21_Referral_to_the_Planning_Commission_to_Allow_Non-commercial_Use.aspx</a></p>
5/30/17	<p>Develop a pilot Density Bonus program for the C-T District to generate in-lieu fees that could be used to build housing for homeless and extremely low-income residents.</p> <p><a href="http://www.cityofberkeley.info/Clerk/City_Council/2017/05_May/Documents/05-30_Annotated.aspx">http://www.cityofberkeley.info/Clerk/City_Council/2017/05_May/Documents/05-30_Annotated.aspx</a></p>
10/31/17	<p>Facilitate student housing by increasing the height and Floor Area Ratio (FAR) in the portions of the R-SMU, R-S and R-3 District which are located within the Southside area west of College Avenue.</p> <p><a href="https://www.cityofberkeley.info/Clerk/City_Council/2017/10_Oct/Documents/2017-10-31_Item_27_City_Manager_and_Planning_Commission_-_Rev.aspx">https://www.cityofberkeley.info/Clerk/City_Council/2017/10_Oct/Documents/2017-10-31_Item_27_City_Manager_and_Planning_Commission_-_Rev.aspx</a></p>
1/23/2018	<p>More Student Housing Now Resolution</p> <p><a href="https://www.cityofberkeley.info/Clerk/City_Council/2018/01_Jan/Documents/2018-01-23_Item_30_Adopt_a_More_Student_Housing.aspx">https://www.cityofberkeley.info/Clerk/City_Council/2018/01_Jan/Documents/2018-01-23_Item_30_Adopt_a_More_Student_Housing.aspx</a></p>
5/1/18	<p>Convert commercial space into residential use within all districts in the Southside located west of College Avenue.</p> <p><a href="https://www.cityofberkeley.info/Clerk/City_Council/2018/05_May/Documents/2018-05-01_Item_25_Referral_to_the_Planning.aspx">https://www.cityofberkeley.info/Clerk/City_Council/2018/05_May/Documents/2018-05-01_Item_25_Referral_to_the_Planning.aspx</a></p>
11/27/18	<p>Move forward with parts of More Student Housing Now resolution and implementation of SB 1227.</p> <p><a href="https://www.cityofberkeley.info/Clerk/City_Council/2018/11_Nov/Documents/Item_26_Supp_Worthington.aspx">https://www.cityofberkeley.info/Clerk/City_Council/2018/11_Nov/Documents/Item_26_Supp_Worthington.aspx</a></p>

<p>4/23/19</p>	<p>Analyze and report back on possible Zoning Ordinance changes to foster alternative housing types under a “Missing Middle Initiative”  <a href="https://www.cityofberkeley.info/Clerk/City_Council/2019/04_Apr/Documents/04-23_Annotated_Agenda.aspx">https://www.cityofberkeley.info/Clerk/City_Council/2019/04_Apr/Documents/04-23_Annotated_Agenda.aspx</a></p>
<p>3/25/21</p>	<p>Initiate public process and zoning concepts (including ending exclusionary zoning) in the 2023-2031 Housing Element Update  <a href="https://www.cityofberkeley.info/uploadedFiles/Clerk/City_Council/2021/03_Mar/Documents/Initiation%20of%20Public%20Process%20and%20Zoning%20Concepts%20-%20Mayor%203-25-21.pdf">https://www.cityofberkeley.info/uploadedFiles/Clerk/City_Council/2021/03_Mar/Documents/Initiation%20of%20Public%20Process%20and%20Zoning%20Concepts%20-%20Mayor%203-25-21.pdf</a></p>
<p>3/25/21</p>	<p>Initiate participatory planning for Berkeley’s RHNA and Housing Element Update  <a href="https://www.cityofberkeley.info/Clerk/City_Council/2021/03_Mar/Documents/2021-03-25_(Special)_Supp_2_Reports_Item_2_Supp_Hahn_pdf.aspx">https://www.cityofberkeley.info/Clerk/City_Council/2021/03_Mar/Documents/2021-03-25_(Special)_Supp_2_Reports_Item_2_Supp_Hahn_pdf.aspx</a></p>
<p>11/9/21</p>	<p>Consider an Affordable Housing Overlay as part of the Housing Element Update to allow increased height and density for 100% affordable projects.  <a href="https://www.cityofberkeley.info/Clerk/City_Council/2021/11_Nov/Documents/2021-11-09_Item_09_Affordable_Housing_Overlay.aspx">https://www.cityofberkeley.info/Clerk/City_Council/2021/11_Nov/Documents/2021-11-09_Item_09_Affordable_Housing_Overlay.aspx</a></p>
<p>11/9/21</p>	<p>Adopt a Resolution recognizing housing as a human right; refer to the City Manager’s office several measures to begin developing social housing in the City of Berkeley.  <a href="https://www.cityofberkeley.info/Clerk/City_Council/2021/11_Nov/Documents/2021-11-09_Item_13_Resolution_Recognizing_Housing_as_Human_Right_Referring_to_City_Manager_Several_Measures_to_Begin_Developing_Social_Housing_in_the_City_of_Berkeley.aspx">https://www.cityofberkeley.info/Clerk/City_Council/2021/11_Nov/Documents/2021-11-09_Item_13_Resolution_Recognizing_Housing_as_Human_Right_Referring_to_City_Manager_Several_Measures_to_Begin_Developing_Social_Housing_in_the_City_of_Berkeley.aspx</a></p>
<p>2/25/22</p>	<p>Promote artist housing, including the use of ground floor retail space, as part of the Housing Element Update  <a href="https://www.cityofberkeley.info/Clerk/City_Council/2022/01_Jan/Documents/2022-01-25_Item_11_Referring_the_Civic_Arts_Commission.aspx">https://www.cityofberkeley.info/Clerk/City_Council/2022/01_Jan/Documents/2022-01-25_Item_11_Referring_the_Civic_Arts_Commission.aspx</a></p>

# City of Berkeley Missing Middle Illustrations

February 7, 2022



Prepared by:  
Ben Noble  
Urban Field Studio

# Table of Contents

<b>Introduction</b>	<b>3</b>
<b>Part 1: Existing Standards Illustrated</b>	<b>4</b>
R-1 Existing Standards	4
Model 1: R-1 Single Building on Internal Lot	5
R-1A Existing Standards	6
Model 2: R-1A Single Building on Corner Lot	6
R-2 Existing Standards	7
Model 3: R-2 Two Buildings on an Internal Lot	8
Model 4: R-2 Two Buildings on Internal Lot	9
Model 5: R-2 Two Buildings on Corner Lot	10
R-2A Existing Standards	11
Model 6: R-2A Two Buildings on a Corner Lot	12
Model 7: R-2A Two Buildings on Internal Lot	13
MU-R Existing Standards	14
Model 8: MU-R Four Buildings on Corner Lot	15
Model 9: MU-R Two Buildings on Internal Lot	16
SB 9 Minimum Standards	17
Model 10: R-1 Two Buildings with Split Lot (SB 9)	17
Summary of Part 1	18
<b>Part 2: Missing Middle Models of 2-4 units</b>	<b>19</b>
Prototype 1: New Detached Building behind Existing	20
Comparison Table for Prototype 1	21
Prototype 2: Attached Sidecourt	22
Comparison Table for Prototype 2	23
Prototype 3: Detached Cluster	24
Comparison Table for Prototype 3	25
Prototype 4: Attached Row homes	26
Comparison Table for Prototype 4	27
Summary of Part 2	28



# Introduction

## **Project Overview**

Illustrations of the existing Zoning Ordinance were produced to identify development standards that may require revisions to achieve the goals of the Objective Standards project. Existing zoning standards may require revisions to allow 2-4 units in R1, R-1A, R-2, R-2A, and MU-R zoning districts. This will be the first of two studies; a subsequent study will feature revisions to allow 5+ units.

The revisions may include allowed land uses, permit requirements, Use Permit findings, and development standards to facilitate the City Council's referrals for Missing Middle Development<sup>1</sup> and to End Exclusionary Zoning<sup>2</sup>. Areas of subjectivity particularly in relation to standards that can be modified with discretionary permits will be studied separately as well. This report compares the existing standards (Part 1) with prototypes of missing middle housing (Part 2) to illustrate desired forms of 2-4 unit housing and to highlight considerations for amendments of existing development standards.

## **Part 1: Illustrated Existing Standards**

An analysis and comparison of existing development standards and methods of measurement for zoning districts appropriate for 2-4 units were studied. The illustrations do not demonstrate design, but show how a standard lot (measuring 40' by 130' and 5,200 sf) can sustain up to four units. In Part 1, the existing developable envelope is shown with a dashed line that illustrates setbacks, lot coverage, open space, and average building height. Furthermore, the habitable floor area and building envelope are also limited by setbacks and FAR requirements. The resulting developable volume is illustrated with a blue volume to highlight the maximum allowable building massing allowed by existing standards. These illustrations visually explain the standards and provide context as we contemplate the scale and size of the units that are already allowed, or could be allowed in zones that allow 2-4 units. Generally, no parking is required, though parking is shown selectively where space allows. A summary table is provided at the end of the section to summarize the models.

## **Part 2: Development Feasibility Studies for 2-4 units**

Prototypes of missing middle housing were developed to show how 2-4 units reasonably fit on a typical lot to guide discussion and development of the Objective Standards. A comparison is drawn between what existing zoning allows and what is shown in the prototypes to spur discussion about adjustments needed for any of the zoning districts, the compatibility with neighboring buildings, and other aspects of design.

1. [https://www.cityofberkeley.info/Clerk/City\\_Council/2019/04\\_Apr/Documents/2019-04-23\\_Item\\_32\\_Missing\\_Middle\\_Report.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2019/04_Apr/Documents/2019-04-23_Item_32_Missing_Middle_Report.aspx)

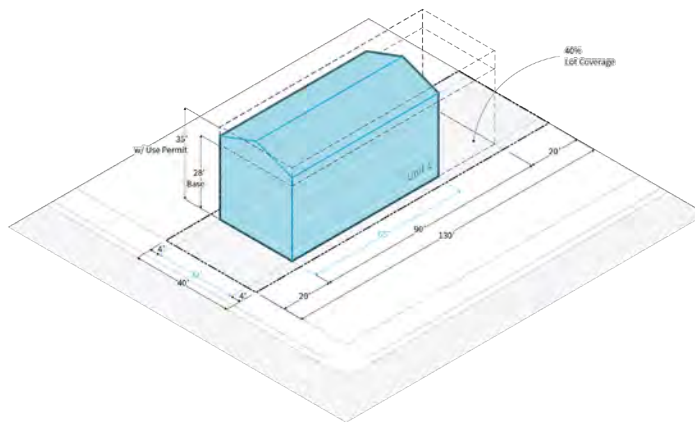
2. [https://www.cityofberkeley.info/Clerk/City\\_Council/2021/02\\_Feb/Documents/2021-02-23\\_Item\\_29\\_Resolution\\_to\\_End\\_Exclusionary.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/02_Feb/Documents/2021-02-23_Item_29_Resolution_to_End_Exclusionary.aspx)

# Part 1: Existing Standards Illustrated

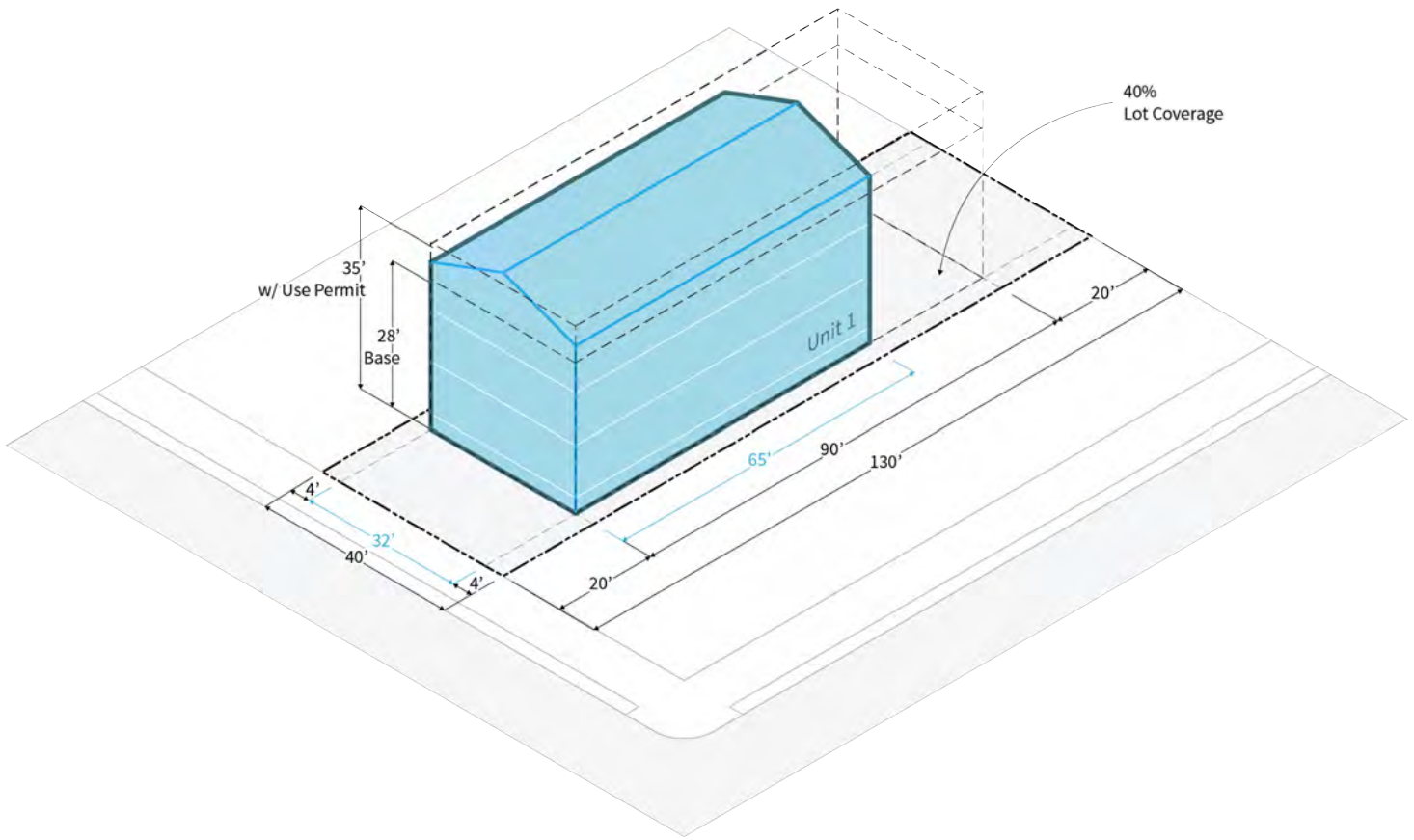
## R-1 Existing Standards

Model 1 shows how the existing development standards apply to the typical R-1 lot. The R-1 district allows single-family dwellings, but not two-family or multifamily dwellings except as provided for under SB 9.

Model 1



# Model 1: R-1 Single Building on Internal Lot

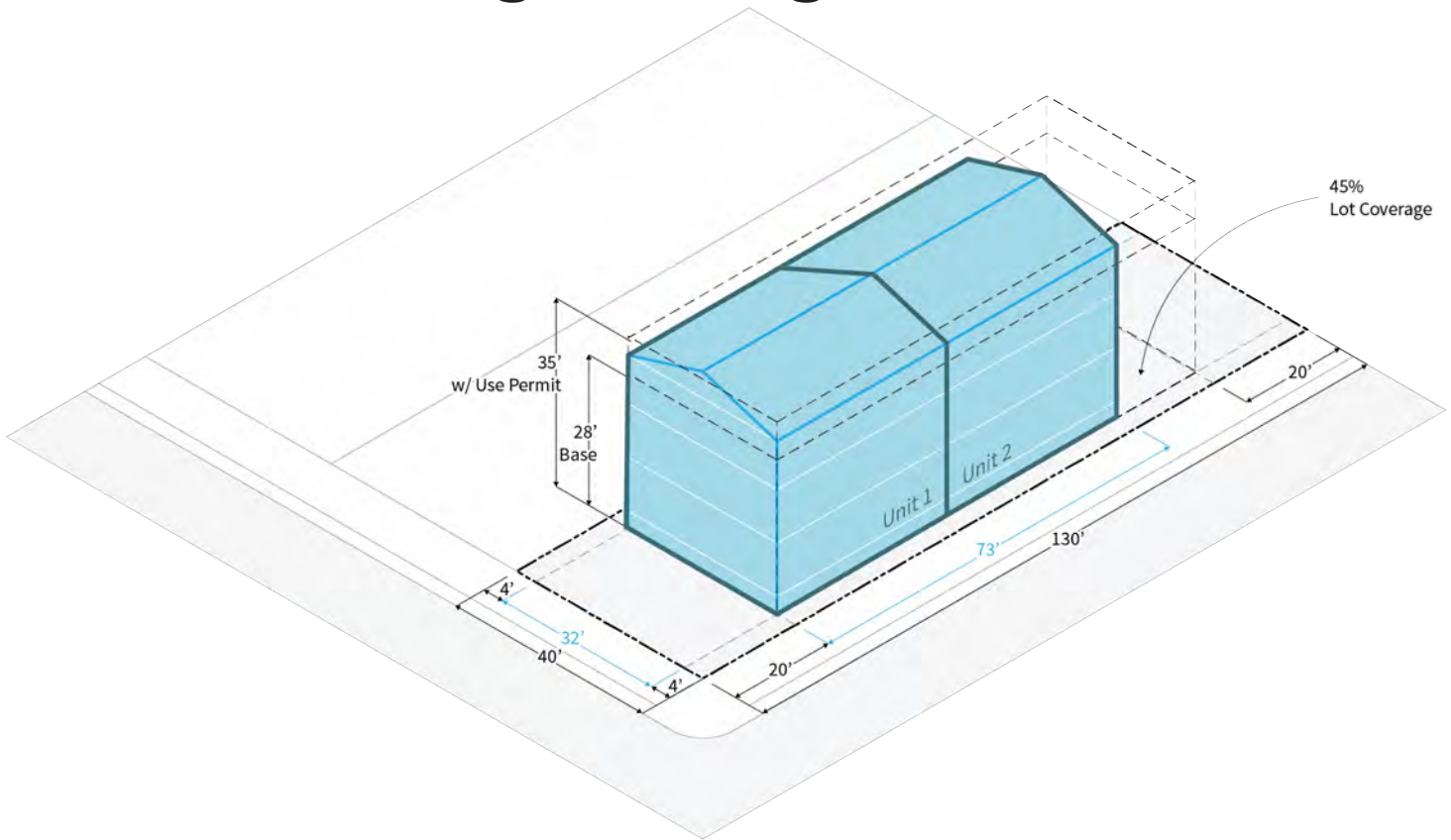


This first model shows the typical maximum building envelope on a standard R-1 lot for one unit only. This is the prevailing typical single-family housing typology for residential zoning. As shown in this model, **lot coverage is a limiting standard in the R-1 district** that prevents the blue building volume from occupying the entire developable envelope shown by the dashed line.

Standards	Existing Standard	Illustrated Volume	Assumptions	Existing Standard	Illustrated Volume
Primary Dwelling Units	1	1	Lot Area	5,000 sf min	5,200 sf
Average Height	28', 35' w AUP	35**	Lot Area per Dwelling Unit	No minimum	Meets standard
Stories	3	3	Lot Dimension	Not limited	40' x 130'
Lot Coverage	40% max	40%	<b>Outputs</b>		
Setbacks			Total Footprint	Not limited	2,080 sf
Front	20' min	20'	Total Floor Area	6,000 sf	6,240 sf
Rear	20' min	20'	FAR	Not limited	1.2
Side	4' min	4'	Density	1 unit per lot	8.4 du/ac
Street Side	4' min	N/A	Usable Open Space	400 sf/du	Meets standard
Building Separation	N/A	N/A			

\* This requires an AUP \*\* May be reduced with an AUP

# Model 2: R-1A Single Building on Corner Lot



The R-1A district allows up to two primary dwellings on one lot. Model 2 shows how a single building can be divided into two units. This scenario could apply to the renovation of an existing building dividing either horizontally (floor by floor) or vertically (front from back) or to new construction. As shown in this model, **lot coverage is a limiting standard in the R-1A district** that prevents the blue building volume from occupying the entire developable envelope shown by the dashed lines.

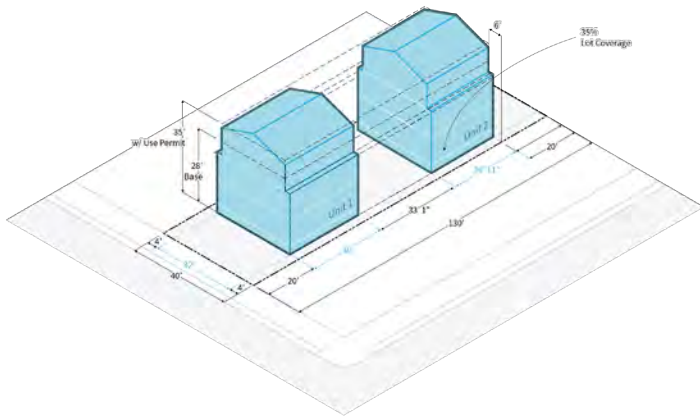
Standards	Existing Standard	Illustrated Volume	Assumptions	Existing Standard	Illustrated Volume
Primary Dwelling Units	2	2	Lot Area	5,000 sf min 4,500 sf for 2 units	5,200 sf
Average Height	28'; Additions: 14', 22' for rear, 35' w AUP	35**	Lot Area per Dwelling Unit	2,250 sf min (2 units max)	2,600 sf
Stories	3, 2 for a rear building	3	Lot Dimension	Not limited	40' x 130'
Lot Coverage	45% max on corner lot	45%	<b>Outputs</b>		
Setbacks			Total Footprint	Not limited	2,336 sf
Front	20'	20'	Total Floor Area	6,750 sf	7,008 sf
Rear	20 min **	20'	FAR	Not limited	1.3
Side	4' min	4'	Density	Max 2 units per lot	16.75 du/ac
Street Side	4' min	N/A	Usable Open Space	400 sf/du	Meets standard
Building Separation	8' min for 1 story, 12' for 2 stories, 16' for 3 stories**	N/A			

\* This requires an AUP \*\* May be reduced with an AUP

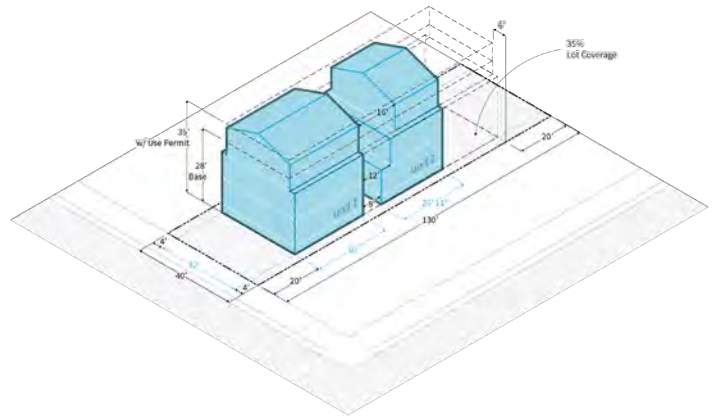
# R-2 Existing Standards

The R-2 district allows single-family, two-family, and multifamily dwellings subject to minimum lot size requirements. Model 3, 4, and 5 show the existing development standards for R-2 which allows each to have two units on a 5,200sf lot. Models 3 and 4 show internal R-2 lots and Model 5 shows a corner lot condition. Model 3 shows how two units are located at the property edges, which is typical construction because it maximizes the open space between units. Model 4 illustrates the minimum separation requirements between two buildings for R-2. Model 5 illustrates the setbacks applicable to a corner lot and minimum separation requirements between units.

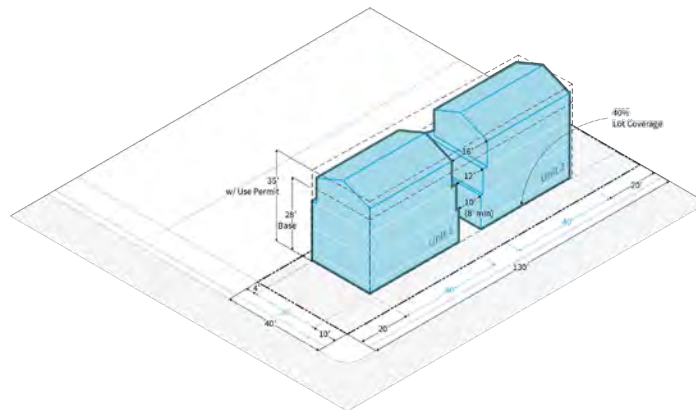
**Model 3 (Interior Lot)**



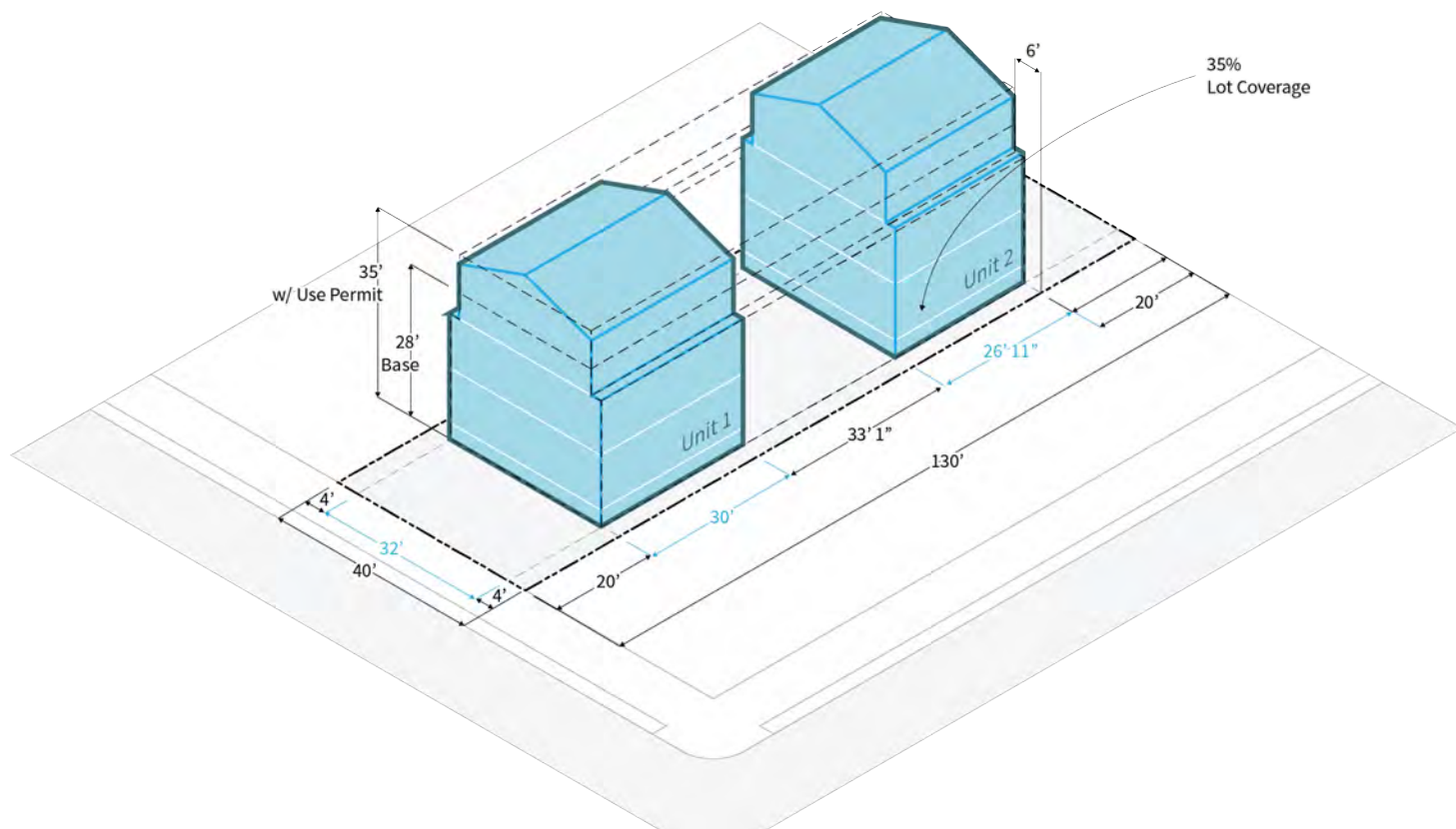
**Model 4 (Interior Lot)**



**Model 5 (Corner Lot)**



# Model 3: R-2 Two Buildings on an Internal Lot



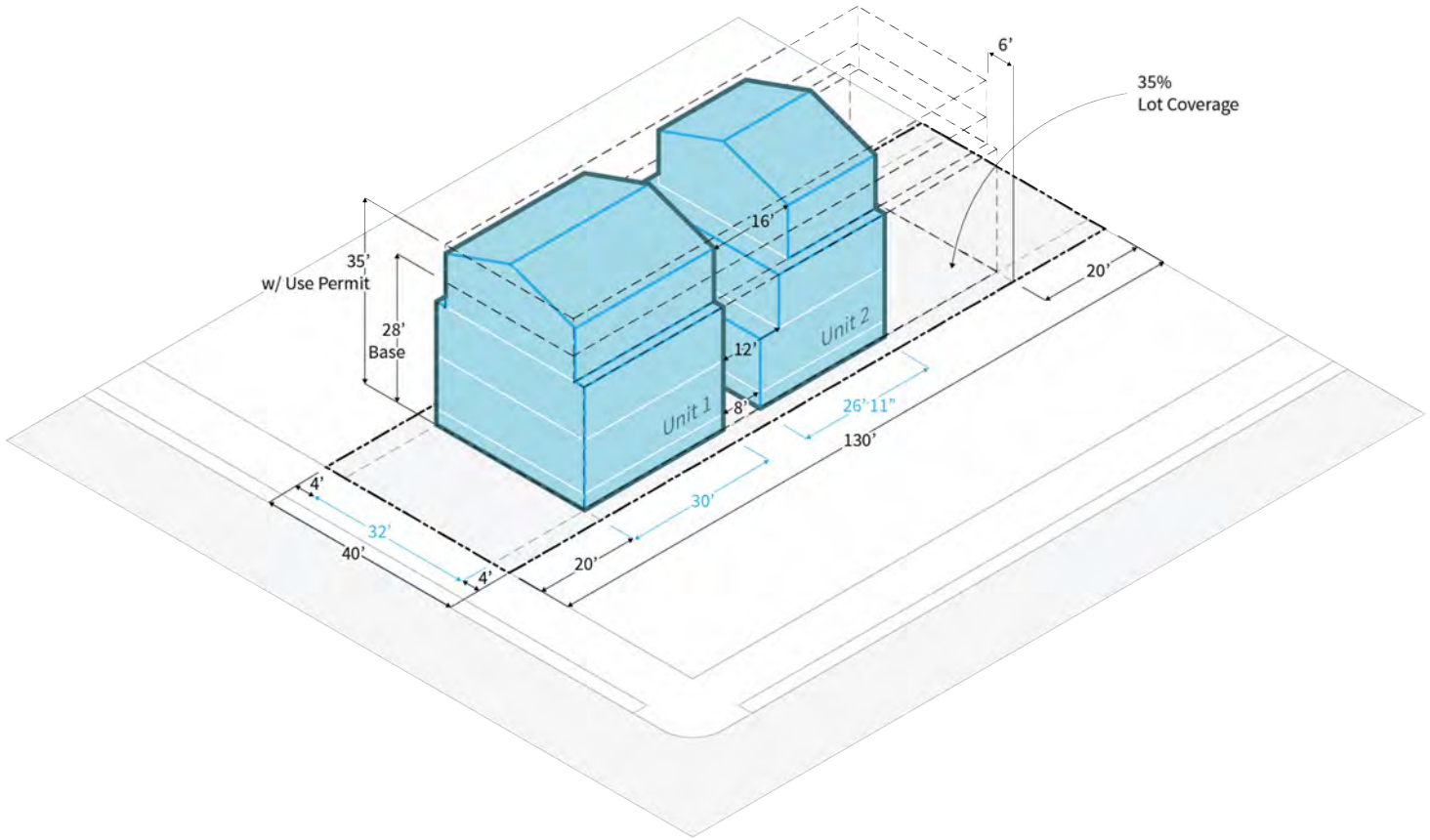
Model 3 shows two buildings, a larger one at the street frontage and a smaller one at the back. This could illustrate an existing building with a new additional dwelling unit added behind, or new construction of two buildings. Upper level stepbacks are illustrated which require a two foot stepback at the third floor. This model exceeds minimums for building separation to maximize the open space between both units. **In the R-2 district lot coverage and third-story stepbacks are limiting standards** that prevent the blue building volume from occupying the entire developable envelope shown by the dashed line.

Standards	Existing Standard	Illustrated Volume	Assumptions	Existing Standard	Illustrated Volume
Primary Dwelling Units	2	2	Lot Area	5,000 sf min	5,200 sf
Average Height	28', Additions: 14', 35' w AUP	35**	Lot Area per Dwelling Unit	2,500 sf	2,600 sf
Stories	3	3	Lot Dimension	Not limited	40' x 130'
Lot Coverage	35% for 3 story building on interior lot	35%	<b>Outputs</b>		
Setbacks			Total Footprint	Not limited	1,820
Front	20' min	20'	Total Floor Area	Not limited	5,229
Rear	20' min **	20'	FAR	Not limited	1.0
Side	4' for first two stories, 6' for third story	4' /6'	Density	3+ units per lot	16.75 du/ac
Street Side	10'	N/A	Usable Open Space	400 sf/du	Meets standard
Building Separation	8' min for 1st story, 12' for 2nd story, 16' for 3rd story**	Meets standard			

\* This requires an AUP \*\* May be reduced with an AUP



# Model 4: R-2 Two Buildings on Internal Lot

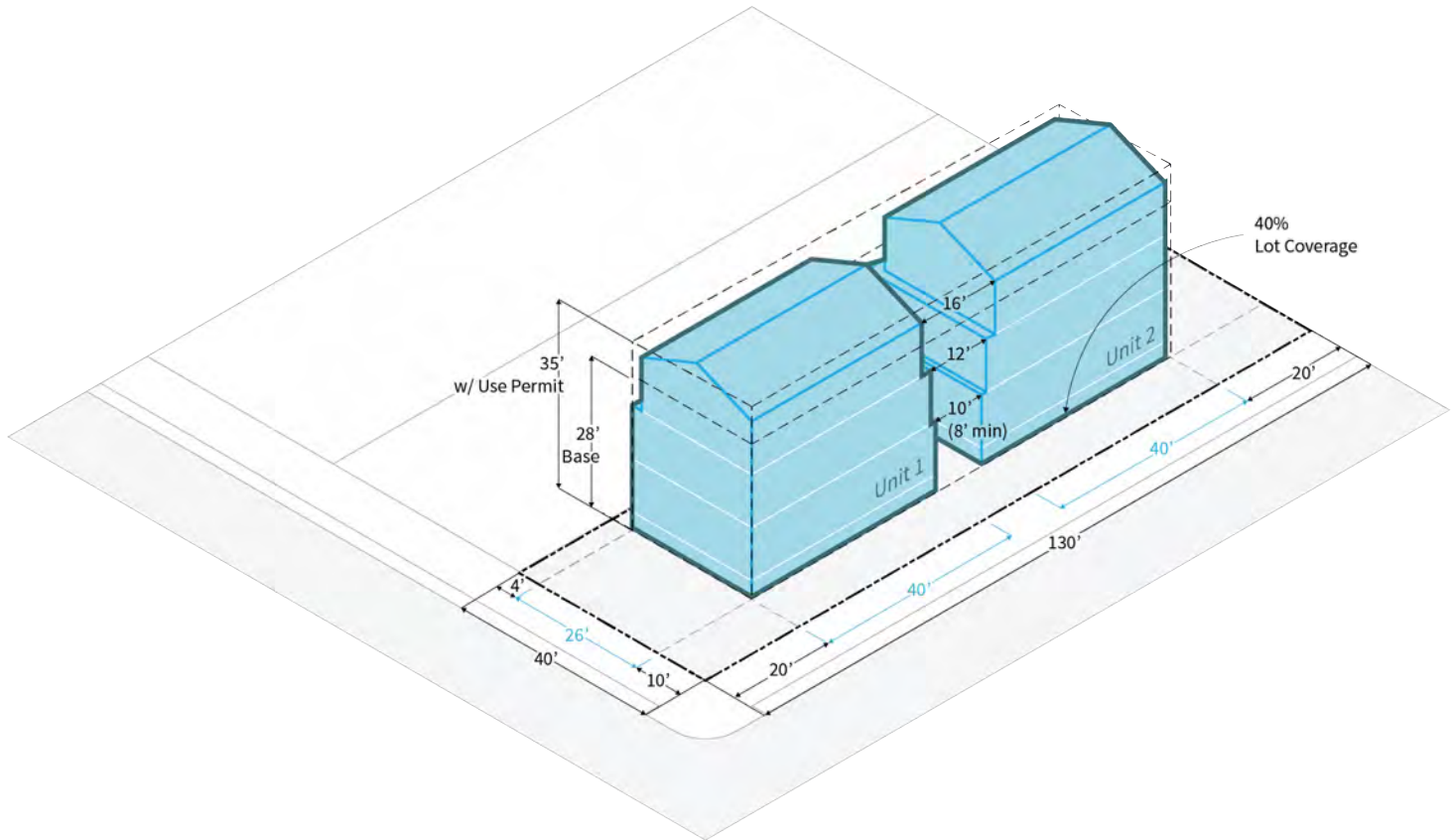


Model 4 shows the developable volume of two units based on stepback and building separation standards that vary by story. Between Model 2 and 4, the FAR drops from 1.0 to 0.9 because of building separation standards. In this model, **building separation as well as lot coverage and third-story setbacks are limiting standards** that prevent the blue building volume from occupying the entire developable envelope shown by the dashed line.

Standards	Existing Standard	Illustrated Volume	Assumptions	Existing Standard	Illustrated Volume
Primary Dwelling Units	2	2	Lot Area	5,000 sf min	5,200 sf
Average Height	28', Additions: 14', 35' w AUP	35'	Lot Area per Dwelling Unit	2,500 sf	2,600 sf
Stories	3	3	Lot Dimension	Not limited	40' x 130'
Lot Coverage	35% max for 3 story building on interior lot	35%	<b>Outputs</b>		
Setbacks			Total Footprint	Not limited	1,820 sf
Front	20' min	20'	Total Floor Area	Not limited	4,881 sf
Rear	20' min	20'***	FAR	Not limited***	0.9
Side	4' for first two stories, 6' for third story	4' / 6'	Density	3+ units per lot	16.75 du/ac
Street Side	10'	N/A	Usable Open Space	400 sf/du	Meets standard
Building Separation	8' min for 1st story, 12' for 2nd story, 16' for 3rd story**	Meets standard			

\* This requires an AUP \*\* May be reduced with an AUP \*\*\* SB 478 prohibits a floor area ratio standard of less than 1.0

# Model 5: R-2 Two Buildings on Corner Lot



Model 5 shows two separate units built on a corner lot in the R-2 zone. Setbacks are bigger for a corner lot in comparison to an internal lot. This shows how the building separation increases by story, however the ground floor is shown at 10 feet because this is the resulting distance between two buildings on the lot given the configuration of setbacks and lot coverage. It exceeds the 8-foot building separation at the ground floor. On a corner lot, **the street side setback and building separation are limiting standards** which further constrains the developable envelope compared to interior lots.

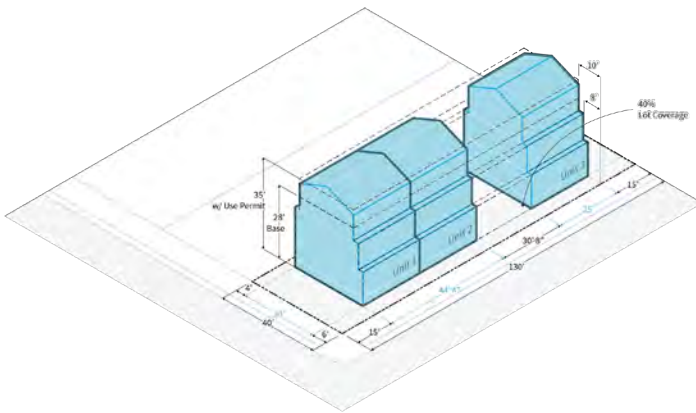
Standards	Existing Standard	Illustrated Volume	Assumptions	Existing Standard	Illustrated Volume
Primary Dwelling Units	2 max	2	Lot Area	5,000 sf min	5,200 sf
Average Height	28'; Additions: 14', 35' w AUP	35'	Lot Area per Dwelling Unit	2,500 sf min	2,600 sf
Stories	3 max	3	Lot Dimension	Not limited	40' x 130'
Lot Coverage	40% max for 3 story building on corner lot	40%	<b>Outputs</b>		
Setbacks			Total Footprint	Not limited	2,080
Front	20' min	20'	Total Floor Area	Not limited	5,884
Rear	20' min	20'	FAR	Not limited	1.1
Side	4' for first two stories, 6' for third story	4'	Density	3+ units per lot	16.75 du/ac
Street Side	10' min	10'	Usable Open Space	400 sf/du min	Meets standard
Building Separation	8' min for 1st story, 12' for 2nd story, 16' for 3rd story**	Meets standard			

\* This requires an AUP \*\* May be reduced with an AUP

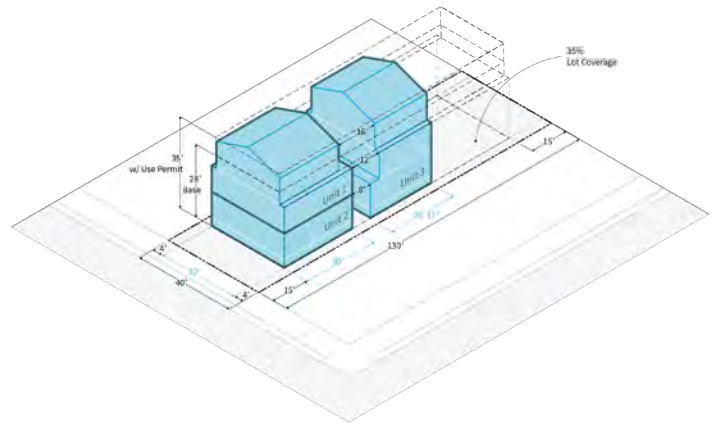
# R-2A Existing Standards

The R-2A district allows single-family, two-family, and multifamily dwellings subject to minimum lot size requirements. Model 6 and 7 show the existing development standards for R-2A which allows three units on a 5,200sf lot. Model 6 shows the three units on a corner lot. Model 7 shows the three units on an interior lot. Corner lots (40%) and interior lots (35%) have different lot coverage requirements for three-story buildings. Models 6 and 7 illustrate the setback requirements that vary by story. Model 7 also illustrates the building separation requirements that vary by story.

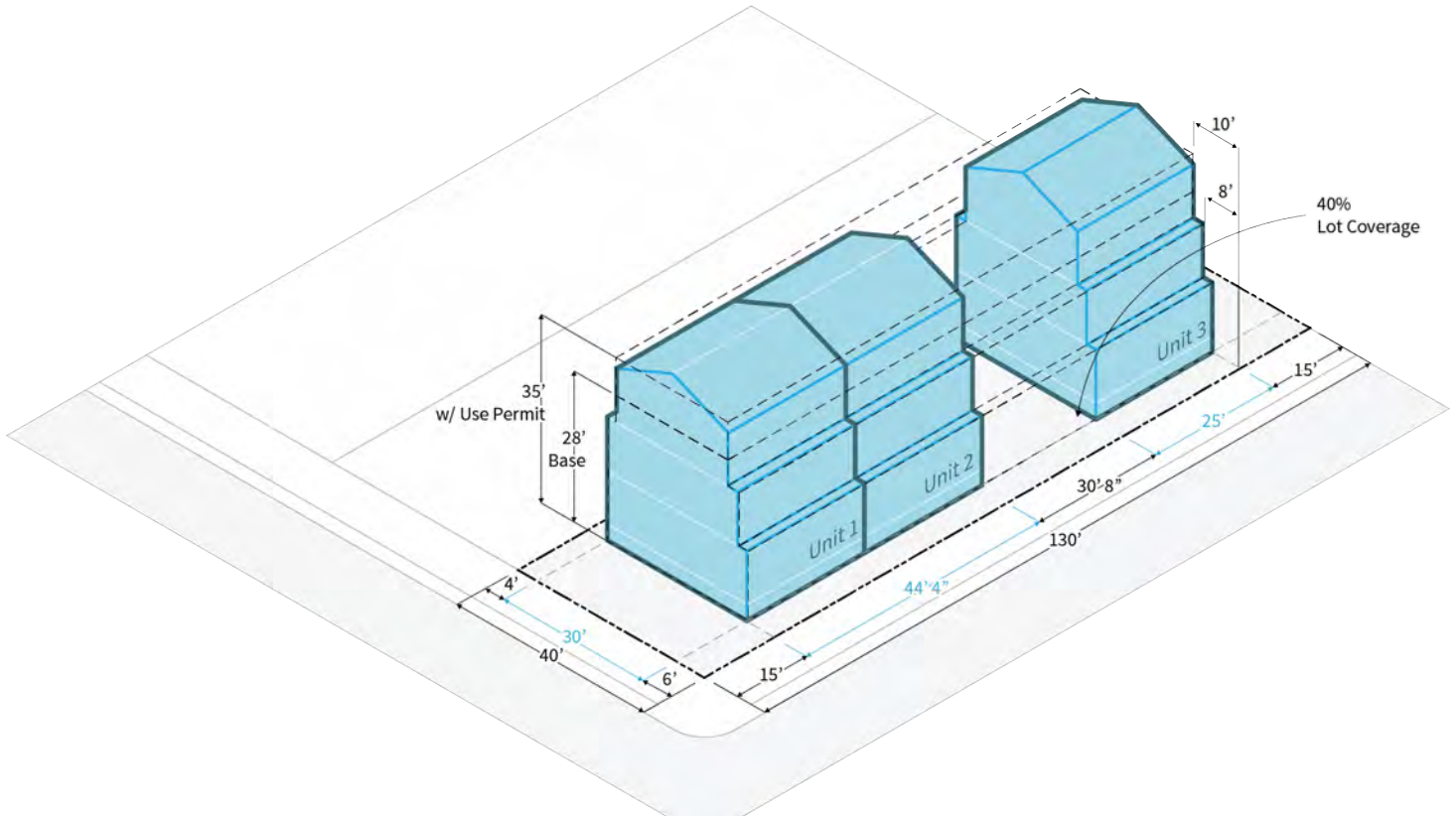
**Model 6 (Corner Lot)**



**Model 7 (Interior Lot)**



# Model 6: R-2A Two Buildings on a Corner Lot

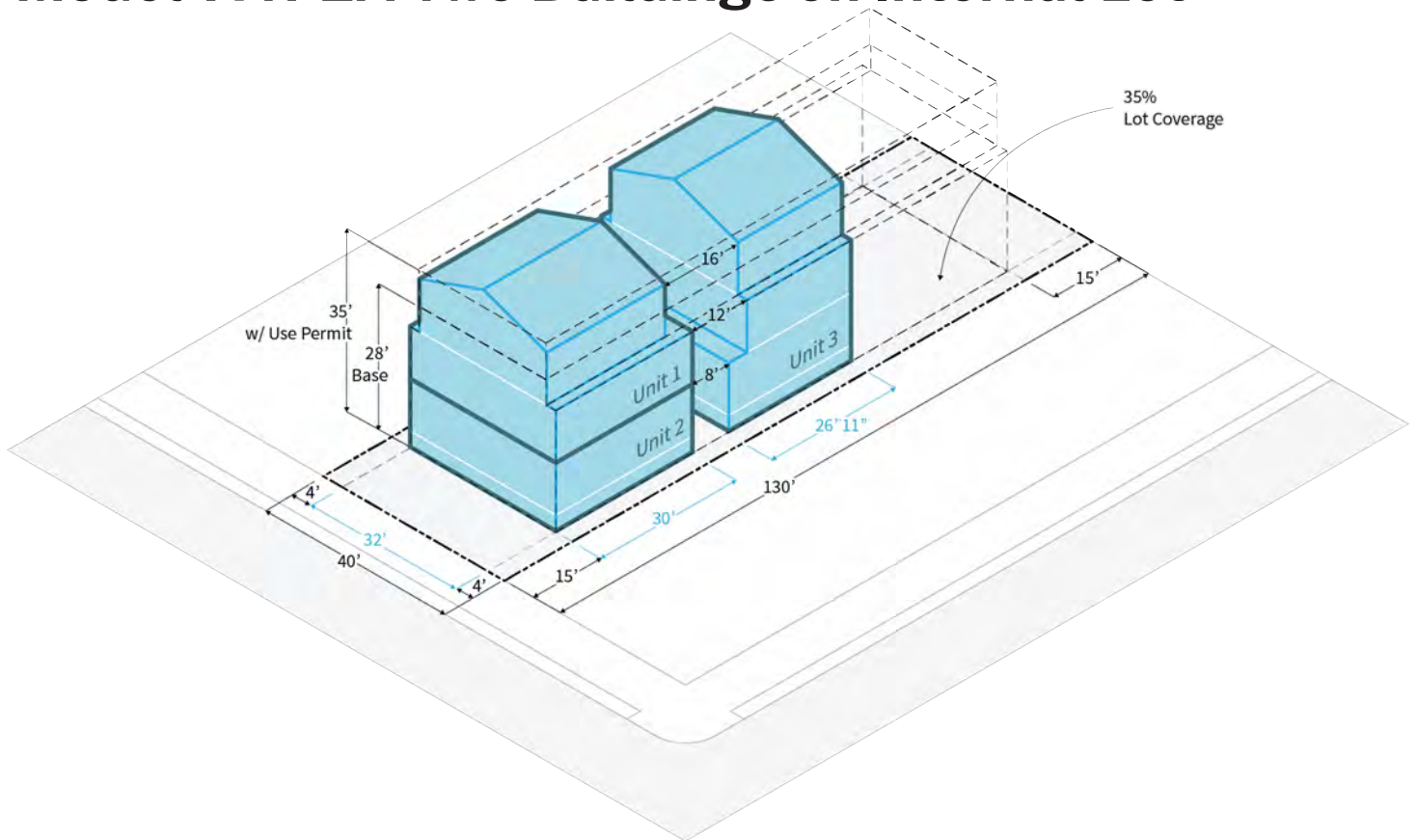


Models 6 and 7 compare R-2A conditions with Model 6 on a corner lot and Model 7 for an internal lot. The larger of the two buildings shown in Model 6 is split into two units to make three units total on the lot. This model shows that **lot coverage is a limiting standard** that prevents the blue building volume from occupying the entire developable envelope shown by the dashed line. The developable envelope is also **further limited by increased side setbacks for second and third stories.**

Standards	Existing Standard	Illustrated Volume	Assumptions	Existing Standard	Illustrated Volume
Primary Dwelling Units	3 max	3	Lot Area	5,000 sf min	5,200 sf
Average Height	28' max, Additions: 14', 35' w/ AUP	35'*	Lot Area per Dwelling Unit	1,650 sf min	1,733 sf
Stories	3 max	3	Lot Dimension	Not limited	40' x 130'
Lot Coverage	40% for 3 story building on corner lot	40%	<b>Outputs</b>		
Setbacks			Total Footprint	Not limited	2,080
Front	15' min	20'	Total Floor Area	Not limited	6,212
Rear	15' min	20'***	FAR	Not limited	1.2
Side	4' min for first two stories, 6' for 3rd story	Meets standard	Density	3+ units per lot	25.1 du/ac
Street Side	6' min for 1st story, 8' for 2nd story, 10' for 3rd story	Meets standard	Usable Open Space	300 sf/du min	Meets standard
Building Separation	8' min for 1st story, 12' for 2nd story, 16' for 3rd story**	N/A			

\* This requires an AUP \*\* May be reduced with an AUP

# Model 7: R-2A Two Buildings on Internal Lot



Model 7 shows two buildings on an internal lot with the bigger one split into two units (on separate levels) to make three units total on the lot. Stepbacks differ from the R-2 Zone. This shows how the building separation varies between 8-16 feet at each story. This model shows that **lot coverage is a limiting standard** on an interior lot and reduces that possible building volume below what is allowed on a corner lot.

Standards	Existing Standard	Illustrated Volume	Assumptions	Existing Standard	Illustrated Volume
Primary Dwelling Units	3 max	3	Lot Area	5,000 sf min	5,200 sf
Average Height	28' max, Additions: 14', 35' w AUP	35'	Lot Area per Dwelling Unit	1,650 sf min	1,733 sf
Stories	3 max	3	Lot Dimension	Not limited	40' x 130'
Lot Coverage	35% max for 3-story interior lot building	35%	<b>Outputs</b>		
Setbacks			Total Footprint	Not limited	1,820 sf
Front	15' min	15'	Total Floor Area	Not limited	4,881 sf
Rear	15' min	15 <sup>***</sup>	FAR	Not limited <sup>***</sup>	0.9
Side	4' min for first two stories, 6' for 3rd story	Meets standard	Density	3+ units per lot	25.1 du/ac
Street Side	6' min for 1st story, 8' for 2nd story, 10' for 3rd story	N/A	Usable Open Space	300 sf/du	Meets standard
Building Separation	8' for 1st story, 12' for 2nd story, 16' for 3rd story <sup>**</sup>	Meets standard			

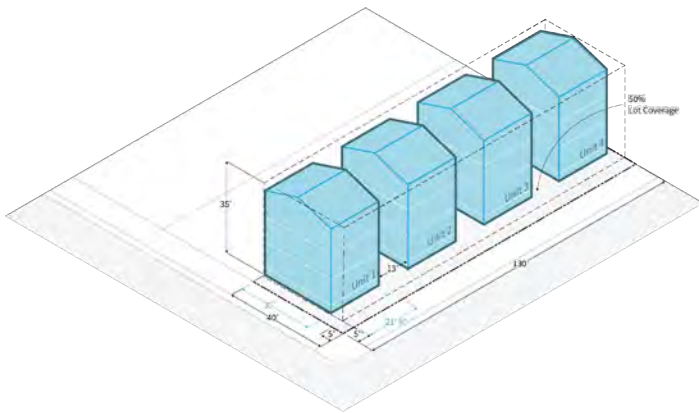
\* This requires an AUP \*\*May be reduced with an AUP \*\*\* SB 478 prohibits a floor area ratio standard of less than 1.0



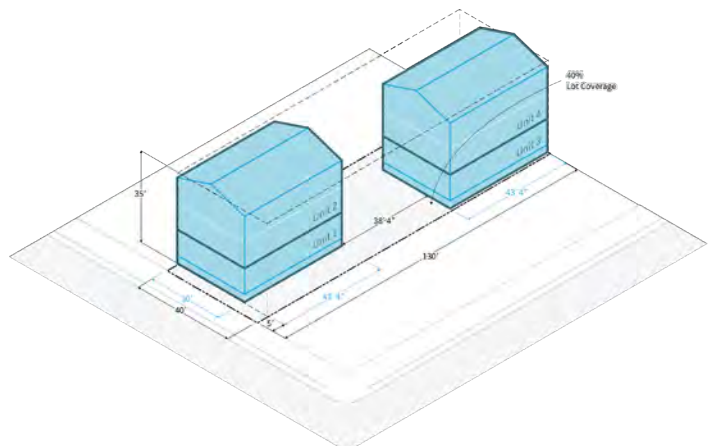
# MU-R Existing Standards

The MU-R district allows single-family, two-family, and multifamily dwellings. Model 8 and 9 show the existing development standards for MU-R which allow four units on a 5,200 sf lot with minimal setbacks but a 1.5 FAR maximum. Model 8 shows the four units on a corner lot. Model 9 shows the four units separated into two buildings on an interior lot.

**Model 8 (Corner Lot)**

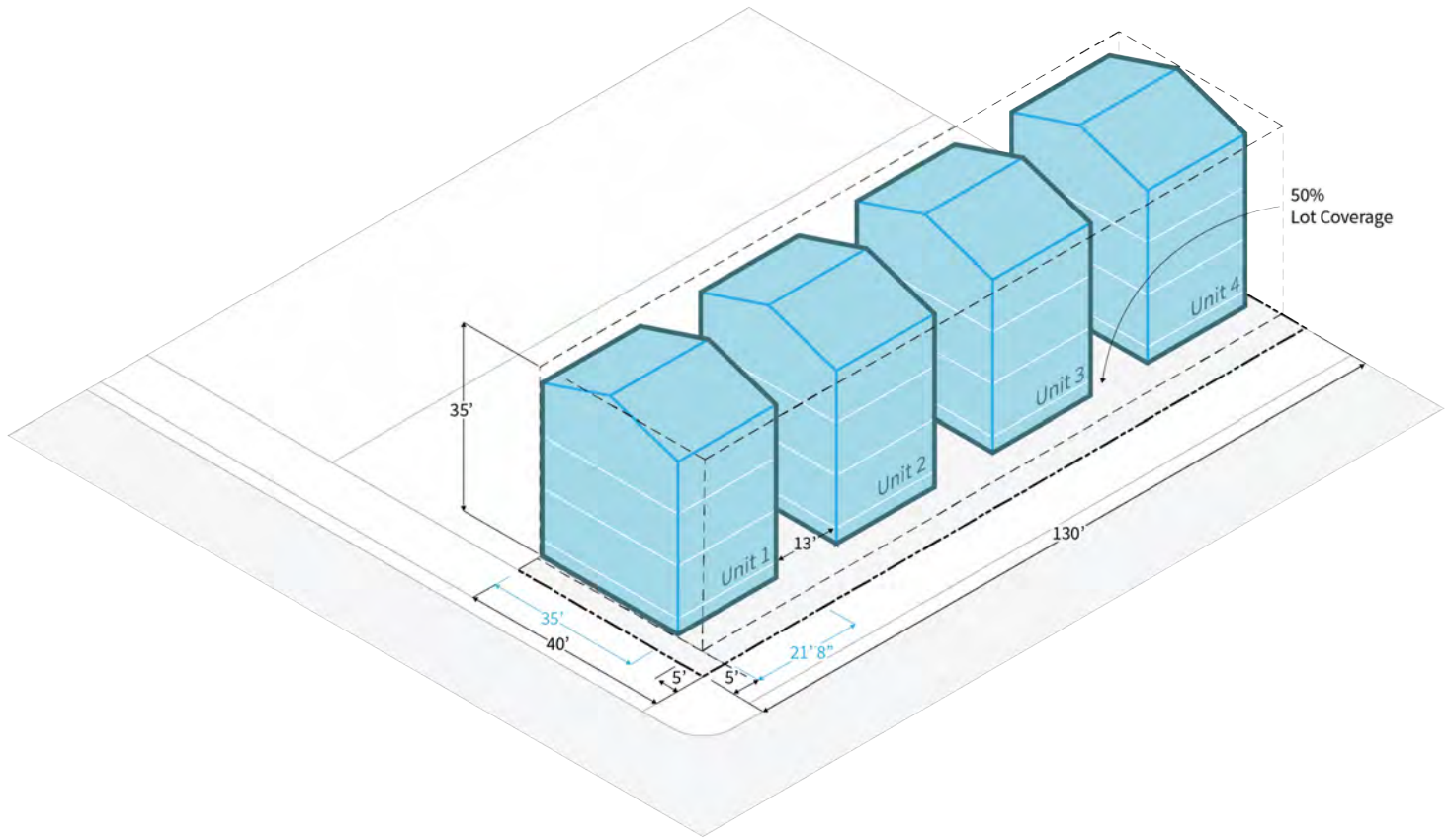


**Model 9 (Interior Lot)**





# Model 8: MU-R Four Buildings on Corner Lot

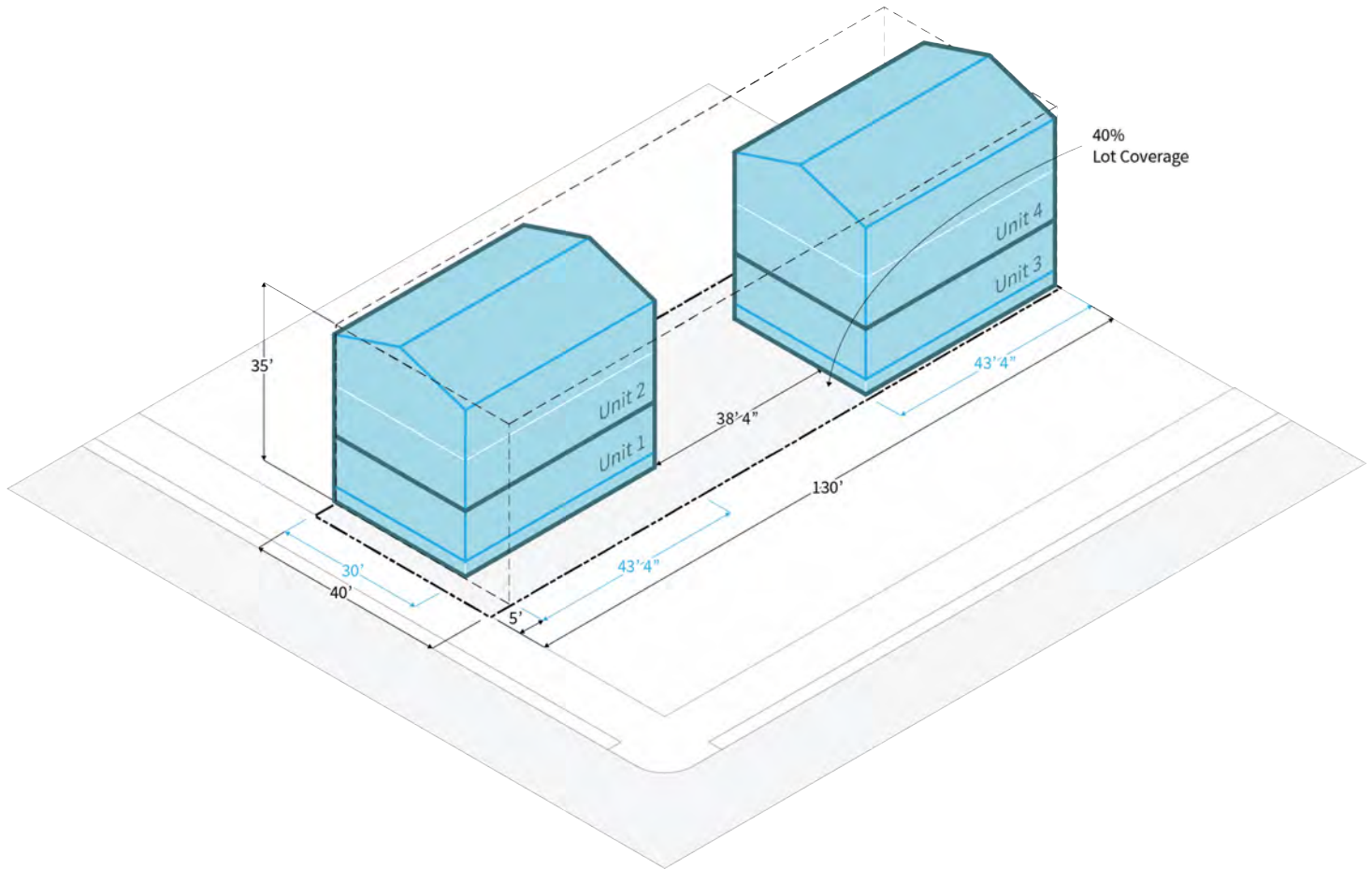


Model 8 shows four units as detached single-unit homes on a corner lot. Access to tuck-under parking can be provided along the long side of the lot and patios are associated with each home. The distribution of the building area that 1.5 FAR results in is equal across the lot and not restricted by building separation standards. As shown in this model, **floor area ratio (FAR) is the limiting standard in the MU-R district** that prevents the blue building volume from occupying the entire developable envelope shown by the dashed line.

Standards	Existing Standard	Illustrated Volume	Assumptions	Existing Standard	Illustrated Volume
Primary Dwelling Units	4 max	4	Lot Area	Not limited	5,200 sf
Average Height	35' max	35'	Lot Area per Dwelling Unit	1,250 sf min	1,300 sf
Stories	3 max	3	Lot Dimension	40' min width	40' x 130'
Lot Coverage	100% max	50%	<b>Outputs</b>		
Setbacks			Total Footprint	Not limited	2,600 sf
Front	5' min	5'	Total Floor Area	7,800 sf	7,800 sf
Rear	No min	0'	FAR	1.5 max	1.5
Side	No min	0'	Density	3+ units per lot	33.5 du/ac
Street Side	5' min	5' min.	Usable Open Space	150 sf per du	Meets standard
Building Separation	No min				

\* This requires an AUP \*\* May be reduced with an AUP

# Model 9: MU-R Two Buildings on Internal Lot

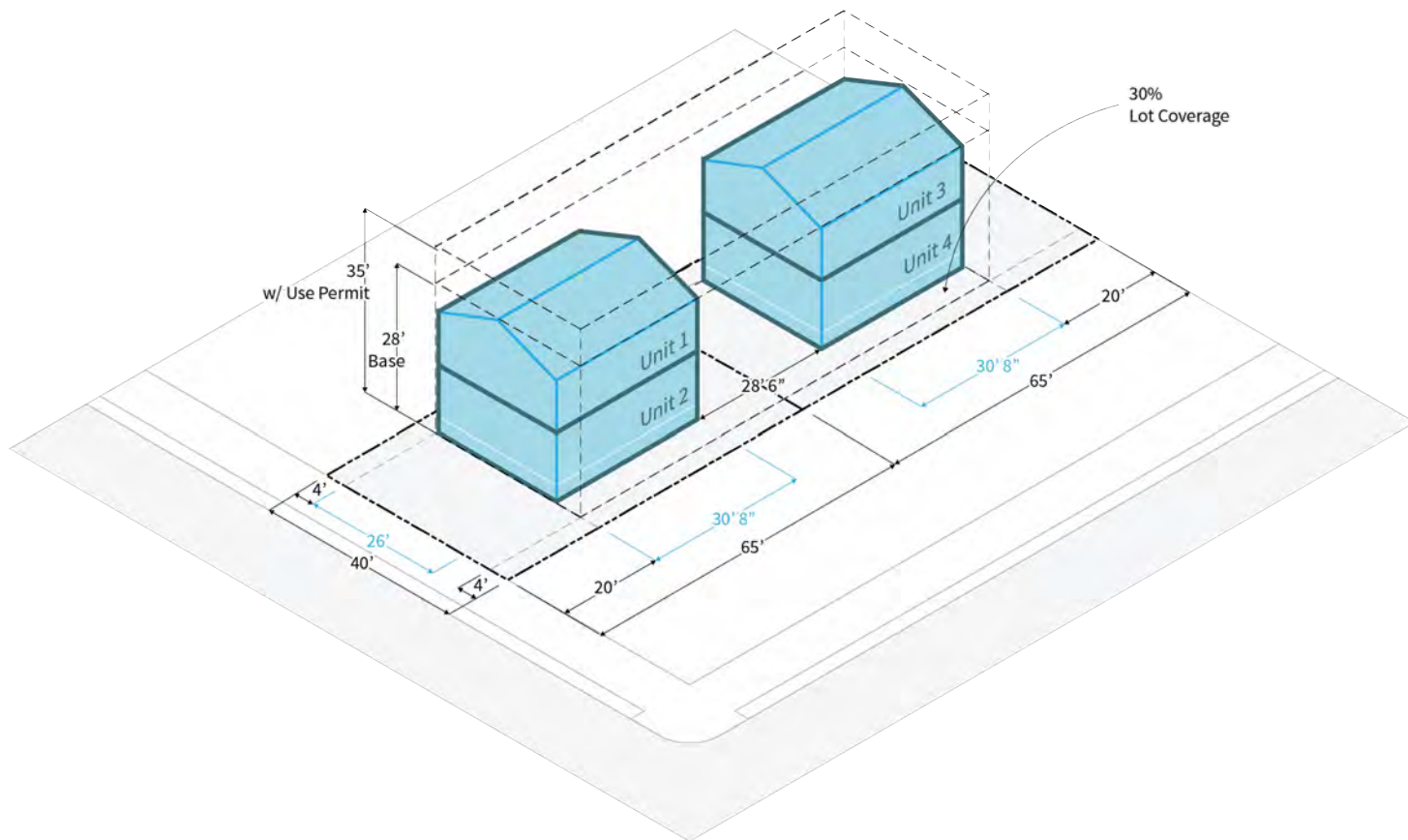


Model 9 shows two stacked flat duplexes on an internal lot and the maximum FAR of 1.5. **Maximum FAR is the limiting standard** that prevents the blue building volume from occupying the entire developable envelope shown by the dashed line.

Standards	Existing Standard	Illustrated Volume	Assumptions	Existing Standard	Illustrated Volume
Primary Dwelling Units	4 max	4	Lot Area	Not limited	5,200 sf
Average Height	35' max	35'	Lot Area per Dwelling Unit	1,250 sf	1,300 sf
Stories	3 max	3	Lot Dimension	40' min width	40' x 130'
Lot Coverage	100%	40%	<b>Outputs</b>		
Setbacks			Total Footprint	Not limited	2,600 sf
Front	5' min	5'	Total Floor Area	7,800 sf	7,800 sf
Rear	No min	0'	FAR	1.5 max	1.5
Side	No min	0'	Density	3+ units per lot	33.5 du/ac
Street Side	5' min	N/A	Usable Open Space	150 sf per du	Meets standard
Building Separation	No min	38' 4"			

\* This requires an AUP \*\* May be reduced with an AUP

# Model 10: R-1 Two Buildings with Split Lot (SB 9)



SB 10 allows an existing R-1 lot to be split into two lots. This example shows the potential for SB 9 lot split with two units on each resulting lot, sized at 800 sf per unit and stacked on top of each other. It does not illustrate the maximum lot coverage, because this design assumes each unit is a single story. The model shows building stories and coverage less than the R-1 standard due to the minimum 800 square-foot unit size under SB 9.

Standards	Existing Standard	Illustrated Volume	Assumptions	Existing Standard	Illustrated Volume
Primary Dwelling Units	4*	4	Lot Area	1,200 sf min for lot split*	2,600 sf
Average Height	28', 35' w AUP	35'	Lot Area per Dwelling Unit	600 sf min*	1,300 sf
Stories	1	2	Lot Dimension	Not limited	40' x 65'
Lot Coverage	40% max	30%	<b>Outputs</b>		
Setbacks			Total Footprint	1,040 sf max	1,040 sf
Front	20' min	20'	Total Floor Area	Not Limited	2,400 sf
Rear	4' min*	20'	FAR	1 unit per lot	0.9
Side	4' min	4'	Density	Not Limited	33.5 du/ac
Street Side	4' min	N/A	Usable Open Space	400 sf/du	Meets standard
Building Separation	Only as required by building code	Meets standard	Unit Size	800 sf*	800 sf

\* Must be allowed under SB 9

# Summary of Part 1

The FAR and densities from all models are provided here to gain a sense of maximum development intensity allowed under existing standards. Theoretically, the resulting development should result in the same maximum floor area with the same development standards, but what the illustrations show is that **there is a difference due to whether or not units are attached and whether they are on corner lots or internal lots.**

The “limiting factors” column identifies the standards that limit the achievable floor area within the developable envelope defined by height and setback standards.

	Units	Floor Area	FAR	Density	Limiting Factors
<b>R-1</b>					
Model 1: Single Building on Internal Lot	1	6,240 sf	1.2	8.4 du/ac	Lot coverage
<b>R-1A</b>					
Model 2: Single Building on Corner Lot	2	7,008 sf	1.3	16.9 du/ac	Lot coverage
<b>R-2</b>					
Model 3: Two Buildings on Internal Lot	2	5,229 sf	1.0	16.9 du/ac	Corner lot building separation, upper story setbacks, and lot coverage
Model 4: Two Buildings on Internal Lot	2	4,881 sf	0.9	16.9 du/ac	
Model 5: Two Buildings on Corner Lot	2	5,884 sf	1.1	16.9 du/ac	
<b>R-2A</b>					
Model 6: Two Buildings on a Corner Lot	3	6,212 sf	1.2	25.1 du/ac	Corner lot setbacks and lot coverage
Model 7: Two Buildings on Internal Lot	3	4,881 sf	0.9	25.1 du/ac	
<b>MU-R</b>					
Model 8: Two Buildings on Internal Lot	4	7,800 sf	1.5	33.5 du/ac	FAR
Model 9: Four Buildings on Corner Lot	4	7,800 sf	1.5	33.5 du/ac	
<b>SB 9</b>					
Model 10: Two Buildings with Split Lot (SB9)	4	2,400 sf	0.9	33.5 du/ac	SB 9 allows 800 sf min per unit

## Observations

- **Lot Coverage.** Maximum lot coverage is a limiting standard in all R districts. Lot coverage standards on interior lots further reduces building volumes compared to corner lots. Lot coverage standards that vary by number of stories are complicated.
- **Height and Stories.** For some buildings it may be possible to incorporate four stories into a 35-foot average building height.
- **Upper-Floor Side Stepbacks.** Setbacks in R-2 and R-2A vary per floor, which provides an odd wedding-cake shape to three story buildings. A uniform side setbacks requirement for all floor would be easier to construct.
- **Building Separation.** Building separation standards that vary by floor also force odd design and may not be needed or desirable for buildings sharing a single lot.
- **FAR.** In the case of MU-R, FAR is the limiting standard that constrains the building volume from occupying the developable area.

## Part 2: Missing Middle Models of 2-4 units

This exercise references the existing standards illustrated in Part 1, but does not follow them. The intent of providing prototypes of missing middle housing is to explore how lots could be developed based on observation of typical design and precedents in the area and identify where existing standards are in conflict. The prototypes explore a range of possible development configurations. **For that reason, some common configurations, such as three or four new detached single-family homes on one lot, were not selected for modeling.**

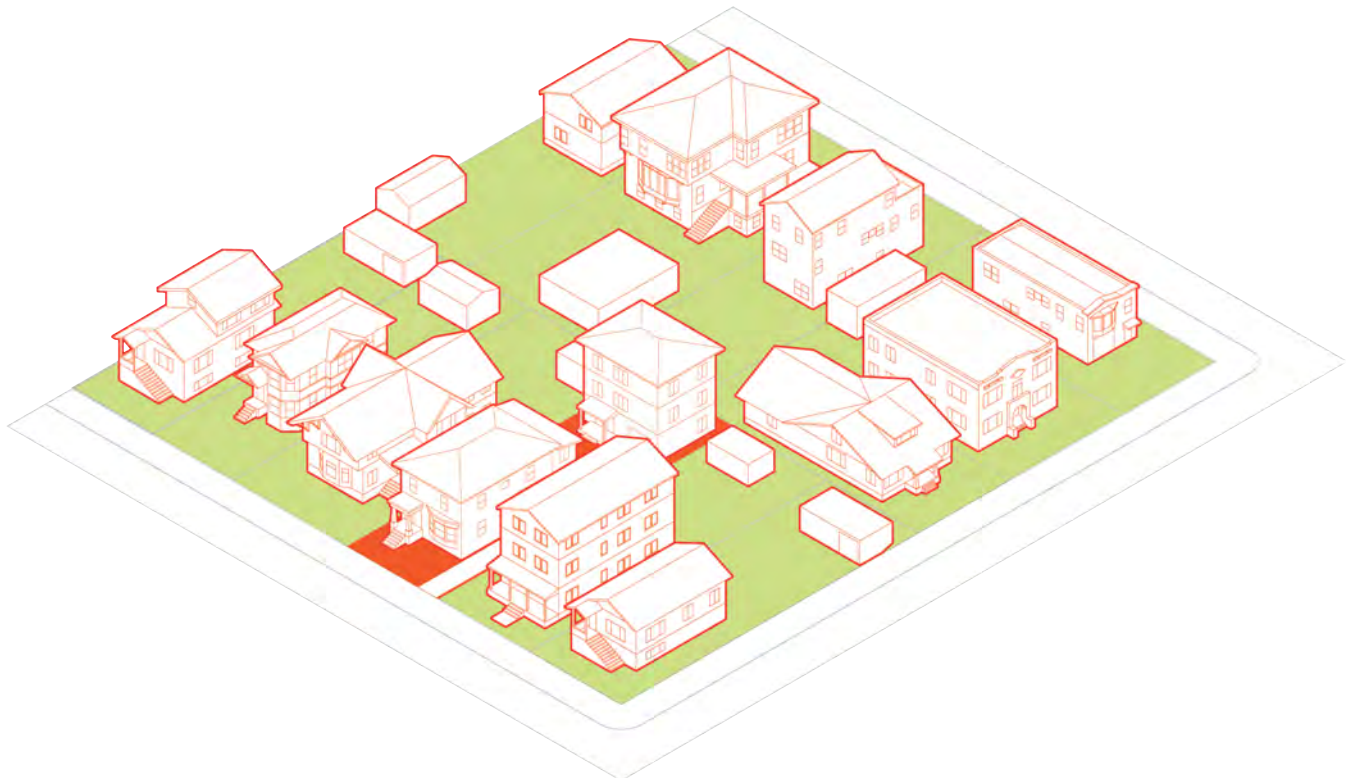
Four prototypes were chosen to demonstrate how lots may densify. The prototypes include:

- Prototype 1: An existing building with a separate new building behind
- Prototype 2: Detached cluster of two duplexes
- Prototype 3: Attached sidecourt building
- Prototype 4: Attached row homes



# Prototype 1: New Detached Building behind Existing

Prototype 1 shows an existing building split into two units with a new three-story, two unit building built in the backyard. This version shows on-site parking for the rear building. This example is for four units on an interior lot of a block. The context within the neighborhood block is provided below.





# Comparison Table for Prototype 1

Model Info		Complies with Existing Standards?				
		R-1	R-1A	R-2	R-2A	MU-R
Number of Units	4	No	No	Yes	Yes	Yes
Lot Area Per Unit	1,300 sf	No	No	No	No	Yes
Total Footprint	2,100 sf	Yes	Yes	Yes	Yes	Yes
Total Floor Area	5,000 sf	Yes	Yes	Yes	Yes	Yes
Lot Area	5,200 sf	Yes	Yes	Yes	Yes	Yes
Lot Coverage	40%	Yes	Yes	No	No	Yes
Lot Width	40'	Yes	Yes	Yes	Yes	Yes
Lot Depth	130'	Yes	Yes	Yes	Yes	Yes
Usable Open Space Per Dwelling Unit	≈ 215 sf	No	No	No	No	Yes
Floor Area Ratio	1.0	Yes	Yes	Yes	Yes	Yes
Building Height, Average	27-32'	Yes*	Yes*	Yes*	Yes*	Yes
Stories	2-3	Yes	Yes	Yes	Yes	Yes
Setbacks						
Front	20'	Yes	Yes	Yes	Yes	Yes
Rear	5'	No	No	Yes*	Yes*	Yes
Side	4'	Yes	Yes	Yes	Yes	Yes
Street Side	n/a	n/a	n/a	n/a	n/a	n/a
Building Separation	30 ft.	Yes	Yes	Yes	Yes	Yes

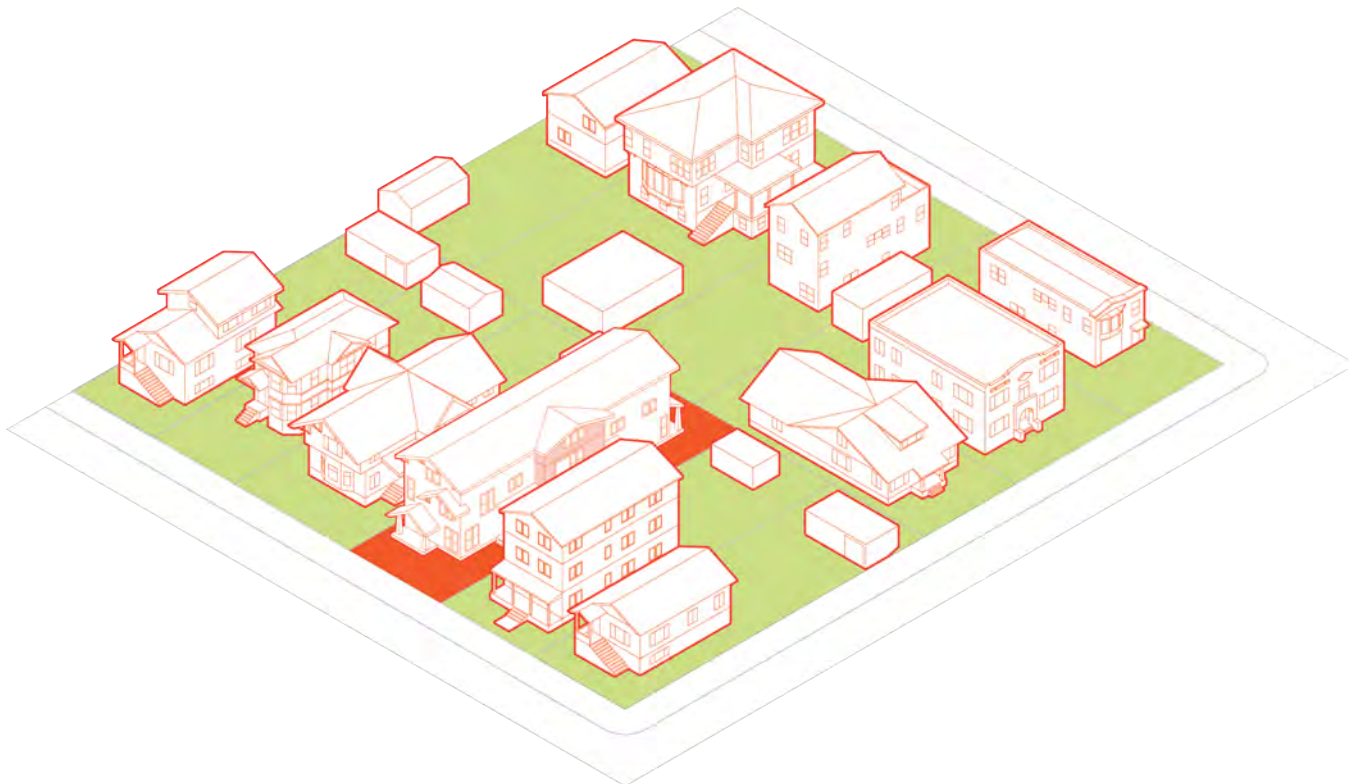
\* AUP required

## Key Takeaways:

- **Minimum Lot Area Per Unit.** On a typical 5,200 sq. ft. lot, a four-unit project does not meet the minimum lot area per unit requirement in all of the R districts.
- **Rear Setback.** The new building in the rear yard conflicts with the rear setback standard in the R-1 and R-1A district. In the R-2 and R-2A districts the building is allowed in the rear setback with an AUP.
- **Lot Coverage.** In the R-2 and R-2 A districts, the prototype conflicts with the lot coverage standard because it is a three-story building on an interior lot. If it were on a corner lot or two stories or less, the prototype would conform with the lot coverage standard in these districts.
- **Usable Open Space.** This prototype conflicts with the usable open space standard in all R districts.
- **MU-R District.** This prototype conforms with all existing standards in the MU-R district.

## Prototype 2: Attached Sidecourt

Prototype 2 shows a new or remodeled building split into three units with entries in the front, rear and side, on an interior lot of a block. The context within the neighborhood block is provided below.



# Comparison Table for Prototype 2

Model Info		Complies with Existing Standards?				
		R-1	R-1A	R-2	R-2A	MU-R
Number of Units	3	No	No	Yes	Yes	Yes
Lot Area Per Unit	1,733 sf	No	No	No	Yes	Yes
Total Footprint	2,160 sf	Yes	Yes	Yes	Yes	Yes
Total Floor Area	6,480 sf	Yes	Yes	Yes	Yes	Yes
Lot Area	5,200 sf	Yes	Yes	Yes	Yes	Yes
Lot Coverage	41%	No	No	No	No	Yes
Lot Width	40'	Yes	Yes	Yes	Yes	Yes
Lot Depth	130'	Yes	Yes	Yes	Yes	Yes
Usable Open Space Per Dwelling Unit <sup>2</sup>	≈ 400 sf	Yes	Yes	Yes	Yes	Yes
Floor Area Ratio	1.2	Yes	Yes	Yes	Yes	Yes
Building Height, Average	30"	Yes*	Yes*	Yes*	Yes*	Yes
Stories	3	Yes	Yes	Yes	Yes	Yes
Setbacks						
Front	20'	Yes	Yes	Yes	Yes	Yes
Rear	20'	No	No	Yes*	Yes*	Yes
Side	4'	Yes	Yes	No	No	Yes
Street Side	n/a	n/a	n/a	n/a	n/a	n/a
Building Separation	n/a	Yes	Yes	Yes	Yes	Yes

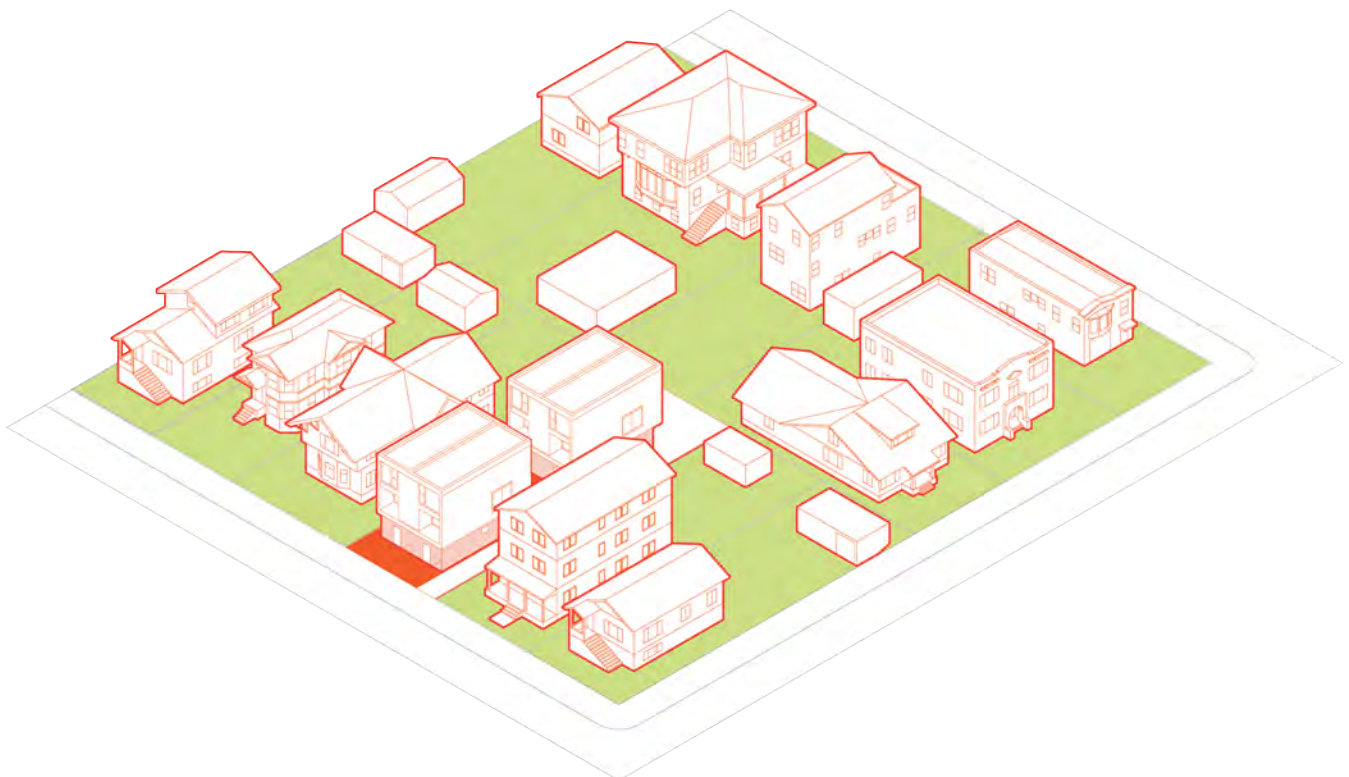
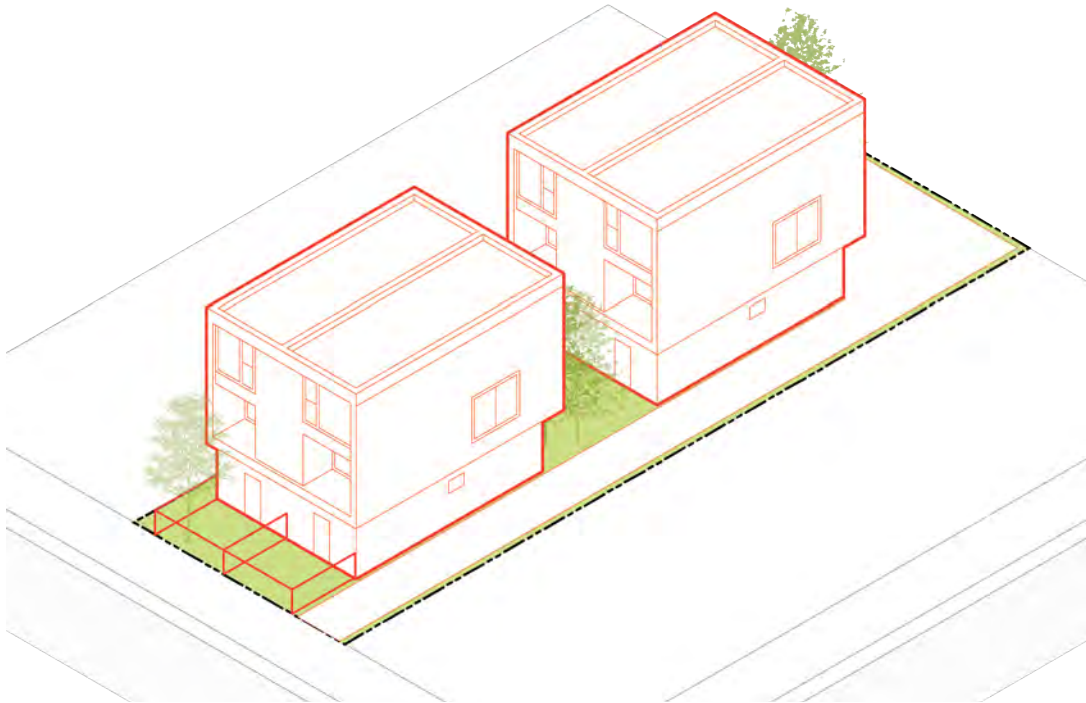
\* AUP required

## Key Takeaways:

- **Rear Setback.** The building extending into the rear yard conflicts with the rear setback standard in the R-1 and R-1A district. In the R-2 and R-2A districts the building is allowed in the rear setback with an AUP.
- **Lot Coverage.** The prototype conflicts with the lot coverage standard in all R districts.
- **Interior Side Setback.** The R-2 and R-2A districts require increased 6-foot interior side setbacks for three-story buildings. This prototype conflicts with this standard.
- **Lot Area Per Unit.** On a typical 5,200 sq. ft. lot, a three-unit prototype does not meet the minimum lot area per unit requirement in the R-1, R-1A, and R-2 districts.
- **MU-R District.** This prototype conforms with all existing standards in the MU-R district.

# Prototype 3: Detached Cluster

This model shows two new three-story duplexes (two units each). This version shows on-site parking. This example is for four units on an interior lot block, the context is provided below.



# Comparison Table for Prototype 3

Model Info		Complies with Existing Standards?				
		R-1	R-1A	R-2	R-2A	MU-R
Number of Units	4	No	No	Yes	Yes	Yes
Lot Area Per Unit	1,300 sf	No	No	No	No	Yes
Total Footprint	1,820 sf	Yes	Yes	Yes	Yes	Yes
Total Floor Area	3,640 sf	Yes	Yes	Yes	Yes	Yes
Lot Area	5,200 sf	Yes	Yes	Yes	Yes	Yes
Lot Coverage	35%	Yes	Yes	Yes	Yes	Yes
Lot Width	40'	Yes	Yes	Yes	Yes	Yes
Lot Depth	130'	Yes	Yes	Yes	Yes	Yes
Usable Open Space Per Dwelling Unit	≈ 330 sf	No	No	No	Yes	Yes
Floor Area Ratio	0.7	Yes	Yes	Yes	Yes	Yes
Building Height, Average	32'	Yes*	Yes*	Yes*	Yes*	Yes
Stories	3	Yes	Yes	Yes	Yes	Yes
Setbacks						
Front	12'	No	No	No	No	Yes
Rear	26'	Yes	Yes	Yes	Yes	Yes
Side	4' & 10'	Yes	Yes	No	No	Yes
Street Side	n/a	n/a	n/a	n/a	n/a	n/a
Building Separation	21'	Yes	Yes	Yes	Yes	Yes

\* AUP required

## Key Takeaways:

- **Front Setbacks.** With a 12-foot front setback, this prototype conflicts with front setback standards in the R-1, R-1A, R-2, and R-2A districts.
- **Usable Open Space.** With approximately 330 square feet of usable open space, this prototype meets the usable open space standard in the R-2A and MU-R districts but conflicts with the standard in the R-1, R-1A, and R-2 districts.
- **Interior Side Setback.** The R-2 and R-2A districts require increased 6-foot interior side setbacks for three-story buildings. This prototype conflicts with this standard.
- **Lot Area Per Unit.** On a typical 5,200 sq. ft. lot, a four-unit prototype does not meet the minimum lot area per unit requirement in the R districts.
- **MU-R District.** This prototype conforms with all existing standards in the MU-R district.



# Prototype 4: Attached Row homes

This model shows a new building split into four three-story row homes. This version shows on-site parking.





# Comparison Table for Prototype 4

Model Info		Complies with Existing Standards?				
		R-1	R-1A	R-2	R-2A	MU-R
Number of Units	4	No	No	Yes	Yes	Yes
Lot Area Per Unit	1,300 sf	No	No	No	No	Yes
Total Footprint	2,130 sf	Yes	Yes	Yes	Yes	Yes
Total Floor Area	6,390 sf	Yes	Yes	Yes	Yes	Yes
Lot Area	5,200 sf	Yes	Yes	Yes	Yes	Yes
Lot Coverage	40%	Yes	Yes	Yes	Yes	Yes
Lot Width	40'	Yes	Yes	Yes	Yes	Yes
Lot Depth	130'	Yes	Yes	Yes	Yes	Yes
Usable Open Space Per Dwelling Unit	≈ 490 sf	Yes	Yes	Yes	Yes	Yes
Floor Area Ratio	1.2	Yes	Yes	Yes	Yes	Yes
Building Height, Average	32'	Yes*	Yes*	Yes*	Yes*	Yes
Stories	3	Yes	Yes	Yes	Yes	Yes
Setbacks						
Front	20'	Yes	Yes	Yes	Yes	Yes
Rear	20'	Yes	Yes	Yes	Yes	Yes
Side	4'	Yes	Yes	No	No	Yes
Street Side	10'	Yes	Yes	Yes	Yes	Yes
Building Separation	0'	Yes	Yes	Yes	Yes	Yes

\* AUP required

## Key Takeaways:

- **Lot Area Per Unit.** On a typical 5,200 square foot lot, this prototype with four units conflicts with the minimum lot area per unit standard in the R districts.
- **Interior Side Setback.** The R-2 and R-2A districts require increased 6-foot interior side setbacks for three-story buildings. This prototype conflicts with this standard.
- **MU-R District.** This prototype conforms with all existing standards in the MU-R district.

## Summary of Part 2

The tables show that the following limit the prototypes shown in Part 2:

- Lot area per unit
- Lot coverage
- Front setbacks
- Rear setbacks
- Side setbacks
- Usable open space per dwelling unit

**The City may wish to consider the following changes to existing standards to accommodate 2-4 unit development in the R-1, R-1A, R-2, R-2A, and MUR districts:**

- Simplify “wedding cake” upper story side setbacks and building separation requirements. Requiring a singular 4’ side setback and eliminating building separation requirements would allow projects to be more easily constructed.
- Simplify lot coverage regulations by applying a single standard for each zoning district that does not vary by number of stories. Also, consider increasing allowed lot coverage as the number of units increase (max 50%) to incentivize housing producing and accommodate a broader range of development types.
- Reduce rear setbacks to 4 feet setbacks to allow for more capacity on site.

**DRAFT STANDARDS FOR RESIDENTIAL PROJECTS WITH TWO TO FOUR UNITS  
IN THE R-1, R-1A, R-2, R-2A, AND MU-R ZONING DISTRICTS**

This document presents draft standards for residential projects with two to four units in the R-1, R-1A, R-2, R-2A, and MU-R zoning districts. These standards are intended to implement the City Council’s direction to eliminate exclusionary zoning and allow for small-scale multifamily development in Berkeley’s lower-density residential districts.

These draft standards also reflect Senate Bill (SB) 9, which requires all California cities to allow two dwelling units on one parcel in a single-family zone if the development meets certain requirements. SB 9 also requires cities to allow an “urban lot split” in a single-family zone, with two units allowed on each of the two newly created parcels (resulting in four units total).

The draft standards in this document are organized into two main sections:

- Allowed Uses and Permits Required
- Development Standards

For certain standards, different options are presented along with staff recommendations. City staff and consultants will request feedback on these options at the ZORP Subcommittee meeting on February 16, 2022.

**ALLOWED USES AND PERMITS REQUIRED**

City Council direction calls for the City to allow 2-4 unit projects in R-1, R-1A, R-2, R-2A, MU-R districts. The options below address permits required for this use.

**Option 1: Allow All 2-4 Unit Projects By-right (Recommended)**

Option 1 would allow 2-4 unit residential development, including new buildings and additions, with a Zoning Certificate in the R-1, R-1A, R-2, R-2A, and MU-R districts. The City would approve the development ministerially if it complies with all objective standards – which are being developed as part of this project. No discretionary permit or public hearing would be required. Table 1 shows proposed changes to the allowed use table for residential districts consistent with this option.

**TABLE 1: PERMITS REQUIRED FOR 2-4 UNIT PROJECTS (OPTION 1)**

ZC = Zoning Certificate UP(PH) = Use Permit required AUP = Administrative Use Permit required NP = Not Permitted	Districts				
	R-1	R-1A	R-2	R-2A	MU-R
Dwelling Types					
<u>Multi-Unit 2-4 Two-Family</u>	ZC NP	ZC UP(PH)	ZC UP(PH)	ZC UP(PH)	ZC AUP
<u>Multi-Family Unit 5+</u>	NP	NP	UP(PH)	UP(PH)	UP(PH)

Option 1 reflects the requirement under SB 9 for the City to allow up to four units by-right on a lot in the R-1 district. This option applies this same permit requirement to 2-4 unit projects in the R-1A, R-2, R-2A, and MU-R districts. Staff and consultants recommend this option so that permit requirements for 2-4 unit projects are uniform in all of the lower-density residential districts and in the MU-R district.

***Option 2: SB 9 Projects By-right; Use Permit for Other 2-4 Unit Projects***

As shown in Table 2, a second option would allow 2-4 unit projects by-right in the R-1 district as required by SB 9. In all other lower-density residential districts, 2-4 unit projects would continue to require a Use Permit (or AUP in MU-R). This option limits by-right approval of projects to those eligible SB 9 projects in the R-1 district.

**TABLE 2: PERMITS REQUIRED FOR 2-4 UNIT PROJECTS (OPTION 2)**

ZC = Zoning Certificate UP(PH) = Use Permit required AUP = Administrative Use Permit required NP = Not Permitted	Districts				
	R-1	R-1A	R-2	R-2A	MU-R
Dwelling Types					
<u>Multi-Unit 2-4 Two-Family</u>	ZC NP [1]	UP(PH)	UP(PH)	UP(PH)	AUP
<u>Multi-Family Unit 5+</u>	NP	NP	UP(PH)	UP(PH)	UP(PH)

[1] A Zoning Certificate is required for projects qualifying for ministerial approval pursuant to Government Code Section 65852.21 and/or Section 66411.7. All other projects require a Use Permit.

**DEVELOPMENT STANDARDS**

Table 3 shows existing development standards in the R-1, R-1A, R-2, R-2A, and MU-R districts and proposed new standards for 2-4 unit projects in these districts. Proposed standards would apply only to 2-4 unit projects; other types of projects (e.g., single-family dwellings) would continue to be subject to existing standards. An asterisk (\*) following a standard signifies alternative options are presented after the table.

**TABLE 3: DRAFT PROPOSED DEVELOPMENT STANDARDS FOR 2-4 UNIT PROJECTS**

	R-1	R-1A	R-2	R-2A	MU-R
Density, Maximum	<u>Existing:</u> No max. <u>Proposed:</u> 36 du/ac	<u>Existing:</u> No max. <u>Proposed:</u> 36 du/ac	<u>Existing:</u> No max. <u>Proposed:</u> 36 du/ac	<u>Existing:</u> No max. <u>Proposed:</u> 36 du/ac	<u>Existing:</u> No max. <u>Proposed:</u> 36 du/ac
Lot Area, Minimum					
New Lot	<u>Existing:</u> 5,000 sq. ft. <u>Proposed:</u> 1,200 sq. ft.	<u>Existing:</u> 5,000 sq. ft. <u>Proposed:</u> 1,200 sq. ft.	<u>Existing:</u> 5,000 sq. ft. <u>Proposed:</u> 1,200 sq. ft.	<u>Existing:</u> 5,000 sq. ft. <u>Proposed:</u> 1,200 sq. ft.	<u>Existing:</u> No min. <u>Proposed:</u> No min.
Per Dwelling Unit	<u>Existing:</u> N/A <u>Proposed:</u> 600 sq. ft. [2]	<u>Existing:</u> 2,250 [1] <u>Proposed:</u> 600 sq. ft. [2]	<u>Existing:</u> 2,500 sq. ft. [1] <u>Proposed:</u> 600 sq. ft. [2]	<u>Existing:</u> 1,650 sq. ft. [1] <u>Proposed:</u> 600 sq. ft. [2]	<u>Existing:</u> 1,250 sq. ft. [1] <u>Proposed:</u> 600 sq. ft. [2]
Lot Width, Minimum	<u>Existing:</u> No min. <u>Proposed:</u> No min.	<u>Existing:</u> No min. <u>Proposed:</u> No min.	<u>Existing:</u> No min. <u>Proposed:</u> No min.	<u>Existing:</u> No min. <u>Proposed:</u> No min.	<u>Existing:</u> 40 ft. <u>Proposed:</u> No min.
Usable Open Space per Dwelling Unit, Minimum	<u>Existing:</u> 400 sq. ft. <u>Proposed:</u> 400 sq. ft.*	<u>Existing:</u> 400 sq. ft. <u>Proposed:</u> 400 sq. ft.*	<u>Existing:</u> 400 sq. ft. <u>Proposed:</u> 400 sq. ft.*	<u>Existing:</u> 300 sq. ft. <u>Proposed:</u> 300 sq. ft.*	<u>Existing:</u> 150 sq. ft. <u>Proposed:</u> 150 sq. ft.
Floor Area Ratio, Maximum	<u>Existing:</u> No max. <u>Proposed:</u> No max.*	<u>Existing:</u> No max. <u>Proposed:</u> No max.*	<u>Existing:</u> No max. <u>Proposed:</u> No max.*	<u>Existing:</u> No max. <u>Proposed:</u> No max.*	<u>Existing:</u> 1.5 <u>New:</u> 1.5 for 2 units; 1.7 for 3 units, 1.9 for 4 units*
Main Building Height, Average					
New Buildings	<u>Existing:</u> 28 ft. and 3 stories; 35 ft. w/ AUP <u>Proposed:</u> 28 ft. and 3 stories for 2 units; 35 ft. and 3 stories for 3 or 4 units*	<u>Existing:</u> 28 ft. and 3 stories; 35 ft. w/ AUP; 22 ft. and 2 stories for rear main building <u>Proposed:</u> 28 ft. and 3 stories for 2 units; 35 ft. and 3 stories for 3 or 4 units*	<u>Existing:</u> 28 ft. and 3 stories; 35 ft. w/ AUP <u>Proposed:</u> 35 ft. and 3 stories for 2 units; 35 ft. and 4 stories for 3 or 4 units*	<u>Existing:</u> 28 ft. and 3 stories; 35 ft. w/ AUP <u>Proposed:</u> 35 ft. and 3 stories for 2 units; 35 ft. and 4 stories for 3 or 4 units*	<u>Existing:</u> 35 ft. and 3 stories <u>Proposed:</u> 35 ft. and 3 stories for 2 units; 35 ft. and 4 stories for 3 or 4 units*
Additions	<u>Existing:</u> 14 ft.; 35 ft. w/ AUP <u>Proposed:</u> Same as new buildings	<u>Existing:</u> 14 ft.; 35 ft. w/ AUP <u>Proposed:</u> Same as new buildings	<u>Existing:</u> 14 ft.; 35 ft. w/ AUP <u>Proposed:</u> Same as new buildings	<u>Existing:</u> 14 ft.; 35 ft. w/ AUP <u>Proposed:</u> Same as new buildings	<u>Existing:</u> 35 ft. and 3 stories <u>Proposed:</u> Same as new buildings

\* Other options presented outside of table

[1] Additional unit allowed for remaining lot area per district standards

[2] If a lot existing as of [ordinance effective date] is subdivided, no more than 4 units is allowed for all newly created lots combined

	R-1	R-1A	R-2	R-2A	MU-R
Lot Line Setbacks					
Front, Min.	Existing: 20 ft. Proposed: 20 ft. [3]*	Existing: 20 ft. Proposed: 20 ft. [3]*	Existing: 20 ft. Proposed: 20 ft. [3]*	Existing: 15 ft. Proposed: 15 ft. [3]*	Existing: 5 ft. Proposed: 5 ft. [3]*
Front, Max.	Existing: No max. Proposed: 25 percent more than the average front setback of adjacent homes*				
Rear, Min.	Existing: 20 ft. Proposed: 4 ft.*	Existing: 20 ft. Proposed: 4 ft.*	Existing: 20 ft. Proposed: 4 ft.*	Existing: 15 ft. Proposed: 4 ft.*	Existing: No min. [4] Proposed: No min.
Interior Side, Min.	Existing: 4 ft. Proposed: 4 ft.*	Existing: 4 ft.; 6 ft. for rear main building Proposed: 4 ft.*	Existing: 4 ft.; 6 ft. for third story Proposed: 4 ft.*	Existing: 4 ft.; 6 ft. for third story Proposed: 4 ft.*	Existing: No min. Proposed: No min.
Street Side, Min.	Existing: 4 ft. Proposed: 4 ft.*	Existing: 4 ft.; 6 ft. for rear main building Proposed: 4 ft.*	Existing: 10 ft. Proposed: 4 ft.*	Existing: 6/8/10 ft. for 1/2/3 stories Proposed: 4 ft.*	Existing: 5 ft. Proposed: No min.
Third Story Step Back, Minimum					
Front	Existing: No min. Proposed: 5 ft.*	Existing: No min. Proposed: 5 ft.*	Existing: No min. Proposed: No min.*	Existing: No min. Proposed: No min.*	Existing: No min. Proposed: No min.*
Rear	Existing: No min. Proposed: No min.*	Existing: No min. Proposed: No min.*	Existing: No min. Proposed: No min.*	Existing: No min. Proposed: No min.*	Existing: No min. Proposed: No min.*
Interior Side	Existing: No min. Proposed: No min.*	Existing: No min. Proposed: No min.*	Existing: No min. [5] Proposed: No min.*	Existing: No min. [5] Proposed: No min.*	Existing: No min. Proposed: No min.*
Street Side	Existing: No min. Proposed: No min.*	Existing: No min. Proposed: No min.*	Existing: No min. Proposed: No min.*	Existing: No min. [5] Proposed: No min.*	Existing: No min. Proposed: No min.*
Building Separation, Minimum	Existing: No min. Proposed: No min.	Existing: 8-16 ft. [6] Proposed: No min.	Existing: 8-16 ft. [6] Proposed: No min.	Existing: 8-16 ft. [6] Proposed: No min.	Existing: No min. Proposed: No min.
Lot Coverage, Maximum	Existing: 40% Proposed: 40% for 2 units, 45% for 3 units, 50% for 4 units*	Existing: 40-45% [7] Proposed: 40% for 2 units, 45% for 3 units, 50% for 4 units*	Existing: 35-50% [6][7] Proposed: 40% for 2 units, 45% for 3 units, 50% for 4 units*	Existing: 35-50% [6][7] Proposed: 40% for 2 units, 45% for 3 units, 50% for 4 units*	Existing: 100% Proposed: 100%

\* Other options presented outside of table

[3] Or average front setback of adjacent homes, whichever is less.

[4] Minimum 5 ft. if rear of lot abuts a street

[5] Increased third-story setback requirement may result in a step back from lower building wall

[6] Varies by number of stories

[7] Varies by location of lot (interior or corner)



### 1. Usable Open Space Per Dwelling Unit

A minimum of 400 square feet of usable open space per dwelling unit is currently required in the R-1, R-1A, and R-2. A minimum of 300 square feet and 150 square feet of usable open space per dwelling unit is required in the R-2A and MU-R, respectively.

***Option 1: Modifying Standards for Usable Open Space (Recommended)***

To allow for flexibility in the location and configuration of usable open space, this option would modify the standards defined in BMC Section 23.304.090 Usable Open Space to include outdoor area on the ground within front, street side, or rear setback areas and also above ground (e.g. balconies) used for active or passive recreation use. Minimum width and length for ground floor usable open space remains 10 feet and minimum width and length of above ground usable open space remains six feet.

***Option 2: Reducing Required Open Space Area***

To encourage housing production and reduce constraints to development, this alternative option proposes a decrease in required usable open space area per dwelling unit and maintains the standards defined in BMC Section 23.304.090 Usable Open Space, which limits the area that a balcony can contribute to the required usable open space to 50 percent.

**TABLE 4: MINIMUM USABLE OPEN SPACE REQUIREMENT OPTION 2**

	R-1	R-1A	R-2	R-2A	MU-R
Usable Open Space per Dwelling Unit, Minimum	200 sq. ft.	200 sq. ft.	200 sq. ft.	200 sq. ft.	150 sq. ft.

### 2. Building Height

A maximum average building height of 35 feet is currently allowed with a Use Permit in all lower-density residential districts, and without a Use Permit in the MU-R district. New height standards for 2-4 unit projects are designed to allow for multi-unit projects while considering impacts on and compatibility with surrounding homes.

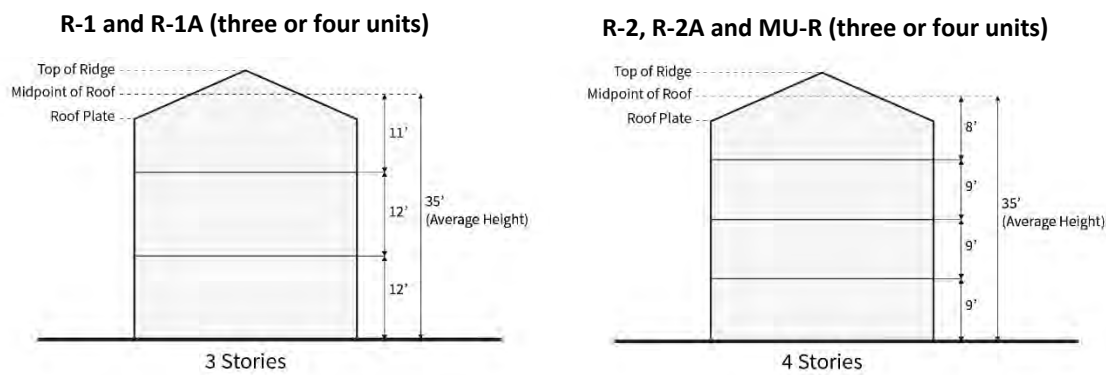
***Option 1: Increased High/Stories with Additional Units (Recommended)***

To incentivize housing production, this option allows increased height or stories for projects with three or four units (see Table 4). In R-1 and R-1A districts, 28 feet and 3 stories would be allowed for two-unit projects, and 35 feet and 3 stories would be allowed for three or four-unit projects. In the R-2, R-2A, and MU-R districts, 35 feet and three stories would be allowed for two-unit projects, and 35 feet and 4 stories would be allowed for three or four-unit projects. Buildings may also be subject to upper floor step backs as described in Section 3 below.

**TABLE 5: MAXIMUM BUILDING HEIGHT OPTION 1**

	R-1	R-1A	R-2	R-2A	MU-R
Two Units					
Feet	28 ft.	28 ft.	35 ft.	35 ft.	35 ft.
Stories	3 stories	3 stories	3 stories	3 stories	3 stories
Three or Four Units					
Feet	35 ft.	35 ft.	35 ft.	35 ft.	35 ft.
Stories	3 stories	3 stories	4 stories	4 stories	4 stories

**FIGURE 1: MAXIMUM BUILDING HEIGHT OPTION 1**



Staff and consultants recommend this option to incentivize housing production and maximize the number of units possible on a site consistent with the existing 35-foot height limit.

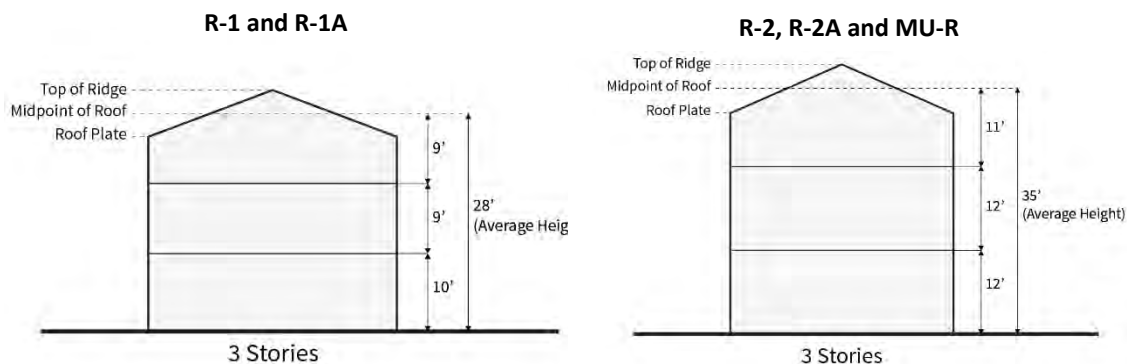
**Option 2: 28 Feet in R-1 and R-1A; 35 Feet in R-2, R-2A, and MU-R**

As shown in Table 5, this option limits building height to 28 feet and 3 stories in the R-1 and R-1A districts, which is the current base height allowed without an AUP. Maximum height in the R-2, R-2A, and MU-R district would be 35 feet and 3 stories.

**TABLE 6: MAXIMUM ALLOWED MAIN BUILDING HEIGHT OPTION 2**

	R-1	R-1A	R-2	R-2A	MU-R
Feet	28 ft.	28 ft.	35 ft.	35 ft.	35 ft.
Stories	3 stories	3 stories	3 stories	3 stories	3 stories

FIGURE 2: MAXIMUM BUILDING HEIGHT OPTION 2



### 3. Setbacks

The setback options described below consider existing standards and setbacks required under SB 9 and State ADU law. For SB 9 projects, the City may require setbacks of no more than 4 feet from side and rear property lines. State ADU law also requires the City to allow ADUs 4 feet from side and rear property line. The existing Zoning Ordinance also allows, with an AUP, a reduced setback to 0 feet in the R-2 and R-2A and to 12 feet in the R-1A.

#### ***Option 1: Minimum and Maximum Front and Side/Rear Matching SB 9/ADU Law (Recommended)***

As shown in Table 7, this option allows for a reduced minimum front setback to match the existing front setbacks of adjacent homes and adds a new maximum setback to ensure that building placement is compatible with adjacent structures. For all districts, the maximum setback is 25 percent more than the average front setback of adjacent structures to allow for flexibility by approximately five feet. If the average setback of adjacent homes is 20 feet, this standard would require a new building to be setback no more than 25 feet from front property line. On corner lots, the maximum setback would be measured by the front setback of the adjacent front yard property.

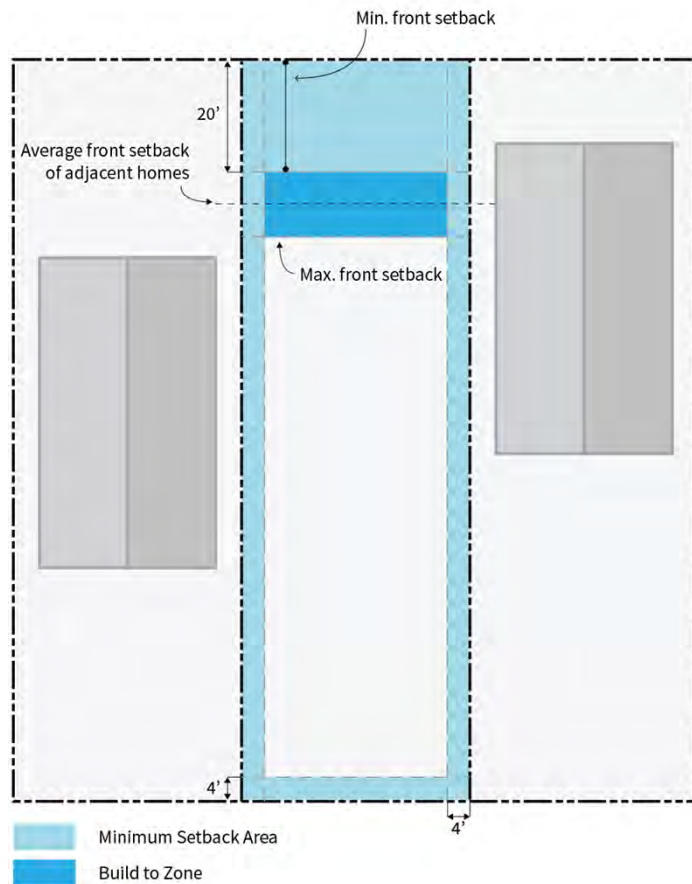
Rear setbacks are reduced to 4 feet for three and four-unit projects. Interior side and street side setbacks match existing. Figure 3 illustrates this option with dimensions shown for the R-1, R-1A, and R-2 districts.

**TABLE 7: LOT LINE SETBACKS OPTION 1**

	R-1	R-1A	R-2	R-2A	MU-R
<b>Front</b>					
Min.	20 ft. [1]	20 ft. [1]	20 ft. [1]	15 ft. [1]	5 ft. [1]
Max.	25 percent more than the average front setback of adjacent homes				
<b>Rear, Min.</b>					
Two Units	20 ft.	20 ft.	20 ft.	15 ft.	0 ft.
Three or Four Units	4 ft.	4 ft.	4 ft.	4 ft.	No min.
<b>Interior Side, Min.</b>	4 ft.	4 ft.	4 ft.	4 ft.	No min.
<b>Street Side, Min.</b>	4 ft.	4 ft.	4 ft.	4 ft.	No min.

[1] Or average front setback of adjacent homes, whichever is less.

**FIGURE 3: OPTION 1 SETBACKS FOR R-1, R-1A, AND R-2 (3 AND 4-UNIT PROJECTS)**



Staff recommends Option 1 setbacks to maximize the number of units on typical lots, to require building placement consistent with surrounding context, and to allow rear setbacks consistent with SB 9 and State ADU law.

**Option 2: Maintain Existing Setbacks Except as Required for SB 9 projects**

This option maintains existing minimum setbacks with a reduced rear setback only in the R-1 district for qualifying SB 9 projects (see Table 7). Figure 4 illustrates this option with dimensions shown for the R-1 district.

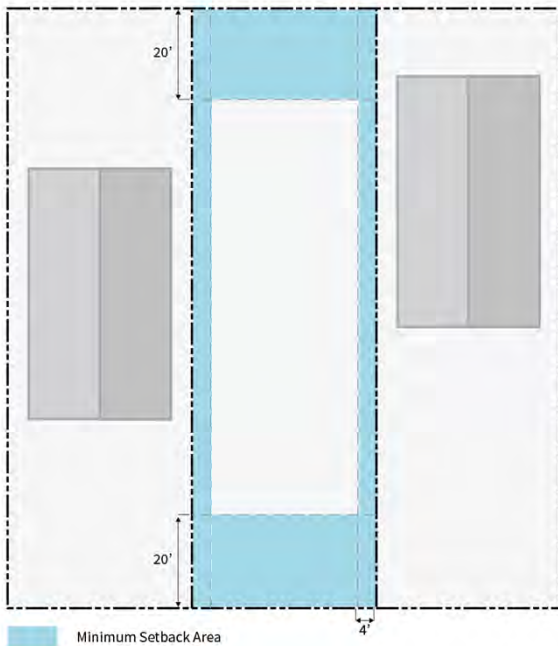
**TABLE 8: LOT LINE SETBACKS OPTION 2**

	R-1	R-1A	R-2	R-2A	MU-R
<b>Front</b>					
Min.	20 ft.	20 ft.	20 ft.	15 ft.	5 ft.
Max.	No maximum				
<b>Rear, Min.</b>	20 ft. [1]	20 ft. [2]	20 ft. [2]	15 ft. [2]	0 ft.
<b>Interior Side, Min.</b>	4 ft.	4 ft.	4 ft.	4 ft.	0 ft.
<b>Street Side, Min.</b>	4 ft.	6 ft.	10 ft.	10 ft.	5 ft.

[1] 4 feet minimum for qualifying projects pursuant to Government Code Section 65852.21 and/or Section 66411.7.

[2] A reduced setback to 0 feet in the R-2 and R-2A and to 12 feet in the R-1A allowed with AUP

**FIGURE 4: OPTION 2 SETBACKS FOR R-1**



#### 4. Third-Story Step backs

Options for third-story step backs aim to mitigate visual and neighbor impacts from new three or four-story buildings. Step backs are measured from the face of the building, as opposed to set backs, which are measured from the property line.

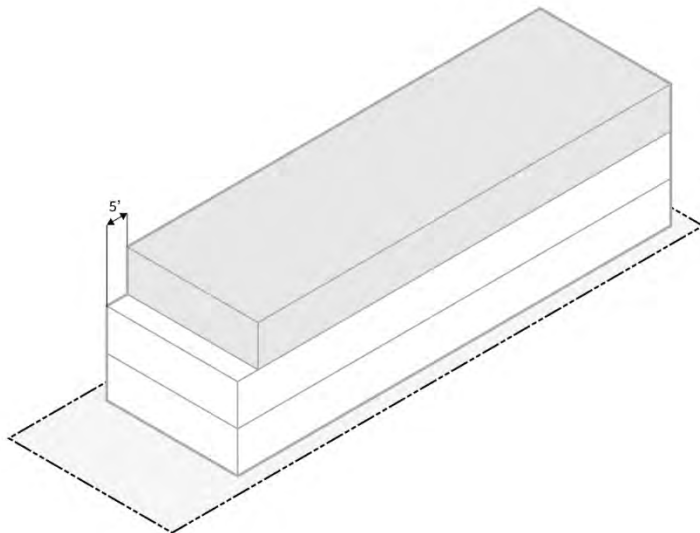
##### **Option 1: Front third-story step back in R-1 and R-1A Only**

This option requires a minimum 5-foot third-story front step back in the R-1 and R-1A districts (see Table 8). No other third-story step backs would be required.

**TABLE 9: THIRD-STORY STEP BACKS OPTION 1**

	R-1	R-1A	R-2	R-2A	MU-R
Front, minimum	5 ft.	5 ft.	No min.	No min.	No min.
Rear, minimum	No min.	No min.	No min.	No min.	No min.
Interior Side, minimum	No min.	No min.	No min.	No min.	No min.
Street Side, minimum	No min.	No min.	No min.	No min.	No min.

**FIGURE 5: THIRD-STORY STEP BACKS IN R-1 AND R-1A (OPTION 1)**



Staff and consultant recommend this option to allow for three and four-unit projects on typical lot conditions. Building volume would also continue to be constrained by other standards, such as maximum lot coverage.



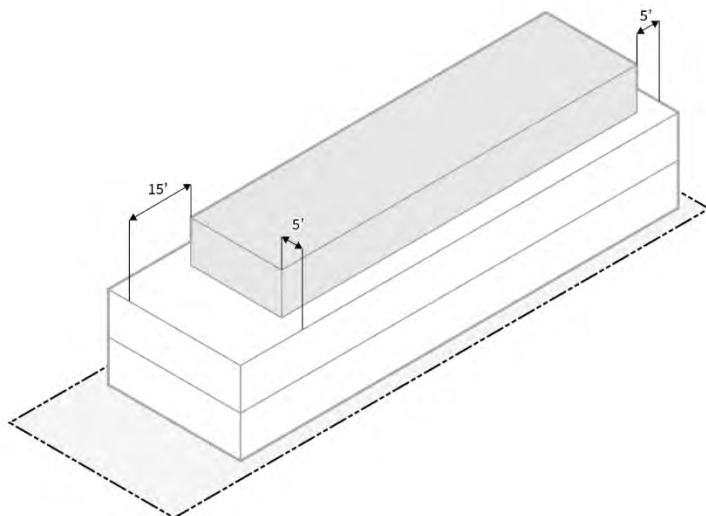
**Option 2: Front/Side/Rear Step Backs in R-1 and R-2; Front Step Backs in R-2, R-2A, MU-R**

This option requires a 15-foot front, 5-foot rear, and 5-foot interior side step back in the R-1 and R-2 districts (see Table 9). A 5-foot front step back is required in the R-2, R-2A, and MU-R districts. On a 5,000 square foot lot with a 40 percent coverage, this option would reduce floor area by approximately 1065 square feet, or about 46.7 percent of the total potential 2,000 square feet.

**TABLE 10: THIRD-STORY STEP BACK OPTION 2**

	R-1	R-1A	R-2	R-2A	MU-R
<b>Front, minimum</b>	15 ft.	15 ft.	5 ft.	5 ft	5 ft.
<b>Rear, minimum</b>	5 ft.	5 ft.	No min.	No min.	No min.
<b>Interior Side, minimum</b>	5 ft.	5 ft.	No min.	No min.	No min.
<b>Street Side, minimum</b>	No min.	No min.	No min.	No min.	No min.

**FIGURE 6: THIRD-STORY STEP BACKS IN R-1 AND R-1A (OPTION 2)**



**5. Lot Coverage**

Maximum lot coverage is a limiting standard in the R-1, R-1A, R-2, and R-2A districts, particularly for 3- and 4-unit projects. The options below consider changes to existing lot coverage standards to allow for different types of multi-unit projects in these districts.

**Option 1: Increased Allowed Lot Coverage with Additional Units (Recommended)**

As shown in Table 11, this option increases allowed lot coverage in the R districts as the number

of units increases. The allowed lot coverage in the MU-R district remains unchanged. Staff recommends this option to incentivize housing production.

**TABLE 11: MAXIMUM LOT COVERAGE OPTION 1**

	R-1	R-1A	R-2	R-2A	MU-R
Two Units	40%	40%	45%	45%	100%
Three Units	45%	45%	50%	50%	100%
Four Units	50%	50%	55%	55%	100%

**Option 2: Reduced Maximum Lot Coverage for All 2-4 Unit Projects**

As shown in Table 12, this option increases allowed lot coverage to 50 percent in the R districts for all 2-4 unit projects. The allowed lot coverage in the MU-R district remains unchanged.

**TABLE 12: MAXIMUM LOT COVERAGE OPTION 2**

	R-1	R-1A	R-2	R-2A	MU-R
Two, Three, and Four Units	50%	50%	50%	50%	100%

**6. Floor Area Ratio**

Currently there is no FAR standard for the R-1, R-2, R-2, and R-2A districts and a maximum 1.5 FAR in the MU-R district. The City Council has directed staff to consider scaling the FAR to increase as the number of units increase on a site.

Senate Bill (SB) 478 adopted in 2021 requires a minimum FAR of 1.0 for projects with three to seven units. If a city has no FAR standard, other development standards, such as lot coverage and height, may not preclude an FAR of at least 1.0 for these projects.

**Option 1: No New FAR Standard in R District; Scaled FAR in MU-R (Recommended)**

This option does not establish a maximum FAR in the R districts. Allowed floor area is constrained by maximum building height, lot coverage, and setback standards. In the MU-R district, allowed FAR would increase as the number of units increase on the site.

Staff and consultants recommend this option as other standards in the R districts will be sufficient to control the maximum allowed building envelop. An additional FAR standard is not needed. Staff-recommended standards for height, coverage, and setbacks scale to increase with increased units to address prior City Council direction.

**Option 2: Increased FAR for Preservation and Increased Units**

This option establishes a new FAR standard in the R-1, R-2, R-2, and R-2A districts. Allowed FAR increases when more units are provided on a site and when an existing street-facing building is

preserved. SEE TABLE 13.

**TABLE 13: MAXIMUM FLOOR AREA RATIO (OPTION 2)**

	R-1	R-1A	R-2	R-2A	MU-R
<b>2 units</b>					
Demolition [1]	0.8	0.8	0.8	0.8	0.8
No demolition	1.1	1.1	1.1	1.1	1.1
<b>3 units</b>					
Demolition	1.0	1.0	1.3	1.3	1.4
No demolition	1.3	1.3	1.6	1.6	1.7
<b>4 units</b>					
Demolition	1.2	1.2	1.5	1.5	1.6
No demolition	1.5	1.5	1.8	1.8	1.9

[1] "Demolition" means demolition of existing street facing main building

On a 5,200 sq. ft. lot, a 0.8 FAR would allow for two 2,080 square-foot homes (4,160 square feet total). For projects with three or four units, Table 13 shows a maximum FAR of at least 1.0 as required by SB 478. On a typical 5,200 square-foot lot, an FAR of 1.0 would allow for three 1,733 square foot homes.



Planning and Development Department  
Land Use Planning Division

## STAFF REPORT

DATE: July 6, 2022  
TO: Members of the Planning Commission  
FROM: Justin Horner, Associate Planner  
SUBJECT: Affordable Housing Overlay and Southside Local Density Bonus Program

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### BACKGROUND

This report provides the Planning Commission with background and recommendations to respond to two City Council referrals:

- 1) In May 2017, the City Council referred to the Planning Commission a request to develop a **local density bonus program** for the C-T (Telegraph Avenue Commercial) zoning district to allow density bonuses without requiring on-site affordable units in order to generate in-lieu fees that could be used to build housing for homeless and extremely low income residents (*Attachment 2*); and
- 2) In November 2021, the City Council referred to the Planning Commission a request to consider an **affordable housing overlay** to permit increased height and density for housing projects comprised entirely of affordable units (*Attachment 3*).

These two referrals followed a July 2016 City Council referral to allow increased development potential in the C-T zoning district north of Dwight Avenue and to establish community benefit requirements, including affordable housing (*Attachment 1*).

#### Local Density Bonus Program Referral

The 2017 referral asked the Planning Commission to develop a density bonus program that would serve as a local alternative to the state Density Bonus program in the C-T District. At the time the referral was written, the State Density Bonus program allowed up to 35% more density for projects that include a certain percentage of units affordable to households who earn 50% or 80% of Area Median Income (AMI). Since then, AB

2345 (2020) has increased the maximum density bonus to 50%. Importantly, for the purposes of this referral, affordable units included in State Density Bonus projects must be provided on-site as part of the qualifying project, and are required to reach households with incomes of up to 50% AMI.

The 2017 referral proposed a local program that would grant a density bonus comparable to the State Density Bonus, but would allow a project sponsor to meet the affordable housing requirement by paying an in-lieu fee into the city's Housing Trust Fund. The funds raised by such projects would be used to fund housing for homeless and extremely low income households (30% AMI or less), who are otherwise not explicitly served by the State Density Bonus program. The referral recommends initiating a pilot program with these general parameters for projects within the C-T District.

A local density bonus program in the C-T District, or the Southside Area more broadly<sup>1</sup>, should be considered in the context of anticipated upzoning and changes to development standards within the Southside Plan area within the next 12 to 18 months to encourage more housing. The Planning Commission will be asked to consider such changes as part of future work preparing objective development standards for higher density districts.

#### Affordable Housing Overlay Referral

The 2021 referral asked the Planning Commission to consider an Affordable Housing Overlay zone to permit increased height and density for projects that are fully comprised of affordable housing units<sup>2</sup> and to create a pathway for ministerial approval of those projects that comply with objective design or development standards. The Affordable Housing Overlay would not apply to parcels with designated landmarks, or parcels in Berkeley Fire Zones 2 and 3, which includes parcels in Very High Fire Hazard Severity Zones and generally designated H District Overlay.

#### *Increased Height and Density*

The referral calls for local height and density incentives, including waivers and modifications, for 100% affordable projects. Importantly, the referral indicates that any local standards should *exceed* standards set forth in [Assembly Bill 1763 \(AB 1763\)](#).

Signed by Governor Newsom in 2019, AB 1763 revises the State Density Bonus to require a city to award a developer additional density, concessions and incentives, and height increases for 100% affordable projects, as follows:

- Density: Qualifying projects under AB 1763 are eligible for an 80% density bonus. As noted above, under State Density Bonus law, the maximum density

<sup>1</sup> The Southside Area also comprises all parcels zoned R-SMU and R-S, and some parcels zoned R-3.

<sup>2</sup> According to the referral, 100% affordable projects are those "deed-restricted for extremely low (15-30% AMI), very low (30-50% AMI), low (50-80% AMI), and moderate (80-120% AMI) income households."

bonus is normally 50%. If a qualifying project is located within ½ mile of a major transit stop<sup>3</sup>, a locality cannot impose density restrictions.<sup>4</sup>

- **Height:** Qualifying projects within ½ mile of a major transit stop are entitled to height increases of up to three stories or 33 feet.
- **Incentives and Concessions, and Waivers:** Projects utilizing the State Density Bonus law are typically eligible to utilize up to three incentives or concessions<sup>5</sup> to local policies or development standards. AB 1763 allows eligible projects to utilize a fourth incentive or concession. In addition, a qualifying density bonus project may also waive or reduce development standards which physically preclude the construction of the project at its bonus density.

- **Parking:** AB 1763 eliminates parking requirements for qualifying projects.

The referral includes specific recommended changes to development standards for 100% affordable projects, including waiving floor area ratio (FAR) standards, permitting up to 80% lot coverage, and amending the General Plan to avoid any inconsistencies between proposed higher-density projects and densities indicated in the General Plan for land use designations. The referral also recommends requirements for skilled and trained workforce standards for projects of 50,000 square feet or greater.

### *Ministerial Approval*

The referral calls for creating a ministerial approval pathway for qualifying projects that comply with “objective design standards or form-based standards.” These standards include “guidelines for architectural details” which incorporate consideration of neighborhood context, massing, building facades, materials, color and finishes, open space, public art, landscaping, circulation and outdoor light, and upper-story setbacks.

The referral recommends soliciting public input for these standards as part of the Housing Element process, and creating an advisory Design Review process through the Design Review Committee (DRC) to assist project sponsors in compliance. As detailed in the discussion below, the referral also includes specific timelines for review and approval of qualifying projects.

## **DISCUSSION**

### Local Density Bonus Program

<sup>3</sup> “Major transit stop” means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

<sup>4</sup> See [Gov. Code Section 65915\(f\)\(3\)\(D\)\(ii\)](#)

<sup>5</sup> Gov. Code Section 65915(k) states that a “concession or incentive” means a reduction of site development standards or modification of zoning code or architectural design requirements; the approval of a mixed-use development that includes residential uses in a non-residential zone; or any other regulatory incentive proposed by a developer that results in an identifiable and actual cost reduction for the provision of affordable housing.



As noted above, a number of City Council referrals have called for intensifying housing development in the C-T District. More development in the C-T District would provide much-needed student housing in areas adjacent to the University and reduce market pressure from students seeking housing in other areas of Berkeley. The Draft Housing Element Update includes an implementation program to amend zoning in the Southside Area and permit substantially more development by right. In addition, a local density bonus in the C-T District could address these policy priorities in the following ways:

- On-Site Units and Student Housing in the Southside:** As noted above, any affordable housing units developed pursuant to the State Density Bonus law must be provided on-site. This requirement is complicated in the Southside Area for a number of reasons. Deed-restricted affordable units are most often targeted to family households and are often supplemented by on-going service provisions and special operation requirements, particularly when serving very low-income households. These special requirements are often incompatible with proposed project types in the Southside that are targeted to meet student demand, which include, for examples, units with more bedrooms, expanded or specialized common areas, or a greater prevalence of Group Living Accommodations. The transient population also complicates monitoring and enforcement, and student households have a variety of income sources that make it difficult to confirm compliance with affordability income level restrictions.

A local density bonus in the C-T District would not only encourage the production of more housing for students in an optimum location but would also provide a mechanism to generate additional funds for the City to provide for affordable housing in other ways and minimize compliance issues that are experienced with typical deed-restricted units.

- Funding Sources for Extremely Low Income and Homeless Housing and Services:** While the State Density Bonus provides for the provision of housing to very-low, low- and moderate-income households, it does not expressly incentivize housing opportunities for extremely low-income households or people experiencing homelessness. Identifying sufficient funding for housing these specific groups has been a citywide challenge.

As noted in the referral, the C-T District is an area where residents are particularly supportive of housing for the homeless and extremely low-income residents. A local density bonus could provide much-needed targeted funding to housing these specific groups of residents while increasing opportunities to provide more student housing than otherwise permitted under existing zoning.

### *Policy Considerations*

The referral recommends the adoption of a local density bonus program that is limited to the C-T District and sets the local density bonus fee to match the in-lieu affordable housing mitigation fee. The in-lieu affordable housing mitigation fee is currently \$39,746

per new market-rate unit (equivalent to almost \$200,000 in compensation for each affordable unit that is not provided when applying a 20% inclusionary housing requirement). However, Council is expected to consider changes to the City's affordable housing requirements in Fall 2022 that could change the manner in which fees are calculated. Any fee discussion for these referrals should leave open the possibility of future changes to the baseline.

Beyond these basic parameters, additional policy considerations include:

- **Number of Required Affordable Units:** The State Density Bonus scales the amount of additional density a project is eligible for in proportion to the number and affordability of the included on-site units (*Attachment 4* includes a table that summarizes this relationship). For example, a project that includes 16% of its base project units affordable to low-income households (the "qualifying" units) is entitled to a 29% density bonus, while a project that includes the same percentage of very low-income units is entitled to a 50% density bonus. A local density bonus program will need to address the ratio of bonus units awarded compared to the assumed affordability and in-lieu fee being assessed.
- **Double-Counting:** State law requires the City to consider units that qualify a project for a density bonus as also satisfying any overlapping local inclusionary requirements, e.g. a project with 10% very-low-income units will qualify a project for a density bonus while also satisfying a portion of the City's inclusionary requirement. The City's inclusionary housing ordinance requires that 20% of all units be affordable, with those units divided evenly between very low-income and low-income households. The City ordinance allows an applicant to instead pay an in-lieu fee on a per-unit basis for the portion of the requirement that is not met on-site (i.e. if less than 10% of the total are very-low and less than 10% are low-income units).

The law therefore requires the City to credit a project for both the density bonus qualifying units and inclusionary units rather than pay a local in-lieu fee in proportion to the rate at which it has already satisfied the local inclusionary ordinance. Furthermore, the City cannot impose in-lieu fees on the bonus units. Therefore, a local density bonus program that allows the payment of fees to obtain a bonus will have to be more attractive to developers than the existing system. In essence, the total of all the fees would need to be less than the cost and complication of providing the minimum number of units required by the State law and inclusionary ordinance, or the developer will likely opt for the existing system that already grants bonuses and fee credits.

- **Eligible Districts:** While the referral limits the local density bonus concept to a pilot program in the C-T District, there may be a policy interest in expanding the program to the entire Southside Plan Area. Other zoning districts include the R-SMU, R-S and R-3.

*Attachment 5* includes a map of opportunity sites in the Southside identified in the draft Housing Element update (June 2022). Expanding the local density bonus program beyond the C-T District but still within the Southside Area would increase opportunities for more housing and increase the City's Housing Trust Fund from the program fee.

- **Concessions and Waivers:** While the referral does not specifically mention concessions or waivers as part of a local density bonus program, they are an essential part of State Density Bonus law. As mentioned above, project sponsors can request *incentives and concessions* from established development standards when such concessions result in an identifiable and actual cost reduction for the provision of affordable housing. In addition, a project sponsor may request any number of *waivers* from development standards that physically preclude the construction of a project that qualifies for a density bonus.

The number of concessions a project can request under State Density Bonus law is related to the number of affordable units provided and the depth of affordability (see Table 1). This issue should be coordinated with discussion of the second referral, which includes some recommended modifications to development standards for affordable housing.

**Table 1. Incentives/Concessions Under State Density Bonus Law<sup>6</sup>**

Number of Incentives/Concessions	Very Low Income Percentage	Low Income Percentage	Moderate Income Percentage
1	5%	10%	10%
2	10%	17%	20%
3	15%	24%	30%
4	100% affordable (max 20% moderate income)		

- **Fee Level:** While the referral recommends utilizing a fee equal to the in-lieu affordable housing mitigation fee, a unique fee level could be established for the local density bonus program. A fee could be set lower or higher than the in-lieu affordable housing mitigation fee, while there could also be two fee options that could act as proxies for units provided to very low-income or low-income households for purposes of determining the fee level and the allowed concessions and waivers noted above. A feasibility study would be worthwhile to assist in determining the structure that would be most attractive to developers while also meeting the City's objectives for obtaining additional resources for meeting the needs of special populations.

<sup>6</sup> Goetz, Jon and Tom Sakai, Guide to the California Density Bonus Law (2022), pg.6.  
[https://www.meyersnave.com/wp-content/uploads/California-Density-Bonus-Law\\_2022.pdf](https://www.meyersnave.com/wp-content/uploads/California-Density-Bonus-Law_2022.pdf)

Affordable Housing Overlay

The Affordable Housing Overlay referral provides a number of policy recommendations to facilitate the development of housing projects comprised entirely of affordable housing. Some of these recommendations have either been recently addressed by State law or are the subject of current policy formulation. This section summarizes each referral request, provides information on current policies that are relevant to each request, and suggests potential policy options.

1. **Exceed standards set in AB 1763** with additional height and density incentives, including waivers and modifications similar to State Density Bonus law.
  - **Current Efforts:** As noted above, AB 1763 allows an 80% density bonus and four incentives/concessions for 100% affordable projects. Within ½ mile of transit, AB 1763 prohibits density restrictions (i.e. maximum units per acre) and allows a height increase of up to 3 stories/33 feet. AB 1763 also includes reductions in required parking, but Berkeley already has no minimum parking requirements for most residential projects.
  - **Potential Policy Changes:** To exceed AB 1763 standards, an Affordable Housing Overlay district could include a larger density bonus (more than 80%), more incentives/concessions (more than four), or could apply the density and height provisions to additional areas outside of the transit proximity standard.
2. In the **R-1, R-1A, R-2, R-2A and MU-R districts**, provide additional density bonus, waive limits on FAR, and allow up to 80% lot coverage.
  - **Current Efforts:** Staff, the ZORP Subcommittees and the Planning Commission are currently preparing objective development standards for Middle Housing to encourage residential development in these zones. Initial recommendations for these reforms include permitting multi-unit housing by-right, reducing setbacks, and increasing allowable lot coverage. In response to ZORP Subcommittee and Planning Commission feedback, these standards do not include waiving FAR, as FAR is considered a valuable tool to control unit sizes and promote “affordability by design.”
  - **Potential Policy Changes:** Any potential policy changes for residential development in these zones would best be considered as part of the Middle Housing objective development standards process.
3. In the **R-3, R-4 and all C districts**, provide additional density bonus, waive limits on FAR, and allow up to 80% lot coverage.
  - **Current Efforts:** Objective development standards for projects that include higher density housing in the R-3, R-4, and all C districts are in the second

phase of the work being undertaken by the ZORP Subcommittees. Like Middle Housing policy, the multi-unit objective development standards process will consider changes in levels of discretion, setbacks, lot coverage and other development standards, as recommended in the referral and elsewhere.

- **Potential Policy Changes:** Any potential policy changes for residential development in these zones would best be considered as part of the multi-unit objective development standards process. This process will begin later this year, pending budget approval.
4. Create **General Plan amendments** that allow for 100% affordable projects to increase densities while avoiding inconsistencies with the General Plan.
- **Current Efforts:** The General Plan does not include project-level density requirements or limitations, and individual projects are not evaluated for consistency with General Plan densities. Importantly, the current Housing Element is consistent with the General Plan, as will be the Housing Element Update. Therefore, the density standards of the General Plan are not an inhibiting factor for development.
  - **Potential Policy Changes:** No policy work in this area is recommended.
5. Require **skilled and trained workforce requirements** for projects with 50,000 square feet or more.
- **Current Efforts:** 100% affordable projects are likely to utilize the streamlining provisions of SB 35, which provide ministerial approval of projects that include 50% affordable housing and meet objective development standards. SB 35 already includes a skilled and trained workforce requirement for all projects of 10 units or more. Additionally, while the Low-Income Housing Tax Credit does not yet include a prevailing wage requirement, many State sources of affordable housing funding, such as the Multifamily Housing Program, include a prevailing wage requirement.<sup>7</sup>
  - **Potential Policy Changes:** No policy work in this area is recommended.
6. Exempt **historic landmarks and parcels in fire zones** from any streamlining provisions.
- **Current Efforts:** 100% affordable projects are likely to utilize the streamlining provisions of SB 35, which provide ministerial approval of projects that include affordable housing and meet objective development standards. SB 35

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<sup>7</sup> California Department of Housing and Community Development, *Multifamily Housing Program Final Guidelines* (May 2022), p. 28. <https://www.hcd.ca.gov/sites/default/files/2022-06/mhp-guidelines-ab-434-posting-6-10.pdf>

already excludes parcels that include designated city, state or federal historic landmarks and parcels in fire zones.

- **Potential Policy Changes:** No policy work in this area is recommended.
7. Develop **objective design standards** for projects to be eligible for ministerial approval. These design standards should include architecture, massing, neighborhood context, open space, color, finishes, public art, and environmental sustainability.
- **Current Efforts:** As noted above, staff, the ZORP Subcommittees and the Planning Commission are currently preparing objective development standards for Middle Housing. While these include development standards related to massing, open space and, indirectly, neighborhood context (through setbacks, for example), the effort explicitly does not include *design* standards such as architecture, color and finishes. The effort does not include any changes to existing public art requirements or environmental requirements such as electric appliances, permeable paving or landscaping types, which are covered under other regulations, such as Energy, Building and Fire Code and the State's Water Efficient Landscape Ordinance.
  - **Potential Policy Changes:** The preparation of objective design standards related to architecture, neighborhood context, color and finishes could be added to the Planning Commission's workplan. One consideration is that additional objective design standards would subject projects to added regulations, an outcome which may not necessarily be consistent with the intent to streamline development. As noted above, the objective development standards process for residential projects in the R-3, R-4, and all C districts is anticipated to begin later this year, subject to budget allocations and workplan priorities.
8. For projects with fewer than 150 units that are consistent with the objective design standards, the City shall **review and approve the development application within 90 days** of submission.
- **Current Efforts:** 100% affordable projects are likely to utilize the streamlining provisions of SB 35, which provide ministerial approval of projects that include 50% affordable housing and meet objective development standards. SB 35 requires a local agency to determine whether a project is eligible for SB 35 streamlining within 60-90 days, and that a final decision be made within 90-180 days. All residential projects are also subject to the State's Permit Streamlining Act, which requires review and determination of application completeness within 30 days.
  - **Potential Policy Changes:** Timelines for 100% affordable projects can be established or shortened as a matter of policy, regardless of project size or



whether they are consistent with objective design standards. Berkeley has specialized application forms and guides, and has trained staff for processing expedited permits under SB35, SB330, and similar programs that require compliance with objective development standards.

## NEXT STEPS

Staff are considering inclusion of a Local Density Program and Affordable Housing Overlay in the Housing Element Update, for policies to be carried out during the 2023-2031 planning period. As a requirement, the programs must provide details for implementation, including action steps and measurable timelines. The Planning Commission is requested to provide comments and recommendations regarding the following questions. If appropriate, staff will return to the Planning Commission with additional information or with appropriate Housing Element Update amendments.

### Local Density Program

1. Should a local density program that includes a fee to assist extremely low income and homeless residents be created?
2. For purposes of calculating the fee, what are the thresholds / metrics for affordable units / density bonuses / fees?
3. What should be the geography of the local density bonus program, i.e. the C-T District or the Southside Plan Area?
4. Should the program include concessions and waivers similar to State Density Bonus law?

### Affordable Housing Overlay

1. Should an Affordable Housing Overlay (AHO) be designed to facilitate the development of 100% affordable projects?
2. Should the AHO provide density bonus, height provision or transit-adjacent benefits in excess of those in AB 1763?
3. Should the AHO provide additional development incentives in the R-1, R-1A, R-2, R-2A and MU-R districts over and above what is being considered in the Middle Housing program?
4. Should the AHO provide additional development incentives in the R-3, R-4 and C districts in a process separate from the upcoming objective development standards process for higher density residential projects?
5. Should the AHO provide unique workforce-related requirements in excess of those provided by SB 35 and required under state affordable housing funding guidelines?
6. Should staff prepare objective design standards related to architecture, neighborhood character, color and building materials as a basis to provide ministerial approval of 100% affordable projects?
7. Should staff propose a prioritization of project types to facilitate the review of applications for 100% affordable projects?

**Attachments:**

1. [City Council Referral – Increase Development Potential in C-T \(2016\)](#)
2. [City Council Referral – Local Density Bonus Pilot \(2017\)](#)
3. [City Council Referral – Affordable Housing Overlay \(2021\)](#)
4. [Density Bonus Calculation Chart \(2022\)](#)
5. [Draft Housing Element - Southside Sites Inventory \(June 2022\)](#)



## Kriss Worthington

Councilmember, City of Berkeley, District 7  
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kworthington@ci.berkeley.ca.us

### ACTION CALENDAR

July 12, 2016

*(Continued from May 24, 2016)*

To: Honorable Mayor and Members of the City Council  
From: Councilmember Kriss Worthington

Subject: Allow Increased Development Potential in the Telegraph Commercial (C-T) District Between Dwight Avenue and Bancroft Avenue and Refer to the City Manager to Develop Community Benefit Requirements, with a Focus on Labor Practices and Affordable Housing

### RECOMMENDATION

That the Council immediately amend the Berkeley Zoning Ordinance to allow increased development potential in the Telegraph Commercial (C-T) District between Dwight Avenue and Bancroft Avenue and refer to the City Manager to develop community benefit requirements, with a focus on labor practices and affordable housing.

### BACKGROUND

The City Council sent a referral to the Planning Commission on June 30, 2015, regarding the conflict between the 5.0 FAR adopted by the Council for the C-T District and the other development regulations in the district.

On April 20, 2016, the Planning Commission considered modifying the development standards and community benefits. The Planning Commission voted to recommend the following to the Berkeley City Council:

- a) That the staff proposed Zoning Ordinance development standards for buildings adjacent to Bancroft Way be applied to the entirety of the C-T District north of Dwight Way; and
- b) That the Council develop community benefit requirements, with a focus on labor practices and affordable housing, before implementation of the proposed Zoning Ordinance language.

### FINANCIAL IMPLICATIONS:

Minimal.

ENVIRONMENTAL SUSTAINABILITY:

Consistent with Berkeley's Environmental Sustainability Goals and no negative impact.

CONTACT PERSON:

Councilmember Kriss Worthington      510-981-7170

Attachment:

1. April 20, 2016 Planning Commission Staff Report on "Changes to the Zoning Ordinance to Allow Development Potential Increases in the Telegraph Avenue Commercial (C-T) District"



Planning and Development Department  
Land Use Planning Division

## STAFF REPORT

DATE: April 20, 2016  
TO: Members of the Planning Commission  
FROM: Elizabeth Greene, Senior Planner  
SUBJECT: Public Hearing: Changes to the Zoning Ordinance to Allow Development Potential Increases in the Telegraph Avenue Commercial (C-T) District

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### RECOMMENDATION

Staff recommends that the Planning Commission:

- Hold a Public Hearing (continued from March 16, 2016) and take public comment; and
- Recommend the City Council modify language in Zoning Ordinance Section 23E.56.070, which would allow greater intensity of development in the C-T district only along Bancroft Way, as proposed in the staff recommendation.

See Attachment 1 for the proposed zoning amendment language.

### BACKGROUND

The City Council sent a referral to the Planning Commission on June 30, 2015, regarding the conflict between the 5.0 FAR adopted by the Council for the C-T District and the other development regulations in the district. The Planning Commission considered options for modifying the development standards at meetings held on November 4, 2015, and January 20, 2016.

On March 16, 2016, the Commission held a Public Hearing to consider a staff proposal to make the following changes to the Zoning Ordinance:

1. Removing limits on the number of stories throughout the C-T District;
2. Increasing the height limit in areas of the C-T District adjacent Bancroft Way; and
3. Allowing projects in the C-T District adjacent to Bancroft Way to exceed the FAR and height standards (up to 6.0 FAR and 75 feet) with a Use Permit.

For the reasoning behind this recommendation, as well as the staff reports from the previous meetings, see the [March 16, 2016 Staff Report and attachments](#).



At this meeting, the Commission discussed the location of any changes to development standards within the C-T District. The Commission also discussed the possibility of linking increased development potential to community benefits. In particular, the Commission was interested in adding a labor component, mandating a 1:8 ratio of apprentices to journeymen working on a project. The Commission voted to continue the hearing to April 20, 2016, to allow staff to study the financial and legal feasibility of linking a labor requirement, along with other community benefits, to additional development.

## DISCUSSION

The following is the staff analysis of the issues discussed at the March 16<sup>th</sup> meeting:

1. The location of the proposed development standards. The staff recommended restricting development standard changes to properties adjacent to Bancroft Way. At the March 16<sup>th</sup> meeting, the Commission discussed whether the development standards should be changed in the entire portion of the C-T District north of Dwight Way. Based on this discussion and the language in the public hearing notice, the Council could consider changes to development standards in any portion of the C-T District north of Dwight Way.
2. Linking community benefits to additional development potential. The City Council will be considering a wide range of strategies to address the City's need for housing. Among the strategies are referrals to the Planning Commission to consider a new City density bonus and modifications to development standards citywide. A recommendation to incorporate community benefits into new housing developments citywide could be included in the response to these referrals. Staff recommends reserving any neighborhood-specific recommendations for community benefits programs until after these programs have been considered as part of a city-wide study, including a financial feasibility analysis.
3. Incorporating labor practice standards into community benefits. Local regulations of labor standards or practices can be mandated by the City as long as they are not preempted by state or federal law. The City Attorney advises that this kind of regulation be treated like other community benefit proposals and adopted separately from the Zoning Ordinance. The Planning Commission could make a recommendation to Council to amend the Berkeley Municipal Code (BMC) to add labor requirements when it makes its recommendation on the C-T zoning amendments. Staff recommends tying recommendations for labor-related community benefits to any general recommendation regarding community benefits as discussed above.
4. Relationship between proposed development standards and community benefits. The Commission discussed the ramifications of approving increased density potential without a community benefits package. Staff has provided an alternative recommendation should the Commission want to defer a decision on the development standards until a BMC ordinance is developed for community benefits.



## CONCLUSION

Staff recommends that the Planning Commission hold a Public Hearing, take public comment, and forward recommendation 1a and 1b to Council:

1. a) Recommend the attached proposed Zoning Ordinance amendments, with any changes identified through a vote of the Commission; and
- b) Recommend that the Council develop community benefit requirements, with a focus on labor practices.

Alternatively, the Commission could make the following recommendations to Council:

2. a) Do not recommend any changes to the Zoning Ordinance; and
- b) Recommend that the Council develop community benefit requirements, with a focus on labor practices.

### Attachments:

1. Proposed ordinance language
2. Map of the C-T District
3. Public Hearing Notice (published March 4, 2016)



Kriss Worthington  
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CONSENT CALENDAR  
May 30, 2017

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Kriss Worthington and Ben Bartlett, and Mayor Arreguin  
Subject: Planning Commission Referral for a Pilot Density Bonus Program for the Telegraph Avenue Commercial District to Generate Revenue to House the Homeless and Extremely Low-Income Individuals

RECOMMENDATION

That the Berkeley City Council refer a City Density Bonus policy for the Telegraph Avenue Commercial District to the Planning Commission to generate in-lieu fees that could be used to build housing for homeless and extremely low-income residents.

BACKGROUND

Under current state law, new development projects that get a density bonus, allowing up to 35 percent more density, are required to build inclusionary housing. Inclusionary housing is typically defined as below-market rate housing for people who earn 50 percent or 80 percent of the Area Median Income (AMI).

While it's great that developers are including some affordable housing in their market-rate projects, affordable housing for the homeless and extremely low-income who don't qualify for inclusionary units can be provided if developers instead paid fees into the Housing Trust Fund. This can be achieved through the use of a City Density Bonus for the Telegraph Avenue Commercial District, an area where many residents have expressed support for housing the homeless and the extremely low-income.

The City bonus fee would be equal to the in-lieu affordable housing mitigation fee, currently set at \$34,000 per unit. Fees paid into the fund could be leveraged with other Federal, State and Regional affordable housing sources, resulting in significantly more affordable housing built through the Housing Trust Fund than currently available. The City has important policy proposals to assist the homeless and extremely low-income residents that urgently need funding.

The pilot program of a City Density Bonus in the Telegraph Avenue Commercial District could go a long way toward easing Berkeley's critical housing shortage by increasing incentives for developers to add more housing and give the city greater ability to deliver affordable housing.

FISCAL IMPACTS

This proposal will generate millions in new revenue to the Housing Trust Fund.

ENVIRONMENTAL IMPACTS

The proposed change is consistent with City Climate Action Plan goals supporting increased residential density. Additionally, new residential construction is subject to more stringent green building and energy efficiency standards and will help reduce per capita greenhouse gas emissions.

CONTACT PERSON

Councilmember Kriss Worthington 510-981-7170



CONSENT CALENDAR  
DATE: November 9, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin (Author), Councilmember Bartlett (Co-sponsor),  
Councilmember Robinson (Co-sponsor) and Councilmember Hahn (Co-sponsor)

Subject: Affordable Housing Overlay

### RECOMMENDATION

Council refers to the City Manager and the Planning Commission to consider an Affordable Housing Overlay for 100% affordable housing and seek to integrate it into the ongoing Housing Element process in anticipation of the 2023-2031 RHNA cycle. Staff should consider revisions to the zoning code and General Plan, permitting increased height and density for 100% affordable housing developments, including specific consideration of labor and design/form standards, to achieve the underlying goals:

1. Exceeding standards set forth in California Government Code Section 65915 (AB-1763) with additional local height and density incentives, including waivers and modifications similar to those vested in state density bonus law, with ministerial approval for qualifying 100% affordable projects deed-restricted for Low, Very Low, Extremely Low, and Moderate Income households (exclusive of manager's unit) pursuant to AB-1763, and maintaining demolition restrictions consistent with state law, specifying:
  - a. In R3, R4, MU-R, and all C-prefixed zoning districts, a local density bonus (granted in addition to, but not compounding with, any State density bonus[es]) with standards reflective of whatever State density bonus a project would be entitled to under the provisions of AB 1763 (2019), waiving limits on floor area ratio, and permitting up to 80% lot coverage; and study additional incentives in these zones;
  - b. In R-1, R-1A, R-2, and R-2A zones, a local bonus for qualifying projects inclusive of existing density bonuses, waiving limits on floor area ratio, and permitting up to 80% lot coverage; and study project feasibility in these zones;
  - c. Create General Plan amendments that allow for 100% affordable qualifying projects to increase density while avoiding inconsistencies with General Plan densities;
  - d. Skilled and trained workforce standards as defined by SB-7 (Atkins, 2021) for qualifying projects with at least 50,000 square feet of total floor area;
2. Exempting parcels with Designated City, State, and Federal Historic Landmarks;

3. Exempting parcels in Very High Fire Hazard Severity Zones (VHFHSZ) as determined by the California Department of Forestry and Fire Protection (CalFire), and in City of Berkeley Fire Zones 2 and 3;
4. Develop objective design standards or form-based standards for qualifying projects to receive ministerial approval, including guidelines for architectural details with respect to neighborhood context, massing, and building facades; materials, color, and finishes; open space, public art, and landscaping; circulation and outdoor lighting; 20' average building setback above the fourth floor (or 45') from any property line that is adjacent to a low or low-to-medium residential district; utilities; interiors; financial feasibility, and environmental sustainability, to be implemented with the following provisions:
  - a. Solicit community input, including through public outreach to be conducted in the Housing Element update process, for design standards that would ensure consistency with the City of Berkeley's architectural quality;
  - b. Establish an advisory Design Review process through the Design Review Committee (DRC). An applicant may elect to return for advisory comment up to two more times. For projects with fewer than 150 units, the City shall review and approve, based on consistency with objective standards, an affordable housing application within 90 days of submission. After 60 days, the City shall provide the applicant with an exhaustive list of objective standards not met by the project, and how the standards could or should be met. For projects with 150 units or more, these time frames shall be 90 and 180 days, respectively. The time under these provisions will toll between the City's issuance of a letter describing inconsistency with objective standards and the time necessary for the applicant to respond to those items.

#### POLICY COMMITTEE RECOMMENDATION

On October 7, 2021 the Land Use, Housing & Economic Development policy committee took the following action: M/S/C (Robinson/Hahn) Positive recommendation to approve the item as submitted in supplemental material from the Author; revising the first paragraph of the recommendation to read *"Council refers to the City Manager and the Planning Commission to consider an Affordable Housing Overlay for 100% affordable housing and seek to integrate it into the ongoing Housing Element process in anticipation of the 2023-2031 RHNA cycle. Staff should consider revisions to the zoning code and General Plan, permitting increased height and density for 100% affordable housing developments, including specific consideration of labor and design/form standards, to achieve the underlying goals:"*; and adding the words *"or form-based standards"* to bullet 4 of the recommendation.

#### BACKGROUND

Berkeley has made insufficient progress on meeting its state-mandated Regional Housing Need Allocation (RHNA) goals for low- and moderate-income housing in the

2014-2022 RHNA cycle. As recently as the city's 2020<sup>1</sup> Housing Pipeline Report, the city had only fulfilled 23% of its moderate-income RHNA goals, 21% of its RHNA goals for Very-Low Income households, and a mere 4% for Low-Income households. Berkeley's next RHNA cycle is estimated to mandate roughly 3 times as many units<sup>2</sup> as the previous cycle's total of 2,959 units across all income tiers. SB-330 by Sen. Nancy Skinner (D-Berkeley), passed in 2019, requires municipal general plans to zone adequately to meet residential capacity mandated by RHNA goals and state-certified Housing Elements.

Affordable housing will continue to be a high priority, but nonprofit affordable housing developers may face stiff competition for scarce land with market-rate developers, particularly during an anticipated period of economic recovery. In 2019, Governor Newsom signed AB-1763 by Assembly member David Chiu (D-SF), amending California Government Code 65915 to confer greater fiscal advantages for 100% affordable housing developments through state density bonus law. The bill prohibits minimum parking requirements (which Berkeley has recently removed) and grants an increase of up to 33' in permitted height, with a waiver on density restrictions for projects located within a half-mile of major transit stops.

When the 42-unit affordable housing project at Harpers Crossing opened in Berkeley, at a total project cost of \$18 million, over 700 seniors applied. Without substantial funding and square footage for affordable housing, the City of Berkeley will be increasingly challenged to create enough subsidized housing to meet increasing demand. Increased allowable density and streamlined approvals for affordable housing will also be key to meeting Berkeley's RHNA goals for low- and moderate-income housing.

#### RATIONALE FOR RECOMMENDATION

As of 2019, development costs in the San Francisco Bay Area averaged \$600,000 for new housing funded by 9% Low Income Housing Tax Credits.<sup>3</sup> At this cost, building nearly 4,000 housing units for low- and very low-income households would cost roughly \$2.5 billion, several orders of magnitude larger than the City of Berkeley's General Fund and Measure O bond funding.

Additional density bonuses and ministerial approval could reduce costs for affordable housing and increase Berkeley's capacity to meet its RHNA goals for low- and moderate-income housing. Increasing height limits allows smaller sites to fit enough homes to reach the economy of scale needed for affordable housing. According to an October 2014 report on affordable housing development by several state housing

<sup>1</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2020/07\\_Jul/Documents/2020-07-28\\_Item\\_45\\_Annual\\_Housing\\_Pipeline\\_Report.aspx&sa=U&ved=2ahUKEwjc3tDIntHuAhXWu54KHdyGAtAQFjABegQICRAC&usg=AOvVaw0eXQ4oP5AAL14h0lphPdr](https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-28_Item_45_Annual_Housing_Pipeline_Report.aspx&sa=U&ved=2ahUKEwjc3tDIntHuAhXWu54KHdyGAtAQFjABegQICRAC&usg=AOvVaw0eXQ4oP5AAL14h0lphPdr)

<sup>2</sup> [https://abag.ca.gov/sites/default/files/draft\\_rhna\\_allocation\\_presentation\\_to\\_exec\\_bd\\_jan\\_21.pdf](https://abag.ca.gov/sites/default/files/draft_rhna_allocation_presentation_to_exec_bd_jan_21.pdf)

<sup>3</sup> Reid, C. (2020). The Costs of Affordable Housing Production: Insights from California's 9% Low-Income Housing Tax Credit Program. *UC Berkeley Turner Center for Housing Innovation*. Retrieved from [https://turnercenter.berkeley.edu/wp-content/uploads/pdfs/LIHTC\\_Construction\\_Costs\\_March\\_2020.pdf](https://turnercenter.berkeley.edu/wp-content/uploads/pdfs/LIHTC_Construction_Costs_March_2020.pdf)



agencies, “for each 10 percent increase in the number of units, the cost per unit declines by 1.7 percent.”<sup>4</sup> A 2020 study by UC Berkeley’s Turner Center on affordable housing projects funded by 9% Low Income Housing Tax Credits reported: “On average, efficiencies of scale translate into a reduction of about \$1,162 for every additional unit in a project.”<sup>5</sup>

Increased density and streamlined, predictable permitting processes through ministerial review can increase the amount of affordable housing that limited public subsidies are able to provide. By-right permitting is associated with increased housing supply and price elasticity<sup>6</sup> and lower “soft costs,” which is particularly beneficial to projects funded by Low Income Housing Tax Credits (LIHTC)<sup>7</sup>, with complex financing structures that may risk loss of funding due to uncertainty and delays in the permit process.<sup>8</sup>

There is existing precedent in the state of California for meeting low-income RHNA goals with an Affordable Housing Overlay. In eastern Contra Costa County, the newly-incorporated city of Oakley established an Affordable Housing Overlay in 2005, which has yielded 7 affordable housing developments totaling 509 housing units combined as of 2019.<sup>9</sup> Despite local opposition to low-income housing, the AHO enabled the city to obtain state certification for its first 2001-2007 Housing Element, procure funding from the county, and meet its low-income RHNA goals by rezoning 16.3 acres for multifamily housing.

According to the Association of Bay Area Governments (ABAG), 28 jurisdictions in the 9-county Bay Area have some form of Housing Overlay Zone policy.<sup>10</sup>

According to a 2010 fact sheet by Public Advocates and East Bay Housing Organizations (EBHO), “the more valuable the developer incentives included in a Housing Overlay Zone, the more effective the HOZ will be in encouraging production of homes that people can afford. Desirable incentives both motivate developers to take

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<sup>4</sup> California Department of Housing and Community Development, et al. (2014). Affordable Housing Cost Study: Analysis of the Factors that Influence the Cost of Building Multi-Family Affordable Housing in California. Retrieved from [https://www.treasurer.ca.gov/ctcac/affordable\\_housing.pdf](https://www.treasurer.ca.gov/ctcac/affordable_housing.pdf)

<sup>5</sup> See footnote 3.

<sup>6</sup> Mayer, C. J., & Somerville, C. T. (2000). Land use regulation and new construction. *Regional Science and Urban Economics*, 30(6), 639–662. doi:10.1016/s0166-0462(00)00055-7

<sup>7</sup> Hoyt, H. (2020). More is Less? An Inquiry into Design and Construction Strategies for Addressing Multifamily Housing Costs. *Joint Center for Housing Studies of Harvard University*. Retrieved from [https://www.jchs.harvard.edu/sites/default/files/media/imp/harvard\\_jchs\\_gramlich\\_design\\_and\\_construction\\_strategies\\_multifamily\\_hoyt\\_2020\\_3.pdf](https://www.jchs.harvard.edu/sites/default/files/media/imp/harvard_jchs_gramlich_design_and_construction_strategies_multifamily_hoyt_2020_3.pdf)

<sup>8</sup> Kendall, M. (2019, Nov. 24). Is California’s most controversial new housing production law working? *Mercury News*. Retrieved from <https://www.mercurynews.com/2019/11/24/is-californias-most-controversial-new-housing-production-law-working/>

<sup>9</sup> UC Berkeley Turner Center for Housing Innovation. (2019). Affordable Housing Overlays: Oakley. Retrieved from [https://turnercenter.berkeley.edu/wp-content/uploads/2020/10/Affordable\\_Housing\\_Overlay\\_Zones\\_Oakley.pdf](https://turnercenter.berkeley.edu/wp-content/uploads/2020/10/Affordable_Housing_Overlay_Zones_Oakley.pdf)

<sup>10</sup> <http://housing.abag.ca.gov/policysearch>

advantage of the HOZ, and reduce development costs to allow construction of more affordable homes.”<sup>11</sup>

The City Council of Cambridge, Massachusetts passed an Affordable Housing Overlay amendment to its zoning code in October of 2020.<sup>12</sup> The City Council of Somerville, MA passed a similar zoning ordinance in December of 2020. These zoning overlays permit greater height and density for ministerial approval 100% Below Market-Rate housing developments, following objective design criteria, in residential and commercial zones. The intent of these ordinances is to increase the availability of infill sites with an advantage for affordable housing development where nonprofit and public entities may otherwise be unable to compete in the private market, as well as promoting a more equitable distribution of affordable housing in cities where class and racial segregation still mirrors the historical legacy of redlining and Jim Crow-era racial covenants.

These ordinances preserve open space requirements and comport with restrictions on historic districts. The Somerville<sup>13</sup> and Cambridge<sup>14</sup> Overlays were overwhelmingly supported by nonprofit affordable housing developers and activists. The city of Boston is now considering similar proposals.<sup>15</sup>

Prior to the introduction of the city’s Affordable Housing Overlay policy, Somerville City Councilor Ben Ewen-Campen, chair of the council’s Land Use Committee, directed city staff to survey the region’s affordable housing. “Overwhelmingly, we heard about two obstacles,” Ewen-Campen wrote.<sup>16</sup>

*First, and most obviously, is the cost of land. Today, it is nearly impossible for any non-profit housing developer to purchase property in Somerville. This is no surprise: they are competing against “market rate” developers and investors who can afford to pay far more because they’ll soon be making windfall profits in our red-hot real estate market. Second, the funding agencies that support affordable housing are looking for predictability and certainty in the projects they support. This*

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<sup>11</sup> [http://www.friendsofrpe.org/files/HOZ\\_Fact\\_Sheet\\_FINAL\\_7-27-10%282%29.pdf](http://www.friendsofrpe.org/files/HOZ_Fact_Sheet_FINAL_7-27-10%282%29.pdf)

<sup>12</sup> Sennott, A. (2020). Mayor: ‘An important social justice moment.’ Councilors pass Affordable Housing Overlay after more than 20 community meetings. *WickedLocal.com*. Retrieved from <https://www.wickedlocal.com/story/cambridge-chronicle-tab/2020/10/06/an-important-social-justice-moment-cambridge-councilors-pass-affordable-housing-overlay/114657068/>

<sup>13</sup> Taliesin, J. (2020). Somerville moves to facilitate local affordable housing development. *WickedLocal.com*. Retrieved from <https://www.wickedlocal.com/story/somerville-journal/2020/11/23/residents-support-citys-move-ease-affordable-housing-development/6328944002/>

<sup>14</sup> Eisner, D. (2020). The Historic Affordable Housing Overlay Is about to Pass. How Did It Overcome so Many Obstacles? *A Better Cambridge*. Retrieved from [https://www.abettercambridge.org/the\\_historic\\_affordable\\_housing\\_overlay\\_is\\_about\\_to\\_pass\\_how\\_did\\_it\\_overcome\\_so\\_many\\_obstacles](https://www.abettercambridge.org/the_historic_affordable_housing_overlay_is_about_to_pass_how_did_it_overcome_so_many_obstacles)

<sup>15</sup> Logan, T. (2020). Boston to consider looser zoning for affordable housing. *The Boston Herald*. Retrieved from <https://www.bostonglobe.com/2020/08/24/business/boston-mull-looser-zoning-affordable-housing/>

<sup>16</sup> Ewen-Campen, B. (2020). We need a city-wide ‘Affordable Housing Overlay District’ in Somerville. *The Somerville Times*. Retrieved from <https://www.thesomervilletimes.com/archives/103539>

*means that the uncertainty, delays, and discretionary nature of the permitting process in Somerville can be a major issue when attempting to secure funding. Together, these two obstacles mean that new affordable units in Somerville are almost always created by market rate developers through Somerville's "20% inclusionary zoning" policy, which is absolutely necessary but nowhere near sufficient to meet Somerville's goals for affordability.*

Affordable housing nonprofits in California face similar fiscal and regulatory barriers to developing much-needed low- and moderate-income housing. While Berkeley does not have an abundance of vacant and/or publicly-owned land close to transit to help meet these goals, an Affordable Housing Overlay permitting more density for residential uses on commercial corridors for 100% affordable housing can tap into a larger subset of commercial parcels with residential potential in the city. According to a study by the UC Berkeley Turner Center for Housing Innovation, mid-sized cities in the San Francisco Bay Area have an average of 32.4% of land zoned for commercial uses, and this land tends to be evenly distributed between high- and low-opportunity neighborhoods as defined by the state's Tax Credit Allocation Committee.<sup>17</sup>

An overlay for 100% affordable housing with density bonuses and ministerial review would be critical for ensuring that residential zoning does not exclude affordable housing for low- and moderate-income households from high-opportunity neighborhoods, a necessary precondition for the city to comply with fair housing law.

Pursuant to Assembly Bill 686 (Santiago) passed in 2018, jurisdictions are required to produce housing elements that comply with the Affirmatively Furthering Fair Housing rule published by the U.S. Department of Housing and Urban Development (HUD) on July 16, 2015. The bill defines this requirement in the context of housing elements as "taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws."<sup>18</sup>

Zoning standards that prohibit densities needed for more affordable housing in high-opportunity neighborhoods risk exacerbating gentrification and displacement. According to research by the UC Berkeley Urban Displacement Project, 83% of today's gentrifying areas were rated "hazardous" or "declining" by the Home Owners Loan Corporation (HOLC), in part due to their Black and Asian populations, and denied federal mortgage insurance in the agency's infamous redlining maps of the early 20<sup>th</sup> Century. "Desirable"

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<sup>17</sup> Romem, I. & Garcia, D. (2020). Residential Redevelopment of Commercially Zoned Land in California. *UC Berkeley Turner Center for Housing Innovation*. Retrieved from <https://turnercenter.berkeley.edu/wp-content/uploads/2020/12/Residential-Redevelopment-of-Commercially-Zoned-Land-in-California-December-2020.pdf>

<sup>18</sup> [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180AB686](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB686)

neighborhoods with federal mortgage insurance were restricted to white homebuyers, and 75% of those neighborhoods are still measurably exclusionary today.<sup>19</sup>

The Urban Displacement Project has also reported that “subsidized housing is twice as effective as market-rate housing in mitigating displacement,” and Cash & Zuk (2019) recommend “equitable development considerations” which include “open[ing] up high-opportunity neighborhoods to low-income households.”<sup>20</sup> Additionally, the researchers recommend local preference or right to return policies “to stabilize neighborhoods as new developments take root,” and the City of Berkeley has implemented a local preference policy as part of the Adeline Corridor Specific Plan.<sup>21</sup>

As the Home for All SMC Housing Overlay Zone fact sheet explains: “In locations where the zoning doesn’t allow residential development, HOZs can enable housing construction while avoiding the lengthy process of amending a general plan.”<sup>22</sup> This proposal only refers broad recommendations for general plan amendments to the Planning Commission to align intended outcomes of the Affordable Housing Overlay with general plan revisions that will result from the upcoming Housing Element update, but a robust Overlay can continue to promote 100% affordable housing development in future cycles when general plan amendments are not under consideration.

Additionally, an enhanced density bonus program with robust skilled and trained workforce requirements can incorporate consistent labor standards<sup>23</sup> into beneficial economies of scale.

### ALTERNATIVES CONSIDERED

Due to aforementioned state laws, there is no alternative in which the City of Berkeley does not rezone certain areas to meet its upcoming RHNA goals and have a certified Housing Element. While the city could simply abide by the standards set forth in AB-1763 with no additional incentives or streamlining for 100% affordable housing, this would risk insufficiently prioritizing low- and moderate-income housing, and is inconsistent with goals already identified by the City Manager’s office to reduce homelessness and housing insecurity.

The City Manager’s 1000 Person Plan to End Homelessness<sup>24</sup> includes among its strategic recommendations:

<sup>19</sup> Cash, A. (2020). Redlining in Berkeley: the Past is Present. *Berkeley Rent Stabilization Board*. Retrieved from [https://www.cityofberkeley.info/uploadedFiles/Rent\\_Stabilization\\_Board/Level\\_3\\_-\\_General/SPECIAL\\_Item%206\\_Redlining%20in%20Berkeley%20presentation\\_02.20.20\\_FINAL\(2\).pdf](https://www.cityofberkeley.info/uploadedFiles/Rent_Stabilization_Board/Level_3_-_General/SPECIAL_Item%206_Redlining%20in%20Berkeley%20presentation_02.20.20_FINAL(2).pdf)

<sup>20</sup> Cash, A & Zuk, M. (2019). Investment Without Displacement: From Slogan to Strategy. *Shelterforce*. Retrieved from <https://shelterforce.org/2019/06/21/investment-without-displacement-from-slogan-to-strategy/>

<sup>21</sup> [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Land\\_Use\\_Division/Adeline%20Corridor%20Specific%20Plan%20Nov.%202020.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Land_Use_Division/Adeline%20Corridor%20Specific%20Plan%20Nov.%202020.pdf)

<sup>22</sup> <https://homeforallsmc.org/toolkits/housing-overlay-zones/>

<sup>23</sup> [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220SB7](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB7)

<sup>24</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2019/02\\_Feb/Documents/2019-02-26\\_Item\\_20\\_Referral\\_Response\\_1000\\_Person\\_Plan.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2019/02_Feb/Documents/2019-02-26_Item_20_Referral_Response_1000_Person_Plan.aspx)

*“Continue implementing changes to Berkeley’s Land Use, Zoning, and Development Review Requirements for new housing with an eye towards alleviating homelessness. If present economic trends continue, the pace with which new housing is currently being built in Berkeley will likely not allow for a declining annual homeless population. Berkeley should continue to streamline development approval processes and reform local policies to help increase the overall supply of housing available.”*

### ENVIRONMENTAL IMPACTS

Research from UC Berkeley scholars and the CoolClimate Network<sup>25</sup> finds that urban infill offers one of the greatest potential policy levers for municipalities to reduce their greenhouse gas emissions. Incentives for affordable housing, such as density bonuses, also offer potential to reduce per capita VMT by increasing housing options in Berkeley and shortening commute times for a greater share of the local workforce. In an analysis of 252 California Cities, Durst (2021) finds that “each additional affordable housing incentive is associated with a 0.37 percentage point decrease in the share of workers who commute more than 30 minutes.”<sup>26</sup>

An Affordable Housing Overlay coupled with the city’s Local Preference policy could reduce Berkeley’s transportation emissions by reducing per capita VMT pursuant to goals established in the city’s Climate Action Plan.

### FISCAL IMPACTS

TBD.

The City Manager’s 1000 Person Plan to End Homelessness notes that the fiscal impact of land use reform “could not be quantified” at the time the report was issued.

### CONTACT

Councilmember Terry Taplin (District 2), 510-983-7120, [ttaplin@cityofberkeley.info](mailto:ttaplin@cityofberkeley.info)

### ATTACHMENTS/SUPPORTING MATERIALS

1. Berkeley AHO Infographic with art by by Alfred Twu (reflects previous draft)
2. Cambridge, MA: Ordinance No. 2020-8
3. Assembly Bill 1763 (2019)

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<sup>25</sup> Jones, C. et al. (2017). Carbon Footprint Planning: Quantifying Local and State Mitigation Opportunities for 700 California Cities. *Urban Planning*, 3(2). doi:10.17645/up.v3i2.1218.

<sup>26</sup> Durst, N. J. (2021). Residential Land Use Regulation and the Spatial Mismatch between Housing and Employment Opportunities in California Cities. *Turner Center for Housing Innovation*. Retrieved from <http://californialanduse.org/download/Durst%20Residential%20Land%20Use%20Regulation%202020.pdf>



## Low Density Zones (R-1, R-1A, R-2, R-2A)





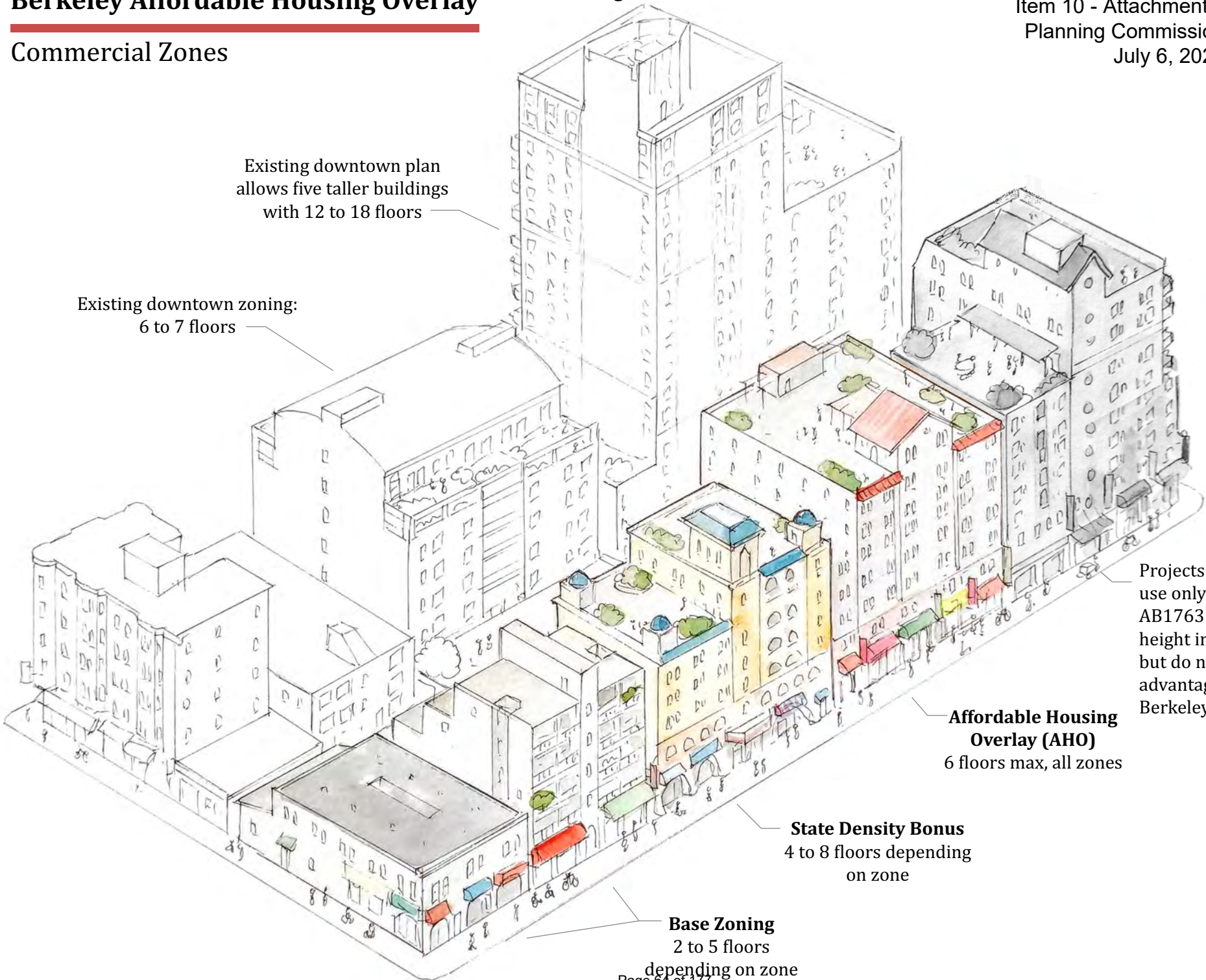
## Medium Density Zones (R-3, R-4)



## Commercial Zones

Existing downtown plan  
allows five taller buildings  
with 12 to 18 floors

Existing downtown zoning:  
6 to 7 floors



Projects that choose to  
use only state law  
AB1763 may have more  
height in some zones,  
but do not get other  
advantages of using the  
Berkeley AHO

**Affordable Housing  
Overlay (AHO)**  
6 floors max, all zones

**State Density Bonus**  
4 to 8 floors depending  
on zone

**Base Zoning**  
2 to 5 floors  
depending on zone

**ORDINANCE NO. 2020-8 – First Publication**

CITY OF CAMBRIDGE

In the Year Two Thousand and Twenty

AN ORDINANCE

ORDERED: That the attached proposed zoning ordinance establishing an Affordable Housing Overlay be submitted by the City Council, and that it be referred to the Committee on Ordinances and the Planning Board for public hearings, as provided in Chapter 40A, Section 5 of the Massachusetts General Laws, to wit:

ORDERED: That the Cambridge City Council amend Section 2.000, DEFINITIONS, of the Zoning Ordinance of the City of Cambridge amended to insert the following definitions alphabetically:

**Affordable Housing Overlay (AHO).** A set of modified development standards set forth in Section 11.207.3 of this Zoning Ordinance intended to allow incremental increases in density, limited increases in height, and relaxation of certain other zoning limitations for residential developments in which all units are made permanently affordable to households earning up to 100% of area median income.

**Affordable Housing Overlay (AHO) Dwelling Unit.** A dwelling unit within an AHO Project for which occupancy is restricted to an AHO Eligible Household and whose rent or initial sale price is established by the provisions of Section 11.207.3 of this Zoning Ordinance.

**Affordable Housing Overlay (AHO) Eligible Household.** A household whose gross household income does not exceed the amounts set forth in Section 11.207.3 of this Zoning Ordinance.

**Affordable Housing Overlay (AHO) Project.** The construction of a new building or buildings and/or the modification of an existing building or buildings resulting in single-family, two-family, townhouse, or multifamily dwellings within which each dwelling unit is an AHO Dwelling Unit subject to the standards and restrictions set forth in Section 11.207 of this Zoning Ordinance.

**Grade.** The mean finished ground elevation of a lot measured either around the entire perimeter of the building or along any existing wall facing a public street, which ground elevation is maintained naturally without any structural support.



**Ground Story or Ground Floor.** The lowest Story Above Grade within a building. Story. That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above.

**Story Above Grade.** A Story whose highest point is more than 4 feet above the Grade.

**Story Below Grade.** Any Story that is lower than the Ground Story of a building.

ORDERED: That the Cambridge City Council amend of the Zoning Ordinance of the City of Cambridge, by inserting a new section 11.207, **AFFORDABLE HOUSING OVERLAY**, to read as follows:

#### 11.207.1 Purpose and Intent

The purpose of this Section is to promote the public good by supporting the development of housing that is affordable to households earning up to 100% of area median income. The intent of this Section is to allow incremental increases in density, limited increases in height, and relaxation of certain other zoning limitations for residential developments in which all units are made permanently affordable to households earning up to 100% of area median income (referred to as “AHO Projects,” as defined in Article 2.000 of this Zoning Ordinance); to incentivize the reuse of existing buildings in order to create AHO Projects that are more compatible with established neighborhood character; to promote the city’s urban design objectives in Section 19.30 of this Zoning Ordinance while enabling AHO Projects to be permitted as-of-right, subject to non-binding advisory design consultation procedures that follow all design objectives set forth within this Zoning Ordinance and the results of the design review process shall be provided to the Cambridge Affordable Housing Trust; and to apply such standards throughout the City, to promote city planning goals of achieving greater socioeconomic diversity and a more equitable distribution of affordable housing citywide.

#### 11.207.2 Applicability

- (a) The provisions set forth in this Section shall apply to AHO Projects, as defined in Article 2.000 of this Zoning Ordinance, in all zoning districts except Open Space Districts.
- (b) An AHO Project shall be permitted as-of-right if it meets all of the standards set forth in this Affordable Housing Overlay in place of the requirements otherwise applicable in the zoning district. Any development not meeting all of

the standards set forth in this Affordable Housing Overlay shall be subject to the requirements otherwise applicable in the zoning district, including any requirements for special permits.

11.207.3 Standards for Eligibility, Rent, and Initial Sale Price for AHO Dwelling Units

- (a) All dwelling units in an AHO Project shall comply with the standards for AHO Dwelling Units as set forth in this Section.
- (b) For all AHO Dwelling Units:
  - (i) AHO Dwelling Units shall be rented or sold only to AHO Eligible Households, with preference given to Cambridge residents, and former Cambridge residents who experienced a no-fault eviction in Cambridge in the last twelve (12) months, in accordance with standards and procedures related to selection, asset limits, and marketing established by the Community Development Department (CDD) and applicable state funding requirements.
  - (ii) AHO Dwelling Units shall be created and conveyed subject to recorded covenants approved by CDD guaranteeing the permanent availability of the AHO Dwelling Units for AHO Eligible Households.
- (c) For rental AHO Dwelling Units:
  - (i) The gross household income of an AHO Eligible Household upon initial occupancy shall be no more than one-hundred percent (100%) of AMI.
  - (ii) At least eighty percent (80%) of AHO Dwelling Units within the project shall be occupied by AHO Eligible Households whose gross household income upon initial occupancy is no more than eighty percent (80%) of AMI.
  - (iii) Rent, including utilities and any other fees routinely charged to tenants and approved by CDD, shall not exceed thirty percent (30%) of the gross household income of the AHO Eligible Household occupying the AHO Dwelling Unit or other similar standard pursuant to an applicable housing subsidy program which has been approved by CDD.

- (iv) After initial occupancy, the gross household income of an AHO Eligible Household shall be verified annually, or on such other basis required by an applicable housing subsidy program which has been approved by CDD, to determine continued eligibility and rent, in accordance with policies, standards, and procedures established by CDD.
  - (v) An AHO Eligible Household may continue to rent an AHO Dwelling Unit after initial occupancy even if the AHO Eligible Household's gross household income exceeds the eligibility limits set forth above, but may not exceed one hundred twenty percent (120%) of AMI for more than one year after that Eligible Household's gross household income has been verified to exceed such percentage, unless otherwise restricted pursuant to an applicable housing subsidy program which has been approved by CDD.
  - (vi) Notwithstanding the requirements set forth in (i) through (v) above, an owner may voluntarily choose to charge a lower rent than as provided herein for AHO Dwelling Units.
- (d) For owner-occupied AHO Dwelling Units:
- (i) The gross household income of an AHO Eligible Household upon initial occupancy shall be no more than one-hundred percent (100%) of AMI.
  - (ii) At least fifty percent (50%) of AHO Dwelling Units shall be sold to AHO Eligible Households whose gross household income upon initial occupancy is no more than eighty percent (80%) of AMI.
  - (iii) The initial sale price of an AHO Dwelling Unit shall be approved by CDD and shall be determined to ensure that the monthly housing payment (which shall include debt service at prevailing mortgage loan interest rates, utilities, condominium or related fees, insurance, real estate taxes, and parking fees, if any) shall not exceed thirty percent (30%) of the monthly income of:
    - 1) A household earning ninety percent (90%) of AMI, in the case of an AHO Dwelling Unit to be sold to an AHO Eligible Household whose income upon initial



occupancy is no more than one-hundred percent (100%) of AMI; or

- 2) A household earning seventy percent (70%) of AMI, in the case of an AHO Dwelling Unit to be sold to an AHO Eligible Household whose income upon initial occupancy is no more than eighty percent (80%) of AMI
- (e) An AHO Project meeting the standards set forth herein as approved by CDD shall not be required to comply with the Inclusionary Housing Requirements set forth in 11.203 of this Zoning Ordinance.

#### 11.207.4 Use

- (a) In all zoning districts, an AHO Project may contain single-family, two-family, townhouse, or multifamily dwellings as-of-right. Townhouse and Multifamily Special Permit procedures shall not apply.
- (b) An AHO Project may contain active non-residential uses on the ground floor as they may be permitted as-of-right in the base zoning district or the overlay district(s) that are applicable to a lot, which for the purpose of this Section shall be limited to Institutional Uses listed in Section 4.33, Office Uses listed in Section 4.34 Paragraphs a. through e., and Retail and Consumer Service uses listed in Section 4.35 that provide services to the general public.

#### 11.207.5 Development Standards

##### 11.207.5.1 General Provisions

- (a) For the purposes of this Section, the phrase “District Development Standards” shall refer to the development standards of the base zoning district as they may be modified by the development standards of all overlay districts (with the exception of this Affordable Housing Overlay) that are applicable to a lot.
- (b) District Dimensional Standards shall include the most permissive standards allowable on a lot, whether such standards are permitted as-of-right or allowable by special permit. A District Dimensional Standard that is allowable by special permit shall include any nondiscretionary requirements or limitations that would otherwise apply.

- (c) An AHO Project that conforms to the following development standards shall not be subject to other limitations that may be set forth in Article 5.000 or other Sections of this Zoning Ordinance, except as otherwise stated in this Section.

11.207.5.2 Dimensional Standards for AHO Projects

11.207.5.2.1 Building Height and Stories Above Grade. For an AHO Project, the standards set forth below shall apply in place of any building height limitations set forth in the District Development Standards.

- (a) Where the District Dimensional Standards set forth a maximum residential building height of forty (40) feet or less, an AHO Project shall contain no more than four (4) Stories Above Grade and shall have a maximum height of forty-five (45) feet, as measured from existing Grade. For AHO Projects containing active non-residential uses on the ground floor, the maximum height may be increased to fifty (50) feet but the number of Stories Above Grade shall not exceed four (4) stories.
- (b) Where the District Dimensional Standards set forth a maximum residential building height of more than forty (40) feet but not more than fifty (50) feet, an AHO Project shall contain no more than six (6) Stories Above Grade and shall have a maximum height of sixty-five (65) feet, as measured from existing Grade, except as further limited below. For AHO Projects containing active non-residential uses on the ground floor, the maximum height may be increased to seventy (70) feet but the number of Stories Above Grade shall not exceed six (6) stories.
  - (i) Except where the AHO Project abuts a non-residential use, portions of an AHO Project that are within thirty-five (35) feet of a district whose District Dimensional Standards allow a maximum residential building height of forty (40) feet or less shall be limited by the provisions of Paragraph (a) above, except that if the AHO project parcel extends into that District, then the height limitation shall only extend thirty five (35) feet from the property line.
- (c) Where the District Dimensional Standards set forth a maximum residential building height of more than fifty (50) feet, an AHO Project shall contain no more than seven (7) Stories Above Grade and shall have a maximum height

of eighty (80) feet, as measured from existing Grade, except as further limited below.

- (i) Except where the AHO Project abuts a non-residential use, portions of an AHO Project that are within thirty-five (35) feet of a district whose District Dimensional Standards allow a maximum residential building height of forty (40) feet or less shall be reduced to a minimum of five (5) Stories Above Grade or a maximum height of sixty (60) feet, as measured from existing Grade, except that if the AHO project parcel extends into that District, then the height limitation shall only extend thirty five (35) feet from the property line.
- (d) The Height Exceptions set forth in Section 5.23 of this Zoning Ordinance shall apply when determining the building height of an AHO Project.

#### 11.207.5.2.2 Residential Density

- (a) Where the District Dimensional Standards establish a maximum floor area ratio (FAR) of less than 1.00, an AHO Project shall not exceed an FAR of 2.00. Otherwise, there shall be no maximum FAR for an AHO Project.
- (b) There shall be no minimum lot area per dwelling unit for an AHO Project.

#### 11.207.5.2.3 Yard Setbacks

- (a) For the purpose of this Section, the applicable District Dimensional Standards shall not include yard setback requirements based on a formula calculation as provided in Section 5.24.4 of the Zoning Ordinance, but shall include non-derived minimum yard setback requirements set forth in Article 5.000 or other Sections of this Zoning Ordinance.
- (b) Front Yards. An AHO Project shall have a minimum front yard setback of 15 feet, except where the District Dimensional Standards establish a less restrictive requirement, or may be reduced to the average of the front yard setbacks of the four (4) nearest pre-existing principal buildings that contain at least two Stories Above Grade and directly front the same side of the street as the AHO Project, or may be reduced to a minimum of ten (10) feet in the case of an AHO Project on a corner lot. Where the District Dimensional Standards set forth different requirements for residential and non-residential uses, the

non-residential front yard setback requirement shall apply to the entire AHO Project if the Ground Story contains a non-residential use as set forth in Section 11.207.4 Paragraph (b) above; otherwise, the residential front yard setback shall apply.

- (c) Side Yards. An AHO Project shall have a minimum side yard setback of seven and one-half (7.5) feet, or may be reduced to the minimum side yard setback set forth in the District Dimensional Standards for residential uses that is not derived by formula if it is less restrictive.
- (d) Rear Yards. An AHO Project shall have a minimum rear yard setback of twenty (20) feet, or may be reduced to the minimum rear yard setback set forth in the District Dimensional Standards for residential uses that is not derived by formula if it is less restrictive.
- (e) Projecting eaves, chimneys, bay windows, balconies, open fire escapes and like projections which do not project more than three and one-half (3.5) feet from the principal exterior wall plane, and unenclosed steps, unroofed porches and the like which do not project more than ten (10) feet beyond the line of the foundation wall and which are not over four (4) feet above Grade, may extend beyond the minimum yard setback.
- (f) Bicycle parking spaces, whether short-term or long-term, and appurtenant structures such as coverings, sheds, or storage lockers may be located within a required yard setback but no closer than seven and one-half (7.5) feet to an existing principal residential structure on an abutting lot.

#### 11.207.5.2.4 Open Space

- (a) Except where the District Dimensional Standards establish a less restrictive requirement or as otherwise provided below, the minimum percentage of open space to lot area for an AHO Project shall be thirty percent (30%). However, the minimum percentage of open space to lot area may be reduced to no less than fifteen percent (15%) if the AHO Project includes the preservation and protection of an existing building included on the State Register of Historic Places.
- (b) The required open space shall be considered Private Open Space but shall be subject to the limitations set forth below and shall not be subject to the dimensional and other limitations set forth in Section 5.22 of this Zoning

Ordinance. Private Open Space shall exclude parking and driveways for automobiles.

- (c) All of the required open space that is located at grade shall meet the definition of Permeable Open Space as set forth in this Zoning Ordinance.
- (d) The required open space shall be located at Grade or on porches and decks that are no higher than the floor elevation of the lowest Story Above Grade, except that up to twenty five percent (25%) of the required open space may be located at higher levels, such as balconies and decks, only if it is accessible to all occupants of the building.
- (e) For the purpose of this Affordable Housing Overlay, area used for covered or uncovered bicycle parking spaces that are not contained within a building shall be considered Private Open Space.

#### 11.207.5.3 Standards for Existing Buildings

A building that is in existence as of the effective date of this Ordinance and does not conform to the standards set forth in Section 11.207.5.2 above may be altered, reconstructed, extended, relocated, and/or enlarged for use as an AHO Project as-of-right in accordance with the standards set forth below. Except as otherwise stated, the required dimensional characteristics of the building and site shall be those existing at the time of the conversion to an AHO Project if they do not conform to the standards of Section 11.207.5.2. The following modifications shall be permitted as-of-right, notwithstanding the limitations set forth in Article 8.000 of this Zoning Ordinance:

- (a) Construction occurring entirely within an existing structure, including the addition of Gross Floor Area within the interior of the existing building envelope that may violate or further violate FAR limitations set forth in Section 11.207.5.2, and including any increase to the number of dwelling units within the existing building, provided that the resulting number of Stories Above Grade is not more than the greater of the existing number of Stories Above Grade or the existing height of the building divided by 10 feet.
- (b) The relocation, enlargement, or addition of windows, doors, skylights, or similar openings to the exterior of a building.

- (c) The addition of insulation to the exterior of an existing exterior wall to improve energy efficiency, provided that the resulting exterior plane of the wall shall either conform to the yard setback standards set forth in Section 11.207.5.2 above or shall not intrude more than eight (8) inches further into the existing yard setback and provided that the lot shall either conform to the open space standards set forth in Section 11.207.5.2 or shall not decrease the existing open space by more than 5% or 100 square feet, whichever is greater.
- (d) The installation of exterior features necessary for the existing structure to be adapted to meet accessibility standards for persons with disabilities, including but not limited to walkways, ramps, lifts, or elevators, which may violate or further violate of the dimensional requirements set forth in Section 11.207.5.2.
- (e) The repair, reconstruction, or replacement of any preexisting nonconforming portions of a building including but not limited to porches, decks, balconies, bay windows and building additions, provided that the repair, reconstruction or replacement does not exceed the original in footprint, volume, or area.
- (f) Any other alterations, additions, extensions, or enlargements to the existing building that are not further in violation of the dimensional requirements set forth in Section 11.207.5.2 above.

#### 11.207.6 Parking and Bicycle Parking

The limitations set forth in Article 6.000 of this Zoning Ordinance shall be modified as set forth below for an AHO Project.

##### 11.207.6.1 Required Off-Street Accessory Parking

- (a) There shall be no required minimum number of off-street parking spaces for an AHO Project except to the extent necessary to conform to other applicable laws, codes, or regulations.
- (b) An AHO Project of greater than 20 units, for which no off-street parking is provided shall provide or have access to either on-street or off-street facilities that can accommodate passenger pick-up and drop-off by motor vehicles and short-term loading by moving vans or small delivery trucks. The Cambridge Traffic, Parking, and Transportation Department shall certify to the Superintendent of Buildings



that the AHO Project is designed to reasonably accommodate such activity without causing significant hazard or congestion. The Cambridge Director of Traffic, Parking, and Transportation shall have the authority to promulgate regulations for the implementation of the provisions of this Paragraph.

#### 11.207.6.2 Accessory Parking Provided Off-Site

- (a) Off-street parking facilities may be shared by multiple AHO Projects, provided that the requirements of this Section are met by all AHO Dwelling Units served by the facility and the facility is within 1,000 feet of all AHO Projects that it serves.
- (b) Off-street parking facilities for an AHO Project may be located within existing parking facilities located within 1,000 feet of the AHO Project and in a district where parking is permitted as a principal use or where the facility is a pre-existing nonconforming principal use parking facility, provided that the owner of the AHO Project shall provide evidence of fee ownership, a long-term lease agreement or renewable short-term lease agreement, recorded covenant, or comparable legal instrument to guarantee, to the reasonable satisfaction of the Superintendent of Buildings, that such facilities will be available to residents of the AHO Project.

#### 11.207.6.3 Modifications to Design and Layout Standards for Off-Street Parking

- (a) Notwithstanding Section 6.43.2, parking spaces may be arranged in tandem without requiring a special permit, provided that no more than two cars may be parked within any tandem parking space.
- (b) Notwithstanding Section 6.43.6, owners of adjacent properties may establish common driveways under mutual easements without requiring a special permit.
- (c) Notwithstanding Paragraph 6.44.1(a), on-grade open parking spaces may be located within ten (10) feet but not less than five (5) feet from the Ground Story of a building on the same lot or seven and one-half (7.5) feet from the Ground Story of a building on an adjacent lot without requiring a special permit, provided that such parking spaces are screened from buildings on abutting lots by a fence or other dense year-round visual screen.

- (d) Notwithstanding Paragraph 6.44.1(b), on-grade open parking spaces and driveways may be located within five (5) feet of a side or rear property line without requiring a special permit, provided that screening is provided in the form of a fence or other dense year-round visual screen at the property line, unless such screening is waived by mutual written agreement of the owner of the lot and the owner of the abutting lot.

#### 11.207.6.4 Modifications to Bicycle Parking Standards

- (a) Notwithstanding Section 6.104, long-term or short-term bicycle parking spaces may be located anywhere on the lot for an AHO Project or on an adjacent lot in common ownership or under common control.
- (b) Notwithstanding Section 6.107.5, up to 20 long-term bicycle parking spaces may be designed to meet the requirements for Short-Term Bicycle Parking Spaces, so long as they are covered from above to be protected from precipitation.
- (c) The requirement for short-term bicycle parking shall be waived where only four or fewer short-term bicycle parking spaces would otherwise be required.
- (d) The number of required bicycle parking spaces shall be reduced by half, up to a maximum reduction of 28 spaces, where a standard-size (19-dock) Public Bicycle Sharing Station is provided on the lot or by the developer of the AHO Project on a site within 500 feet of the lot, with the written approval of the City if located on a public street or other City property, or otherwise by legally enforceable mutual agreement with the owner of the land on which the station is located as approved by the Community Development Department. If additional Public Bicycle Sharing Station docks are provided, the number of required bicycle parking spaces may be further reduced at a rate of 0.5 bicycle parking space per additional Public Bicycle Sharing Station dock, up to a maximum reduction of half of the required number of spaces.
- (e) For AHO Dwelling Units created within an existing building, bicycle parking spaces meeting the standards of this Zoning Ordinance shall not be required but are encouraged to be provided to the extent practical given the limitations of the existing structure. Bicycle parking spaces shall be provided, as required by this Zoning Ordinance, for

dwelling units in an AHO Project that are constructed fully outside the envelope of the existing structure.

#### 11.207.6.5 Transportation Demand Management

An AHO Project not providing off-street parking at a ratio of 0.4 space per dwelling unit or more shall provide, in writing, to the Community Development Department a Transportation Demand Management program containing the following measures, at a minimum:

- (a) Offering either a free annual membership in a Public Bicycle Sharing Service, at the highest available tier where applicable, or a 50% discounted MBTA combined subway and bus pass for six months or pass of equivalent value, to up to two individuals in each household upon initial occupancy of a unit.
- (b) Providing transit information in the form of transit maps and schedules to each household upon initial occupancy of a unit, or providing information and a real-time transit service screen in a convenient common area of the building such as an entryway or lobby.

#### 11.207.7 Building and Site Design Standards for New Development

##### 11.207.7.1 General Provisions

- (a) Except where otherwise stated, the Project Review requirements set forth in Article 19.000 of this Zoning Ordinance and any design standards set forth in Section 19.50 or elsewhere in the Zoning Ordinance shall be superseded by the following standards for an AHO Project.
- (b) The following design standards shall apply to new construction and to additions to existing structures. Except as otherwise provided, an existing building that is altered or moved to accommodate an AHO Project shall not be subject to the following standards, provided that such alterations do not create a condition that is in greater nonconformance with such standards than the existing condition.

##### 11.207.7.2 Site Design and Arrangement

- (a) The area directly between the front lot line and the principal wall plane of the building nearest to the front lot line shall consist of any combination of landscaped area, hardscaped area accessible to pedestrians and bicyclists,

and usable spaces such as uncovered porches, patios, or balconies. Parking shall not be located within such area, except for driveway access which shall be limited to a total of thirty (30) feet of width for any individual driveway for each one hundred (100) feet of lot frontage.

- (b) Pedestrian entrances to buildings shall be visible from the street, except where the building itself is not visible from the street due to its location. All pedestrian entrances shall be accessible by way of access routes that are separated from motor vehicle access drives.
- (c) A building footprint exceeding two hundred and fifty (250) feet in length, measured parallel to the street, shall contain a massing recess extending back at least fifteen (15) feet in depth measured from and perpendicular to the front lot line and at least fifteen (15) feet in width measured parallel to the front lot line so that the maximum length of unbroken façade is one hundred fifty (150) feet.

#### 11.207.7.3 Building Façades

- (a) At least twenty percent (20%) of the area of building façades facing a public street or public open space shall consist of clear glass windows. For buildings located in a Business A (BA), Business A-2 (BA-2), Business B (BB) or Business C (BC) zoning district, this figure shall be increased to thirty percent (30%) for non-residential portions of the building, if any.
- (b) Building façades shall incorporate architectural elements that project or recess by at least two feet from the adjacent section of the façade. Such projecting or recessed elements shall occur on an average interval of 40 linear horizontal feet or less for portions of the façade directly facing a public street, and on an average interval of 80 linear horizontal feet or less for other portions of the façade. Such projecting or recessed elements shall not be required on the lowest Story Above Grade or on the highest Story Above Grade, and shall not be required on the highest two Stories Above Grade of a building containing at least six Stories Above Grade. The intent is to incorporate elements such as bays, balconies, cornices, shading devices, or similar architectural elements that promote visual interest and residential character, and to allow variation at the ground floor and on upper floors where a different architectural treatment may be preferable.

#### 11.207.7.4 Ground Stories and Stories Below Grade

- (a) The elevation at floor level of the Ground Story shall be at the mean Grade of the abutting public sidewalk, or above such mean Grade by not more than four feet. Active non-residential uses at the Ground Story shall be accessible directly from the sidewalk without requiring use of stairs or a lift. The requirements of this paragraph shall not apply if it is determined by the City Engineer that a higher Ground Story elevation is necessary for the purpose of flood protection.
- (b) Where structured parking is provided within the Ground Story of a building, the portion of the building immediately behind the front wall plane shall consist of residential units, common areas, or other populated portions of the building in order to screen the provided parking over at least seventy-five percent (75%) of the length of the façade measured parallel to the street and excluding portions of the façade used for driveway access. On a corner lot, the requirements of this Paragraph shall only apply along one street.
- (c) The façade of a Ground Story facing a public street shall consist of expanses no longer than twenty-five (25) feet in length, measured parallel to the street, which contain no transparent windows or pedestrian entryways.
- (d) If the Ground Story is designed to accommodate active non-residential uses, the following additional standards shall apply:
  - (i) the height of the Ground Story for that portion of the building containing active non-residential uses shall be at least fifteen (15) feet;
  - (ii) the depth of the space designed for active non-residential uses shall be at least thirty-five (35) feet on average measured from the portion of the façade that is nearest to the front lot line in a direction perpendicular to the street, and measured to at least one street in instances where the space abuts two or more streets; and
  - (iii) that portion of the Ground Story façade containing active non-residential uses shall consist of at least thirty percent (30%) transparent glass windows or, if the use is a retail or consumer service establishment, at least thirty percent (30%) transparent glass windows, across the combined façade on both streets in the case of a corner lot.

- (e) Ground Stories shall be designed to accommodate at least one space, with a total frontage equaling at least fifty percent (50%) of the existing retail frontage, for an active non-residential use, which may include retail or consumer establishments as well as social service facilities supporting the mission of the owner of the AHO Project, on sites that are located in a Business base zoning district, and where the project site contains or has contained a retail and or consumer service use at any point within the past two years prior to application for a building permit for an AHO Project.
- (f) Private living spaces within dwelling units, including bedrooms, kitchens, and bathrooms, may only be contained within Stories Above Grade. Stories Below Grade may only contain portions of dwelling units providing entries, exits, or mechanical equipment, or common facilities for residents of the building, such as lobbies, recreation rooms, laundry, storage, parking, bicycle parking, or mechanical equipment

#### 11.207.7.5 Mechanical Equipment, Refuse Storage, and Loading Areas

- (a) All mechanical equipment, refuse storage, or loading areas serving the building or its occupants that are (1) carried above the roof, (2) located at the exterior building wall or (3) located outside the building, shall meet the requirements listed below. Mechanical equipment includes, but is not limited to, ventilation equipment including exhaust fans and ducts, air conditioning equipment, elevator bulkheads, heat exchangers, transformers and any other equipment that, when in operation, potentially creates a noise detectable off the lot. The equipment and other facilities: (a) Shall not be located within any required setback. This Paragraph (a) shall not apply to electrical equipment whose location is mandated by a recognized public utility, provided that project plans submitted for review by the City identify a preferred location for such equipment.
- (b) When on the ground, shall be permanently screened from view from adjacent public streets that are within 100 feet of the building, or from the view from abutting property in separate ownership at the property line. The screening shall consist of a dense year-round screen equal or greater in height at the time of installation than the equipment or facilities to be screened, or a fence of equal or greater



height that is comparable in quality to the materials used on the principal facades of the building, with no more than twenty-five (25) percent of the face of the fence open with adjacent planting.

- (c) When carried above the roof, shall be set back from the principal wall plane by a dimension equal to at least the height of the equipment and permanently screened from view, from the ground, from adjacent public streets and any abutting residentially used lot or lots in a residential zoning district. The screening shall be at least seventy-five percent (75%) opaque and uniformly distributed across the screening surface, or opaque to the maximum extent permissible if other applicable laws, codes, or regulations mandate greater openness.
- (d) Shall meet all city, state and federal noise regulations, as applicable, as certified by a professional acoustical engineer if the Department of Inspectional Services deems such certification necessary.
- (e) That handle trash and other waste, shall be contained within the building or screened as required in this Section until properly disposed of.

#### 11.207.7.6 Environmental Design Standards

- (a) This Section shall not waive the Green Building Requirements set forth in Section 22.20 of this Zoning Ordinance that may otherwise apply to an AHO Project.
- (b) Where the provisions of the Flood Plain Overlay District apply to an AHO Project, the performance standards set forth in Section 20.70 of this Zoning Ordinance shall apply; however, a special permit shall not be required.
- (c) An AHO Project shall be subject to other applicable laws, regulations, codes, and ordinances pertaining to environmental standards.
- (d) New outdoor light fixtures installed in an AHO Project shall be fully shielded and directed to prevent light trespass onto adjacent residential lots.

#### 11.207.8 Advisory Design Consultation Procedure

Prior to application for a building permit, the developer of an AHO Project shall comply with the following procedure, which is intended to provide an opportunity for non-binding community and staff input into the design of the project.

- (a) The intent of this non-binding review process is to advance the City's desired outcomes for the form and character of AHO Projects. To promote the City's goal of creating more affordable housing units, AHO Projects are permitted to have a greater height, scale, and density than other developments permitted by the zoning for a given district. This procedure is intended to promote design outcomes that are compatible with the existing neighborhood context or with the City's future planning objectives for the area.
- (b) The City's "Design Guidelines for Affordable Housing Overlay," along with other design objectives and guidelines established for the part of the city in which the AHO Project is located, are intended to inform the design of AHO Projects and to guide the Planning Board's consultation and report as set forth below. It is intended that designers of AHO Projects, City staff, the Planning Board, and the general public will be open to creative variations from any detailed provisions set forth in such objectives and guidelines as long as the core values expressed are being served.
- (c) At least two community meetings shall be scheduled at a time and location that is convenient to residents in proximity to the project site. The Community Development Department (CDD) shall be notified of the time and location of such meetings, and shall give notification to abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within three hundred feet of the property line of the lot on which the AHO Project is proposed and to any individual or organization who each year files with CDD a written request for such notification, or to any other individual or organization CDD may wish to notify.
  - (i) The purpose of the first community meeting shall be for the developer to share the site and street context analysis with neighborhood residents and other interested parties prior to building design, and receive feedback from community members.
  - (ii) The purpose of the subsequent community meeting(s) shall be to present preliminary project designs, answer questions from neighboring residents and other interested members of the public, and receive feedback on the design. The date(s), time(s), location(s), attendance, materials presented, and comments received at such

meeting(s) shall be documented and provided to CDD.

- (d) Following one or more such community meeting(s), the developer shall prepare the following materials for review by the Planning Board. CDD shall review to certify that the submitted written and graphic materials provide the required information in sufficient detail. All drawings shall be drawn to scale, shall include a graphic scale and north arrow for orientation, and shall provide labeled distances and dimensions for significant building and site features.
- (i) A context map indicating the location of the project and surrounding land uses, including transportation facilities.
  - (ii) A context analysis, discussed with CDD staff, including existing front yard setbacks, architectural character, and unique features that inform and influence the design of the AHO Project.
  - (iii) An existing conditions site plan depicting the boundaries of the lot, the locations of buildings, open space features, parking areas, trees, and other major site features on the lot and abutting lots, and the conditions of abutting streets.
  - (iv) A proposed conditions site plan depicting the same information above as modified to depict the proposed conditions, including new buildings (identifying building entrances and uses on the ground floor and possible building roof deck) and major anticipated changes in site features.
  - (v) A design statement on how the proposed project attempts to reinforce existing street/context qualities and mitigates the planned project's greater massing, height, density, &c.
  - (vi) Floor plans of all proposed new buildings and existing buildings to remain on the lot.
  - (vii) Elevations and cross-section drawings of all proposed new buildings and existing buildings to remain on the lot, depicting the distances to lot lines and the heights of surrounding buildings, and labeling the proposed materials on each façade elevation.

- (viii) A landscape plan depicting and labeling all hardscape, permeable, and vegetated areas proposed for the site along with other structures or appurtenances on the site.
  - (ix) Plans of parking and bicycle parking facilities, as required by Section 6.50 of this Zoning Ordinance.
  - (x) Materials palettes cataloguing and depicting with photographs the proposed façade and landscape materials.
  - (xi) Existing conditions photographs from various vantage points on the public sidewalk, including photos of the site and of the surrounding urban context.
  - (xii) Proposed conditions perspective renderings from a variety of vantage points on the public sidewalk, including locations adjacent to the site as well as longer views if proposed buildings will be visible from a distance.
  - (xiii) A dimensional form, in a format provided by CDD, along with any supplemental materials, summarizing the general characteristics of the project and demonstrating compliance with applicable zoning requirements.
  - (xiv) A brief project narrative describing the project and the design approach, and indicating how the project has been designed in relation to the citywide urban design objectives set forth in Section 19.30 of the Zoning Ordinance, any design guidelines that have been established for the area, and the “Design Guidelines for Affordable Housing Overlay.”
  - (xv) Viewshed analysis and shadow studies that show the impact on neighboring properties with existing Solar Energy Systems.
  - (xvi) An initial development budget that shows anticipated funding sources and uses including developer fee and overhead.
- (e) Within 65 days of receipt of a complete set of materials by CDD, the Planning Board shall schedule a design consultation as a general business matter at a public meeting and shall give notification to abutters, owners of land directly opposite on any public or private street or

way, and abutters to the abutters within three hundred feet of the property line of the lot on which the AHO Project is proposed and to any individual or organization who each year files with CDD a written request for such notification, or to any other individual or organization CDD may wish to notify. The materials shall be made available to the public in advance, and the Planning Board may receive written comments prior to the meeting from City staff, abutters, and members of the public.

- (f) At the scheduled design consultation, the Planning Board shall hear a presentation of the proposal from the developer and oral comments from the public. The Board may ask questions or seek additional information from the developer or from City staff.
- (g) The Planning Board shall evaluate the proposal for general compliance with the requirements of this Section, for consistency with City development guidelines prepared for the proposal area and the “Design Guidelines for Affordable Housing Overlay,” for appropriateness in terms of other planned or programmed public or private development activities in the vicinity, and for consistency with the Citywide Urban Design Objectives set forth in Section 19.30. The Board may also suggest specific project adjustments and alterations to further the purposes of this Ordinance. The Board shall communicate its findings in a written report provided to the developer and to CDD within 20 days of the design consultation.
- (h) The developer may then make revisions to the design, in consultation with CDD staff, and shall submit a revised set of documents along with a narrative summary of the Planning Board’s comments and changes made in response to those comments.
- (i) The Planning Board shall review and discuss the revised documents at a second design consultation meeting, which shall proceed in accordance with Paragraphs (c) and (d) above. Following the second design consultation, the Planning Board may submit a revised report and either the revised report or if there are no revisions the initial report shall become the final report (the “Final Report”). Any additional design consultations to review further revisions may occur only at the discretion and on the request of the developer or the Cambridge Affordable Housing Trust.

- (j) The Final Report from the Planning Board shall be provided to the Superintendent of Buildings to certify compliance with the procedures set forth herein.

#### 11.207.9 Implementation of Affordable Housing Overlay

- (a) The City Manager shall have the authority to promulgate regulations for the implementation of the provisions of this Section 11.207. There shall be a sixty-day review period, including a public meeting, to receive public comments on draft regulations before final promulgation.
- (b) The Community Development Department may develop standards, design guidelines, and procedures appropriate to and consistent with the provisions of this Sections 11.207 and the above regulations.

#### 11.207.10 Enforcement of Affordable Housing Overlay

The Community Development Department shall certify in writing to the Superintendent of Buildings that all applicable provisions of this Section have been met before issuance of any building permit for any AHO Project, and shall further certify in writing to the Superintendent of Buildings that all documents have been filed and all actions taken necessary to fulfill the requirements of this Section before the issuance of any certificate of occupancy for any such project.

#### 11.207.11 Review of Affordable Housing Overlay

- (a) Annual Report. CDD shall provide an annual status report to the City Council, beginning eighteen (18) months after ordination and continuing every year thereafter. The report shall contain the following information:
  - (i) List of sites considered for affordable housing development under the Affordable Housing Overlay, to the extent known by CDD, including site location, actions taken to initiate an AHO Project, and site status;
  - (ii) Description of each AHO Project underway or completed, including site location, number of units, unit types (number of bedrooms), tenure, and project status; and
  - (iii) Number of residents served by AHO Projects.
- (b) Five-Year Progress Review. Five (5) years after ordination, CDD shall provide to the City Council, Planning Board and



the Affordable Housing Trust, for its review, a report that assesses the effectiveness of the Affordable Housing Overlay in increasing the number of affordable housing units in the city, distributing affordable housing across City neighborhoods, and serving the housing needs of residents. The report shall also assess the effectiveness of the Advisory Design Consultation Procedure in gathering meaningful input from community members and the Planning Board and shaping AHO Projects to be consistent with the stated Design Objectives. The report shall evaluate the success of the Affordable Housing Overlay in balancing the goal of increasing affordable housing with other City planning considerations such as urban form, neighborhood character, environment, and mobility. The report shall discuss citywide outcomes as well as site-specific outcomes.

Passed to a second reading as amended at the City Council meeting held on September 14, 2020 and on or after October 5, 2020 the question comes on passage to be ordained.

Attest:- Anthony I. Wilson  
City Clerk

**Assembly Bill No. 1763**

## CHAPTER 666

An act to amend Section 65915 of the Government Code, relating to housing.

[Approved by Governor October 9, 2019. Filed with Secretary  
of State October 9, 2019.]

## LEGISLATIVE COUNSEL'S DIGEST

AB 1763, Chiu. Planning and zoning: density bonuses: affordable housing.

Existing law, known as the Density Bonus Law, requires a city or county to provide a developer that proposes a housing development within the jurisdictional boundaries of that city or county with a density bonus and other incentives or concessions for the production of lower income housing units, or for the donation of land within the development, if the developer agrees to construct a specified percentage of units for very low income, low-income, or moderate-income households or qualifying residents and meets other requirements. Existing law provides for the calculation of the amount of density bonus for each type of housing development that qualifies under these provisions.

This bill would additionally require a density bonus to be provided to a developer who agrees to construct a housing development in which 100% of the total units, exclusive of managers' units, are for lower income households, as defined. However, the bill would provide that a housing development that qualifies for a density bonus under its provisions may include up to 20% of the total units for moderate-income households, as defined. The bill would also require that a housing development that meets these criteria receive 4 incentives or concessions under the Density Bonus Law and, if the development is located within ½ of a major transit stop, a height increase of up to 3 additional stories or 33 feet. The bill would generally require that the housing development receive a density bonus of 80%, but would exempt the housing development from any maximum controls on density if it is located within ½ mile of a major transit stop. The bill would prohibit a housing development that receives a waiver from any maximum controls on density under these provisions from receiving a waiver or reduction of development standards pursuant to existing law, other than as expressly provided in the bill. The bill would also make various nonsubstantive changes to the Density Bonus Law.

Existing law requires that an applicant for a density bonus agree to, and that the city and county ensure, the continued affordability of all very low and low-income rental units that qualified the applicant for a density bonus for at least 55 years, as provided. Existing law requires that the rent for

## Ch. 666

lower income density bonus units be set at an affordable rent, as defined in specified law.

This bill, for units, including both base density and density bonus units, in a housing development that qualifies for a density bonus under its provisions as described above, would instead require that the rent for at least 20% of the units in that development be set at an affordable rent, defined as described above, and that the rent for the remaining units be set at an amount consistent with the maximum rent levels for a housing development that receives an allocation of state or federal low-income housing tax credits from the California Tax Credit Allocation Committee.

Existing law, upon the request of the developer, prohibits a city, county, or city and county from requiring a vehicular parking ratio for a development meeting the eligibility requirements under the Density Bonus Law that exceeds specified ratios. For a development that consists solely of rental units, exclusive of a manager's unit or units, with an affordable housing cost to lower income families, as provided in specified law, and that is a special needs housing development, as defined, existing law limits that vehicular parking ratio to 0.3 spaces per unit.

This bill would instead, upon the request of the developer, prohibit a city, county, or city and county from imposing any minimum vehicular parking requirement for a development that consists solely of rental units, exclusive of a manager's unit or units, with an affordable housing cost to lower income families and is either a special needs housing development or a supportive housing development, as those terms are defined.

By adding to the duties of local planning officials with respect to the award of density bonuses, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. Section 65915 of the Government Code, as amended by Chapter 937 of the Statutes of 2018, is amended to read:

65915. (a) (1) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall comply with this section. A city, county, or city and county shall adopt an ordinance that specifies how compliance with this section will be implemented. Failure to adopt an ordinance shall not relieve a city, county, or city and county from complying with this section.

(2) A local government shall not condition the submission, review, or approval of an application pursuant to this chapter on the preparation of an

## Ch. 666

additional report or study that is not otherwise required by state law, including this section. This subdivision does not prohibit a local government from requiring an applicant to provide reasonable documentation to establish eligibility for a requested density bonus, incentives or concessions, as described in subdivision (d), waivers or reductions of development standards, as described in subdivision (e), and parking ratios, as described in subdivision (p).

(3) In order to provide for the expeditious processing of a density bonus application, the local government shall do all of the following:

(A) Adopt procedures and timelines for processing a density bonus application.

(B) Provide a list of all documents and information required to be submitted with the density bonus application in order for the density bonus application to be deemed complete. This list shall be consistent with this chapter.

(C) Notify the applicant for a density bonus whether the application is complete in a manner consistent with the timelines specified in Section 65943.

(D) (i) If the local government notifies the applicant that the application is deemed complete pursuant to subparagraph (C), provide the applicant with a determination as to the following matters:

(I) The amount of density bonus, calculated pursuant to subdivision (f), for which the applicant is eligible.

(II) If the applicant requests a parking ratio pursuant to subdivision (p), the parking ratio for which the applicant is eligible.

(III) If the applicant requests incentives or concessions pursuant to subdivision (d) or waivers or reductions of development standards pursuant to subdivision (e), whether the applicant has provided adequate information for the local government to make a determination as to those incentives, concessions, or waivers or reductions of development standards.

(ii) Any determination required by this subparagraph shall be based on the development project at the time the application is deemed complete. The local government shall adjust the amount of density bonus and parking ratios awarded pursuant to this section based on any changes to the project during the course of development.

(b) (1) A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (f), and, if requested by the applicant and consistent with the applicable requirements of this section, incentives or concessions, as described in subdivision (d), waivers or reductions of development standards, as described in subdivision (e), and parking ratios, as described in subdivision (p), when an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section, that will contain at least any one of the following:

(A) Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

## Ch. 666

(B) Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(C) A senior citizen housing development, as defined in Sections 51.3 and 51.12 of the Civil Code, or a mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.

(D) Ten percent of the total dwelling units in a common interest development, as defined in Section 4100 of the Civil Code, for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.

(E) Ten percent of the total units of a housing development for transitional foster youth, as defined in Section 66025.9 of the Education Code, disabled veterans, as defined in Section 18541, or homeless persons, as defined in the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.). The units described in this subparagraph shall be subject to a recorded affordability restriction of 55 years and shall be provided at the same affordability level as very low income units.

(F) (i) Twenty percent of the total units for lower income students in a student housing development that meets the following requirements:

(I) All units in the student housing development will be used exclusively for undergraduate, graduate, or professional students enrolled full time at an institution of higher education accredited by the Western Association of Schools and Colleges or the Accrediting Commission for Community and Junior Colleges. In order to be eligible under this subclause, the developer shall, as a condition of receiving a certificate of occupancy, provide evidence to the city, county, or city and county that the developer has entered into an operating agreement or master lease with one or more institutions of higher education for the institution or institutions to occupy all units of the student housing development with students from that institution or institutions. An operating agreement or master lease entered into pursuant to this subclause is not violated or breached if, in any subsequent year, there are not sufficient students enrolled in an institution of higher education to fill all units in the student housing development.

(II) The applicable 20-percent units will be used for lower income students. For purposes of this clause, "lower income students" means students who have a household income and asset level that does not exceed the level for Cal Grant A or Cal Grant B award recipients as set forth in paragraph (1) of subdivision (k) of Section 69432.7 of the Education Code. The eligibility of a student under this clause shall be verified by an affidavit, award letter, or letter of eligibility provided by the institution of higher education that the student is enrolled in, as described in subclause (I), or by the California Student Aid Commission that the student receives or is eligible for financial aid, including an institutional grant or fee waiver, from the college or university, the California Student Aid Commission, or the federal government shall be sufficient to satisfy this subclause.

(III) The rent provided in the applicable units of the development for lower income students shall be calculated at 30 percent of 65 percent of the area median income for a single-room occupancy unit type.

(IV) The development will provide priority for the applicable affordable units for lower income students experiencing homelessness. A homeless service provider, as defined in paragraph (3) of subdivision (d) of Section 103577 of the Health and Safety Code, or institution of higher education that has knowledge of a person's homeless status may verify a person's status as homeless for purposes of this subclause.

(ii) For purposes of calculating a density bonus granted pursuant to this subparagraph, the term "unit" as used in this section means one rental bed and its pro rata share of associated common area facilities. The units described in this subparagraph shall be subject to a recorded affordability restriction of 55 years.

(G) One hundred percent of the total units, exclusive of a manager's unit or units, are for lower income households, as defined by Section 50079.5 of the Health and Safety Code, except that up to 20 percent of the total units in the development may be for moderate-income households, as defined in Section 50053 of the Health and Safety Code.

(2) For purposes of calculating the amount of the density bonus pursuant to subdivision (f), an applicant who requests a density bonus pursuant to this subdivision shall elect whether the bonus shall be awarded on the basis of subparagraph (A), (B), (C), (D), (E), (F), or (G) of paragraph (1).

(3) For the purposes of this section, "total units," "total dwelling units," or "total rental beds" does not include units added by a density bonus awarded pursuant to this section or any local law granting a greater density bonus.

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

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

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

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

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



## Ch. 666

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

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

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

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

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

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

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

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

(i) If any dwelling units described in subparagraph (A) are occupied on the date of application, the proposed housing development shall provide at least the same number of units of equivalent size to be made available at

## Ch. 666

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

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

(C) Notwithstanding subparagraph (B), for any dwelling unit described in subparagraph (A) that is or was, within the five-year period preceding the application, subject to a form of rent or price control through a local government's valid exercise of its police power and that is or was occupied

## Ch. 666

by persons or families above lower income, the city, county, or city and county may do either of the following:

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

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

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

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

(d) (1) An applicant for a density bonus pursuant to subdivision (b) may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of any of the following:

(A) The concession or incentive does not result in identifiable and actual cost reductions, consistent with subdivision (k), to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(B) The concession or incentive would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households.

(C) The concession or incentive would be contrary to state or federal law.

(2) The applicant shall receive the following number of incentives or concessions:

(A) One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a common interest development.

## Ch. 666

(B) Two incentives or concessions for projects that include at least 20 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a common interest development.

(C) Three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a common interest development.

(D) Four incentives or concessions for projects meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b). If the project is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, the applicant shall also receive a height increase of up to three additional stories, or 33 feet.

(3) The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section that shall include legislative body approval of the means of compliance with this section.

(4) The city, county, or city and county shall bear the burden of proof for the denial of a requested concession or incentive.

(e) (1) In no case may a city, county, or city and county apply any development standard that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. Subject to paragraph (3), an applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted under this section, and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical

Ch. 666

environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.

(2) A proposal for the waiver or reduction of development standards pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(3) A housing development that receives a waiver from any maximum controls on density pursuant to clause (ii) of subparagraph (D) of paragraph (3) of subdivision (f) shall not be eligible for, and shall not receive, a waiver or reduction of development standards pursuant to this subdivision, other than as expressly provided in subparagraph (D) of paragraph (2) of subdivision (d) and clause (ii) of subparagraph (D) of paragraph (3) of subdivision (f).

(f) For the purposes of this chapter, “density bonus” means a density increase over the otherwise maximum allowable gross residential density as of the date of application by the applicant to the city, county, or city and county, or, if elected by the applicant, a lesser percentage of density increase, including, but not limited to, no increase in density. The amount of density increase to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).

(1) For housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
17	30.5
18	32
19	33.5
20	35

(2) For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Ch. 666

Percentage Very Low Income Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

(3) (A) For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of senior housing units.

(B) For housing developments meeting the criteria of subparagraph (E) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of the type of units giving rise to a density bonus under that subparagraph.

(C) For housing developments meeting the criteria of subparagraph (F) of paragraph (1) of subdivision (b), the density bonus shall be 35 percent of the student housing units.

(D) For housing developments meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b), the following shall apply:

(i) Except as otherwise provided in clause (ii), the density bonus shall be 80 percent of the number of units for lower income households.

(ii) If the housing development is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, the city, county, or city and county shall not impose any maximum controls on density.

(4) For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Moderate-Income Units	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19



Ch. 666

25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35

(5) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not require, or be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.

(g) (1) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county in accordance with this subdivision, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density for the entire development, as follows:

Percentage Very Low Income	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26
22	27
23	28
24	29
25	30
26	31
27	32

Ch. 666

28	33
29	34
30	35

(2) This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks an increase pursuant to both this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this subdivision if all of the following conditions are met:

(A) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

(B) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.

(C) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned with appropriate development standards for development at the density described in paragraph (3) of subdivision (c) of Section 65583.2, and is or will be served by adequate public facilities and infrastructure.

(D) The transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, not later than the date of approval of the final subdivision map, parcel map, or residential development application, except that the local government may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 if the design is not reviewed by the local government before the time of transfer.

(E) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c), which shall be recorded on the property at the time of the transfer.

(F) The land is transferred to the local agency or to a housing developer approved by the local agency. The local agency may require the applicant to identify and transfer the land to the developer.

(G) The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.

## Ch. 666

(H) A proposed source of funding for the very low income units shall be identified not later than the date of approval of the final subdivision map, parcel map, or residential development application.

(h) (1) When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a childcare facility that will be located on the premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:

(A) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the childcare facility.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the childcare facility.

(2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:

(A) The childcare facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to subdivision (c).

(B) Of the children who attend the childcare facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to subdivision (b).

(3) Notwithstanding any requirement of this subdivision, a city, county, or city and county shall not be required to provide a density bonus or concession for a childcare facility if it finds, based upon substantial evidence, that the community has adequate childcare facilities.

(4) "Childcare facility," as used in this section, means a child daycare facility other than a family daycare home, including, but not limited to, infant centers, preschools, extended daycare facilities, and schoolage childcare centers.

(i) "Housing development," as used in this section, means a development project for five or more residential units, including mixed-use developments. For the purposes of this section, "housing development" also includes a subdivision or common interest development, as defined in Section 4100 of the Civil Code, approved by a city, county, or city and county and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units shall be on contiguous sites that are the subject of one development application, but do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

## Ch. 666

(j) (1) The granting of a concession or incentive shall not require or be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, study, or other discretionary approval. For purposes of this subdivision, "study" does not include reasonable documentation to establish eligibility for the concession or incentive or to demonstrate that the incentive or concession meets the definition set forth in subdivision (k). This provision is declaratory of existing law.

(2) Except as provided in subdivisions (d) and (e), the granting of a density bonus shall not require or be interpreted to require the waiver of a local ordinance or provisions of a local ordinance unrelated to development standards.

(k) For the purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable and actual cost reductions, to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(2) Approval of mixed-use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable and actual cost reductions to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(l) Subdivision (k) does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(m) This section does not supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). Any density bonus, concessions, incentives, waivers or reductions of development standards, and parking ratios to which the applicant is entitled under this section shall be permitted in a manner that is consistent with this section and Division 20 (commencing with Section 30000) of the Public Resources Code.

## Ch. 666

(n) If permitted by local ordinance, nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

(o) For purposes of this section, the following definitions shall apply:

(1) "Development standard" includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.

(2) "Maximum allowable residential density" means the density allowed under the zoning ordinance and land use element of the general plan, or, if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. If the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.

(p) (1) Except as provided in paragraphs (2), (3), and (4), upon the request of the developer, a city, county, or city and county shall not require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivisions (b) and (c), that exceeds the following ratios:

(A) Zero to one bedroom: one onsite parking space.

(B) Two to three bedrooms: two onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

(2) Notwithstanding paragraph (1), if a development includes the maximum percentage of low-income or very low income units provided for in paragraphs (1) and (2) of subdivision (f) and is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, and there is unobstructed access to the major transit stop from the development, then, upon the request of the developer, a city, county, or city and county shall not impose a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds 0.5 spaces per bedroom. For purposes of this subdivision, a development shall have unobstructed access to a major transit stop if a resident is able to access the major transit stop without encountering natural or constructed impediments.

(3) Notwithstanding paragraph (1), if a development consists solely of rental units, exclusive of a manager's unit or units, with an affordable housing cost to lower income families, as provided in Section 50052.5 of the Health and Safety Code, then, upon the request of the developer, a city, county, or city and county shall not impose a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds the following ratios:

## Ch. 666

(A) If the development is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, and there is unobstructed access to the major transit stop from the development, the ratio shall not exceed 0.5 spaces per unit.

(B) If the development is a for-rent housing development for individuals who are 62 years of age or older that complies with Sections 51.2 and 51.3 of the Civil Code, the ratio shall not exceed 0.5 spaces per unit. The development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

(4) Notwithstanding paragraphs (1) and (8), if a development consists solely of rental units, exclusive of a manager's unit or units, with an affordable housing cost to lower income families, as provided in Section 50052.5 of the Health and Safety Code, and the development is either a special needs housing development, as defined in Section 51312 of the Health and Safety Code, or a supportive housing development, as defined in Section 50675.14 of the Health and Safety Code, then, upon the request of the developer, a city, county, or city and county shall not impose any minimum vehicular parking requirement. A development that is a special needs housing development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

(5) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide onsite parking through tandem parking or uncovered parking, but not through onstreet parking.

(6) This subdivision shall apply to a development that meets the requirements of subdivisions (b) and (c), but only at the request of the applicant. An applicant may request parking incentives or concessions beyond those provided in this subdivision pursuant to subdivision (d).

(7) This subdivision does not preclude a city, county, or city and county from reducing or eliminating a parking requirement for development projects of any type in any location.

(8) Notwithstanding paragraphs (2) and (3), if a city, county, city and county, or an independent consultant has conducted an areawide or jurisdictionwide parking study in the last seven years, then the city, county, or city and county may impose a higher vehicular parking ratio not to exceed the ratio described in paragraph (1), based upon substantial evidence found in the parking study, that includes, but is not limited to, an analysis of parking availability, differing levels of transit access, walkability access to transit services, the potential for shared parking, the effect of parking requirements on the cost of market-rate and subsidized developments, and the lower rates of car ownership for low-income and very low income individuals, including seniors and special needs individuals. The city, county, or city and county shall pay the costs of any new study. The city, county, or city and county



Ch. 666

shall make findings, based on a parking study completed in conformity with this paragraph, supporting the need for the higher parking ratio.

(9) A request pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(q) Each component of any density calculation, including base density and bonus density, resulting in fractional units shall be separately rounded up to the next whole number. The Legislature finds and declares that this provision is declaratory of existing law.

(r) This chapter shall be interpreted liberally in favor of producing the maximum number of total housing units.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

**DENSITY BONUS CHART\***

AFFORDABLE UNIT PERCENTAGE**	VERY LOW INCOME DENSITY BONUS	LOW INCOME DENSITY BONUS	MODERATE INCOME DENSITY BONUS***	LAND DONATION DENSITY BONUS	SENIOR****	FOSTER YOUTH/ DISABLED VETS/ HOMELESS	COLLEGE STUDENTS
5%	20%	-	-	-	20%	-	-
6%	22.5%	-	-	-	20%	-	-
7%	25%	-	-	-	20%	-	-
8%	27.5%	-	-	-	20%	-	-
9%	30%	-	-	-	20%	-	-
10%	32.5%	20%	5%	15%	20%	20%	-
11%	35%	21.5%	6%	16%	20%	20%	-
12%	38.75%	23%	7%	17%	20%	20%	-
13%	42.5%	24.5%	8%	18%	20%	20%	-
14%	46.25%	26%	9%	19%	20%	20%	-
15%	50%	27.5%	10%	20%	20%	20%	-
16%	50%	29%	11%	21%	20%	20%	-
17%	50%	30.5%	12%	22%	20%	20%	-
18%	50%	32%	13%	23%	20%	20%	-
19%	50%	33.5%	14%	24%	20%	20%	-
20%	50%	35%	15%	25%	20%	20%	35%
21%	50%	38.75%	16%	26%	20%	20%	35%
22%	50%	42.5%	17%	27%	20%	20%	35%
23%	50%	46.25%	18%	28%	20%	20%	35%
24%	50%	50%	19%	29%	20%	20%	35%
25%	50%	50%	20%	30%	20%	20%	35%
26%	50%	50%	21%	31%	20%	20%	35%
27%	50%	50%	22%	32%	20%	20%	35%
28%	50%	50%	23%	33%	20%	20%	35%
29%	50%	50%	24%	34%	20%	20%	35%
30%	50%	50%	25%	35%	20%	20%	35%
31%	50%	50%	26%	35%	20%	20%	35%
32%	50%	50%	27%	35%	20%	20%	35%
33%	50%	50%	28%	35%	20%	20%	35%
34%	50%	50%	29%	35%	20%	20%	35%
35%	50%	50%	30%	35%	20%	20%	35%
36%	50%	50%	31%	35%	20%	20%	35%
37%	50%	50%	32%	35%	20%	20%	35%
38%	50%	50%	33%	35%	20%	20%	35%
39%	50%	50%	34%	35%	20%	20%	35%
40%	50%	50%	35%	35%	20%	20%	35%
41%	50%	50%	38.75%	35%	20%	20%	35%
42%	50%	50%	42.5%	35%	20%	20%	35%
43%	50%	50%	46.25%	35%	20%	20%	35%
44%	50%	50%	50%	35%	20%	20%	35%
100% *****	80%	80%	80%	35%	20%	20%	35%

\*All density bonus calculations resulting in fractions are rounded up to the next whole number.

\*\*Affordable unit percentage is calculated excluding units added by a density bonus.

\*\*\*Moderate income density bonus applies to for sale units, not to rental units.

\*\*\*\*No affordable units are required for senior units.

\*\*\*\*\* Applies when 100% of the total units (other than manager's units) are restricted to very low, lower and moderate income (maximum 20% moderate).

### Attachment 5: Southside Plan Area and Housing Element Update Opportunity Sites

