



Terry Taplin
Councilmember District 2

SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: **October 7, 2021**

Item Number: **2**

Item Description: **Affordable Housing Overlay**

Submitted by: **Councilmember Taplin**

The language for a local density bonus in R3, R4, MU-R, and Commercial zones has been clarified with respect to its relationship with State Density Bonus Law to encourage staff and the Planning Commission to begin with standards in AB-1763 as a model for developing an Affordable Housing Overlay (“reflective of”), but with more discretion to adapt to local conditions, feasibility, and community feedback. Staff and the commission are directed to start their analysis with the standards e.g. incentives and concessions, qualifications for 100% affordable housing projects, et al. This amendment enables more flexibility to develop a robust local policy that aligns with the goals of AB-1763 without requiring a verbatim duplication.



BERKELEY CITY COUNCILMEMBER
TERRY TAPLÍN
DISTRICT 2

ACTION CALENDAR
DATE: March 9, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin, Councilmember Bartlett (co-sponsor), Councilmember Robinson (co-sponsor)

Subject: Affordable Housing Overlay

RECOMMENDATION

Refer to the City Manager and Planning Commission revisions to the zoning code and General Plan, permitting increased height and density for 100% affordable housing developments, including but not limited to:

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]) reflective of whatever State density bonus a project would be entitled to under the provisions of AB-1763 (2019) ~~in addition to, and duplicative of, the state density bonus under Government Code Section 65915 for qualifying projects~~, 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 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.

Council directs the Planning Commission and staff to codify an Affordable Housing Overlay for 100% affordable housing as specified above in 2021-2022 work plans in anticipation of 2023-2031 RHNA cycle. Staff and the commission should build upon the framework established in Government Code Section 65915 as well as municipal implementations of Affordable Housing Overlays in other jurisdictions.

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 2020¹ 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 units² as the previous cycle's total of 2,959 units across all income tiers. SB-330 by Sen. Nancy

¹ 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

² https://abag.ca.gov/sites/default/files/draft_rhna_allocation_presentation_to_exec_bd_jan_21.pdf

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.³ 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 agencies, "for each 10 percent increase in the number of units, the cost per unit declines by 1.7 percent."⁴ 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."⁵

³ 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

⁴ 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

⁵ See footnote 3.

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 elasticity⁶ and lower “soft costs,” which is particularly beneficial to projects funded by Low Income Housing Tax Credits (LIHTC)⁷, with complex financing structures that may risk loss of funding due to uncertainty and delays in the permit process.⁸

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 2019.⁹ 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.¹⁰

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

The City Council of Cambridge, Massachusetts passed an Affordable Housing Overlay amendment to its zoning code in October of 2020.¹² The City Council of Somerville, MA

⁶ 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

⁷ 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

⁸ 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/>

⁹ UC Berkeley Terner Center for Housing Innovation. (2019). Affordable Housing Overlays: Oakley. Retrieved from https://ternercenter.berkeley.edu/wp-content/uploads/2020/10/Affordable_Housing_Overlay_Zones_Oakley.pdf

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

¹¹ http://www.friendsofrpe.org/files/HOZ_Fact_Sheet_FINAL_7-27-10%282%29.pdf

¹² 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/>

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 Somerville¹³ and Cambridge¹⁴ Overlays were overwhelmingly supported by nonprofit affordable housing developers and activists. The city of Boston is now considering similar proposals.¹⁵

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.¹⁶

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 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

¹³ 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/>

¹⁴ 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>

¹⁵ 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/>

¹⁶ 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>

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.¹⁷

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.”¹⁸

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 20th Century. “Desirable” neighborhoods with federal mortgage insurance were restricted to white homebuyers, and 75% of those neighborhoods are still measurably exclusionary today.¹⁹

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.”²⁰ Additionally, the researchers

¹⁷ 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>

¹⁸ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB686

¹⁹ 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)

²⁰ 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/>

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.²¹

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.”²² 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 standards²³ 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 Homelessness²⁴ includes among its strategic recommendations:

“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

²¹ [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)

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

²³ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB7

²⁴ https://www.cityofberkeley.info/Clerk/City_Council/2019/02_Feb/Documents/2019-02-26_Item_20_Referral_Response_1000_Person_Plan.aspx

Research from UC Berkeley scholars and the CoolClimate Network²⁵ 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.”²⁶

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

²⁵ 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.

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