



Planning Commission

AGENDA

REGULAR MEETING OF THE PLANNING COMMISSION

This meeting is held in a wheelchair accessible location.

Wednesday, February 21, 2018
7:00 PM

North Berkeley Senior Center
1901 Hearst Ave / MLK Jr. Way

See “*MEETING PROCEDURES*” below.

All written materials identified on this agenda are available on the Planning Commission webpage: <http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=13072>

PRELIMINARY MATTERS

1. **Roll Call:** Pinto, Prakash, appointed by Councilmember Maio, District 1
Martinot, Steve, appointed by Councilmember Davila, District 2
Schildt, Christine, Chair, appointed by Councilmember Bartlett, District 3
Mary Kay Lacey, appointed by Councilmember Harrison, District 4
Beach, Benjamin, appointed by, Councilmember Hahn, District 5
Kapla, Robb William, for Councilmember Wengraf, District 6
Fong, Benjamin, appointed by Councilmember Worthington, District 7
Vincent, Jeff, appointed by Councilmember Droste, District 8
Wrenn, Rob, Vice Chair, appointed by Mayor Arreguin
2. **Order of Agenda:** The Commission may rearrange the agenda or place items on the Consent Calendar.
3. **Public Comment:** Comments on subjects not included on the agenda. Speakers may comment on agenda items when the Commission hears those items. (See “*Public Testimony Guidelines*” below):
4. **Planning Staff Report:** In addition to the items below, additional matters may be reported at the meeting. **Next Commission meeting: March 21, 2018.**
5. **Chairperson’s Report:** Report by Planning Commission Chair.
6. **Committee Reports:** Reports by Commission committees or liaisons. In addition to the items below, additional matters may be reported at the meeting.
7. **Approval of Minutes:** [Approval of Draft Minutes from the meeting on February 7, 2018.](#)
8. **Future Agenda Items and Other Planning-Related Events:** None.

AGENDA ITEMS: All agenda items are for discussion and possible action. Public Hearing items require hearing prior to Commission action.

- 9. Action:** [Public Hearing: Zoning Ordinance Cannabis Regulations](#)
Recommendation: Hold public hearing and consider Zoning Ordinance amendments related to Cannabis regulations.
Written Materials: Attached.
Web Information: N/A.
Continued From: 2/7/2018.
- 10. Discussion:** [Local Density Bonus](#)
Recommendation: Discuss new Zoning Ordinance chapter related to local density bonus.
Written Materials: Attached.
Web Information: N/A.
Continued From: N/A.

ADDITIONAL AGENDA ITEMS: In compliance with Brown Act regulations, no action may be taken on these items. However, discussion may occur at this meeting upon Commissioner request.

Information Items: None.

Communications:

- [2018-02-21 – Staff, Save the Date Flyer for Adeline Corridor Open House and Workshops](#)
- [2018-02-21 – Charles Pappas, Cannabis facilitation Planning Commission \(includes 2 attachments\)](#)

Late Communications: (Received after the packet deadline):

- [2018-02-21 – Alfred Twu, Planning Commission input on potential Deconstruction Ordinance](#)
- [2018-02-21 – Charles Pappas, Expanding Cannabis Info. MM/MULI Zones](#)
- [2018-02-21 – Charles Pappas, Zoning Ordinance Cannabis Regulations Input Summary](#)

Late Communications: (Received and distributed at the meeting):

- [2018-02-21 – Sarah O’Farrell, Amendment to Cannabis regulations](#)
- [2018-02-21 – Carl Boster \(Green Team\), Proposed changes to BMC regarding Delivery-only cannabis businesses](#)
- [2018-02-21 – Andreas Cluver, Building and Construction Trade Council of Alameda County, Letter regarding Density Bonus ordinance](#)

ADJOURNMENT

Meeting Procedures

Public Testimony Guidelines:

Speakers are customarily allotted up to three minutes each. The Commission Chair may limit the number of speakers and the length of time allowed to each speaker to ensure adequate time for all items on the Agenda. **To speak during Public Comment or during a Public Hearing, please line up behind the microphone.** Customarily, speakers are asked to address agenda items when the items are before the Commission rather than during the general public comment period.

Speakers are encouraged to submit comments in writing. See “Procedures for Correspondence to the Commissioners” below.

Consent Calendar Guidelines:

The Consent Calendar allows the Commission to take action with no discussion on projects to which no one objects. The Commission may place items on the Consent Calendar if no one present wishes to testify on an item. Anyone present who wishes to speak on an item should submit a speaker card prior to the start of the meeting, or raise his or her hand and advise the Chairperson, and the item will be pulled from the Consent Calendar for public comment and discussion prior to action.

Procedures for Correspondence to the Commissioners:

To distribute correspondence to Commissioners prior to the meeting date, submit comments by 12:00 p.m. (noon), eight (8) days before the meeting day (Tuesday) (email preferred):

- If correspondence is more than twenty (20) pages, requires printing of color pages, or includes pages larger than 8.5x11 inches, please provide 15 copies.
- Any correspondence received after this deadline will be given to Commissioners on the meeting date just prior to the meeting.
- Staff will not deliver to Commissioners any additional written (or emailed) materials received after 12:00 p.m. (noon) on the day of the meeting.
- Members of the public may submit written comments themselves early in the meeting. To distribute correspondence at the meeting, please provide 15 copies and submit to the Planning Commission Secretary just before, or at the beginning, of the meeting.
- Written comments should be directed to the Planning Commission Secretary, at the Land Use Planning Division (Attn: Planning Commission Secretary).

Communications are Public Records: Communications to Berkeley boards, commissions, or committees are public records and will become part of the City’s electronic records, which are accessible through the City’s website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission, or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service, or in person, to the Secretary of the relevant board, commission, or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the Secretary to the relevant board, commission, or committee for further information.

Written material may be viewed in advance of the meeting at the Department of Planning & Development, Permit Service Center, **1947 Center Street, 3rd Floor**, during regular business hours, or at the Reference Desk, of the Main Branch Library, 2090 Kittredge St., or the West Berkeley Branch Library, 1125 University Ave., during regular library hours.

Note: If you object to a project or to any City action or procedure relating to the project application, any lawsuit which you may later file may be limited to those issues raised by you or someone else in the public hearing on the project, or in written communication delivered at or prior to the public hearing. The time limit within which to commence any lawsuit or legal challenge related to these applications is governed by Section 1094.6, of the Code of Civil Procedure, unless a shorter limitations period is specified by any other provision. Under Section 1094.6, any lawsuit or legal challenge to any quasi-adjudicative decision made by the City must be filed no later than the 90th day following the date on which such decision becomes final. Any lawsuit or legal challenge, which is not filed within that 90-day period, will be barred.

Meeting Access: This meeting is being held in a wheelchair

accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services Specialist, at 981-6418 (V) or 981-6347 (TDD), at least three (3) business days before the meeting date.

Please refrain from wearing scented products to public meetings.



Planning Commission

1 **DRAFT MINUTES OF THE REGULAR PLANNING COMMISSION MEETING**
2 **February 7, 2018**

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

4 **Location:** North Berkeley Senior Center, Berkeley, CA

5 **Commissioners Present:** Steve Martinot, Benjamin Beach, Robb William Kapla, Benjamin
6 Fong, Gene Poschman, Christine Schildt, Jeff Vincent, Rob Wrenn, Prakash Pinto.

7 **Commissioners Absent:** None.

8 **Staff Present:** Alex Amoroso, Elizabeth Greene, and Sydney Stephenson.

9 **ORDER OF AGENDA:** Item 9 (Student Housing Presentation) will be first, then Item 10 (1050
10 Parker Rezone), then the Planning Staff Report, Approval of Minutes, and Item 11 (Cannabis
11 Regulations), and Item 12 (Elections).

12 **CONSENT CALENDAR:** None.

13 **PUBLIC COMMENT PERIOD:** 1 speaker.

14 **PLANNING STAFF REPORT:** Next meeting is February 21st, which local density bonus and
15 Cannabis Regulations Public Hearing will be discussed.

16 **COMMUNICATIONS IN PACKET:**

- 17 • 2018-02-07 – Sutter Health, Alta Bates Summit Medical Center
18

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

20 **LATE COMMUNICATIONS** (Received and distributed at the meeting):

- 21 • 2018-02-07 – UC Berkeley Students, More Student Housing Now Resolution
22 • 2018-02-07 – UC Berkeley Students, More Students Housing Now maps
23 • 2018-02-07 – Toni Mester, 3 Referrals related to San Pablo Avenue Plan
24 • 2018-02-07 – Staff, Matrix of the Existing and Proposed Cannabis Zoning Regulations

25 **CHAIR REPORT:** No Chair Report was provided.

26 **COMMITTEE REPORT:** No Report.

27 **7. APPROVAL OF MINUTES:**

28 Motion/Second/Carried (GP/CS) to approve the Planning Commission Meeting Minutes from
29 January 17, 2018. Ayes: Poschman, Beach, Martinot, Schildt, Kapla, Fong, Vincent, Wrenn,
30 Pinto. Noes: None. Abstain: None. Absent: None. (9-0-0-0)
31

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

33 **AGENDA ITEMS**

34 **9. Discussion: Student Housing Initiative Discussion**

35 Ben Fong introduced the Student Housing Initiative presentation. Six students made
36 presentations and there were 20 public speakers. Planning Commission discussed the
37 presentation and asked questions regarding the referrals.

38 Motion/second/carried (BF/GP) requests staff to evaluate the student housing referrals and
39 the Planning work plan. The motioned passed unanimously.

40 Public Comment: 6 student presenters, 20 speakers.

41 **10. Action: Public Hearing: 1050 Parker Street Parcels Rezone and General**
42 **Plan Amendment**

43 Staff briefly presented the staff report for this project, which involves rezoning two parcels
44 from MU-LI to C-W District. Staff requested that the Commission make a recommendation to
45 Council.

- 46 • Pinto: What changed the in the project that was approved by ZAB? Concerned about
47 CEQA analysis for changing from MU-LI to C-W.

48 Motion/Second/Carried (GP/RK) to open Public Hearing. The motion passed unanimously.
49 There were 9 public speakers.

50 The Commission questioned why the project changed from what was proposed and
51 approved by the Zoning Adjustments Board. The Commission discussed options other than
52 rezoning the parcels and requested staff and applicant to research the following topics:

- 53 • Option for conditioning the Zoning Map and General Plan change;
54 • Option for creating a medical office overlay on the MU-LI parcels;
55 • Option for a height variance for the C-W parcel;
56 • Ask Office of Economic Development about the value added to the parcels when
57 changed from MU-LI to C-W;
58 • Ask Kaiser whether they would consider submitting a letter regarding the project; and
59 • Option for a use variance for the MU-LI parcels.
60

61 Motion/Second/Carried (GP/RK) to keep the Public Hearing open and continue this item to the
62 March 21 Planning Commission meeting. Ayes: Poschman, Beach, Martinot, Schildt, Kapla,
63 Fong, Vincent, Wrenn, Pinto. Noes: None. Abstain: None. Absent: None. (9-0-0-0)

64 **11. Discussion: Zoning Ordinance Cannabis Regulations**

65 Staff presented proposed cannabis regulations related to the Zoning Ordinance and matrix to
66 show the new Zoning regulations for cannabis. A public hearing will be held on the Zoning
67 amendments on February 21.

68 Public Comment: 4 speakers.

69 **12. Action: Planning Commission Chair and Vice Chair Elections.**

70 Motion/Second/Carried (GP/) to nominate Chris Schidlt as Chair of the Planning Commission.
71 Ayes: Poschman, Beach, Martinot, Schildt, Kapla, Fong, Vincent, Wrenn, Pinto. Noes: None.
72 Abstain: None. Absent: None. (9-0-0-0)

73
74 Motion/Second/Carried (GP/) to nominate Rob Wrenn as Vice Chair of the Planning
75 Commission. Ayes: Poschman, Beach, Martinot, Schildt, Kapla, Fong, Vincent, Wrenn, Pinto.
76 Noes: None. Abstain: None. Absent: None. (9-0-0-0)

77 Public Comment: None.

78 **The meeting was adjourned at 10:37 pm**

79 **Commissioners in attendance: 9 of 9**

80 **Members in the public in attendance: 75**

81 **Public Speakers: 40**

82 **Length of the meeting: 3 hour and 33 minutes**



Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: February 21, 2018

TO: Members of the Planning Commission

FROM: Elizabeth Greene, Senior Planner

SUBJECT: Public Hearing: Zoning Requirements for Cannabis Uses

RECOMMENDATION

Recommend to the City Council amendments to the Zoning Ordinance to modify existing regulations and establish new land use regulations for cannabis businesses:

- Add Chapter 23.25 Cannabis Uses;
- Remove Sections 23E.16.070 and 23E.72.040;
- Add business types to use tables in commercial and manufacturing chapters; and
- Add/modify definitions in Subtitle 23F.

BACKGROUND

Current City of Berkeley Cannabis ordinances and regulations focus on Medical Dispensaries and cultivation. Other related Cannabis Uses (testing and manufacturing) are regulated without respect to the cannabis component. In the recent past, the Planning Commission has considered delivery-only dispensaries and cultivation uses. These regulations and ordinances are the result of prior citywide initiatives and pre-date the recent adoption of State law.

The passage in November 2016 of Proposition 64 allowed for the production, processing, distribution and sale of adult use (commercial non-medical) cannabis. The State has established regulations and licensing to control how these businesses operate, and left land use regulations up to each local jurisdiction.

On July 25, 2017, the City Council asked staff and the Cannabis Commission to establish a licensing process for commercial cannabis operations, consistent with the State regulations (Attachment 2). City staff from the Planning, Environmental Health, Public Health, Finance, Police, Fire and Code Enforcement departments, as well as the City Attorney's office, have drafted new cannabis regulations. The intent of these regulations is to:

1. Respond to the Council referral;
2. Develop regulations for new license types permitted by the State so businesses can be approved/selected to operate in Berkeley;
3. Ensure that existing and proposed ordinances are consistent with State regulations; and
4. Simplify and clarify the existing ordinance language.

The Commission previously reviewed and discussed background information at its February 7, 2018 meeting. The staff report and attachments from that meeting are available [here](#).

DISCUSSION

Changes to the Zoning Ordinance

The proposed City of Berkeley cannabis regulations involve changes to both the Berkeley Municipal Code and the Zoning Ordinance. The Planning Commission's purview is making recommendations to the City Council regarding changes and additions to the Zoning Ordinance.

The Zoning Ordinance changes can be divided into two categories: changes to format and changes to regulations.

1. Format changes

The format changes are designed to make information about cannabis uses easier to find. These include:

- Moving current regulations related to cannabis uses into one chapter: 23C.25 Cannabis Uses; and
- Adding references to Cannabis Uses in the use tables of relevant commercial and manufacturing districts.

2. Regulation changes

The regulation changes involve revisions to development standards to reflect State regulations or new cannabis activities.

This discussion focuses on the regulation changes. The ordinance identifies five cannabis business types and provides development standards for each use. These standards relate to the location of the use, limits ("quotas") on the number of uses; required distances ("buffers") from other uses; and levels of discretion. See Attachment 3 for a description of the use types and Attachment 4 for a matrix of the development standards. Development standards that were recommended by a commission to Council but were not considered by the Council are included in the matrix.

The new Chapter 23C.25 has been modified since the February 7, 2018 PC meeting to correct some language and to expand the quota limits. These changes are highlighted in the chapter and the development standard matrix (Attachments 1 and 4).

Considerations and Analysis

The Planning Commission should focus on five primary areas when evaluating the Zoning Ordinance changes: use types; locations; quotas; buffers; and levels of discretion. A brief description of these areas and issues considered by staff follows.

Use Types. The Zoning Ordinance would allow all State-licensed business types except cultivation facilities larger than 22,000 square feet and outdoor commercial cultivation to locate in Berkeley.

Issues considered by staff:

- The excluded uses would be inconsistent with Berkeley based on their size or possible impacts (odor) on the surrounding community.

Questions for Commission:

- Should the types of uses in Berkeley be expanded or have additional limitations?

Location. The Zoning Ordinance would allow businesses in the following locations:

Business Type	Location
Retailers	Storefront retail and delivery-only in any C-prefixed district. Delivery-only businesses could not locate in a ground floor unit with street frontage, and could locate in an M-prefixed district as an ancillary use to another cannabis business.
Cultivators	M District
Manufacturers	Same requirements as non-cannabis Light Manufacturers
Distributors	Same requirements as Wholesale Uses
Testing Labs	Same requirements as non-cannabis Testing Labs

Issues considered by staff:

- These regulations would allow cannabis uses to locate in areas that allow similar non-cannabis uses.
- The restriction on delivery-only businesses is designed to prevent “dead zones” in commercial districts, as these uses would not generate customer visits.
- Allowing delivery-only retailers to co-locate with manufacturing, distribution or cultivation uses would allow integrated microbusinesses as permitted by State law, and would not significantly impact space available in manufacturing districts.

Questions for Commission:

- Are these locations appropriate for these uses?
- Should these uses be expanded beyond the proposed locations, or have additional limitations?

Quotas. Quotas are proposed for Adult Use Retail and Major Cannabis Cultivation Facilities (those between 10,000 and 22,000 sf). The quota for the uses is listed

as a range, as the actual quota may vary based on the type of selection process chosen by Council. The number used is designed as a starting point, either because it reflects an existing quota or because it reflects the lowest number considered in the selection process scenarios. The exception to this is cultivation uses, as the Council directed that the number of Major Cannabis Cultivation Facilities should be limited to six.

Business Type	Possible Quota Range
Retailers	
Medicinal Storefront	6 (existing) or greater
Adult Use Storefront	12 or greater
Delivery-only	10 or greater
Medicinal / Adult Use Storefront	Limit number by zoning district (see map)
Cultivators	
All businesses	180,000 sf total canopy in Berkeley
Major Cannabis Cultivation Facilities (those 10,000 sf or greater)	6

Issues considered by staff:

- There is much uncertainty about the impact that cannabis businesses will have in communities. Quotas would allow the City to add businesses slowly and to evaluate impacts before allowing additional businesses.
- Overly restrictive quotas could limit competition and prevent new businesses from locating in Berkeley.
- Quotas are considered important in preventing an overconcentration of retail uses that allow customer visits, as this could significantly change the character of existing business districts and the surrounding residential neighborhoods.
- The quota for total commercial cultivation is designed to protect manufacturing districts from unlimited cannabis businesses locating in the area, as this could raise rents and make it difficult for non-cannabis businesses to compete for sites.
- Quotas are not recommended for manufacturers and testing labs as few have located in the city without quotas.

Questions for Commission:

- How important are quota limits for Retailers?
- Are there other numbers that should be considered by Council?

Buffers. Buffers are proposed for the following uses:

Business Type	Buffer from	Buffer size
Retail Storefront	K-12 schools and each other	600 ft
Retail Delivery-only	K-12 schools	600 ft
Other Cannabis businesses	K-12 schools	300 ft

Issues considered by staff:

- Buffers keep establishments that allow customer visits or have products packaged for sale away from areas with high concentrations of minors.
- Smaller buffers are recommended between non-retail businesses and schools due to the all-cash nature of the industry and possible use of volatile substances in manufacturing process.
- Buffers between Retail storefronts will prevent overconcentration of Retail storefronts.

Questions for Commission:

- Is overconcentration a problem?
- Are buffers from schools needed?
- Should buffers from other uses be considered?
- Are proposed buffers the right size?

Levels of Discretion. The Zoning Ordinance would allow all of the proposed cannabis business types to be approved with a Zoning Certificate or subject to the same regulations as similar non-cannabis businesses.

Staff reasoning:

- Level of discretion is consistent with similar uses that do not involve cannabis.
- Existing dispensaries, manufacturers and testing labs have not resulted in significant enforcement issues.
- These uses are not expected to be detrimental to surrounding neighborhoods and businesses due to State and local regulations addressing security, buffers from schools, quotas, etc.
- All cannabis businesses will be subject to annual State licenses and local operational permits which can be revoked if businesses are not compliant with regulations.

Questions for Commission:

- Should any use types have a different level of discretion?

Selection Process and Equity Considerations

Staff will present options for a selection process to the Cannabis Commission and the City Council. These options will include ways to incorporate equity into the process. Equity applicants will be defined as those that have at least a 40% owner that qualifies as an equity candidate due to either meeting a low-income threshold or as been arrested or incarceration for cannabis-related, non-violent crimes. The selection options are also

designed to be relatively fast and inexpensive for applicants. The quotas and possibly buffers could be modified depending on the type of process chosen by the Council.

General Plan Review:

Staff has determined that no changes are necessary to the General Plan as a result of the draft zoning amendment. The proposed changes would add development standards for existing and new cannabis use types. These uses are very similar to non-cannabis uses already permitted in the city.

The General Plan has specific policies that support these zoning ordinance changes:

Policy LU-1 Community Character: Maintain the character of Berkeley as a special, diverse, unique place to live and work.

Action LU-7.C: Carefully evaluate and monitor new and existing uses to minimize or eliminate negative impacts on adjacent residential uses.

Actions LU-26.A and LU-27.A: Require ground-floor commercial uses to be oriented to the street and sidewalks to encourage a vital and appealing pedestrian experience.

CEQA Review:

The businesses proposed in this ordinance are either already permitted in Berkeley or are similar to many other commercial uses in the City of Berkeley Zoning Ordinance. These businesses will not have impacts greater than those of other commercial uses. Buffers from schools and requirements for neighborhood compatibility will help protect neighborhoods from negative effects of these commercial uses. Annual State and local reviews of each business will ensure they are meeting State and local regulations. This means that no additional impacts are expected from the uses and no additional environmental evaluation is necessary.

CONCLUSION

Staff recommends that the Planning Commission:

1. Consider the analysis and recommendation included with this report;
2. Consider the questions proposed in the report;
3. Consider attached Zoning Ordinance language (Attachment 1);
4. Consider other options put forward by other Commissioners and the public; and
5. Identify recommendation through a vote of the Commission.

ATTACHMENTS

1. Proposed Ordinance Language (New Chapter 23C.25; modified Chapter 23F.04; modified use tables in Chapters 23E.36 (C-1), 23E.40 (C-N), 23E.44 (C-E), 23E.48 (C-NS), 23E.52 (C-SA), 23E.56 (C-T), 23E.60 (C-SO), 23E.64 (C-W), 23E.68 (C-DMU), 23E.72 (M), 23E.76 (MM), 23E.80 (MU-LI), and 23E.84 (MU-R) and deleted Section 23E.16.070 and 23E.72.040)

2. Council referral (July 25, 2017)
3. Description of uses
4. Development standard matrix
5. Public Hearing Notice

Chapter 23C.25 CANNABIS USES

Sections:

23C.25.010 Retail Uses

23C.25.020 Cultivation

23C.25.030 Manufacturing, Testing and Distribution

Section 23C.25.010 Retailer

- A. Retailer is defined in Section 12.21.020.
- B. Retailers may not be located within 600 feet of another Retailer or a public or private elementary, middle or high school.
- C. Expansion of an approved Retailer shall follow the conversion regulations for the Zoning District in which it is located and shall comply with subdivision (B) of this Section.
- D. An M-Retailer existing and authorized as of January 1, 2010, that does not comply with this Section, may continue at its current medical cannabis dispensing location and shall be considered a legal nonconforming use. Notwithstanding Section 23C.04.060 or subdivision (B) of this Section, the Zoning Officer may approve an Administrative Use Permit to allow the expansion of a legal nonconforming medical cannabis dispensary use on any parcel or on two adjacent parcels where a dispensary was located on one of the parcels as of July 1, 2010.
- E. No changes in ownership or approved location shall be approved until such time as the City Council established procedures and criteria to allow such changes.
- F. Medicinal Cannabis Retailers
 - 1. ~~Six-XX~~ Medicinal Cannabis Retailers as defined in Section 12.21.020 shall be permitted as of right with a Zoning Certificate in C-prefixed zones if they comply with the parking requirements applicable to the uses they include, and any security requirements promulgated by the Chief of Police.
- G. Adult Use Retailers
 - 1. ~~Twelve-XX~~ Adult Use Retailers as defined in Section 12.21.020 shall be permitted as of right with a Zoning Certificate in C-prefixed zones if they comply with the regulations in BMC Chapter 12.XX, parking requirements applicable to the

uses they include, and any security requirements promulgated by the Chief of Police.

H. Delivery-only Retailers

1. ALTERNATIVE A: CANNABIS COMMISSION RECOMMENDATION - In addition to the six existing Medicinal Cannabis Retailers, under Berkeley Municipal Code Section 12.26.130 and any A-Retailers Dispensaries selected under Section 12.27.100, an unlimited number of Delivery-only Retailers shall be permitted, on a first-come-first-served basis. OR

1. ALTERNATIVE B: STAFF RECOMMENDATION - In addition to the six existing M-Retailers under Section 12.26.130 and any A-Retailers selected under Section 12.27.100, ~~ten (10) XX~~ Delivery-only Retailers shall be permitted, subject to a Council-approved selection process.

2. ALTERNATIVE A: PLANNING COMMISSION RECOMMENDATION Delivery-only Retailers as defined in Section 12.21.020 shall be allowed subject to issuance of an (Administrative Use Permit or Use Permit) in all C-prefixed zones except Commercial Neighborhood (C-N). Delivery-only Retailers must comply with the regulations in Chapters 12.21 and 12.22 and Title 23, comply with the parking requirements applicable to retail uses, and any security requirements promulgated by the Chief of Police.

2. ALTERNATIVE B: STAFF RECOMMENDATION Delivery-only Retailers as defined in Section 12.21.020 shall be allowed in all C-prefixed zones. Delivery-only businesses are ~~permitted only on second floors~~ prohibited on the ground floor adjacent to street frontage. Delivery-only Retailers must comply with the regulations in Chapters 12.21 and 12.22 and Title 23, comply with the parking requirements applicable to retail uses, and any security requirements promulgated by the Chief of Police.

3. Delivery-Only Retailers may locate in all M-prefixed zones only as an ancillary use to another type of Cannabis Business.

I. No new Retailer may be approved under this Section until the City Council adopts a licensing process and standards for Retailers. Such standards may include, but shall not be limited to, whether proposed dispensaries will provide a percentage of all useable product dispensed at no cost to very low income patients and will provide product that is produced using organic methods; and whether their form of organization, ownership and practices ensure equity and accountability, low prices and an adequate supply of high quality medical cannabis to their members.

Section 23C.25.020 Cannabis Cultivation

A. Notwithstanding anything to the contrary in this Chapter, cultivation of cannabis as defined in Chapters 12.21 and 12.22 and MAUCRSA, shall be permitted as a matter of right with a Zoning Certificate in ~~all M-prefixed zones~~ the M District, subject to the following limitations:

1. Such locations shall be limited to licensed Cannabis Businesses.
2. Cannabis may not be dispensed, and client, patient or member services or retail sales are prohibited, at such locations.
3. No single location used for cultivation and associated uses by a licensee may exceed 22,000 square feet of total canopy area, except that separate spaces used by different licensees may be aggregated on the same location.
4. Up to six Major Cannabis Cultivation Facilities between the size of 10,000 sf and 22,000 sf in total canopy area are permitted.
5. There is no numeric limit for Cannabis Cultivation Facilities under 10,000 sf in total canopy area. These uses are limited by the total area permitted for cannabis cultivation set forth in subsection 23C.25.020.A.7 minus the area available for Major Cannabis Cultivation Facilities.
6. Outdoor commercial cultivation is prohibited.
7. The total canopy area used for cannabis cultivation shall not exceed 180,000 square feet. (23E.72.040.A)

B. Cannabis nurseries, as defined in Chapter 12.21 are considered Cannabis Cultivation uses and are subject to the same regulations as Cultivators.

C. Such locations shall comply with all regulations in Chapter 12.XX, security regulations promulgated by the Chief of Police, and the requirements of this Chapter, and shall not be located within 300 feet of a private or public elementary, middle or high school. Such locations may include testing, processing, manufacturing and food preparation only to the extent expressly permitted by MAUCRSA.

D. No Cannabis uses may be approved under this Section until the City Council adopts a licensing process and standards for such uses. Such standards shall include a requirement that indoor cultivation uses provide for an energy offset through a program specified by the City to offset the net increased energy that is used by the Facility as compared to a regular industrial facility, and may include, but shall not be limited to, whether proposed Facilities will provide a percentage of all usable product cultivated at no cost to very low income patients and will use organic methods in cultivation and processing to the maximum extent reasonable; and whether their form of organization,

ownership and practices ensure equity and accountability, low prices and an adequate supply of high quality cannabis to Customers.

Section 23C.25.030 Cannabis Manufacturing, Testing Labs and Distribution

A. Uses such as, but not limited to, testing, processing, and food preparation, that involve cannabis as defined in Chapter 12.21 but do not involve dispensing, client, patient or member services, or cultivation (other than for testing), shall be evaluated and regulated under this Title without regard to the fact that they involve cannabis.

B. Manufacturers, Testing Labs, Research and Development and Distribution businesses which are licensed as Cannabis Businesses by the State may not be located within 300 feet of a public or private elementary, middle or high school.

C. For the purposes of this Chapter, the following Cannabis uses shall be evaluated and regulated for Zoning purposes in the same way as the existing non-Cannabis uses, with the exception of distance buffers from schools:

Cannabis Use	Non-Cannabis Use
Manufacturing, processing, food preparation	Light Manufacturing
Testing labs	Testing labs
Research and Development	Research and Development
Distribution	Wholesale Uses

Changes to Definitions (Chapter 23F.04.010)

Cannabis Uses: Cannabis uses include retail sales, cultivation, manufacturing, testing, and distributing. See BMC Chapters 12.21 and 12.22 for cannabis regulations and Section 23C.24 for land use regulations.

Light Manufacturing: Primarily involved in baking, brewing, fabricating, milling, processing and other similar forms of mechanical and chemical treatment. Light manufacturing uses are generally in the following groups in the North American Industrial Classification System (NAICS):

Light Manufacturing Uses	NAICS Code
Apparel and Other Textile Mill Products	314 – 33636
Electronic and Electric Equipment, except semiconductors	334412 – 335311, 334413, 333319, 333618, 333992, 335129, 35999
Fabricated Metal Products	332 – 332999
Food Processing	311 – 311999
Furniture and Fixtures	337 – 33792
Industrial Machinery and Equipment	333 – 333999
Instruments and Related Products	334511 – 334518
Leather and Leather Products, except leather tanning	3162 – 316999
Lumber and Wood Products, except logging	321 – 321999
Miscellaneous Manufacturing	339 – 339999
Paper and Allied Products, except paper, pulp and paperboard mills	3222 – 322299
Perfumes, Cosmetics and Toilet Preparations	325611 – 32562
Printing and Publishing, except publishing without printing	323 – 323122
Rubber and Miscellaneous Plastic Products	326 – 326299
Stone, Clay and Glass Products, except cement	327 – 327215, 32733 – 327999
Textile Mill Products	313 – 31332
Transportation Equipment	336 – 336999

Light Manufacturing Uses	NAICS Code
Cannabis Manufacturing	

Retail Products Store: An establishment engaged in the sales of personal, consumer or household items to the customers who will use such items, including, but not limited to:

Retail Products Stores	Comments
Antique Stores	Includes Collectibles
Art/Craft Shops	
Art Galleries	
Art and Craft Supply Stores	
Audio/Video Records, Tapes, Disks Sales Shops	Excludes video rental stores
Automobile Parts Stores	Excludes service of auto parts
Bicycle Shops	Includes sales, parts and repair/service
Bookstores, Periodical Stands	
Clothing Stores	Includes apparel, hats, shoes and accessories
Computer Stores	Hardware and software
Drugstores	Includes pharmaceutical, sundries, cosmetic/personal care items
Fabric, Textile and Sewing Supply Shops	
Flower and Plant Stores	Includes live, fresh-cut and/or dried flowers; excludes nurseries
Food Products Stores, Specialized	Includes Bakeries
Food Products Stores, General	Includes groceries, markets and supermarkets
Furniture Stores, Household or Office	Includes carpets and rugs
Garden Supply Stores, Nurseries	Does not include Cannabis Nurseries, see Cannabis Cultivation definition in 12.21.020
Gift/Novelty Shops	

Retail Products Stores	Comments
Glass Pane and Mirror Stores	
Hobby Shops	
Household Hardware and Housewares Stores	
Household Electronics/Electrical Stores (Audio, Telephone and Video/TV)	Excludes video rental stores
Jewelry/Watch Shops	
Linen Shops	Includes bedding
Musical Instruments and Materials Stores	
Office Supply Stores	
Paint/Wallpaper Stores	
Photography Equipment Supply Stores	Includes cameras and film developing
Secondhand Stores	Includes used/vintage clothing and household goods
Small Appliance Stores	
Sporting Goods Stores	Includes equipment, clothing and supplies, excluding Firearm/Munitions Businesses
Stationery, Cards and Paper Goods Stores	
Toy Stores	
Variety Stores	

Changes to Commercial District and Manufacturing District Use Tables (multiple chapters)

Table 23E.36.030 C-1 General Commercial District Provisions: Uses Permitted

Use	Classification	Special Requirements (if any)
Retail Sales		
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores)
Alcoholic Beverage Retail Sales including Liquor Stores and Wine Shops	UP(PH)	Includes sale for off-site consumption at restaurants Prohibited within the University Avenue Strategic Plan Overlay (unless in conjunction with a restaurant or general food product store)
Department Stores	ZC*	
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops, including Auction Houses	UP(PH)	Prohibited within the University Avenue Strategic Plan Overlay
Pet Stores, including Sales and Grooming of Animals (but not Boarding)	UP(PH)	
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
Adult-Use Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22
Medicinal-Use Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22
Delivery-only Cannabis Retailer (Adult-use and Medicinal-use)	ZC, AUP or UP	ZC shall only be issued after business is approved through the selection process Subject to the requirements of Section 23C.24 and BMC Chapters 12.21. and 12.22

Miscellaneous Uses		
Automatic Teller Machines	UP(PH)	When not a part of a Retail Financial Service
Cafeteria, Employee or Residential	UP(PH)	
Cemeteries, Crematories, Mausoleums	Prohibited	
Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, no more than 5% of the subject property area, and located within the main building
Circus or Carnival	UP(PH)	
Commercial Excavation	UP(PH)	Including earth, gravel, minerals, or other building materials including drilling for, or removal of, oil or natural gas
Dry Cleaning and Laundry Plants	UP(PH)	
Emergency Shelter		See Chapter 23C.10 .
Up to 25 beds	ZC	
More than 25 beds	UP(PH)	
Kennels or Pet Boarding	Prohibited	
Laboratories, Testing (including Cannabis Testing)	AUP**	
Mortuaries	UP(PH)	
Public Utility Substations, Tanks	UP(PH)	
Radio, Television, or Audio/Sound Recording and/or Broadcast Studios	UP(PH)	

Warehouses or Storage including Mini-storage Warehouses	UP(PH)	Prohibited within the University Avenue Strategic Plan Overlay
Wireless Telecommunications Facilities		
Microcell Facilities, Modifications to Existing Sites, and Additions to Existing Sites When the Site Is Not Adjacent to a Residential District	AUP	Subject to the requirements of Section 23C.17.100
All Other Telecommunication Facilities	UP(PH)	Subject to the requirements and findings of Section 23C.17.100

Table 23E.40.030 C-N Neighborhood Commercial District Provisions: Uses Permitted

Use	Classification	Special Requirements (if any)
Retail Sales		
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed. (Does not include Video Rental Stores)
Alcoholic Beverage Retail Sales including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants
Department Stores	AUP	
Over 3,000 s.f.	Prohibited	
Drugstores	ZC*	A new or expanded Drugstore is prohibited if it is over 5000 square feet in Gross Floor Area, and within 1000 feet of any property containing an existing Drugstore, as measured by a straight line from the nearest point of the property line of the parcel on which the Drugstore is proposed to the nearest point of the property line of the parcel on which the nearest Drugstore is located.
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use

Use	Classification	Special Requirements (if any)
Pawn Shops, including Auction Houses	Prohibited	
Pet Stores, including Sales and Grooming of Animals (but not Boarding)	UP(PH)	
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
Adult-Use Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22
Medicinal-Use Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22
Delivery-only Cannabis Retailer (Adult-use and Medicinal-use)	Prohibited OR ZC	ZC shall only be issued after business is approved through the selection process Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22

Table 23E.44.030 C-E Elmwood Commercial District Provisions: Uses Permitted

Use	Classification	Special Requirements (if any)
Retail Sales		
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores).
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants
Department Stores Over 3,000 s.f.	ZC* Prohibited	
Drugstores	ZC*	A new or expanded Drugstore is prohibited if it is over 5000 square feet in

Use	Classification	Special Requirements (if any)
		Gross Floor Area, and within 1000 feet of any property containing an existing Drugstore, as measured by a straight line from the nearest point of the property line of the parcel on which the Drugstore is proposed to the nearest point of the property line of the parcel on which the nearest Drugstore is located.
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops, including Auction Houses	Prohibited	
Pet Stores, including Sales and Grooming of Animals	UP(PH)	Does not include boarding of animals
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
Adult-Use Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22
Medicinal-Use Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22
Delivery-only Cannabis Retailer (Adult-use and Medicinal-use)	ZC, AUP or UP	ZC shall only be issued after business is approved through the selection process Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22

Table 23E.48.030 C-NS North Shattuck Commercial District Provisions: Uses Permitted

Use	Classification	Special Requirements (if any)
Retail Sales		
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores).

Use	Classification	Special Requirements (if any)
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants
Department Stores Over 3,000 s.f.	ZC* Prohibited	
Drugstores	ZC*	A new or expanded Drugstore is prohibited if it is over 5000 square feet in Gross Floor Area, and within 1000 feet of any property containing an existing Drugstore, as measured by a straight line from the nearest point of the property line of the parcel on which the Drugstore is proposed to the nearest point of the property line of the parcel on which the nearest Drugstore is located.
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops, including Auction Houses	Prohibited	
Pet Stores, including Sales and Grooming of Animals (but not Boarding)	UP(PH)	
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
Adult-Use Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22
Medicinal-Use Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22
Delivery-only Cannabis Retailer (Adult-use and Medicinal-use)	ZC, AUP or UP	ZC shall only be issued after business is approved through the selection process Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22

Table 23E.52.030 C-SA South Area Commercial District Provisions: Uses Permitted

Use	Classification	Special Requirements (if any)
Retail Sales		
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores)
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants No sales of distilled alcoholic beverages are allowed along Adeline Street south of Ashby Avenue
Department Stores Over 3,000 s.f.	ZC* UP(PH)	
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops	Prohibited	Including Auction Houses
Pet Stores	UP(PH)	Including Sales and Grooming of Animals (but not Boarding)
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
Adult-Use Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22
Medicinal-Use Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22
Delivery-only Cannabis Retailer (Adult-use and Medicinal-use)	ZC, AUP or UP(PH)	ZC shall only be issued after business is approved through the selection process Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22

Table 23E.56.030 C-T Telegraph Avenue Commercial District Provisions: Uses Permitted

Use	Classification	Special Requirements (if any)
Retail Sales		
All Retail Sales Uses, except those listed below	ZC	As defined in Sub-title 23F , except otherwise listed (does not include Video Rental Stores)
Alcoholic Beverage Retail Sales including liquor stores and wine shops	Prohibited	Includes sale for off-site consumption at restaurants
Department Stores Over 3,000 s.f.	ZC UP(PH)	
Drug Paraphernalia (any use involving the sale or distribution thereof)	Prohibited	As defined in California Health and Safety Code Section 11364.5(d)
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops	Prohibited	Including Auction Houses
Pet Stores	UP(PH)	Including Sales and Grooming of Animals (but not Boarding)
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
Adult-Use Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22
Medicinal-Use Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22
Delivery-only Cannabis Retailer (Adult-use and Medicinal-use)	ZC, AUP or UP(PH)	ZC shall only be issued after business is approved through the selection process Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22

Table 23E.60.030 C-SO Solano Avenue Commercial District Provisions: Uses Permitted

Use	Classification	Special Requirements (if any)
Retail Sales		
All Retail Sales Uses, except those listed below	ZC*	As defined in Sub-title F, except otherwise listed (does not include Video Rental Stores)
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants
Department Stores Over 3,000 s.f.	ZC* Prohibited	
Drugstores	ZC*	A new or expanded Drugstore is prohibited if it is over 5000 square feet in Gross Floor Area, and within 1000 feet of any property containing an existing Drugstore, as measured by a straight line from the nearest point of the property line of the parcel on which the Drugstore is proposed to the nearest point of the property line of the parcel on which the nearest Drugstore is located.
Firearm/Munitions Businesses	UP(PH)	Prohibited on any property devoted to residential use
Pawn Shops	Prohibited	
Pet Stores including Sales and Grooming of Animals (but not Boarding)	UP(PH)	
Smoke Shops	UP(PH)	Prohibited if within 1,400 feet of a school or public park
Adult-Use Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22
Medicinal-Use Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22
Delivery-only Cannabis Retailer (Adult-use and Medicinal-use)	ZC, AUP or UP(PH)	ZC shall only be issued after business is approved through the selection process Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22

Use	Classification	Special Requirements (if any)

Table 23E.64.030 C-W West Berkeley Commercial District Provisions: Uses Permitted

Use	Permits Required to Establish, Expand or Change Use (sq. ft.)			Special Requirements (if any)
Retail Sales				
Retail uses as defined in Sub-title 23F , except otherwise listed.				
	Under 3,500	3,500-7,500	7,500 or more	
All Retail Sales Uses, except those specified below	ZC	AUP	UP(PH) **	**Except when part of a combination commercial/residential use; see Mixed Use Development heading
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)			Includes sale for off-site consumption at restaurants
Firearm/Munitions Businesses	UP(PH)			Prohibited on any property devoted to residential use
Pawn Shops, including Auction Houses	UP(PH)			
Smoke Shops	UP(PH)			Prohibited if within 1,400 feet of a school or public park
Adult-Use Cannabis Retailer	ZC			ZC shall only be issued after business is approved through the selection process Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22
Medicinal-Use Cannabis Retailer	ZC			ZC shall only be issued after business is approved through the selection process Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22
Delivery-only Cannabis Retailer (Adult-use and Medicinal-use)	ZC, AUP or UP(PH)			ZC shall only be issued after business is approved through the selection process

Use	Permits Required to Establish, Expand or Change Use (sq. ft.)	Special Requirements (if any)
		Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22

Miscellaneous Uses		
Automatic Teller Machines	AUP	When not part of a Retail Financial Service
Cafeteria, Employee or Residential	AUP	
Cemeteries and Mausoleums	Prohibited	
Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, no more than 5% of the subject property area, and located within the main building
Circus or Carnival	UP(PH)	Prohibited in designated nodes. See Section 23E.64.050.C
Commercial Excavation	Prohibited	Including earth, gravel, minerals or other building materials including drilling for, or removal of, oil or natural gas
Dry Cleaning and Laundry Plants	Prohibited	
Emergency Shelter Up to 25 beds More than 25 beds	ZC UP(PH)	See Chapter 23C.10 .
Kennels or Pet Boarding	UP(PH)	Prohibited on ground floor in designated node
Laboratories, Commercial Physical or Biological	Prohibited	See Section 23E.64.030.C
Laboratories, Testing (including Cannabis Testing)	AUP if less than 10,000 sq. ft. UP(PH) if more than 10,000 sq. ft.	
Mortuaries and Crematories	UP(PH)	
Public Utility Substations, Buildings, Tanks	UP(PH)	Prohibited in designated node. See Section 23E.64.050.C
Radio, Television, or Audio/Sound Recording and/or Broadcast Studios	UP(PH)	Prohibited on ground floor in designated node. See Section 23E.64.050.C

Wireless Telecommunications Facilities		
Microcell Facilities, Modifications to Existing Sites, and Additions to Existing Sites When the Site Is Not Adjacent to a Residential District	AUP	Subject to the requirements and findings of Section 23C.17.100
All Other Telecommunication Facilities	UP(PH)	Subject to the requirements and findings of Section 23C.17.100
Light Manufacturing and Wholesale Trade Uses		
Manufacturing uses prohibited on ground floors in designated nodes. See Section 23E.64.050.C		
Light Manufacturing and Wholesale Trade Uses (including Cannabis Distributors)		
5,000 or less sq. ft.	AUP	
5,000 sq. ft. or more	UP(PH)	
All Other Manufacturing Uses	UP(PH)	
Warehouses or Storage (including Mini-storage Warehouses)	Prohibited	

Table 23E.68.030 C-DMU Downtown Mixed Use Commercial District Provisions: Uses Permitted

Use	Classification	Special Requirements
Retail Sales		
All Retail Sales Uses, except those listed below	ZC	As defined in Sub-title 23F , except otherwise listed
Alcoholic Beverage Retail Sales, including liquor stores and wine shops	UP(PH)	Includes sale for off-site consumption at restaurants
Department Stores	AUP	
Under 10,000 s.f.	ZC	
Firearm/Munitions Businesses	Prohibited	
Pawn Shops, including Auction Houses	UP(PH)	
Pet Stores, including Sales and Grooming of Animals (but not Boarding)	UP(PH)	
Smoke Shops	Prohibited	

Use	Classification	Special Requirements
Adult-Use Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22
Medicinal-Use Cannabis Retailer	ZC	ZC shall only be issued after business is approved through the selection process Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22
Delivery-only Cannabis Retailer (Adult-use and Medicinal-use)	ZC, AUP or UP(PH)	ZC shall only be issued after business is approved through the selection process Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22

Miscellaneous Uses		
Automatic Teller Machines When not a Part of a Retail Financial Service		
Exterior	UP(PH)	
Interior	AUP	
Cafeteria, Employee or Residential	UP(PH)	
Cemeteries, Crematories, Mausoleums	Prohibited	
Columbaria	AUP	Allowed with a ZC if incidental to a Community and Institutional Use, limited to 400 niches, no more than 5% of the subject property area, and located within the main building.
Circus or Carnival	UP(PH)	
Dry Cleaning and Laundry Plants	UP(PH)	
Emergency Shelter		See Chapter 23C.10 .
Up to 60 beds	ZC	
More than 60 beds	UP(PH)	
Kennels or Pet Boarding	Prohibited	

Laboratories, Testing (including Cannabis Testing)	AUP	
Mortuaries	UP(PH)	
Public Utility Substations, Tanks	UP(PH)	
Radio, Television or Audio/Sound Recording Studios Broadcast Studios	AUP UP(PH)	
Warehouses or Storage including Mini-storage Warehouses	UP(PH)	
Wireless Telecommunications Facilities Microcell Facilities, Modifications to Existing Sites, and Additions to Existing Sites When the Site Is Not Adjacent to a Residential District All Other Telecommunication Facilities	AUP UP(PH)	Subject to the requirements and findings of Section 23C.17.100 Subject to the requirements and findings of Section 23C.17.100

Table 23E.72.030 M Manufacturing District Provisions: Uses Permitted

Uses	Permits Required to Establish, Expand or Change Use (sq. ft.)			Special Requirements (if any)
	Under 20,000	20,000 – 40,000	More than 40,000	
Manufacturing and Wholesale Trade				
Construction Products Manufacturing	ZC	AUP	UP(PH)	
Light Manufacturing	ZC	ZC	UP(PH)	
Mini-storage Warehouses	Prohibited			
Pesticides, herbicides and fertilizers	Prohibited			
Petroleum refining and products	Prohibited			
Pharmaceuticals	AUP	UP(PH)	UP(PH)	
Primary Production Manufacturing	AUP	UP(PH)	UP(PH)	
Semiconductors	UP(PH)			
Warehouses (other than Mini-storage)	ZC	AUP	UP(PH)	
Warehouse-Based Non-Store Retailers	ZC	AUP	UP(PH)	Allowed in Manufacturing,

				Wholesale Trade or Warehouse. See Section 23E.72.045.A
Wholesale Trade Establishments (including Cannabis Distributors)	ZC	AUP	UP(PH)	
Other Industrial Uses				
Art/Craft Studio	ZC <10,000	AUP 10,000 – 20,000	UP(PH) >20,000	Workspaces only, no Live/Work permitted.
Bus, cab, truck and public utility depots	AUP	UP		
Commercial Excavation	UP(PH)			Including earth, gravel, minerals, or other building materials, including drilling for, or removal of, oil or natural gas
Contractors	AUP		UP	
Dry Cleaning and Laundry Plants	ZC	AUP	UP(PH)	No retail service permitted
Laboratories, Testing and Commercial Biological Research	Prohibited			
Media Production	ZC <10,000	AUP 10,000 – 20,000	UP(PH) >20,000	
Recycled Materials Processing	ZC*	AUP	UP	* If all processing done indoors; if any outdoors, AUP
Repair Service (other than auto repair)	ZC	AUP	UP	No retail sales permitted
Services to Buildings and Dwellings	AUP			
Cannabis Cultivation	ZC			ZC shall only be issued after business is approved through the selection process Subject to the requirements of Section 23C.24 and BMC Chapters 12.21 and 12.22

Table 23E.76.030 MM Mixed Manufacturing District Provisions: Uses Permitted

Uses	Permits Required to Establish, Expand or Change Use (sq. ft.)			Special Requirements (if any)
	Under 20,000	20,000 – 40,000	More than 40,000	
Manufacturing and Wholesale Trade				
Construction Products Manufacturing	ZC	AUP	UP(PH)	
Light Manufacturing	ZC	ZC	UP(PH)	
Mini-storage Warehouses	Prohibited			Changes of Use to Mini Storage Warehouse Prohibited
Pesticides, herbicides and fertilizers	Prohibited			
Petroleum refining and products	Prohibited			
Pharmaceuticals	AUP	UP(PH)	UP(PH)	
Primary Production Manufacturing	AUP	UP	UP(PH)	
Semiconductors	UP(PH)			
Warehouse-Based Non-Store Retailers	ZC	AUP	UP(PH)	Allowed in Manufacturing, Wholesale Trade or Warehouse, See Section 23E.76.040.D
Warehouses (other than Mini-storage)	ZC	AUP	UP(PH)	
Wholesale Trade establishments (including Cannabis Distributors)	ZC	AUP	UP(PH)	
Other Industrial Uses				
Art/Craft Studio	ZC <10,000	AUP 10,000 – 20,000	UP(PH) >20,000	Workspaces only, no Live/Work permitted. Allowed in Manufacturing, Wholesale Trade or Warehouse. See Section 23E.76.040.D
Bus, cab, truck and public utility depots	AUP	UP		
Commercial Excavation	UP(PH)			Including earth, gravel, minerals, or other building materials, including drilling for, or

Uses	Permits Required to Establish, Expand or Change Use (sq. ft.)			Special Requirements (if any)
	Under 20,000	20,000 – 40,000	More than 40,000	
				removal of, oil or natural gas
Contractors	AUP		UP	Allowed in Manufacturing, Wholesale Trade or Warehouse. See Section 23E.76.040.D
Dry Cleaning and Laundry Plants	ZC	AUP	UP(PH)	No retail service permitted
Laboratories, Testing and Commercial Biological Research (including Cannabis Testing)	AUP	UP	UP(PH)	
Media Production	ZC <10,000	AUP 10,000 – 20,000	UP(PH) >20,000	
Recycled Materials Processing	ZC*	AUP	UP	* If all processing done indoors; if any outdoors, AUP
Research and Development	ZC	AUP		
Change of Use from Warehouse and Wholesale Trade	AUP	UP(PH)	UP(PH)	See Section 23E.80.045.A2.
Repair Service (other than auto repair)	ZC	AUP	UP	No retail sales permitted
Services to Buildings and Dwellings	AUP			

Table 23E.80.030 MU-LI Mixed Use-Light Manufacturing District Provisions: Uses Permitted

Uses	Permits Required to Establish, Expand, or Change use by Floor Area (sq. ft.)			Special Requirements (if any)
	Under 20,000	20,000 – 30,000	More than 30,000	
Manufacturing and Wholesale Trade				
Increased Permit requirements in locations within 150 ft. of a residential use in either the R or MU-R district. See Section 23E.80.060.D				

Uses	Permits Required to Establish, Expand, or Change use by Floor Area (sq. ft.)			Special Requirements (if any)
	Under 20,000	20,000 – 30,000	More than 30,000	
Construction Products Manufacturing	UP(PH)	UP(PH)	UP(PH)	
Light Manufacturing	ZC	AUP	UP(PH)	
Mini-storage Warehouses	Prohibited			
Pesticides, Herbicides and Fertilizers	Prohibited			
Petroleum refining and products	Prohibited			
Pharmaceuticals	AUP	UP(PH)	UP(PH)	Permitted only in locations at least 500 ft. from R or MU-R Districts; see Section 23E.80.060.F
Primary Production manufacturing	Prohibited			
Semiconductors and related devices	Prohibited			
Warehouses (other than Mini-storage)	ZC	AUP	UP(PH)	See Retail Uses for storage of goods for a retail use
Warehouse-Based Non-Store Retailers	ZC	AUP	UP(PH)	Allowed in Manufacturing, Material Recovery Enterprise, Wholesale Trade or Warehouse. See Section 23E.80.045.A.1
Wholesale Trade establishments (including Cannabis Distributors)	ZC	AUP	UP(PH)	
Other Industrial Uses				
Art/Craft Studios	ZC <10,000	AUP 10,000 – 20,000	UP(PH) >20,000	Workspaces only, live/work limited. Section 23E.80.030.E . Allowed in Manufacturing, Material Recovery Enterprise, Wholesale Trade or Warehouse. See Section 23E.80.045.A.1 .

Uses	Permits Required to Establish, Expand, or Change use by Floor Area (sq. ft.)			Special Requirements (if any)
	Under 20,000	20,000 – 30,000	More than 30,000	
Bus, cab, truck, public utility depots	AUP	UP(PH)	UP(PH)	UP(PH) required if lot is over 20,000 sq. ft. regardless of floor area
Commercial Excavation	UP(PH)			Including earth, gravel, minerals, other building materials, drilling for oil or natural gas
Contractors	AUP	UP(PH)	UP(PH)	Allowed in Manufacturing, Material Recovery Enterprise, Wholesale Trade or Warehouse. See Section 23E.80.045.A.1.
Dry Cleaning and Laundry Plants	ZC	AUP	UP(PH)	
Laboratories, Commercial, Physical or Biological using: Class 1 Organisms only Class 2 Organisms Class 3 Organisms	UP(PH) UP(PH) Prohibited			Permitted only in locations at least 500 ft. from R or MU-R Districts. See Section 23E.80.060
Laboratories, Motion Picture, Photo Processing	UP(PH)			
Laboratories, Testing (including Cannabis Testing)	UP(PH)			
Material Recovery Enterprise	UP(PH)			
Media Production	ZC <10,000	AUP 10,000 – 20,000	UP(PH) >20,000	
Recycled Materials Processing	UP(PH)			If lot is over 20,000 sq. ft.
Recycling Redemption Center	UP(PH)			If lot is over 20,000 sq. ft.
Repair Service (other than auto repair)	ZC	AUP	UP(PH)	No retail sales permitted
Research and Development	ZC	AUP		

Uses	Permits Required to Establish, Expand, or Change use by Floor Area (sq. ft.)			Special Requirements (if any)
	Under 20,000	20,000 – 30,000	More than 30,000	
Change of Use From Warehouse and Wholesale Trade	AUP	UP(PH)	UP(PH)	See Section 23E.80.045.A.2.
Services to Buildings and Dwellings	AUP			

Table 23E.84.030 MU-R Mixed Use-Residential District Provisions: Uses Permitted

Uses	Permit Required to Establish, Expand or Change Use (sq. ft.)	Special Requirements (if any)
Manufacturing and Wholesale Trade		
Manufacturing Uses		
Construction Products Manufacturing	Prohibited	
Light Manufacturing	AUP if 5,000 or less; UP(PH) if more than 5,000	Subject to the finding under Section 23E.84.090.K and parking requirements under Section 23E.84.080.B
Primary Production Manufacturing	Prohibited	
Warehouses		
Mini-storage Warehouses	Prohibited	
Warehouses or Storage	UP(PH)	See Retail Uses for Storage of Goods for a Retail Use; also see parking requirements under Section 23E.84.080.B
Wholesale Trade (including Cannabis Distributors)	AUP if 5,000 or less; UP(PH) if more than 5,000	Subject to parking requirements; see Section 23E.84.080.B

Section 23E.16.070 Medical Cannabis Uses Reserved

- ~~A. 1. Subject to the licensing requirement of paragraph 3, six medical cannabis dispensaries as defined in Section 12.26.030 shall be permitted as of right with a Zoning Certificate in C-prefixed zones if they comply with the parking requirements applicable to the uses they include, and any security requirements promulgated by the Chief of Police. When applicable, Zoning Certificates for medical cannabis uses shall be issued without undue delay and following normal and expedient consideration of the permit application.~~
- ~~2. Medical cannabis dispensaries may not be located within 600 feet of another medical cannabis dispensary or a public or private elementary, middle or high school. It is the intent of the voters that the Council not adopt buffer zones from additional uses absent a compelling necessity.~~
- ~~3. No new medical cannabis dispensary may be approved under this Section until the City Council adopts a licensing process and standards for medical cannabis dispensaries. Such standards may include, but shall not be limited to, whether proposed dispensaries will provide a percentage of all usable product dispensed at no cost to very low income patients and will provide product that is produced using organic methods; and whether their form of organization, ownership and practices ensure equity and accountability, low prices and an adequate supply of high-quality medical cannabis to their members.~~
- ~~B. A medical cannabis dispensary existing and authorized as of January 1, 2010, that does not comply with this Section, may continue at its current medical cannabis dispensing location and shall be considered a legal nonconforming use. Notwithstanding Section 23C.04.060 or subdivision (A)(2) of this Section, the Zoning Officer may approve an Administrative Use Permit to allow the expansion of a legal nonconforming medical cannabis dispensary use on any parcel or on two adjacent parcels where a dispensary was located on one of the parcels as of July 1, 2010.~~
- ~~C. Uses such as, but not limited to, testing, processing, and food preparation, that involve medical cannabis as defined in Chapter 12.26 but do not involve dispensing, client, patient or member services, or cultivation (other than for testing), shall be evaluated and regulated under this Title without regard to the fact that they involve medical cannabis, except that no commercial facility used for medical cannabis food preparation may be used for the preparation of any other type of food. (Ord. 7501-NS § 1, 2016; Ord. 7161-NS § 6, 2010; Ord. 7068-NS § 4 (part), 12/08/08)~~

Section 23E.72.040 Medical Cannabis Cultivation Reserved

- ~~A. Notwithstanding anything to the contrary in this Chapter, cultivation of medical cannabis as defined in Chapter 12.26, Chapter 12.27 and the State's Medical Marijuana Regulation and Safety Act shall be permitted as a matter of right with a Zoning Certificate in the M District, subject to the following limitations:~~

- ~~1. Such locations shall be limited to licensed medical cannabis organizations.~~
 - ~~2. Medical cannabis may not be dispensed, and client, patient or member services are prohibited, at such locations.~~
 - ~~3. No single location used for cultivation and associated uses by a licensee may exceed 22,000 square feet, except that separate spaces used by different licensees may be aggregated on the same location.~~
 - ~~4. The total area used for medical cannabis cultivation shall not exceed 180,000 square feet.~~
- ~~B. Such locations shall comply with security regulations promulgated by the Chief of Police, and the requirements of this Chapter, and shall not be located within 600 feet of a private or public elementary, middle or high school. Such locations may include testing, processing, manufacturing and food preparation, if permitted by the State's Medical Marijuana Regulation and Safety Act.~~
- ~~C. No medical cannabis uses may be approved under this Section until the City Council adopts a licensing process and standards for such uses. Such standards shall include a requirement that indoor cultivation uses provide for an energy offset through a program specified by the City to offset the net increased energy that is used by the facility as compared to a regular industrial facility, and may include, but shall not be limited to, whether proposed facilities will provide a percentage of all usable product cultivated at no cost to very low income patients and will use organic methods in cultivation and processing to the maximum extent reasonable; and whether their form of organization, ownership and practices ensure equity and accountability, low prices and an adequate supply of high quality medical cannabis to their members. (Ord. 7464-NS § 1, 2016; Ord. 7161-NS § 7, 2010)~~



Office of the Mayor

ACTION CALENDAR

July 25, 2017

To: Honorable Members of the City Council

From: Mayor Jesse Arreguin

Subject: Commercial Cannabis Regulations and Licensing

RECOMMENDATION:

Refer to the City Manager and Cannabis Commission the proposed local ordinances to establish a licensing process for Commercial Cannabis operations, as permitted under Proposition 64, Adult Use of Marijuana Act.

The Council requests that the City Manager and Cannabis Commission report to the City Council on its recommendations on regulations and licensing for commercial cannabis businesses before the end of 2017.

BACKGROUND:

Existing Berkeley law contains no provisions for any sort of non-medical cannabis business structure. Proposition 64, the Adult Use of Marijuana Act, which passed statewide with 57% of the vote, and in Berkeley with 83.5%, permits local governments to establishing licensing in advance of state regulations for recreational cannabis. The proposed ordinances, based in large part on current Berkeley medical rules, would:

- Provide a structure for the licensure and regulation of Commercial Cannabis Organizations consistent with California Health and Safety Code section 11362.5 (Compassionate Use Act), California Health and Safety Code sections 11362.7-11362.83 (Medical Marijuana Program), the Medical Cannabis Regulation and Safety Act, and the Adult Use of Marijuana Act (Proposition 64, or AUMA) to protect public health, safety, and welfare.
- Empower the City Manager to determine if the Commercial Cannabis Organization is in compliance with Berkeley rules.
- Define all terms as set forth in the Control, Regulate and Tax Adult Use of Marijuana Act ("AUMA") as may be supplemented by rules or regulations issued by the Bureau of Marijuana Control within the Department of Consumer Affairs, the Department of Food and Agriculture or the Department of Health.
- Not reduce the rights of qualified patients and primary caregivers, or individuals over 21 as authorized by AUMA, to access and personal cultivation.
- Require City Council establish procedures for the issuance of a local license in those types similar to the types permitted under State law.
- Permit, if permitted by state law, a dispensary to operate both a Medical and Nonmedical Commercial Cannabis Organization at a single location.

- Require that a Principal of any Commercial Dispensary may not be a Principal for any other Dispensary in Berkeley except that any Principal may be a Principal for any Dispensary that is licensed to operate both a Medical and Nonmedical Commercial Cannabis Organization at a single location.
- Permit medical dispensaries authorized as of January 1, 2017 and in substantial compliance with Chapters 12.26 and 12.27 and Title 23 as reasonably determined by the City Manager to qualify for a Commercial Cannabis Dispensary license.
- Prohibit the City from issuing new dispensary licenses until January 1, 2020, to ascertain demand.
- Require track and trace of cannabis by batch and impose operating standards in compliance with BMC and AUMA.
- Require neighborhood compatibility in a manner similar to existing Berkeley requirements.
- Prohibit smoking on site and within 50 feet of a Dispensary but, to the extent permitted by State law, permit the ingestion, smoking or vaporizing on site if restricted to persons over 21, not visible from any other public place, and so long as alcohol and tobacco sales or consumption are not permitted on site.
- Require signage similar to that required for medical dispensaries.
- Require Product Safety and Quality Assurance measures similar to and no less stringent than as required for medical dispensaries.
- Permit the City Council to establish by resolution fees that shall be charged to implement the Chapter.
- Prohibit the City from responding to a federal law enforcement information request or providing information about a person who has applied for or received a license to engage in commercial cannabis activity pursuant to BMC, MCRSA, and AUMA.

FINANCIAL IMPLICATIONS:

Staff time. Taxes assessed on new commercial cannabis operations will result in additional General Fund revenues to support city services.

CONTACT PERSON:

Mayor Jesse Arreguín

510-981-7100

Attachments:

1. Proposed Amendments to the Berkeley Municipal Code permitting Commercial Cannabis businesses

State license types

Berkeley's proposed ordinance proposes allowing five types of State-licensed cannabis businesses: Retailers; Cultivators; Manufacturers; Testing Labs; and Distributors.

Retailers

Cannabis Retailers are the only license types that may sell cannabis or cannabis products. There are three types of uses: Medicinal, Adult Use and Delivery-Only. Medicinal and Adult Use Retailers must have a storefront for patient/customer visits and can also deliver products. Delivery-only Dispensaries may not have patient/customer visits.

Cultivators

Cultivators grow the cannabis plants for sale to Distributors and/or Manufacturers. Nurseries, which grow plants to provide seeds and starter plants (clones), are also considered Cultivators. The State has different licenses based on size, with indoor grows ranging from 500 square feet to over 22,000 square feet.

Manufacturers

Manufacturers use a material to create a new product. In the cannabis industry, this can mean using raw plant material and to create a product (joints or concentrates) or using a concentrate in the manufacture of another product (foods, lotions).

Distributors

Distributors transport cannabis products between licensing businesses, and are the only business type that can interact directly with Testing Labs. Distributors also package products after testing.

Testing Labs

State law requires all cannabis products to quantify the compounds (THC, CBD) in the product, and to determine that the product does not exceed limits for contaminants such as pesticides, molds and mildews.

Matrix of Development Standards for Cannabis Uses

	Staff recommended development standards					Alternatives proposed by commissions
	Location	Quota	Buffer	Discretion	Other standards	
Medicinal Retailer	All C-prefixed districts	6 or greater	600 feet from schools and other cannabis Retailers	ZC and possible selection process		No quota (Cannabis Comm 2-1-18)
Adult Use Retailer	All C-prefixed districts	12 or greater	600 feet from schools and other cannabis Retailers	ZC and possible selection process		No quota (Cannabis Comm, 2-1-18)
Delivery-Only Retailer	All C-prefixed districts and in M-prefixed districts if ancillary to another type of cannabis business.	10 or greater	600 feet from schools and other cannabis Retailers	ZC and possible selection process	Cannot locate on ground floor adjacent to street	All C-prefixed districts except C-N; no decision on level of discretion (PC, 5-17-17) No quota (Cannabis Comm, 2-1-18)
Cultivator	M District	6 large cultivators; no limit on cultivators under 10,000 sf	300 feet from schools	ZC (and selection process if large cultivator)	Total canopy of commercial grows in M District not to exceed 180,000 sf	No quota (Cannabis Comm, 2-1-18)
Manufacturer	Subject to Light Manufacturing standards	None	300 feet from schools	ZC		None
Testing Lab	Subject to Testing Lab standards	None	300 feet from schools	ZC		None
Distributor	Subject to wholesale use standards	None	300 feet from schools	ZC		None



PLANNING COMMISSION

NOTICE OF PUBLIC HEARING

FEBRUARY 21, 2018

Zoning Ordinance Amendments to Title 23 of the Berkeley Municipal Code Related to Medicinal and Adult Use Cannabis Uses in Commercial and Manufacturing Districts throughout Berkeley

The Planning Commission of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 23A.20.030, on **Wednesday, February 21, 2018** at the **North Berkeley Senior Center**, 1901 Hearst Avenue / Martin Luther King Jr. Way (wheelchair accessible). The meeting starts at 7:00 p.m.

PROJECT DESCRIPTION: The City of Berkeley is considering changes to the Zoning Ordinance to allow both medicinal and adult use cannabis uses in a manner consistent with new State regulations. The changes will relocate existing ordinance language from Sections 23E.16.070 and 23E.72.040 into a new Chapter (23C.25).

The City currently regulates Medicinal Retailers (Dispensaries), Manufacturers, Cultivators and Testing Labs. Regulations for these uses may be modified.

New regulations will be considered to allow Adult Use Retailers, Delivery-only Retailers (a retail delivery service without customer visits), and Distributors. The Planning Commission will make recommendations to the City Council, including:

- Identify the zoning districts in which new uses could be permitted;
- Determine any quotas (total numbers) and distances between these uses and other uses (buffers);
- Set the levels of discretion (Administrative Use Permit or Use Permit) that would apply during the permit process;
- Develop new definitions and modify existing definitions as necessary; and
- Modify the Zoning Ordinance use tables accordingly to incorporate the changes in the correct zoning districts.

LOCATION: Citywide. A map of the City's zoning districts is available online:

http://www.cityofberkeley.info/uploadedFiles/IT/Level_3_-_General/Zoning%20Map%2036x36%2020050120.pdf

ENVIRONMENTAL REVIEW STATUS: The proposed changes would be exempt from the California Environmental Quality Act pursuant to Guidelines Section 15061(b)(3) because it can be seen with certainty that the proposed amendments to add Adult Use Retailers in Commercial Districts, Delivery-only Dispensaries in Commercial Districts and as an ancillary use in Manufacturing Districts, and Distributors in Manufacturing Districts, would not have a significant effect on the environment. Any proposed discretionary project would be subject to CEQA review.

PUBLIC COMMENT & FURTHER INFORMATION

Comments may be made verbally at the public hearing and in writing before the hearing.

Written comments or questions concerning this project should be directed to:

Alex Amoroso
Planning Commission Secretary
City of Berkeley
Land Use Planning Division
1947 Center Street, 2nd Floor
Berkeley, CA 94704

E-mail: aamoroso@CityofBerkeley.info
Telephone: (510) 981-7520

To assure distribution to Commission members prior to the meeting, ***correspondence must be received by 12:00 noon, seven (7) days before the meeting.*** For items with more than ten (10) pages, fifteen (15) copies must be submitted to the Secretary by this deadline. For any item submitted less than seven (7) days before the meeting, fifteen (15) copies must be submitted to the Secretary prior to the meeting date.

COMMUNICATION ACCESS

To request a meeting agenda in large print, Braille, or on audiocassette, or to request a sign language interpreter for the meeting, call (510) 981-7410 (voice) or 981-6903 (TDD). Notice of at least five (5) business days will ensure availability. Agendas are also available on the Internet at: www.ci.berkeley.ca.us.

FURTHER INFORMATION

Questions should be directed to Alex Amoroso, at 981-7520, or aamoroso@CityofBerkeley.info.



Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: February 21, 2018

TO: Members of the Planning Commission

FROM: Steve Buckley, Land Use Planning Manager
Alene Pearson, Associate Planner

SUBJECT: Density Bonus Ordinance Amendments

INTRODUCTION

The City Council has asked the Planning Commission to consider changes and updates to Density Bonus through a number of Reweighted Range Voting (RRV) referrals and Housing Action Plan items. In response, Planning Commission's subcommittee on Affordable Housing and Community Benefits analyzed referrals and suggested staff approach Density Bonus in three phases:

1. Create a Density Bonus ordinance that codifies existing practice.
2. Respond to referrals that can be addressed by modifications to existing Density Bonus program.
3. Develop numeric density standards for all zoning districts.

Following the above framework, this report and associated recommendations pertain only to Phase 1 and Phase 2 actions. This report does not address Phase 3.

BACKGROUND

State Density Bonus Law (SDBL)¹, initially adopted in 1976, creates incentives for developers to include affordable housing within their projects by granting increased density and relief from local regulations via concessions and waivers. Density Bonus of up to 35% is mandated by the State and is based on the percentage of affordable units provided at various income levels. All cities and counties are required to adopt an ordinance specifying how they will comply with SDBL. Berkeley's Zoning Ordinance includes Density Bonus language and grants Density Bonus in compliance with SDBL.

City Council has referred six items to the Planning Commission that relate to Density Bonus (*see Attachment 1 – Six Density Bonus Referrals*). Although some of these

¹ http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=65915&lawCode=GOV

referrals are focused on specific zoning districts, our analysis identifies a set of broad goals for improvements to the City's Density Bonus program. The goals are as follows:

1. Increase density in the form of more units;
2. Increase height in the form of additional floors;
3. Provide more affordable housing;
4. Allow applicants to pay for off-site qualifying units in lieu of providing on-site units;
and
5. Establish numeric density standards for all zoning districts.

In the context of these goals, the Planning Commission's subcommittee on Affordable Housing and Community Benefits examined Berkeley's Density Bonus practice and suggested a three-phased approach to achieve broad-ranging goals. Phase 1 establishes a foundation to build upon. Phase 2 directly addresses goals 1 through 4. Phase 3 focuses on goal 5. More specifically:

- Phase 1: Create a new, stand-alone Density Bonus ordinance that codifies existing practice and can be used as a baseline for future modifications to the Density Bonus program.
- Phase 2: Respond to requests in referrals that can be addressed by modifications to existing Density Bonus program.
- Phase 3: Develop numeric density standards for all zoning districts.

Staff has developed proposed draft Zoning Ordinance amendments that address Phase 1 and Phase 2 Density Bonus work (*see Attachment 2: Zoning Ordinance Amendment to Repeal of Section 23C.12.050: State California Density Bonus Requirements and Attachment 3: Zoning Ordinance Amendment to Adopt Chapter 23C.14: Density Bonuses*). Note that although proposed draft Zoning Ordinance amendments do not include district-specific regulations, they do create a framework that logically accommodates future modifications and enhancements that could include district-specific language. The Subcommittee on Affordable Housing and Community Benefits has done a preliminary review of draft amendments and directed staff to present them to the Planning Commission for discussion.

PROPOSED AMENDMENTS

In order to implement Phase 1 and Phase 2 Density Bonus actions, the proposed draft Zoning Ordinance amendments will:

1. Repeal Section 23C.12.050 (State of California Density Bonus Requirements):

In 2005 the City of Berkeley added Section 23C.12.050 (State of California Density Bonus Requirements) to the Inclusionary Housing Requirements (Chapter 23C.12) because projects subject to the Inclusionary Housing Requirements concurrently capture benefits from SDBL. Since 2005, Density Bonus has grown in complexity and scope and should be removed from the Inclusionary Housing Requirements Chapter.

Berkeley's Density Bonus language -- currently found in Section 23C.12.050 -- explicitly lists Density Bonus percentages and affordable housing requirements from 2005. These values are no longer valid, as the SDBL has been amended multiple times to respond to implementation challenges, legal rulings and new legislation. This section of code needs to be repealed.

2. Adopt Chapter 23C.14 (Density Bonuses):

Chapter 23C.14 will replace Section 23C.12.050 and will:

- Create a baseline Density Bonus ordinance that is organized logically and is easy to read and understand. SDBL is complex. Creating an ordinance that is easy to understand will reduce complications for applicants.
- Reference compliance with SDBL in order to maintain flexibility as State law evolves. Section 23C.12.050 hardcoded State regulations and became obsolete as SDBL was amended. The proposed amendments refer to Government Code Section 65915, thereby allowing Berkeley's Density Bonus ordinance to remain in compliance as SDBL regulations change over time.
- Refer to Administrative Regulations that document Berkeley's method for base project calculation (*see Attachment 4: Administrative Regulations*). Berkeley uses base project calculations to determine level of Density Bonus because certain zoning districts do not have numerical density standards. Administrative Regulations, maintained by the Planning Department, document the base calculation method. Administrative Regulations are shared with Planning Commission and approved by Zoning Adjustments Board.

Chapter 23C.14 includes the following Special Provisions:

- Offer an option for developers utilizing Density Bonus to make a payment towards building off-site affordable housing units in lieu of providing on-site affordable housing units. The city would need to conduct a study to inform setting an appropriate per unit "construction cost" formula or amount. The exact formula or amount will not be codified in 23C.14, but would instead be determined through a separate action by the City Council after a study is complete.
- Provide developers the option of receiving an additional 15% Density Bonus (up to 50% total) in exchange for providing additional qualifying units. Qualifying units could be provided either on-site or off-site through payment of the fee described above. Calculation of the additional Density Bonus would follow the formula established in SDBL (*see Attachment 5 -- Density Bonus Chart*).

DISCUSSION

Details of the draft Zoning Ordinance amendments are presented below. For each amendment, staff has provided the reasoning, mechanics, and recommendation for change.

1. Delete Density Bonus Section in the Inclusionary Housing Ordinance

Reason: Density bonus requirements do not need to be included in the Inclusionary Housing Ordinance because the City is adopting an updated Density Bonus chapter. Information related to Density Bonus -- including explicit cross-references to SDBL -- will be centralized in the Density Bonus chapter.

Mechanics: Remove language identified in Attachment 2 (*Zoning Ordinance Amendment to Repeal of Section 23C.12.050: State California Density Bonus Requirements*).

Recommendation: This change would be necessary to align with the proposed Density Bonus chapter and remove redundancy.

2. Adopt Chapter 23C.14 (Density Bonuses)

Reason: SDBL allows local governments to adopt Density Bonus ordinances that comply with the State's minimum requirements. The local jurisdiction may also decide to offer Density Bonuses above and beyond what's allowed under SDBL in exchange for locally focused and derived benefits. The City of Berkeley's Density Bonus chapter mirrors the language included in SDBL and references Administrative Regulations which document base project calculation methodology. Draft Zoning Ordinance amendments also include the following Special Provisions as requested by Phase 2 referrals:

- Allows developers to "opt out" of building on-site affordable residential units in order to achieve a Density Bonus of up to 35%.
- Allows developers to request an additional 15% Density Bonus (up to 50% total) in exchange for providing additional affordable housing units or fees.

Mechanics: Add Chapter 23C.14 (Density Bonuses) to Sub-Title 23C, as provided in Attachment 3 (*Zoning Ordinance Amendment to Adopt Chapter 23C.14: Density Bonuses*). The Density Bonus chapter will implement (and be consistent with) SDBL. The in lieu payment option for off-site qualifying units will be contingent upon completion of a study that determines a sufficient amount to provide same level of affordable housing development as State Density Bonus Law.

Recommendation: Adopt amendment adding Chapter 23C.14 (Density Bonuses).

The following questions are for Planning Commission's consideration based on the information provided in this report and on Planning Commission's discussion:

1. ***Do you have feedback on the proposed three-phased approach to Density Bonus referrals?***
2. ***Do you have feedback on the proposed draft Density Bonus Zoning Ordinance amendments?***

3. Will Planning Commission set a public hearing on March 21, 2018 to discuss recommended actions related to Density Bonus referrals?

CONCLUSION

Draft Zoning Ordinance amendments proposed in this report initiate work on six City Council referrals related to Density Bonus and Housing Action Plan items. As explained above, the goals of the referrals broadly overlap and this report presents a three-phased approach to accomplish desired work. More specifically, proposed draft Zoning Ordinance amendments allow for additional density, additional height, more affordable housing, a payment option for off-site affordable units in lieu of on-site affordable units, and a robust Density Bonus program that can be built upon to meet the evolving needs of residents and reflect requests of City Council. Also, note that City Council will set the amount of the in lieu payment by resolution, as has been done with the Affordable Housing Mitigation Fee and other City fees.

This staff report provides background and recommendations necessary to begin implementation of Density Bonus related referrals. City Council expects Planning Commission to take action on the proposed Zoning Ordinance Amendments after holding a public hearing and discussing the recommendations provided.

ATTACHMENTS

1. Six Density Bonus Referrals
2. Zoning Ordinance Amendment to Repeal of Section 23C.12.050: State California Density Bonus Requirements
3. Zoning Ordinance Amendment to Adopt Chapter 23C.14: Density Bonuses
4. Administrative Regulations
5. Density Bonus Chart

The following attachment contains 6 Density Bonus Referrals (and corresponding City Council Annotated Agenda for each Referral):

1. 7/12/16: Increased Development Potential in the C-T
2. 5/30/17: Density Bonus Program in the C-T
3. 10/31/17: 20' Increase in Height in the C-T, R-SMU, R-S and R-3
4. 7/11/17: Housing Accountability Act: Density Standards
5. 11/28/17: Housing Action Plan #3 – Density Bonus Pilot Program in the C-T
6. 11/28/17: Housing Action Plan #5 – Density Standards

1. 7/12/16: Increased Development Potential in the C-T



Kriss Worthington

Councilmember, City of Berkeley, District 7
2180 Milvia Street, 5th Floor, Berkeley, CA 94704
PHONE 510-981-7170, FAX 510-981-7177, EMAIL
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"

**ANNOTATED AGENDA
BERKELEY CITY COUNCIL MEETING**

Tuesday, July 12, 2016

7:00 P.M.

COUNCIL CHAMBERS - 2134 MARTIN LUTHER KING JR. WAY

TOM BATES, MAYOR

Councilmembers:

DISTRICT 1 – LINDA MAIO
DISTRICT 2 – DARRYL MOORE
DISTRICT 3 – MAX ANDERSON
DISTRICT 4 – JESSE ARREGUIN

DISTRICT 5 – LAURIE CAPITELLI
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – KRISS WORTHINGTON
DISTRICT 8 – LORI DROSTE

Preliminary Matters

Roll Call: 7:18 p.m.

Present: Anderson, Arreguin, Capitelli, Droste, Maio, Moore, Wengraf, Worthington, Bates

Absent: None.

Ceremonial Matters:

1. Adjourning the Meeting in Memory of Hal Cronkite, Former Berkeley City Manager
2. Adjourning the Meeting in Memory of Tak Nakamoto, Local Activist

City Manager Comments: None.

Public Comment on Non-Agenda Matters: 6 speakers.

Public Comment on Consent Calendar and Information Items Only: 6 speakers.

Consent Calendar

Action: M/S/C (Maio/Moore) to make the findings that the item related to the Mental Health Adult Clinic Closure and Relocation is of urgent necessity and that the subject came to the attention of the agency after the agenda was published, and to add the item to the agenda.

Vote: All Ayes.

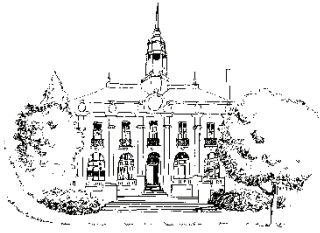
Action: M/S/C (Moore/Wengraf) to adopt the Consent Calendar in one motion except as indicated.

Vote: All Ayes.

Action Calendar – Old Business

32. **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** *(Continued from May 24, 2016)*
From: Councilmember Worthington
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.
Financial Implications: Minimal
Contact: Kriss Worthington, Councilmember, District 7, 981-7170
Action: Item 32 considered concurrently with Item 39. See Item 39 for Action.

2. 5/30/17: Density Bonus Program in the C-T



Kriss Worthington
Councilmember, City of Berkeley, District 7
2180 Milvia Street, 5th Floor, Berkeley, CA 94704
PHONE 510-981-7170, FAX 510-981-7177, EMAIL
kworthington@ci.berkeley.ca.us

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.

Page 2 of 2

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

**ANNOTATED AGENDA
BERKELEY CITY COUNCIL MEETING
Tuesday, May 30, 2017
7:00 P.M.**

COUNCIL CHAMBERS - 2134 MARTIN LUTHER KING JR. WAY

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – LINDA MAIO
DISTRICT 2 – CHERYL DAVILA
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – KRISS WORTHINGTON
DISTRICT 8 – LORI DROSTE

Preliminary Matters

Roll Call: 7:24 p.m.

Present: Maio, Davila, Bartlett, Harrison, Hahn, Wengraf, Worthington, Droste, Arreguin

Absent: None

Ceremonial Matters:

1. Recognition of the Berkeley High School Boys Tennis Team
2. Recognition of Frances Rachel for her 100th Birthday
3. Recognition of the Berkeley World Music Festival
4. Announcement: Community Meeting on Fire Safety and Crime – Northbrae Community Center, June 8 at 7:15 p.m.

Recess 7:41 p.m. – 7:58 p.m.

City Manager Comments: None

Public Comment on Non-Agenda Matters: 1 speaker.

Public Comment on Consent Calendar and Information Items Only: 13 speakers.

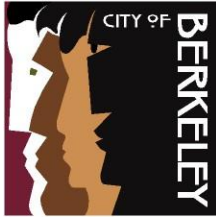
Action: M/S/C (Worthington/Davila) to adopt the Consent Calendar in one motion except as indicated.

Vote: All Ayes.

Council Consent Items

- 39. Amend One Percent for Art Ordinance to Incentivize Fees for the Arts and Culture Plan**
From: Councilmember Worthington
Recommendation: Amend the One Percent for Art Ordinance to incentivize contributions to the Civic Arts Commission's Arts and Culture Plan.
Financial Implications: See report
 Contact: Kriss Worthington, Councilmember, District 7, 981-7170
Action: Moved to Action Calendar. 2 speakers. M/S/C (Worthington/Arreguin) to refer the item to Planning Commission.
Vote: All Ayes.
- 40. Letter of Support to Add Parcel at University and Oxford Street as a Potential Opportunity Site for Student Housing**
From: Councilmembers Worthington and Bartlett, and Mayor Arreguin
Recommendation: Send a letter to Chancellor-designate Carol Christ to request consideration of adding the parcel at University Avenue and Oxford Street to the list of potential opportunity sites for student housing.
Financial Implications: None
 Contact: Kriss Worthington, Councilmember, District 7, 981-7170
Action: Approved recommendation.
- 41. 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**
From: Councilmembers Worthington and Bartlett, and Mayor Arreguin
Recommendation: 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.
Financial Implications: See report
 Contact: Kriss Worthington, Councilmember, District 7, 981-7170
Action: Approved recommendation amended to request that the Planning Commission consider the feasibility of requiring one full time apprenticeship for every \$3 million of construction and to refer the item to the City Manager and the Housing Advisory Commission.
- 42. Condemning Chechnya's Violence Against Gay Men**
From: Councilmember Worthington
Recommendation: Adopt a Resolution denouncing the systematic detention and torture of gay men in Chechnya under President Ramazan Kadyrov.
Financial Implications: Minimal
 Contact: Kriss Worthington, Councilmember, District 7, 981-7170
Action: Councilmembers Davila, Bartlett and Hahn added as co-sponsors. Adopted Resolution No. 68,016–N.S. revised to change "concentration camps" to "secret prisons" in the title.

3. 10/31/17: 20' Increase in Height in the C-T, R-SMU, R-S and R-3



Kriss Worthington
Councilmember District 7

REVISED AGENDA MATERIAL

Meeting Date: October 31, 2017

Item Number: 27

Item Description: **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**

Submitted by: **Councilmembers Kriss Worthington and Kate Harrison, and Mayor Arreguin**

Revised the Council Item to include an attachment, which is a map of Berkeley that is annotated to show which areas will be affected by the proposed legislation.



Kriss Worthington

Councilmember, City of Berkeley, District 7
2180 Milvia Street, 5th Floor, Berkeley, CA 94704
PHONE 510-981-7170, FAX 510-981-7177,
EMAIL kworthington@ci.berkeley.ca.us

CONSENT CALENDAR 10/31/2017

To: Honorable Mayor and Members of the City Council
From: Councilmembers Kriss Worthington and Kate Harrison, and Mayor Arreguin
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 the 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 in 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 for students and can decrease academic performance or leave students without affordable and safe places to live.

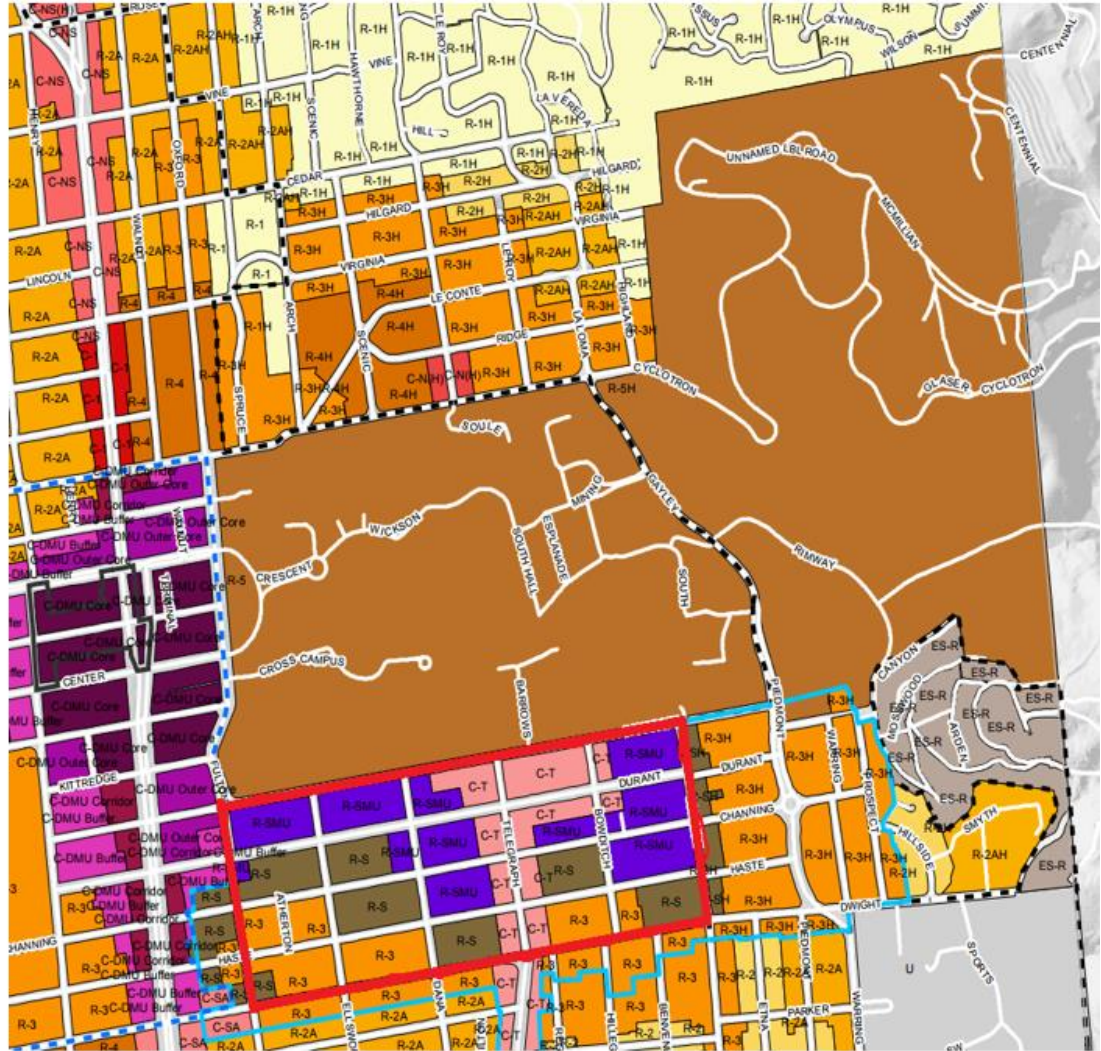
Increasing density in the area surrounding campus proves better for the environment, better for campus area businesses, and better for students. By reducing commute times, students will opt to walk or bike to class, reducing congestion on the road. A shorter commute will also increase student safety and allow students to participate in extracurricular activities that may run into the evening because students will not have to worry 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 south-side campus housing improved project viability specifically 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

Attachment:



	R-3	Multiple-family Residential
	R-S	Residential High Density Subarea
	R-SMU	Residential Mixed Use Subarea
	C-T	Telegraph Avenue Commercial

Proposed Area: South-North Boundary ---- Dwight to Bancroft
 East-West Boundary ---- College to Fulton 10007



Kriss Worthington

Councilmember, City of Berkeley, District 7
2180 Milvia Street, 5th Floor, Berkeley, CA 94704
PHONE 510-981-7170, FAX 510-981-7177,
EMAIL 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.

Page 2 of 2

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

**ANNOTATED AGENDA
BERKELEY CITY COUNCIL MEETING
Tuesday, October 31, 2017
6:00 P.M.**

COUNCIL CHAMBERS - 2134 MARTIN LUTHER KING JR. WAY

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – LINDA MAIO
DISTRICT 2 – CHERYL DAVILA
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – KRISS WORTHINGTON
DISTRICT 8 – LORI DROSTE

Preliminary Matters

Roll Call: 6:07 p.m.

Present: Maio, Davila, Bartlett, Harrison, Hahn, Worthington, Arreguin

Absent: Wengraf, Droste

Councilmember Wengraf present at 6:20 p.m.

Councilmember Droste present at 6:32 p.m.

Ceremonial Matters:

- 1. Recognition of Richie Smith, Berkeley Activist and Volunteer

City Manager Comments: None

Public Comment on Non-Agenda Matters: 9 speakers.

Public Comment on Consent Calendar and Information Items Only: 11 speakers.

Consent Calendar

Action: M/S/C (Arreguin/Worthington) to accept supplemental material from the City Manager on Item 9.

Vote: All Ayes.

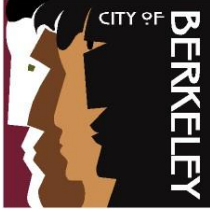
Action: M/S/C (Worthington/Maio) to adopt the Consent Calendar in one motion except as indicated.

Vote: All Ayes.

Council Action Items

27. **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**
From: Councilmembers Worthington and Harrison
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.
Financial Implications: Minimal
 Contact: Kriss Worthington, Councilmember, District 7, 981-7170
Action: Moved to Consent Calendar. Approved recommendation as revised in Supplemental Reports Packet #1.
28. **Refer to the Berkeley Police Department to Address Disparate Racial Treatment and Implement Policy and Practice Reforms**
From: Councilmembers Worthington, Bartlett, and Harrison
Recommendation: Refer to the Berkeley Police Department to track yield rates, develop training programs to address disparities found through the yield rates, and implement policy and practice reforms that reflect cooperation between the Berkeley Police Department and broader Berkeley community.
Financial Implications: Staff time
 Contact: Kriss Worthington, Councilmember, District 7, 981-7170
- Action:** M/S/C (Hahn/Arreguin) to suspend the rules and extend the meeting to 11:30 p.m.
Vote: Ayes – Maio, Davila, Bartlett, Harrison, Hahn, Worthington, Droste, Arreguin; Noes – Wengraf.
- Action:** M/S/Failed (Hahn/Maio) to suspend the rules and extend the meeting to 11:45 p.m.
Vote: Ayes – Maio, Davila, Hahn, Droste, Arreguin; Noes – Bartlett, Harrison, Wengraf, Worthington.
- Action:** M/S/C (Wengraf/Hahn) to reconsider the vote to suspend the rules and extend the meeting to 11:45 p.m.
Vote: Ayes – Maio, Hahn, Wengraf, Droste, Arreguin; Noes – Davila, Bartlett, Harrison, Worthington.
- Action:** M/S/Failed (Maio/Hahn) to suspend the rules and extend the meeting to 11:45 p.m.
Vote: Ayes – Maio, Hahn, Wengraf, Droste, Arreguin; Noes – Davila, Bartlett, Harrison, Worthington.
- Action:** 12 speakers. Item held over to November 14, 2017

4. 7/11/17: Housing Accountability Act: Density Standards



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.

Page 2 of 20

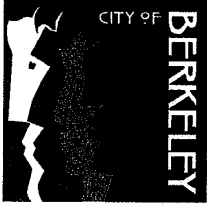
Mayor Jesse Arreguin
Councilmember Sophie Hahn, District 5

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.

Page 3 of 20



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.



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.

Page 5 of 20

Housing Accountability Act

ACTION CALENDAR
July 11, 2017

(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.¹

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))², 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.4th 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,

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

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

Page 6 of 20

Housing Accountability Act

ACTION CALENDAR
July 11, 2017

‘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 standards³ 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.

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

Housing Accountability Act

ACTION CALENDAR
July 11, 2017

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

**ANNOTATED AGENDA
BERKELEY CITY COUNCIL MEETING**

Tuesday, July 11, 2017

6:00 P.M.

COUNCIL CHAMBERS - 2134 MARTIN LUTHER KING JR. WAY

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – LINDA MAIO
DISTRICT 2 – CHERYL DAVILA
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – KRISS WORTHINGTON
DISTRICT 8 – LORI DROSTE

Preliminary Matters

Roll Call: 6:03 p.m.

Present: Bartlett, Davila, Droste, Hahn, Maio, Wengraf, Worthington, Arreguin

Absent: Harrison

Councilmember Harrison present 6:14 p.m.

Ceremonial Matters:

1. Recognition of UN Association of California, Alpha Kappa Alpha, and Alpha Nu Omega

City Auditor Comments:

1. Recognition of Public Works for completing the Equipment Fund Audit

City Manager Comments:

1. Launch of Berkeley Bike Share Program on July 11, 2017

Public Comment on Non-Agenda Matters: 3 speakers.

Public Comment on Consent Calendar and Information Items Only: 1 speakers.

Consent Calendar

Action: M/S/C (Maio/Worthington) to adopt the Consent Calendar in one motion except as indicated.

Vote: All Ayes.

Action Calendar – Old Business**29. Housing Accountability Act** *(Continued from June 13, 2017. Item includes supplemental materials.)***From: City Manager**

Contact: Zach Cowan, City Attorney, 981-6950

Action: 5 speakers. M/S/C (Arreguin/Davila) to refer to the City Manager, Planning Commission, Zoning Adjustments Board, and Design Review Committee 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:

1. 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.
2. Devise and adopt “objective, identified written public health or safety standards” applicable to new housing development projects.
3. Adopt “design review standards that are part of ‘applicable, objective general plan and zoning standards and criteria’”.
4. Quantify and set objective zooming standards and criteria under the first sentence of Government Code Section 65589.5(j) for views, shadows, and other impacts that often underlie detriment findings.

Vote (Paragraphs 1-3): Ayes – Maio, Davila, Harrison, Hahn, Wengraf, Worthington, Arreguin; Noes – Bartlett, Droste.**Vote (Paragraph 4):** Ayes – Maio, Davila, Harrison, Hahn, Wengraf, Arreguin; Noes – Bartlett, Droste, Worthington.

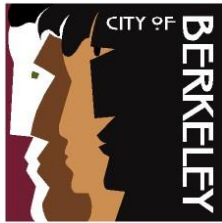
Recess: 9:10 p.m. – 9:27 p.m.

30. Amend BMC Sections 3.78.030, 040, and 050 Related to Commission Procedures *(Continued from June 13, 2017)***From: Human Welfare and Community Action Commission****Recommendation:** Adopt a Resolution requesting that the City Manager examine the addition of language to the Berkeley Municipal Code that clarifies aspects of the management of City of Berkeley commissions and the removal and appointment of commissioners.**Financial Implications:** See report

Contact: Wing Wong, Commission Secretary, 981-5400

Action: Moved to Consent Calendar. No action taken by the City Council on this item.**Vote:** Ayes – Maio, Bartlett, Harrison, Hahn, Wengraf, Worthington, Droste, Arreguin; Noes – Davila.

5. 11/28/17: Housing Action Plan #3 – Density Bonus Pilot Program in the C-T
6. 11/28/17: Housing Action Plan #5 – Density Standards



Office of the Mayor

SUPPLEMENTAL AGENDA MATERIAL

Meeting Date: November 28, 2017

Item Number: 22

Item Description: Implementation Plan for Affordable Housing Action Plan Referrals

Submitted by: Mayor Jesse Arreguin and Councilmember Kate Harrison

This item has been revised to include input from City staff, City commissioners and the community. Language has also been modified to clarify the scope of referrals.



Office of the Mayor

REVISED
ACTION CALENDAR
November 28, 2017

To: Members of the City Council

From: Mayor Jesse Arreguín and Councilmember Kate Harrison

Subject: Implementation Plan for Affordable Housing Action Plan Referrals

RECOMMENDATION

Approve the following priority order for Affordable Housing Action Plan referrals, and adopt the interdepartmental implementation plan as revised:

High Priority

1. ~~Design-Develop a Small Sites Program to assist non-profits in acquiring multi-unit properties of 25 units or less. to assist non-profits in acquiring existing properties that fall under certain criteria with the intention of allocating \$1 million annually.~~

~~Consider giving priority to the creation of limited and non-equity cooperatives affiliated with a democratic community land trust. As a first step, contact owners of seven apparently vacant properties constituting 68 rental units for their interest in selling them to non-profit affordable housing developers or land trusts that could rehabilitate them, and then rent the units at affordable rents. As a second step, investigate properties that are being vacated over time for possible purchase to retain affordable housing.~~ Consider master leasing as a mechanism for managing distinct, smaller properties.
2. Develop an ordinance modeled after Washington D.C.'s Tenant Opportunity to Purchase Act (TOPA) that offers existing tenants in multi-unit properties of three units or more the first right of refusal when property owners place rental property on the sale market, which can be transferred to a qualifying affordable housing provider.
3. A) Draft an ordinance creating a pilot Density Bonus policy for the Telegraph Commercial District to grant additional density for projects in the Telegraph area which pay Affordable Housing Fees in lieu of units on-site. B) Study the creation of ~~for~~ a new City Density Bonus plan to allow developers of multi-family housing to add up to 15% more density in exchange for fees only.
4. Create specific per acre density standards to strengthen City posture vis-à-vis the State Housing Accountability Act, including standards for projects that include density bonus units.
5. Examine and eliminate barriers to developing student housing and senior housing.

6. Refer to the City Manager and Planning Commission an ordinance to clarify existing preferences in allocating City affordable housing units to Berkeley residents living within 1/2 mile of any new development and tenants evicted under the Ellis Act, expand the second category of preference for eligible tenants displaced under the Ellis Act to include certain tenants displaced through an Owner Move-In or (Measure Y) auction, and other forms of displacement as defined by Council.

7. Increase commercial housing linkage fee by California Construction Cost Index CCCI.

8. Identify Parcels of City owned land appropriate for siting assisted-living modular micro-unit buildings; take affirmative steps to speed the permitting and approvals process; obtain zoning approval and a building permit and approvals process for the creation of below market housing; identify a housing non-profit to be responsible for managing and operating the building; and establish criteria for selecting individuals and determining eligibility.
9. Utilize list of ~~vacant~~-city properties developed by city staff and further examine opportunities for placing affordable housing on these sites.
10. Investigate the feasibility of developing workforce housing, in conjunction with Berkeley Unified School District, for teachers and other school district employees. The investigation should include research into what other California jurisdictions (such as San Francisco, Oakland, Santa Clara, and San Mateo County) are considering as part of their pursuit of School District workforce housing.
11. a) Streamline the Affordable Housing Permitting process for Projects with majority of Affordable Housing (50% affordable units or more, Worthington referral 1/19/16); b) Remove Structural barriers to Affordable Housing (Green Affordable Housing Package Policy #2, Droste);- c) waive or reduce permit fees for affordable housing projects (Hahn).
12. Examine and eliminate barriers to building and renting Accessory Dwelling Units.
13. Develop Measure U1 Priorities and Implementation Criteria. Include consideration of ability to leverage funds and placing a measure on the November 2018 ballot to allow possible bonding against revenues.
14. Develop enforcement tools for Short-Term Rental Ordinance and s/Section 8 Non-Discrimination Ordinance (BMC Chapter 13.31, "Discrimination based on source of income prohibited").

Request that the City Manager direct staff to draft a fine schedule for violations of the short-term rental ordinance, including fines for when non-owner/tenant occupied dwelling units are made available for short-term rentals (from June 9, 2015 STR referral).

Medium Priority

15. Impose fees when multifamily properties are destroyed due to fault of property owner

(Demolition ordinance, RHSP, Relocation fees, fines).

16. Green Affordable Housing Package policy #1: Prioritize housing over parking in new developments. Reduce parking in R-4.

17. Amend planning-Zoning code to allow housing and other non-commercial uses on the ground floor.
18. Establish a City maintained online resource that would provide a brief overview of the history and purpose of Below Market Rate (BMR) units, a current list of all buildings that contain BMR units and the characteristics of the units, the percent of median income qualification levels for the units, the HUD published income guidelines for percentage of median and family size, the property owner, rental agent, and/or management company contact information, and other relevant information that would be helpful to potential renters of BMR units. The City shall update the information as more units become available, and quarterly, to ensure that information is current.
- ~~16. To encourage landlords to accept Section 8 and Shelter + Care vouchers: allow parcel and/or property tax reductions based on the percentage of property of units that are currently Section 8 and/or decided during annual Section 8 inspection.~~
19. To encourage landlords to accept Section 8 and Shelter + Care vouchers study a program that is intended to encourage rehabilitation of substandard units that could be leased to recipients of Section 8 and Shelter + Care vouchers. Possible assistance that the City could provide including: create a list of qualified, efficient, and affordable contractors vetted by the City, and a discount or waiver of permit fees, to support bringing their unit(s) to code.
20. Collaborate with Berkeley Housing Authority Board to invest capital funds from sale of the public housing for more affordable housing (Longer term referral).
21. To encourage landlords to accept Section 8 and Shelter + Care vouchers: identify organizations who can support financial literacy and management for Section 8 tenants, including establishing bank accounts with direct deposit to Landlords.
- ~~20. Increase commercial housing linkage fee by CCCL.~~
22. Establish Office of Anti-Displacement, and hire Anti-Displacement Advocate (non-city funded position).
23. Provide housing counseling and legal services for Berkeley's low-income, elderly or disabled distressed homeowners.

Referrals Being Completed

- Evaluate feasibility of developing affordable senior housing above Senior Centers.
- Hold fines on Oregon Park Senior Apartments (OSPA) in abeyance with the agreement until the OSPA conducts a financial audit and structural review and hires a

property manager.

- Adopt Council policy that two-thirds of short term rental tax be allocated to the Housing Trust Fund (with remaining one-third to the arts), following administrative costs.

Referrals Completed

- Expand legal eviction defense of Berkeley tenants beyond current 10-20% receiving this assistance.
- Increase the Rental Assistance Fund for Berkeley tenants.
- To encourage landlords to accept Section 8 and Shelter + Care vouchers: provide legal and/or mediation support, offered either through the City or a partner, in negotiating Landlord/Tenant disputes out-of-court.
- Eliminate discount in Affordable Housing Fee if paid at issuance of building permit; require full fee at building permit, and add periodic increase by reference to California Construction Cost Index (CCCI).
- Designate admin powers to Zoning Officer to expedite permit approval for affordable housing.
- Include Land Value Capture fee in future area development plans.
- Work with Rent Board to identify the causes and remedies for shortfalls in current collection of business license tax.
- Provide flexibility to Council to establish variable affordable housing percentage requirements in given areas of the City. Reflect these differences in area plans (e.g., for San Pablo, Adeline Corridors).
- Create a Deputy Director or Division Manager (Additional Management Analyst added as part of June budget process)

FISCAL IMPACTS OF RECOMMENDATION

There is no fiscal impact from adopting this plan. Future fiscal impacts will be dependent on the specific referral implemented.

CONTACT PERSON

Mayor Jesse Arreguin	510-981-7100
Councilmember Kate Harrison	510-981-7140



Office of the Mayor

ACTION CALENDAR
November 14, 2017

To: Members of the City Council
From: Mayor Jesse Arreguín and Councilmember Kate Harrison
Subject: Implementation Plan for Affordable Housing Action Plan Referrals

RECOMMENDATION

Approve the following priority order for Affordable Housing Action Plan referrals, and adopt the interdepartmental implementation plan as revised:

High Priority

1. Design a Small Sites Program to assist non-profits in acquiring existing properties that fall under certain criteria with the intention of allocating \$1 million annually. As a first step, contact owners of seven apparently vacant properties constituting 68 rental units for their interest in selling them to non-profit affordable housing developers or land trusts that could rehabilitate them, and then rent the units at affordable rents. As a second step, investigate properties that are being vacated over time for possible purchase to retain affordable housing. Consider master leasing as a mechanism for managing distinct, smaller properties.
2. Develop an ordinance modeled after Washington D.C.'s Tenant Opportunity to Purchase Act (TOPA) that offers existing tenants the first right of refusal when property owners place rental property on the sale market, which can be transferred to a qualifying affordable housing provider.
3. Draft an ordinance for a new City Density Bonus plan to allow developers of multi-family housing to add up to 15% more density in exchange for fees only.
4. Create specific per acre density standards to strengthen City posture vis-à-vis the State Housing Accountability Act.
5. Examine and eliminate barriers to developing student housing and senior housing.
6. Refer to the City Manager, City Attorney and Planning Commission an ordinance to clarify existing preferences in allocating City affordable housing units to Berkeley residents living within 1/2 mile of any new development and tenants evicted under the Ellis Act, expand the second category of preference for eligible tenants displaced under the Ellis Act to include certain tenants displaced through

Page 2 of 18

an Owner Move-In or (Measure Y) auction, and other forms of displacement as defined by Council.

7. Utilize list of vacant city properties developed by city staff and further examine opportunities for placing affordable housing on these sites.
8. Identify Parcels of City owned land appropriate for siting assisted-living modular micro unit buildings; take affirmative steps to speed the permitting and approvals process; obtain zoning approval and a building permit and approvals process for the creation of below market housing; identify a housing non-profit to be responsible for managing and operating the building; and establish criteria for selecting individuals and determining eligibility.
9. Investigate the feasibility of developing workforce housing, in conjunction with Berkeley Unified School District, for teachers and employees. The investigation should include research into what other California jurisdictions (such as San Francisco, Oakland, Santa Clara, and San Mateo County) are considering as part of their pursuit of School District workforce housing.
10. Streamline AH Permitting process for Projects with majority of AH; Remove Structural barriers to AH (Green AH Package Policy #2).
11. Examine and eliminate barriers to building and renting ADUs.

Medium Priority

12. Impose fees when multifamily properties are destroyed due to fault of property owner (Demolition ordinance, RHSP, Relocation fees, fines).
13. Develop enforcement tools for Short-Term Rentals/Section 8.
14. Amend planning code to allow housing and other non-commercial uses on the ground floor.
15. Review method of monitoring BMR units and associated fees. Establish a City maintained online resource that would provide a brief overview of the history and purpose of Below Market Rate (BMR) units, a current list of all buildings that contain BMR units and the characteristics of the units, the % of median income qualification levels for the units, the HUD published income guidelines for % of median and family size, the property owner, rental agent, and/or management company contact information, and other relevant information that would be helpful to potential renters of BMR units. The City shall update the information as more units become available, and quarterly, to ensure that information is current.
16. To encourage landlords to accept Section 8 and Shelter + Care vouchers: create a list of qualified, efficient, and affordable contractors vetted by the City, and a discount or waiver of permit fees, to support bringing their unit(s) to code.

Page 3 of 18

17. Collaborate with BHA Board to invest capital funds from sale of the public housing for more affordable housing (Longer term referral).
18. To encourage landlords to accept Section 8 and Shelter + Care vouchers: identify organizations who can support financial literacy and management for Section 8 tenants, including establishing bank accounts with direct deposit to Landlords.
19. To encourage landlords to accept Section 8 and Shelter + Care vouchers: allow parcel and/or property tax reductions based on the percentage of property of units that are currently Section 8 and/or decided during annual Section 8 inspection.
20. Increase commercial housing linkage fee by CCCI.
21. Establish Office of Anti-Displacement, and hire Anti-Displacement Advocate (non-city funded position).

Referrals Being Completed

- Evaluate feasibility of developing affordable senior housing above Senior Centers.
- Hold fines on Oregon Park Senior Apartments (OSPA) in abeyance with the agreement until the OSPA conducts a financial audit and structural review and hires a property manager.
- Adopt Council policy that two-thirds of short term rental tax be allocated to the Housing Trust Fund (with remaining one-third to the arts), following administrative costs.
- Develop Measure U1 Priorities and Implementation Criteria. Include consideration of ability to leverage funds and possible bonding against revenues.

Referrals Completed

- Green Affordable Housing Package policy #1: Prioritize housing over parking in new developments. Reduce parking in R-4.
- Expand legal eviction defense of Berkeley tenants beyond current 10-20% receiving this assistance.
- Provide housing counseling and legal services for Berkeley's low-income, elderly or disabled distressed homeowners.
- Increase the Rental Assistance Fund for Berkeley tenants.

Page 4 of 18

- To encourage landlords to accept Section 8 and Shelter + Care vouchers: provide legal and/or mediation support, offered either through the City or a partner, in negotiating Landlord/Tenant disputes out-of-court.
- Eliminate discount in Affordable Housing Fee if paid at issuance of building permit; require full fee at building permit, and add periodic increase by reference to California Construction Cost Index (CCCI).
- Designate admin powers to Zoning Officer to expedite permit approval for affordable housing.
- Include Land Value Capture fee in future area development plans.
- Work with Rent Board to identify the causes and remedies for shortfalls in current collection of business license tax.
- Provide flexibility to Council to establish variable affordable housing percentage requirements in given areas of the City. Reflect these differences in area plans (e.g., for San Pablo, Adeline Corridors).
- Create a Deputy Director or Division Manager (Additional Management Analyst added as part of June budget process)

FISCAL IMPACTS OF RECOMMENDATION

There is no fiscal impact from adopting this plan. Future fiscal impacts will be dependent on the specific referral implemented.

CONTACT PERSON

Mayor Jesse Arreguin	510-981-7100
Councilmember Kate Harrison	510-981-7140



Office of the City Manager

ACTION CALENDAR

November 28, 2017

(Continued from November 14, 2017)

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Paul Buddenhagen, Director, Health, Housing and Community Services
Timothy Burroughs, Interim Director, Planning & Development

Subject: Implementation Plan for Affordable Housing Action Plan Referrals

RECOMMENDATION

Adopt the attached interdepartmental implementation plan for Affordable Housing Action Plan referrals.

FISCAL IMPACTS OF RECOMMENDATION

There is no fiscal impact from adopting this plan. Future fiscal impacts will be dependent on the specific referral implemented.

CURRENT SITUATION AND ITS EFFECTS

On May 30, 2017, the City Council decided to establish a set of housing-related referrals in addition to the City's Reweighted Range Voting (RRV) list of referrals. The Council's list included items in the following categories: Funding, New Development/Land Acquisition, Policies, Permit Streamlining, Anti-Displacement, and Staffing.

The Council directed the City Manager to review the referral list and return with a prioritized Affordable Housing Action Plan. Staff from the Planning Department and the Health, Housing, and Community Services Department (HHCS) organized an interdepartmental working group to develop a coordinated Affordable Housing Action Plan Implementation Strategy (*Attachment 1*). The City Manager's Office, Finance, Office of Economic Development, and Information Technology as well as the Berkeley Housing Authority and Rent Board are also identified as lead and/or supporting departments.

As of this writing in October, staff have completed ten of the referrals Council previously ranked through the RRV system. Staff are currently working on the next ten referrals, as they continue to implement current programs. The remaining 16 referrals were ranked in priority order in Attachment 1 based on several factors, including:

- Estimated scale of the potential impact and benefits;

Page 6 of 18

Implementation Plan for Affordable Housing Action Plan Referrals

ACTION CALENDAR

November 28, 2017(Continued from November 14, 2017)

- Currently available funding;
- Currently available staff capacity; and
- Consistency with current programs.

Attachment 1 provides a status update for each Council referral currently underway and lists the departments assigned to their respective implementation.

BACKGROUND

The referrals in the Affordable Housing Action Plan are new projects to be added to the programs the City currently provides. The Planning Department is currently developing a department work plan that will illustrate how implementation of the Affordable Housing Action Plan is being sequenced with other existing and upcoming efforts. HHCS's Housing Services unit includes 5.0 FTEs. A detailed outline of the Housing Services unit's current duties are provided in Attachment 2, and are summarized below:

- Housing Trust Fund support for projects and long-term monitoring;
- Below Market Rate housing requirements for new market rate rental and ownership housing, including long-term monitoring and Short Term Rental regulations implementation;
- Condominium Conversion program;
- Environmental review of all projects the City funds with HUD dollars;
- Loan administration for existing housing loans made in the past outside the Housing Trust Fund program;
- Staffing the Housing Advisory Commission; and
- Disposition of City-owned property, including the Berkeley Way site for affordable and supportive housing.

ENVIRONMENTAL SUSTAINABILITY

There are no direct environmental sustainability effects associated with the content of this report; it is intended to serve as a guiding document for other referrals. Infill development associated with some of the referrals is generally considered to support environmental sustainability.

RATIONALE FOR RECOMMENDATION

This Implementation Plan represents the efforts of an interdepartmental team to coordinate resources and staff time. Adopting this Implementation Plan will facilitate an efficient process for completing referrals across City departments.

ALTERNATIVE ACTIONS CONSIDERED

No alternative actions were considered as staff is responding to a direct referral from Council to manage housing related referrals.

Page 7 of 18

Implementation Plan for Affordable Housing Action Plan Referrals

ACTION CALENDAR

November 28, 2017(Continued from November 14, 2017)

CONTACT PERSON

Michael Uberti, Community Development Project Coordinator, Health, Housing and
Community Services, (510) 981-5114

Amy Davidson, Senior Community Development Project Coordinator, Health, Housing
and Community Services, (510) 981-5406

Steve Buckley, Land Use Planning Manager, Planning Department, (510) 981-7411

Attachments:

- 1: Housing Action Plan Implementation Plan
- 2: HHCS HCS Housing Services' Current Projects and Services

Page 8 of 18
Attachment 1 - Housing Action Plan Implementation Plan

Completed Referrals				
	Item	Department Lead	Department Support	Status Update
	Utilize list of vacant city properties developed by city staff and further examine opportunities for placing affordable housing on these sites.	HHCS		2/14/2017 Council information report
	Green Affordable Housing Package policy #1: Prioritize housing over parking in new developments. Reduce parking in R-4.	Planning		State law passed in October 2015 implementing Referral request.
	Expand legal eviction defense of Berkeley tenants beyond current 10-20% receiving this assistance.	Council	HHCS; RSB	Council allocated \$300,000 for eviction defense and housing counseling on June 27 as part of biennial budget process.
	Provide housing counseling and legal services for Berkeley's low-income, elderly or disabled distressed homeowners.	Council	HHCS; RSB	
	Increase the Rental Assistance Fund for Berkeley tenants.	Council	HHCS	Council allocated \$250,000 for rental assistance on June 27 as part of biennial budget process.
	To encourage landlords to accept Section 8 and Shelter + Care vouchers: provide legal and/or mediation support, offered either through the City or a partner, in negotiating Landlord/Tenant disputes out-of-court;	HHCS		City has a contract with SEEDS to provide these services.

Page 9 of 18
Attachment 1 - Housing Action Plan Implementation Plan

	Item	Department Lead	Department Support	Status Update
	Eliminate discount in Affordable Housing Fee if paid at issuance of building permit; require full fee at building permit, and add periodic increase by reference to California Construction Cost Index (CCCI).	Council	HHCS; Planning	Resolution adopted 06/13/2017; Ordinance (second reading) amending BMC Section 22.20.065 adopted 06/27/2017
	Develop enforcement tools for Short-Term Rentals/Section 8.	Planning	IT; Finance; Rent Board	Short-Term Rental application process opened on 9/1/17. Enforcement date TBD.
	Designate admin powers to Zoning Officer to expedite permit approval for affordable housing.	Planning		Ordinance No. 7,573-N.S. was adopted on 10/3 expediting approval for HTF projects.
	Streamline AH Permitting process for Projects with majority of AH; Remove Structural barriers to AH (Green AH Package Policy #2).	Planning		Ordinance No. 7,573-N.S. was adopted on 10/3 expediting approval for HTF projects.
Referrals In Progress				
A	Examine and eliminate barriers to building and renting ADUs.	Planning	HHCS	Anticipated Public Hearing at Planning Commission in November 2017
B	Include Land Value Capture fee in future area development plans.	Planning	OED	On-going effort as part of Adeline Corridor Plan and other future plans.

Page 10 of 18
Attachment 1 - Housing Action Plan Implementation Plan

	Item	Department Lead	Department Support	Status Update
C	Evaluate feasibility of developing affordable senior housing above Senior Centers.	PRW	Planning, HHCS	Measure T-1 implementation includes analysis of housing potential
D	Refer to the City Manager and Planning Commission an ordinance to clarify existing preferences in allocating City affordable housing units to Berkeley residents living within 1/2 mile of any new development and tenants evicted under the Ellis Act, expand the second category of preference for eligible tenants displaced under the Ellis Act to include certain tenants displaced through an Owner Move-In or (Measure Y) auction, and other forms of displacement as defined by Council.	CAO	HHCS; Planning	Evaluation of options has begun. Harper Crossing project incorporated a preference for people who live or work in Berkeley.
E	Draft an ordinance for a new City Density Bonus plan to allow developers of multi-family housing to add up to 15% more density in exchange for fees only.	Planning	HHCS	Developing Local Density Bonus Ordinance to be piloted in the C-T District
F	Amend planning code to allow housing and other non-commercial uses on the ground floor.	Planning		Issue has been discussed by Planning Commission. Local Density Bonus pilot may include flexible ground floor uses.

Page 11 of 18
Attachment 1 - Housing Action Plan Implementation Plan

	Item	Department Lead	Department Support	Status Update
G	Impose fees when multifamily properties are destroyed due to fault of property owner (Demolition ordinance, RHSP, Relocation fees, fines).	Planning	HHCS	Working on amendments to Demolition Ordinance (No. 7,458–N.S.)
H	Establish Office of Anti-Displacement, and hire an Anti-Displacement Advocate (non City-funded position).	CBO		This activity is expected to take place at a nonprofit organization.
I	Increase commercial housing linkage fee by CCCI.	Planning		Feasibility Study for all fees is underway.
J	Hold fines on Oregon Park Senior Apartments (OSPA) in abeyance with the agreement until the OSPA conducts a financial audit and structural review and hires a property manager.	Planning / Housing Code Enforcement	HHCS	Housing Code Enforcement fines are not being collected while OSPA works to complete their tasks.
Upcoming Referrals				
1	Adopt Council policy that two-thirds of short term rental tax be allocated to the Housing Trust Fund (with remaining one-third to the arts), following administrative costs.	City Manager	Finance; HHCS	
2	Work with Rent Board to identify the causes and remedies for shortfalls in current collection of business license tax.	Finance	Rent Board; IT; HHCS	Finance plans to work on enhancing collections in partnership with Rent Board

Page 12 of 18
Attachment 1 - Housing Action Plan Implementation Plan

	Item	Department Lead	Department Support	Status Update
3	Identify Parcels of City owned land appropriate for siting assisted-living modular micro unit buildings; take affirmative steps to speed the permitting and approvals process; obtain zoning approval and a building permit and approvals process for the creation of below market housing; identify a housing non-profit to be responsible for managing and operating the building; and establish criteria for selecting individuals and determining eligibility.	HHCS	Planning	HHCS is working on the Council referral related to the disposition of 1281 University (current home of Kenney Cottage) and microunit projects will be eligible. HHCS completed an analysis of City owned parcels appropriate for multifamily housing development in February 2017.
4	Establish a City maintained online resource that would provide a brief overview of the history and purpose of Below Market Rate (BMR) units, a current list of all buildings that contain BMR units and the characteristics of the units, the % of median income qualification levels for the units, the HUD published income guidelines for % of median and family size, the property owner, rental agent, and/or management company contact information, and other relevant information that would be helpful to potential renters of BMR units. The City shall update the information as more units become available, and quarterly, to ensure that information is current.	HHCS	IT	The City currently has a list of projects with address and property manager contacts available online. The income and rent for each BMR unit vary according to the affordability level and size, and change annually. With 0.33 FTE available for this program, staff are first working to update the online reporting tool, catch up on on-site inspections, and update online FAQ for tenants and developers.

Page 13 of 18
Attachment 1 - Housing Action Plan Implementation Plan

	Item	Department Lead	Department Support	Status Update
5	Create specific per acre density standards to strengthen City posture vis-à-vis the State Housing Accountability Act.	Planning		Anticipated completion 2019/2020 as part of comprehensive analysis of development potential and impacts
6	Investigate the feasibility of developing workforce housing, in conjunction with Berkeley Unified School District, for teachers and employees. The investigation should include research into what other California jurisdictions (such as San Francisco, Oakland, Santa Clara, and San Mateo County) are considering as part of their pursuit of School District workforce housing.	PRW	Planning, HHCS	PRW is in communication with BUSD regarding publicly owned real estate in Berkeley.
7	Develop Measure U1 Priorities and Implementation Criteria. Include consideration of ability to leverage funds and possible bonding against revenues.	Finance; CMO	HHCS	Housing Advisory Commission has appointed a U1 subcommittee to look at the issue. U1 revenue collection will begin in 2018.
8	Collaborate with BHA Board to invest capital funds from sale of the public housing for more affordable housing.	HHCS	BHA	To be analyzed based on BHA proposal when available.

Page 14 of 18
Attachment 1 - Housing Action Plan Implementation Plan

	Item	Department Lead	Department Support	Status Update
9	Design a Small Sites Program to assist non-profits in acquiring existing properties that fall under certain criteria with the intention of allocating \$1 million annually. As a first step, contact owners of seven apparently vacant properties constituting 68 rental units for their interest in selling them to non-profit affordable housing developers or land trusts that could rehabilitate them, and then rent the units at affordable rents. As a second step, investigate properties that are being vacated over time for possible purchase to retain affordable housing. Consider master leasing as a mechanism for managing distinct, smaller properties.	HHCS	Planning; Finance	Since Council prioritized full funding of the Berkeley Way project in May 2017, a source for an additional \$1M for acquisition and rehab has not yet been identified. Both organizations which have done similar projects in Berkeley, NCLT and BACLT, are relatively small and are currently working on other HTF-funded projects.
10	Develop an ordinance modeled after Washington D.C.'s Tenant Opportunity to Purchase Act (TOPA) that offers existing tenants the first right of refusal when property owners place rental property on the sale market, which can be transferred to a qualifying affordable housing provider.	HHCS		A TOPA-like program would work in partnership with a Small Sites program and could be implemented at the same time.
11	To encourage landlords to accept Section 8 and Shelter + Care vouchers: identify organizations who can support financial literacy and management for Section 8 tenants, including establishing bank accounts with direct deposit to Landlords.	HHCS	BHA	

Page 15 of 18
Attachment 1 - Housing Action Plan Implementation Plan

	Item	Department Lead	Department Support	Status Update
12	To encourage landlords to accept Section 8 and Shelter + Care vouchers: create a list of qualified, efficient, and affordable contractors vetted by the City, and a discount or waiver of permit fees, to support bringing their unit(s) to code;	Planning	HHCS	
13	Provide flexibility to Council to establish variable affordable housing percentage requirements in given areas of the City. Reflect these differences in area plans (e.g., for San Pablo, Adeline Corridors).	Planning	HHCS	This flexibility was added to BMC 22.20.065 with Ordinance 7,569-NS adopted on August 18, 2017
14	To encourage landlords to accept Section 8 and Shelter + Care vouchers: allow parcel and/or property tax reductions based on the percentage of property of units that are currently Section 8 and/or decided during annual Section 8 inspection; and	Finance	BHA	
15	Examine and eliminate barriers to developing student housing and senior housing.	HHCS	Planning	

Page 16 of 18
Attachment 1 - Housing Action Plan Implementation Plan

	Item	Department Lead	Department Support	Status Update
16	Create a Deputy Director or Division Manager	HHCS		HHCS Deputy Director works with all 6 HHCS divisions. The Housing Services unit has 5.0 FTEs while HHCS divisions range in size from 14 to 69 FTEs. Funding for additional staffing has not been identified.

Page 17 of 18

Attachment 2 - Current HHCS Housing Projects and Services

Health, Housing & Community Services Department (HHCS) Current Housing Projects and Services

Housing projects and services are staffed in HHCS' Housing and Community Services Division's Housing Services unit (5.0 FTEs).

Housing Trust Fund

- Managing active loans
 - Northern California Land Trust scattered site rehabilitation
 - Bay Area Community Land Trust predevelopment
 - Satellite Affordable Housing Associates All Souls predevelopment
 - Satellite Affordable Housing Associates Grayson Street Apartments construction
 - Resources for Community Development William Byron Rumford Sr. Plaza rehabilitation close out
 - Harper Crossing construction loan amendment, completion and close out
 - Satellite Affordable Housing Associates Hillegass Apartments loan amendment
 - Resources for Community Development MLK House loan amendment
- Monitoring completed units
 - Annual Compliance Reports and on-site monitoring
 - Continued work to customize online reporting tool
 - Federal HOME and CDBG compliance monitoring

Below Market Rate Housing Program

- New regulatory agreement in process with Stonefire
- Respond to requests from developers regarding program requirements
- Revisions to materials available for developers and tenants
- Preparing revisions to fee proposal based on 5/16/2017 Council meeting
- Follow up with State of California to record Acton Courtyard revised regulatory agreement
- Short Term Rental regulations implementation
- Monitoring completed units
 - Annual Compliance Reports and on-site monitoring
 - Continued work to customize online reporting tool
 - Homeownership units portfolio review and monitoring program

Page 18 of 18

Attachment 2 - Current HHCS Housing Projects and Services

Condominium Conversion Program

- Review current applications
- Invoice and collect fee repayments at property sales
- Process subordination requests for subdivided properties

Environmental Review

- Complete NEPA review for approximately 140 City-funded projects per year
- Coordinate with State Historic Preservation Officer under City's agreement

Loan Administration (Outside of HTF)

- Reviewing \$1.7M in older outstanding loans for compliance and status updates

Housing Advisory Commission

- Monthly meeting agenda development, packet preparation, posting and staffing
- Scheduling meeting rooms and posting agendas for 8 ad hoc subcommittees
- Reports follow up

Disposition of City-Owned Property

- 1920 West Street (1281 University Ave.)
- 5th Street Redevelopment Agency Properties
- Berkeley Way site
 - Amendment to predevelopment loan
 - Review of funding request
 - Collaboration with Planning, Public Works, and Fire

ANNOTATED AGENDA BERKELEY CITY COUNCIL MEETING

Tuesday, November 28, 2017

6:00 P.M.

COUNCIL CHAMBERS - 2134 MARTIN LUTHER KING JR. WAY

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – LINDA MAIO
DISTRICT 2 – CHERYL DAVILA
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – KRISS WORTHINGTON
DISTRICT 8 – LORI DROSTE

Preliminary Matters

Roll Call: 6:04 p.m.

Present: Bartlett, Davila, Hahn, Harrison, Worthington, Droste, Arreguin

Absent: Maio, Wengraf

Ceremonial Matters:

1. Recognition of Tom Kelly
2. Recognition of Berkeley Humane
3. Recognition of Berkeley Fire Department/Berkeley Police Department Responders to North Bay Fires

City Auditor Comments:

1. The Auditor highlighted the importance of funding the reserves in light of pension liabilities and possible economic slowdowns. The Auditor also provided an update on the Measure GG audit report.

City Manager Comments:

1. Planning Department Open House – 12/6 from 3:00 - 6:00 p.m. at 1947 Center Street
2. Grove Park Reopening – 12/2 at 11:00 a.m. – 1:00 p.m.
3. Live Oak Holiday Tots Carnival – 12/2 at 10:00 a.m. – 2:30 p.m. at Live Oak Recreation Center
4. Winter on the Waterfront – 12/9 at 1:00 p.m. – 6:30 p.m. at the Berkeley Yacht Club

Public Comment on Non-Agenda Matters: 8 speakers.

Public Comment on Consent Calendar and Information Items Only: 4 speakers.

Action Calendar – Old Business

22. Implementation Plan for Affordable Housing Action Plan Referrals *(Continued from November 14, 2017. Item contains revised materials.)*

From: City Manager

Recommendation: Adopt the attached interdepartmental implementation plan for Affordable Housing Action Plan referrals.

Financial Implications: None

Contact: Paul Buddenhagen, Housing and Community Services, 981-5400, and Timothy Burroughs, Planning and Development, 981-7400

Action: On the severed portion to include density standards.

Vote: Ayes – Bartlett, Davila, Hahn, Harrison, Worthington, Arreguin; Noes – Droste; Abstain – None; Absent – Maio, Wengraf.

Action: On the severed portion regarding the California Construction Cost Index.

Vote: Ayes – Bartlett, Davila, Hahn, Harrison, Worthington, Arreguin; Noes – None; Abstain – Droste; Absent – Maio, Wengraf.

Action: 3 speakers. M/S/C (Arreguin/Davila) to Approve the following priority order for Affordable Housing Action Plan referrals, and adopt the interdepartmental implementation plan as revised:

High Priority

1. Develop a Small Sites Program to assist non-profits in acquiring multi-unit properties of 25 units or less. Consider giving priority to the creation of limited and non-equity cooperatives affiliated with a democratic community land trust. Consider master leasing as a mechanism for managing distinct, smaller properties.
2. Develop an ordinance modeled after Washington D.C.'s Tenant Opportunity to Purchase Act (TOPA) that offers existing tenants in multi-unit properties of three units or more the first right of refusal when property owners place rental property on the sale market, which can be transferred to a qualifying affordable housing provider.
3. **A) Draft an ordinance creating a pilot Density Bonus policy for the Telegraph Commercial District to grant additional density for projects in the Telegraph area which pay Affordable Housing Fees in lieu of units on-site. B) Study the creation of a new City Density Bonus plan to allow developers of multi-family housing to add up to 15% more density in exchange for fees only.**
4. Examine and eliminate barriers to developing student housing and senior housing.
5. **Create specific per acre density standards, including standards for projects that include density bonus units.**
6. Develop enforcement tools for Short-Term Rental Ordinance and Section 8 Non-Discrimination Ordinance (BMC Chapter 13.31, "Discrimination based on source of income prohibited"). Request that the City Manager direct staff to draft a fine schedule for violations of the short-term rental ordinance for multi-unit properties with multiple units used as STRs that are out of compliance with the host ordinance, including fines for when non-owner/tenant occupied dwelling units are made available for short-term rentals (from June 9, 2015 STR referral).
7. Refer to the City Manager and Planning Commission, and/or Housing Advisory Commission an ordinance to clarify existing preferences in allocating City affordable housing units to Berkeley residents living within 1/2 mile of any new development and tenants evicted under the Ellis Act, expand the second category of preference for eligible tenants displaced under the Ellis Act to include certain tenants displaced through an Owner Move-In or (Measure Y) eviction, and other forms of displacement as defined by Council.

Action Calendar – Old Business

8. Increase commercial linkage fee by California Construction Cost Index CCCI.
9. Identify Parcels of City owned land appropriate for siting assisted-living modular micro-unit buildings; take affirmative steps to speed the permitting and approvals process; obtain zoning approval and a building permit and approvals process for the creation of below market housing; identify a housing non-profit to be responsible for managing and operating the building; and establish criteria for selecting individuals and determining eligibility.
10. Utilize list of city properties developed by city staff and further examine opportunities for placing affordable housing on these sites.
11. Investigate the feasibility of developing workforce housing, in conjunction with Berkeley Unified School District, for teachers and other school district employees. The investigation should include research into what other California jurisdictions (such as San Francisco, Oakland, Santa Clara, and San Mateo County) are considering as part of their pursuit of School District workforce housing.
12. a) Streamline the Affordable Housing Permitting process for Projects with majority of Affordable Housing (50% affordable units or more, Worthington referral 1/19/16); b) Remove Structural barriers to Affordable Housing (Green Affordable Housing Package Policy #2, Droste); c) waive or reduce permit fees for affordable housing projects (Hahn), including previously adopted streamlining measures from 2017.
13. Examine and eliminate barriers to building and renting Accessory Dwelling Units.
14. Develop Measure U1 Priorities and Implementation Criteria. Include consideration of ability to leverage funds and placing a measure on the November 2018 ballot to allow possible bonding against revenues.
15. Establish a City maintained online resource that would provide a brief overview of the history and purpose of Below Market Rate (BMR) units, a current list of all buildings that contain BMR units and the characteristics of the units, the percent of median income qualification levels for the units, the HUD published income guidelines for percentage of median and family size, the property owner, rental agent, and/or management company contact information, and other relevant information that would be helpful to potential renters of BMR units. The City shall update the information as more units become available, and quarterly, to ensure that information is current.

Medium Priority

16. Impose fees when multifamily properties are destroyed due to fault of property owner (Demolition ordinance, RHSP, Relocation fees, fines).
17. Green Affordable Housing Package policy #1: Prioritize housing over parking in new developments. Reduce parking in R-4.
18. Amend Zoning code to allow housing and other non-commercial uses on the ground floor.
19. To encourage landlords to accept Section 8 and Shelter + Care vouchers study a program that is intended to encourage rehabilitation of substandard units that could be leased to recipients of Section 8 and Shelter + Care vouchers. Possible assistance that the City could provide including: creating a list of qualified, efficient, and affordable contractors vetted by the City, and a discount or waiver of permit fees, to support bringing their unit(s) to code.
20. Collaborate with Berkeley Housing Authority Board to invest capital funds from sale of the public housing for more affordable housing (Longer term referral).
21. To encourage landlords to accept Section 8 and Shelter + Care vouchers: identify organizations who can support financial literacy and management for Section 8 tenants, including establishing bank accounts with direct deposit to Landlords.
22. Establish Office of Anti-Displacement, and hire Anti-Displacement Advocate (non-city funded position).

Action Calendar – Old Business

23. Provide housing counseling and legal services for Berkeley's low-income, elderly or disabled distressed homeowners.

Vote: Ayes – Bartlett, Davila, Hahn, Harrison, Worthington, Droste, Arreguin; Noes – None; Abstain – None; Absent – Maio, Wengraf.

Action Calendar – New Business**23. FY 2017 Year-End Results and FY 2018 First Quarter Budget Update**

From: City Manager

Recommendation: 1. Adopt a Resolution allocating the General Fund excess equity as follows: \$1,930,415 to the General Fund Stability Reserve, \$1,579,430 to the General Fund Catastrophic Reserve and incorporate additional allocations as amended by subsequent Council action. 2. Discuss and determine funding allocations based on the Mayor's June 27, 2017, revised amendments to the FY 2018 & FY 2019 Biennial Budget and as amended by subsequent Council action.

Financial Implications: See report

Contact: Teresa Berkeley-Simmons, Budget Manager, 981-7000

Action: 3 speakers. M/S/C (Worthington/Arreguin) to continue the item to December 5, 2017 and include the allocations from Mayor Arreguin in Supplemental Reports Packet #2 including a new resolution for the allocation to Dorothy Day House.

Vote: Ayes – Bartlett, Davila, Hahn, Harrison, Worthington, Droste, Arreguin; Noes – None; Abstain – None; Absent – Maio, Wengraf.

24a. Recommendation for Audit and Legal Review of Measure GG Expenditures with Attention to Allocation of Measure GG Funds for Fire Department Overtime

From: Disaster and Fire Safety Commission

Recommendation: We recommend that City Council request from the City Auditor an audit of Measure GG expenditures specifically regarding the allocation of Measure GG funds for Fire Department overtime pay. We additionally suggest a legal review by the City Attorney to determine if the decreasing budget for Fire Department overtime in the General Fund and the coordinated increase of Measure GG funds allocated to overtime pay is in compliance with Measure GG and State and Federal laws, and to provide corrective guidance if it is not.

Financial Implications: See report

Contact: Keith May, Commission Secretary, 981-3473

Chapter 23C.12
INCLUSIONARY HOUSING REQUIREMENTS*

Sections:

- [23C.12.010](#) Purpose
- [23C.12.020](#) Applicability of Regulations
- [23C.12.030](#) General Inclusionary Requirement: 20% of Units
- [23C.12.035](#) Payment of In-Lieu Fees as an Alternative to Providing Inclusionary Units within a Project
- [23C.12.040](#) Requirements Applicable to all Inclusionary Units
- ~~[23C.12.050](#) State of California Density Bonus Requirements~~
- [23C.12.060](#) Inclusionary Unit Requirements for Rental Housing Projects
- [23C.12.070](#) Inclusionary Unit Requirements for Ownership Projects*
- [23C.12.080](#) Special Requirements for Avenues Plan Area
- [23C.12.090](#) Administrative Regulations*
- [23C.12.100](#) Fees

*Specific text which previously amended Berkeley Municipal Code Sections 23C.12.070A, 23C.12.070D, and [23C.12.090](#) for the period January 27, 2004 through February 19, 2006 was repealed on February 19, 2006 as stated in the sunset provision of Ordinance 6,790-N.S. These specific text amendments were reinstated by Ordinance 6,920-N.S., adopted on May 23, 2006.

23C.12.010 Purpose

The purpose of this chapter is to promote achievement of the City Housing Element goals for developing 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% of the median income by requiring the inclusion of affordable Dwelling Units in specified proposed developments, hereinafter referred to as projects. (Ord. 6478-NS § 4 (part), 1999)

23C.12.020 Applicability of Regulations

A. The following types of projects must comply with the inclusionary housing requirements of this chapter:

1. Residential housing projects for the construction of five or more Dwelling Units;
2. Residential housing projects for the construction of one to four new Dwelling Units, when such Units are added to an existing one to four unit property, which has been developed after August 14, 1986, and

30 the resulting number of units totals five or more. All Units in such a property are subject to the
31 requirements of this chapter;

32 3. Residential housing projects proposed on lots whose size and zoning designation is such to allow
33 construction of five or more Dwelling Units.

34 B. This chapter does not apply to Dormitories, Fraternity and Sorority Houses, Boarding Houses, Residential
35 Hotels or Live/Work Units, which are not considered Dwelling Units. Live/Work Units are subject to low income
36 inclusionary provisions set forth in Section [23E.20.080](#).

37 C. This chapter sets forth specific inclusionary housing requirements for the Avenues Plan Area, which
38 prevails over any inconsistent requirements set forth elsewhere in this chapter. (Ord. 6478-NS § 4 (part), 1999)

39 **23C.12.030 General Inclusionary Requirement: 20% of Units**

40 A. Any project subject to this chapter is required to include at least 20% of the total number of Dwelling Units
41 within the project as Inclusionary Units, except that Limited Equity Cooperatives are required to include at least
42 51% of their units as Inclusionary Units.

43 B. In applying the percentages above, any decimal fraction above a whole number of Dwelling Units shall be
44 paid as an in-lieu fee.

45 C. For the purpose of determining the median income levels for Households under this chapter, the City shall
46 use the Oakland Primary Metropolitan Statistical Area (PMSA) statistical figures that are available to the City
47 from the most recent U.S. Census. (Ord. 6478-NS § 4 (part), 1999)

48 **23C.12.035 Payment of In-Lieu Fees as an Alternative to Providing Inclusionary Units** 49 **within a Project**

50 A. Applicability. As an alternative to providing inclusionary units required in an ownership project, the
51 applicant may elect to enter in an agreement with the City to pay fees as set forth in this section, in-lieu of
52 providing units that are not required to be provided at below market prices pursuant to Government Code
53 Section [65915](#).

54 B. Purpose. The fee shall be deposited in the City's Housing Trust Fund.

55 C. Amount of Fee.

- 56 1. The in-lieu fee shall be sixty two and a half percent (62.5%) of the difference between the permitted
57 sale price for inclusionary units and the amounts for which those units are actually sold by the applicant.
- 58 2. This fee shall be calculated and collected based on the sales prices of all of the units in a project to
59 which the inclusionary requirement applies, such that the fee as charged shall be a percentage of the
60 difference between the actual sales price for each unit, and the sales price that would have been
61 permitted had that unit been an inclusionary unit. The percentage shall be determined using the
62 following formula: the number of units for which an in-lieu fee is substituted for an inclusionary unit
63 divided by the total number of units to which the inclusionary ordinance applies, multiplied by 62.5%.
- 64 3. This fee shall only be applicable to units in a project that are counted in determining the required
65 number of inclusionary units in a project and shall not be applicable to any units provided as a density
66 bonus.
- 67 4. In the event that the City Manager makes a determination that an actual sales price does not reflect
68 the fair market value of a unit, the City Manager shall propose an alternate price based on the fair
69 market value of the unit. In the event that the developer and the City Manager cannot agree on a fair
70 market value the City Manager shall select an appraiser to carry out an appraisal of the unit and the
71 appraised value shall be used as the market value.

72 D. Calculation of Inclusionary Sales Price.

- 73 1. The allowable inclusionary sales price for the purpose of calculating the in-lieu fee pursuant to this
74 section shall be three (3) times eighty percent (80%) of the Area Median Income (AMI) last reported as
75 of the closing date of the sale of the unit, with the exception that if the developer has already been
76 authorized to charge an inclusionary sale price based on development costs pursuant to Ordinance
77 6,790-N.S. (adopted January 27, 2004, sunsetted February 19, 2006) the allowable inclusionary sale
78 price for the purposes of this section shall be the price permitted under that ordinance.
- 79 2. Area median income (AMI) shall be calculated in accordance with the affordability regulations
80 established by the City Manager pursuant to Section [23C.12.090](#).

- 81 E. Time of Payment of Fee. The developer shall be required to pay the applicable in-lieu fee no later than the
82 closing date of the sale of a unit as a condition of said closing.

83 F. Use Permit Obtained Prior to Adoption of This Section. This section shall apply to projects for which all
84 required Permits have already been issued, as long as no units on those projects to which this section would
85 apply have been sold. (Ord. 6946-NS § 1, 2006)

86 **23C.12.040 Requirements Applicable to all Inclusionary Units**

87 A. All Inclusionary Units other than those in Limited Equity Cooperatives shall be sold to the City or its
88 designee or to Low Income, Lower Income or Very Low Income Households or shall be rented to Households
89 of similar incomes. Units in Limited Equity Cooperatives shall be sold or rented to Households whose gross
90 incomes do not exceed 120% of the Oakland PMSA median.

91 B. The applicant shall execute a written agreement with the City indicating the number, type, location,
92 approximate size and construction schedule of all Dwelling Units and other information as required for
93 determining compliance with this chapter.

94 C. All Inclusionary Units in a project and phases of a project shall be constructed concurrently with, or prior
95 to, the construction of non-inclusionary units.

96 D. All Inclusionary Units shall be reasonably dispersed throughout the project, be of the same size and
97 contain, on average, the same number of bedrooms as the non-Inclusionary Units in the project; and be
98 comparable with the design or use of non-inclusionary units in terms of appearance, materials and finish
99 quality.

100 E. In projects where the calculation of the inclusionary requirement results in a fraction of a unit, such a
101 fraction shall be paid in the form of an in-lieu fee to the City.

102 1. The in-lieu fee shall be the fractional value of the difference between development cost (excluding
103 marketing costs and profit) and actual sales price for the average comparable unit in projects, where
104 Government Code Section [65915](#) does not apply, and the difference between affordable cost for an
105 appropriately-sized household and the fractional value of the average comparable actual sales price for
106 the fraction of the unit in projects where Government Code Section [65915](#) does apply to require a
107 Density Bonus or equivalent incentive.;

108 2. The in-lieu fee shall be used by the City or its designee (such as a non-profit housing development
109 corporation), to provide, construct or promote the creation or retention of low income housing in the City.
110 The use of in-lieu fees for specific housing programs shall be brought before the Housing Advisory and
111 Appeals Board for review and approval.

112 F. Where the applicant demonstrates, and Staff concurs, that the direct construction and financing costs of
113 the Inclusionary Units, excluding marketing cost and profit (and also excluding land costs if a Density Bonus or
114 equivalent incentive is provided), exceed the selling prices allowed for Inclusionary Units by this chapter, the
115 Board may approve one or more of the following measures to reduce costs or increase profitability:

- 116 1. Reduction of the floor area or in the interior amenities of the Inclusionary Units, provided that such
117 units conform to applicable building and housing codes;
- 118 2. An increase in the number of bedrooms in the Inclusionary Units;
- 119 3. In a home ownership project, construction of rental units in a number required to meet the
120 inclusionary provisions of this chapter applicable to rental housing projects;
- 121 4. Waiving of the in-lieu participation fees for fractions of units. (Ord. 6676-NS § 2, 2002; Ord. 6478-NS
122 § 4 (part), 1999)

123 ~~23C.12.050 State of California Density Bonus Requirements~~

124 ~~A.—The City shall grant a density increase of at least 25% over the otherwise allowable maximum residential~~
125 ~~density permitted by this Ordinance and the General Plan in effect when the application for the development~~
126 ~~was determined to be complete, and at least one of the concessions or incentives set forth in Government~~
127 ~~Code Section 65915(h); unless the decision maker makes a written finding that the additional concession or~~
128 ~~incentive is not required in order to provide for affordable housing costs as defined in Health and Safety Code~~
129 ~~Section 50052.5, or for rents for the targeted units to be set as specified in Government Code~~
130 ~~Section 65915(c); or the City shall provide other incentives of equivalent financial value based on the land cost~~
131 ~~per Dwelling Unit; if an applicant agrees, or proposes, to construct at least one of the following three~~
132 ~~alternatives to comply with Density Bonus requirements:~~

- 133 ~~1.—Twenty percent of the total units of a housing development for lower income Households, as defined~~
134 ~~in Health and Safety Code Section 50079.5; or~~
- 135 ~~2.—Ten percent of the total units of a housing development for very low income Households, as defined~~
136 ~~in Health and Safety Code Section 50105; or~~
- 137 ~~3.—Fifty percent of the total Dwelling Units of a housing development for qualifying residents, as defined~~
138 ~~in Civil Code Section 51.3.~~

139 ~~B.—For purposes of this chapter, the Density Bonus shall not be included when determining the number of~~
140 ~~housing units which is equal to 10% or 20% of the total. The Density Bonus shall apply to housing~~
141 ~~developments consisting of five or more Dwelling Units.~~

142 ~~C.—The use of a Density Bonus is preferred over other types of concessions or incentives. Incentives may~~
143 ~~include, but are not limited to, fee deferments and waivers, granting of Variances, relaxation of otherwise~~
144 ~~applicable Permit conditions and provision of government benefits.~~

145 ~~D.—If the Density Bonus or equivalent incentive granted is above 25%, the applicant shall agree to a cost~~
146 ~~certification process. (Ord. 6848 NS § 3 (part), 2005; Ord. 6478 NS § 4 (part), 1999)~~

147 **23C.12.060 Inclusionary Unit Requirements for Rental Housing Projects**

148 A. All Inclusionary Units shall be occupied by Low, Lower or Very Low Income Households.

149 B. The maximum rental price for Inclusionary Units shall be affordable, as set forth in Section E below, to an
150 appropriate-sized Household whose income is 81% of the Oakland PMSA median.

151 C. In projects requiring more than one Inclusionary Unit, at least 50% of those units shall be rented at a price
152 that is affordable to Low or Lower Income Households, provided that the City can make available rental
153 subsidies through the federal Section 8 Existing Housing Program or an equivalent program. When there is an
154 uneven number of Inclusionary Units, the majority of units shall be priced to be affordable to a Household at
155 50% of median income if subsidies are available. If no rental subsidies are available, all Inclusionary Unit prices
156 shall be affordable to Households at 81% income of the Oakland PMSA median.

157 D. If an applicant agrees to provide 10% Lower Income Inclusionary Units, the rental price for such units shall
158 be affordable to a Household with income that is 60% of the Oakland PMSA median.

159 E. A unit shall be considered affordable if the rent (including utilities) does not exceed 30% of a Household's
160 Gross Income.

161 1. Gross Household Income and utility allowance shall be calculated according to the guidelines used
162 by the Berkeley Housing Authority for the federal Section 8 Existing Housing Program;

163 2. For purposes of calculating rent, appropriate Household size shall be determined by using the
164 schedule contained in the administrative regulations developed for this chapter.

165 F. Dwelling Units designated as Inclusionary Units shall remain in conformance with the regulations of this
166 section for the life of the building.

167 G. The City or its designee shall screen applicants for the Inclusionary Units and refer eligible Households of
168 the appropriate Household size for the unit. For purposes of occupancy, the appropriate Household size
169 standards used by the Housing Authority for the federal Section 8 Existing Housing Program or any future
170 equivalent program shall be used. The applicant or owner shall retain final discretion in the selection of the
171 eligible Households referred by the City.

172 H. The owner shall provide the City with data on vacancies and other information required to insure the long-
173 term affordability of the Inclusionary Units by eligible Households. (Ord. 6478-NS § 4 (part), 1999)

174 **23C.12.070 Inclusionary Unit Requirements for Ownership Projects***

175 A. Inclusionary Units in ownership projects shall be sold as set forth below:

176 1. Inclusionary Units in ownership projects shall be sold at a price that is affordable to an appropriate-
177 sized Household whose income is no more than 80% of the area median income reported for the
178 Oakland PMSA for households of that size, unless the cost of development of the unit is greater than the
179 affordable sales price. Appropriate sizes of household and the ratio of income to sales price for
180 affordable units shall be defined by City Manager regulation;

181 2. Inclusionary ownership units shall be affirmatively marketed to tenants with Section 8 housing
182 vouchers, and who are known to be interested in participating in the Section 8 homeownership program,
183 or other equivalent program(s) of the City of Berkeley, which are in effect at the time said units are
184 offered for sale by the developer.

185 B. The applicant for a project other than a Limited Equity housing Cooperative shall be required to give right-
186 of-first-refusal to purchase any or all new Inclusionary Units to the City or a City-designated agency or
187 organization for a period of not less than 60 days as evidenced by issuance of a Certificate of Occupancy.

188 C. Should the City choose not to exercise its right-of-first-refusal, it shall provide the applicant or owner with a
189 purchaser or with a list of eligible purchasers within a period of not less than 60 days. If the list is not provided,
190 the applicant may select a Low Income purchaser of his or her choice as long as the City verifies income
191 eligibility and the unit is sold at an affordable price as described in this chapter. The City shall maintain a list of
192 eligible Low Income Households and review the assets and incomes of prospective purchasers of the
193 Inclusionary Units on a project by project basis and refer potential purchasers to the applicant or owner.

194 1. All purchasers of Inclusionary Units shall be first-time home buyers from Low, Lower or Very Low
195 Income Households. Purchasers shall also be required to occupy the unit except that such requirement
196 may be waived with the approval of the City. In such cases, the unit shall be rented to a Low, Lower or
197 Very Low Income Household at a rent affordable by such Households;

198 2. Eligible City Residents will have first preference for Inclusionary Units; second preference will be
199 given to eligible persons employed in the City. Other preferences and priorities may also be established
200 administratively, with Planning Commission review, to help meet the City's Housing Element goals;

201 3. The City shall advise all prospective purchasers on the City's eligibility list of the resale restrictions
202 applicable to ownership of Inclusionary Units as specified in this chapter and shall provide purchasers
203 with a Declaration of Restrictions applicable to ownership of Inclusionary Units as specified in this
204 chapter;

205 4. Purchasers of Inclusionary Units in Limited Equity Cooperatives at time of first occupancy shall be
206 first time home buyers with Gross Incomes no greater than 120 percent of the Oakland PMSA median.
207 Subsequent purchasers of Inclusionary Units in Limited Equity Cooperatives shall be first time home
208 buyers whose yearly Gross Income is no more than 44 percent of the cost of a unit at the time of sale,
209 provided that such income shall be no more than 110 percent of the Oakland PMSA median.

210 D. All Inclusionary Units developed under this chapter except for those in Limited Equity Cooperatives shall
211 be subject to the resale restrictions set forth below.

212 1. Home ownership Inclusionary Units offered for sale or sold under the requirements of this chapter
213 shall be offered to the City or its designee for a period of at least 60 days by the first purchaser or
214 subsequent purchasers from the date of the owner's notification to the City of intent to sell. The resale
215 price of the unit shall not exceed the original price and customary closing costs, except to allow for the
216 lower of any increase of either the Consumer Price Index (CPI) for all urban consumers (as produced by
217 the U.S. Bureau of Labor Statistics or its successor agencies) applicable to the Oakland PMSA or of the
218 increase as measured in household income guidelines published annually by the U.S. Department of
219 Housing and Urban Development (or its successor agencies) for the Oakland PMSA;

220 2. This resale formula shall supercede and replace the earlier resale formula in deed restrictions
221 executed between February 19, 1987 (adoption date for Ordinance 5791-N.S.) and May 23, 2006. The
222 City of Berkeley, or its designee, shall notify each such owner of this change to the resale formula

223 contained in their deed restriction within 60 days of adoption of this section. All other terms and
224 conditions of these deed restrictions shall remain in effect;

225 3. If the City does not act on its right-of-first-refusal, the same procedure for new Inclusionary Units
226 shall be used for selection of a purchaser.

227 E. The seller shall not levy or charge any additional fees nor shall any finders fee or other monetary
228 consideration be allowed, other than customary real estate commissions if the services of a licensed real estate
229 agent are employed.

230 F. The City or its designee may monitor resale of Inclusionary Units in Limited Equity Cooperatives. The City
231 or its designee shall monitor the resale of ownership Inclusionary Units. The owners of any Inclusionary Units
232 shall attach, lawfully reference in the Grant Deed conveying title of any such inclusionary ownership unit, and
233 record with the County Recorder a Declaration of Restrictions provided by the City, stating the restrictions
234 imposed pursuant to this chapter. Violators of any of the terms thereof may be prosecuted by the City. (Ord.
235 6920-NS § 1-2 (part), 2006; Ord. 6478-NS § 4 (part), 1999)

236 *Specific text which previously amended Berkeley Municipal Code Sections 23C.12.070A, 23C.12.070D, and
237 23C.12.090 for the period January 27, 2004 through February 19, 2006 was repealed on February 19, 2006 as
238 stated in the sunset provision of Ordinance 6,790-N.S. These specific text amendments were reinstated by
239 Ordinance 6,920-N.S., adopted on May 23, 2006.

240 **23C.12.080 Special Requirements for Avenues Plan Area**

241 A. The City Council finds and determines that:

242 1. The Avenues Plan process identified a number of regional and Berkeley-specific barriers to housing
243 development;

244 2. Among the Berkeley-specific barriers were high land prices; lengthy, difficult and uncertain permit
245 processes; and insufficient financing, especially for affordable housing projects;

246 3. The Avenues Plan area represents a core area of the City where it is particularly appropriate to
247 encourage housing development because of the area's generally good access to workplaces, transit
248 service, senior services and retail stores;

249 4. The policy to encourage housing in this area is reflected in a number of documents, including, but
 250 not limited to, the City’s Housing Element of the Master Plan, the Concept Plan for the General Plan
 251 revision, the Downtown Plan, the South Berkeley Area Plan, the West Berkeley Plan and the University
 252 Avenue statement of planning of goals;

253 5. Despite the City’s support for housing in this area, new housing development here has been limited
 254 and this has hindered revitalization of the area;

255 6. As part of a multi-pronged experimental strategy to create incentives to encourage housing
 256 development, relaxation of various inclusionary zoning requirements within the Avenues Plan area as set
 257 forth in this section is appropriate;

258 7. These changes will also assist the buyer of below market rate Inclusionary Units, by allowing
 259 him/her to gain greater appreciation on his or her investments (market conditions permitting), making the
 260 investment more similar to conventional home ownership, while retaining the long term affordability of
 261 Inclusionary Units;

262 8. The changes will also encourage the construction of larger, family-sized units rather than the smaller
 263 units which have generally been built in multi-family developments;

264 9. These changes in inclusionary zoning will be followed by mechanisms to make more financing
 265 available and changes in zoning standards and permit processes;

266 10. The success of these changes will be reviewed annually, until the five year time period of the
 267 Avenues Plan experiment expires July 1, 2000.

268 B. This section applies on the streets and the addresses listed in the Table below. The area of applicability
 269 consists of the entire C-2 District and portions of the C-1, C-SA, C-W, C-N, R-2A, R-3 and R-4 Districts as
 270 indicated in the Table. Within this area, the provisions of this section supersede any inconsistent provisions of
 271 this chapter.

Table 23C.12.080	
Avenues Plan Area: Street and Address Range	
Street	Addresses
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
Bonita	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
Cowper	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
6th	1916-2099
7th	1912-2099
8th	1910-2099
9th	1910-2099
10th	1908-2099
62nd	1700 up
63rd	1700 up

272 C. This section shall remain in effect until July 1, 2000, at which time the Planning Commission, in
 273 consultation with other relevant Commissions, shall re-examine its effectiveness. At that time the Commission
 274 may initiate modifications to, or an extension of, this section.

275 D. For purposes of this section, the following definitions apply:

276 1. Project means the total number of housing units planned to be built on a single lot or on a grouping
 277 of contiguous, commonly owned or controlled lots, regardless of whether those units are all built
 278 simultaneously;

279 2. Affordable family-sized unit means a unit which:

- 280 a. Is at least 850 square feet in area if two bedrooms or 1,100 square feet if three bedrooms or
281 more;
- 282 b. Contains at least two lawful bedrooms;
- 283 c. Contains at least as many bathrooms as the corresponding two bedroom market rate units;
284 and
- 285 d. Is sold at a price that is affordable to an appropriate sized Household whose income is no
286 more than 80 percent of the metropolitan area median as reported by the Department of Housing
287 and Urban Development (HUD).

288 E. Except as provided in this chapter, the number of Inclusionary Units required are as set forth in the
289 following table:

Total Number of Units Built	Number of Inclusionary Units Required
10-14	1
15-19	2
Each additional multiple of 5 units	1 additional

290 F. For every five units which the applicant can demonstrate with bona fide sales documents have been sold
291 at a price at or below that affordable to an appropriate sized Household with an income of 100 percent of
292 metropolitan area median, the applicant shall be released of the obligation to provide one Inclusionary Unit.

293 G. For every ten affordable family-sized units, the applicant shall be released of the obligation to provide one
294 Inclusionary Unit sold at a price at or below that affordable to an appropriate sized Household with an income
295 of 100 percent of metropolitan area median.

296 H. Within the area of applicability for that portion of a project wherein both the Inclusionary and the non-
297 inclusionary Units contain at least as many bathrooms as the corresponding two bedroom market rate units,
298 only ten percent of units are required to be Inclusionary.

299 I. The first Inclusionary Unit in projects with units for sale shall be sold at a price that is affordable to an
300 appropriate sized Household whose income is no more than 80 percent of the Oakland PMSA median as
301 reported by HUD. Except as otherwise provided in Section [23C.12.080](#).D.2.d above, the second Inclusionary
302 Unit shall be sold at a price that is affordable to an appropriate sized Household whose income is no more than

303 100 percent of the PMSA median and subsequent Inclusionary Units shall be sold alternately at these price
304 levels.

305 J. Inclusionary sale units in projects in the Avenues Plan Area shall be sold at a price such that first year
306 housing cost (including homeowners' association dues, if any) for a Household of appropriate size with an
307 income at the targeted level shall not exceed 33 percent of income. This cost shall be calculated assuming that
308 the buyer makes a ten percent down payment, which shall not be considered a portion of the cost. The housing
309 cost shall be calculated for each project at the time the condominium association budget is approved by the
310 Department of Real Estate and shall not be changed subsequent to that time for that project, regardless of
311 future changes in cost.

312 K. The resale price of Inclusionary Units within the Avenues Plan Area may increase at the rate of increase of
313 the Consumer Price Index for All Urban Consumers (CPI-U) applicable to the metropolitan area. (Ord. 6478-NS
314 § 4 (part), 1999)

315 **23C.12.090 Administrative Regulations***

316 A. The City Manager or his/her designee shall promulgate rules and regulations pertaining to this chapter,
317 including but not limited to setting and administering gross rents and sale prices, requiring guarantees, entering
318 into recorded agreements with applicants and taking other appropriate steps necessary to assure that the
319 required low income and very low income Dwelling Units are provided and occupied by Low Income
320 Households. (Ord. 6920-NS § 3 (part), 2006; Ord. 6478-NS § 4 (part), 1999)

321 *Specific text which previously amended Berkeley Municipal Code Sections 23C.12.070A, 23C.12.070D, and
322 23C.12.090 for the period January 27, 2004 through February 19, 2006 was repealed on February 19, 2006 as
323 stated in the sunset provision of Ordinance 6,790-N.S. These specific text amendments were reinstated by
324 Ordinance 6,920-N.S., adopted on May 23, 2006.

325 **23C.12.100 Fees**

326 The City Council, by resolution, may establish fees for the administration of this chapter. (Ord. 6887-NS § 1,
327 2005)

328

Chapter 23C.14 Density Bonuses

23C.14.010	Purpose
23C.14.020	Definitions
23C.14.030	Application Requirements
23C.14.040	Density Bonus Calculations and Procedures
23C.14.050	Waivers and Reductions
23C.14.060	Incentives and Concessions
23C.14.070	Location of Qualifying Units
23C.14.080	Special Provisions
23C.14.090	Regulatory Agreements

23C.14.010 Purpose

The purpose of this Chapter is to establish procedures and local standards for the implementation of California Government Code Section 65915 consistent with local zoning regulations and development standards, and to provide special provisions consistent with the intent of State and local law.

23C.14.020 Definitions

Whenever the following terms are used in this Chapter, they have the meaning established by this Section. Other capitalized terms have the meaning set forth in Berkeley Municipal Code Chapter 23A.08 and/or Chapter 23F.04, or in California Government Code Section 65915, as applicable.

- A. "Administrative Regulations" means guidelines and procedures promulgated by the Planning Director that may be adopted or amended from time to time to effectively implement this ordinance.
- B. "Base Project" means the maximum residential density (number and type of units) on a housing development site pursuant to the applicable zoning district or, where no density standard is provided, as set forth in the Administrative Regulations.
- C. "Density Bonus Units" means those residential units granted pursuant to the provisions of Section 65915 and this Chapter that are in excess of those units in the Base Project.
- D. "Housing Development" has the meaning set forth in Section 65915.
- E. "Incentives" includes "concessions and incentives" as defined in Section 65915(k).

- 45 F. "Qualifying Unit" means a unit that is provided (by inclusion in the project or by an in-
46 lieu payment) at a below market-rate rent or sales price as set forth in Section 65915
47 in order to receive a Density Bonus and/or Waivers or Reductions and/or Incentives.
48
- 49 G. "Section 65915" means California Government Code Section 65915, as it may be
50 amended from time to time.
51
- 52 H. "Waiver or Reduction" means a waiver or a reduction as the terms are used in
53 Section 65915 and in particular in subdivision (e) thereof, and means any and all
54 changes to or exemptions from physical lot development standards that are required
55 to avoid precluding the construction of a Housing Development with Density Bonus
56 Units, as set forth in Section 65915(e).
57

58 **23C.14.030 Application Requirements**

59
60 In addition to any other information required by this Title, applicants for a Density Bonus
61 are submit the following information as part of their application:
62

- 63 A. How the proposed project will satisfy the eligibility requirements of Section 65915;
64
- 65 B. For those districts without density standards, a density bonus schematic as set forth
66 in the administrative regulations;
67
- 68 C. The proposed size of the Density Bonus pursuant to 23C.14.040;
69
- 70 D. The Incentives, if any, that are sought under Section 65915(d); and
71
- 72 E. Any Waivers or Reductions that are sought under Section 65915(e) that would be
73 required to accommodate the Housing Development, including the Density Bonus
74 Units and any Incentives.
75
- 76 F. An applicant may elect in writing to receive a Density Bonus that is less
77 than that mandated by Section 65915, including a Density Bonus of 0
78 (zero). In such cases, the applicant will retain their entitlement to
79 Incentives.
80

81 **23C.14.040 Density Bonus Calculations and Procedures**

- 82
- 83 A. Density Bonuses must be calculated as set forth in Section 65915 and
84 pursuant to the Administrative Regulations.
85
- 86 B. Density Bonus requests must accompany Housing Development
87 applications and will be decided upon by the highest governing body.
88

89 **23C.14.050 Waivers and Reductions**

90

- 91 A. For purposes of this Chapter, the number of Waivers and Reductions are counted as
92 follows:
93
- 94 1. Any Waiver or Reduction that would otherwise require discretionary approval by
95 the Zoning Officer or Board of any single dimensional lot development standard,
96 such as height or setbacks, or any single quantitative lot development standard,
97 such as parking or open space, counts as one. However, a proposed Waiver or
98 Reduction that would involve exceedance of a single physical lot development
99 standard counts as a one even if that exceedance would otherwise require more
100 than one Permit (e.g., extra height may require Permits for height, FAR, and/or
101 number of stories but would count as one Incentive for height).
102
 - 103 2. Where it is ambiguous as to whether a proposed Waiver or Reduction involves
104 one or more dimensional or quantitative lot development standards, the stricter
105 interpretation shall apply as determined by the Zoning Officer.
106
- 107 B. In determining whether it can make the finding set forth in Section 65915(d)(1), the
108 City will base its determination and any finding on a comparison of the project
109 including the Density Bonus and requested Waiver or Reduction to the Base Project.
110
- 111 C. The City is not required to deny a proposed Waiver or Reduction solely because it is
112 able to make a finding under Section 65915(d)(1).
113
- 114 D. Unless denied under Section 65915, Waivers or Reductions will be exempt from
115 discretionary review or Permits under this Title, other than design review.
116

117 **23C.14.060 Incentives**

118
119 Incentives must be justified based on the financial needs of the project, including
120 reduced costs and increased revenue, to provide for the affordable housing costs of the
121 qualifying units and for the project overall.
122

123 124 **23C.14.070 Location of Qualifying Units**

125
126 Qualifying Units must be reasonably dispersed throughout the Housing Development,
127 be of the same size and contain, on average, the same number of bedrooms as the
128 non-Qualifying Units in the project, and must be comparable to the non-Qualifying Units
129 in terms of design, use, appearance, materials and finish quality. In determining whether
130 dispersal of Qualifying Units is reasonable, the Board may consider special benefits
131 provided by, as well as special constraints on, the project.
132

133 **23C.14.080 Special Provisions**

134
135 In addition to requirements set forth in this Section 65915 and this Chapter, the
136 following Special Provisions apply to Density Bonuses in the City of Berkeley. Special

137 Provisions are considered Incentives and may be requested at the discretion of the
138 applicant.

139

140 A. In Lieu Payments: In lieu of providing Qualifying Units in rental Housing
141 Developments, an applicant may receive a Density Bonus and Incentives as set
142 forth in this Chapter and Section 65915 by making a payment into the Housing Trust
143 Fund according to a formula that may be determined by resolution of the City
144 Council.

- 145 1. This section is not operative unless and until such a resolution is adopted.
- 146 2. The City will conduct a study prior to adopting the implementing resolution to
147 evaluate the cost and efficacy of providing Qualifying Units through an in-lieu
148 payment.
- 149 3. The Council resolution(s) may establish variable payments and specific areas
150 of the City in which this provision applies.

151

152 B. Exceeding State Density Bonus: Rental Housing Developments that provide
153 affordable housing in excess of criteria established in Section 65915(f), may be
154 awarded up to an additional 15% Density Bonus pursuant to Section 65915(n),
155 provided that additional Qualifying Units are provided as calculated according to an
156 extrapolation of the formula applied in Section 65915(f). Affordable Housing in
157 excess of criteria established in Section 65915(f) may be provided onsite or by an in-
158 lieu payment into the Housing Trust Fund as set forth in Section A above.

159

160 C. In addition to other required findings, Special Provisions may be awarded only when
161 the City finds that the Density Bonus project is in compliance with the purposes of
162 the district in which the project is located.

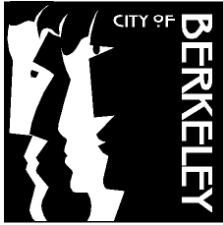
163

164 **23C.14.090 Regulatory Agreements**

165 Prior to issuance of a Certificate of Occupancy for a Housing Development that has
166 received a Density Bonus and/or Incentives and has opted to provide the units on site,
167 the applicant must enter into a regulatory agreement in a form provided by the City that
168 implements Section 65915 and this Chapter.

169

170



Planning and Development Department
 Land Use Planning Division

Procedures for Implementing State Density Bonus Law In Zoning Districts Without Numeric Density Standards

Introduction

This is a description of the procedures followed by the City of Berkeley for the analysis of a project that qualifies as an affordable housing project pursuant to Government Code Section 65915, the State Density Bonus Law. Specifically, this document describes how to determine the base project in zoning districts that do not have numeric density standards (R-3, R-4, R-5, Commercial Districts, and Mixed-Use Districts).

The State Density Bonus Law was enacted in 1979 to encourage the creation of more housing and to address the severe shortage of affordable housing in California by allowing an applicant to exceed the otherwise maximum residential density for a parcel by including a specific percentage of deed-restricted affordable housing. This document outlines how the City of Berkeley evaluates proposed density bonus projects.

While this document establishes a general set of procedures, every density bonus project is unique and should be treated as such. Thus staff's analysis of each proposed project will require careful review and continued discussion with applicants, colleagues, and the City Attorney.

Affordability Requirements

Pursuant to § 65915, Below Market Rate definitions:

Very Low Income	≥ 30% to 50% Area Median Income (AMI) ¹
Low Income	≥ 50% to 80% AMI
Moderate Income	≥ 80% to 100% AMI

Overview

Requirement	Duration	Reference	Applies to:
Qualifying Units	55 years	65915(c)(1)	All projects
Replacement Units	55 years	65915(c)(3)	Projects with existing units onsite ²
Demolition Ordinance	For the life of the building	23C.08.020	Projects with existing units onsite
Affordable Housing Mitigation Fee		22.20.065	Projects with units that are for rent
Inclusionary Housing Ordinance		23C.12	Projects with units that are for sale

¹ AMI is median index of household earning as it is calculated for Alameda County. For a more detailed discussion of AMI please refer to the Housing Element of the General Plan.

² Per § 65915(c)(3), replacement units are required when the project is proposed on 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."

Density Bonus Procedures
Last Updated: February 2018

Affordable Housing Projects that Qualify for a Density Bonus

If a project proposes to include dwelling units with affordability consistent with any one of the following levels (§ 65915(b)), it is considered a density bonus project:

- At least 10% of the total dwelling units are affordable to Lower Income households;
- At least 5% of the total dwelling units are affordable to Very Low Income households;
- A senior citizen housing development (requires at least 35 units) (see Civil Code Section 51.3 and 51.12 for definitions of qualified residents);
- At least 10% of the total dwelling units are affordable to Moderate Income households, when they are for sale (a “common interest development”); or
- At least 10% of the total dwelling units are for transitional foster youth or disabled veterans (Education Code Section 18541) that are affordable to Very Low Income households.

Overview (Described in more detail below)

Step 1: Calculate the “Base Project,” i.e. the project that meets the “maximum allowable density” for the project site, without any discretionary permits.

Step 2: Analyze the Fidelity between the Base Project and the Proposed Project.

Step 3: Calculate the Density Bonus, i.e. the allowed density increase.

Step 4: Accommodate the Density Bonus units (Waivers/Reductions and Concessions/Incentives)

Density Bonus Procedures
Last Updated: February 2018

Step 1. Calculate the Base Project

State Density Bonus Law requires a City to grant a density increase over “the otherwise maximum allowable gross residential density” for the specific zoning range and land use element of the general plan. Berkeley, however, does not have parcel-based density standards for higher density residential (R-3 and above) or commercial/mixed-use zoning districts. While the General Plan provides policy guidance for residential density, it cannot be applied on a per-parcel basis to set the maximum allowable residential density.

Because Berkeley does not have density standards in most zoning districts, we instead rely on zoning development standards and basic Building Code considerations to define a building envelope for a particular project site. The defining standards include setbacks, parking, height, lot coverage, open space, and floor area ratio. Allowable maximum residential density is therefore the residential floor area that these standards can accommodate on a given parcel. This envelope becomes the “base project” for the purpose of calculating density. In other words, per BMC Section 23C.14.040, the otherwise allowable maximum residential density is the floor area that can be achieved under the single use permit, which requires solely a finding of non-detriment under Chapter 23B.32.

Overview of Procedures to Identify the Base Project:

- a. Using the floor area and unit count of the proposed final project, calculate average unit size of the project based on the units within the proposed project.³
- b. Determine the maximum floor area of a hypothetical base project that would fit on the site without needing a development code waiver or reduction, while fully complying with the building code.
- c. Divide this area by the average unit size of the proposed units. Any fractional unit must be rounded up.⁴

Concepts for the Base Project:

- Must comply with all applicable development standards, without any discretionary permits to waive or modify a standard (such as additional height, reduced parking, setbacks or usable open space).⁵
- Must comply with applicable building and fire codes.
- Must be substantially consistent with the proposed project (not including waivers/reductions to allow the density bonus and any concessions).⁶ See below, “Fidelity between Base and Proposed Project,” for further discussion.
- Must exclude any commercial space.
- Must include any non-residential uses, including non-dwelling residential amenities (such as common laundry rooms, lounges, etc.) in proposed project, unless these uses are requested as a concession.⁷

³ This size will be larger than that typically placed on project plans, since it includes circulation space and other residential amenities that are above the ground floor.

⁴ Per § 65915(q), “Each component of any density calculation, including base density and bonus density, resulting in any fractional units shall be separately rounded up to the next whole number.”

⁵ All mechanical equipment and elevator penthouses must fit within the Base Project without the necessity of additional permits. Floor area that encroaches into the public right-of-way must be excluded, because it would require a permit from the Public Works Department.

⁶ The base project must include all required parking, even if the proposed project reduces the parking and the applicant proposes to pay an in-lieu fee.

⁷ This requirement is intended to prevent an applicant from counting non-residential space in the base project that is not actually intended for residential use, which would lead to a calculation of a larger bonus. Residential amenities (laundry rooms, bike parking, meeting rooms etc.) will not count towards the base project when located in areas of the project where residential uses are not allowed according to the Zoning Ordinance (i.e. residential uses on the ground floor in the C-1 District).

Density Bonus Procedures
Last Updated: February 2018

Step 2. Fidelity between Base Project and Proposed Project

The base project must be substantially consistent with the footprint, configuration of parking and usable open space, and ceiling heights of the proposed project. In other words, the base project and proposed project must have fidelity. This requirement reflects the City's desire to ensure that the project that the applicant wishes to build is reflected in the base project, and is also intended to prevent applicants from creating a base project that would be far denser and/or poorer in design quality than the applicant actually desires to build, for the purpose of obtaining a larger density bonus.

In general, the following design choices should be consistent in order for the base project and proposed project to have fidelity:

- Average unit size must be substantially the same in the base and proposed project;
- If parking is proposed in the basement of a base project, it must also be in the basement of the proposed project; if lifts are proposed in the base, they must also be in the proposed project;
- If useable open space is proposed on the roof of the base project, it must also be on the roof of the proposed project.

However, determining whether there is fidelity between the base and proposed projects is not always straightforward. Applicants should review each case with the Planning Manager as well as the City Attorney to ensure that this principle is applied consistently.

Step 3. Apply the Density Bonus

Once a base project has been established for a parcel given the characteristics of the proposed project, this base density is multiplied by the required density increase per § 65915(f). The result is the density bonus a qualifying affordable housing project is entitled to develop pursuant to State law. Below is a summary of the required procedures:

1. Determine percentage and income level of below market rate units based on § 65915(b), the 'qualifying units'
2. Calculate the allowable bonus (%) based on § 65915(f)⁸
3. Apply the number of bonus units to the base project. Round any fraction up to the next whole number.

Step 4. Accommodate the Density Bonus Units

In order to accommodate the proposed density bonus, development standards must be modified to accommodate the bonus floor area or units. § 65915(e) and 65915(k) provides further direction on granting waivers/reductions and concessions/incentives, respectively.

An applicant is entitled to the prescribed density increase based on the number / affordability of qualifying units the project provides; the City does not have discretion over the density increase. However, staff can work with the applicant to determine which waivers/reductions and concessions/incentives would result in the least detriment to the

⁸ Per § 65915(n), a City may grant a density bonus that is greater than what is described in subdivision (f) only if permitted by local ordinance. Berkeley's ordinance only permits a greater bonus in the C-T District

Density Bonus Procedures
Last Updated: February 2018

5 of 5

neighborhood and adjoining properties. A number of factors are considered in determining which standards to modify. These include neighborhood context, existing public policy or plan recommendations including the General Plan, Area Plans, Zoning Ordinance requirements, and environmental issues. In other words, staff will work to determine the options that would result in the least detriment to the neighborhood and adjoining properties. These determinations are subject to further review by the Zoning Adjustments Board and Design Review Committee.

In general, any combination of zoning development standards may be modified to accommodate the placement of bonus units. These include:

- Increased lot coverage
- Reduced setbacks
- Reduced usable open space
- Reduced parking
- Increased floor area ratio
- Increased building height or number of stories
- Encroachment into the public right-of-way

Density Bonus Chart*

Affordable Unit Percentage **	Very Low Income Density Bonus (rental/ownership)	Low Income Density Bonus (rental/ownership)	Moderate Income Density Bonus (ownership only)
5%	20.0%	-	-
6%	22.5%	-	-
7%	25.0%	-	-
8%	27.5%	-	-
9%	30.0%	-	-
10%	32.5%	20.0%	5%
11%	35.0%	21.5%	6%
12%	37.5%	23.0%	7%
13%	40.0%	24.5%	8%
14%	42.5%	26.0%	9%
15%	45.0%	27.5%	10%
16%	47.5%	29.0%	11%
17%	50.0%	30.5%	12%
18%		32.0%	13%
19%		33.5%	14%
20%		35.0%	15%
21%		36.5%	16%
22%		38.0%	17%
23%		39.5%	18%
24%		41.0%	19%
25%		42.5%	20%
26%		44.0%	21%
27%		45.5%	22%
28%		47.0%	23%
29%		48.5%	24%
30%		50.0%	25%
31%			26%
32%			27%
33%			28%
34%			29%
35%			30%
36%			31%
37%			32%
38%			33%
39%			34%
40%			35%
41%			36%
42%			37%
43%			38%
44%			39%
45%			40%
46%			41%
47%			42%
48%			43%
49%			44%
50%			45%
51%			46%
52%			47%
53%			48%
54%			49%
55%			50%

* All Density Bonus calculations resulting in fractions are rounded up to the next whole number.

**Affordable unit percentage is calculated excluding units added by Density Bonus.

BOLD denotes Density Bonus in exceedance of State Density Bonus Law.



* * S A V E T H E D A T E * *

Adeline Community Open House and Workshops

WHAT: Adeline Community Open House: Public Exhibit and Workshops

WHERE: Ed Roberts Campus at 3075 Adeline Street Berkeley, CA

WHEN: From Saturday, March 10th, to Friday, March 23rd; exhibit and workshop hours vary

The City of Berkeley invites you to take part in the next phase of the Adeline Corridor planning process! From **March 10th – 23rd**, we will be hosting a Community Open House at the **Ed Roberts Campus** to show a range of options for the area, focusing on five priority areas identified by community feedback to date: housing affordability, economic opportunity, transportation, public space and land use/community character. The Open House will also address land use and zoning, and will show updated concepts for the right-of-way (ROW) street design, incorporating feedback that was received in the last public exhibit in March 2017: Re-Imagine Adeline.

The Open House exhibits will be available for drop-in visits throughout the 2-week period, Monday to Friday whenever the Ed Roberts Campus is open, and from 9:30am – 2pm on both Saturdays. For those who are interested in having a more in-depth discussion, we are also hosting special workshops on the topics of: equity, community resources, economic opportunity, public space, and housing/community benefits on the two Saturdays of the Open House, March 10th and March 17th. ***A detailed schedule of staffed exhibit hours and workshops will be available soon and shared widely through the project website, by email and distribution of printed flyers.***

Questions or Comments? Contact Alisa Shen, Project Manager

Tel: (510) 981-7409 Email: ashen@cityofberkeley.info | Mail: City of Berkeley Land Use Planning Division | 1947 Center Street, 2nd Floor, Berkeley, CA 94704

Learn more about the Adeline Corridor Specific Plan by visiting www.cityofberkeley.info/AdelineCorridor/

From: Charles Pappas [mailto:nberkhills@sbcglobal.net]
Sent: Monday, February 12, 2018 1:44 PM
To: Amoroso, Alexander <AAmoroso@cityofberkeley.info>; poschman1@comcast.net
Cc: Greene, Elizabeth <EGreene@cityofberkeley.info>; Molly Dooley Jones <mollydooleyjones@gmail.com>; Berkeley Mayor's Office <mayor@cityofberkeley.info>; Elgstrand, Stefan <SElgstrand@cityofberkeley.info>; Wengraf, Susan <SWengraf@cityofberkeley.info>; Worthington, Kriss <KWorthington@cityofberkeley.info>; Manager, C <CManager@cityofberkeley.info>; City Attorney's Office <attorney@cityofberkeley.info>; Harrison, Kate <KHarrison@cityofberkeley.info>
Subject: Cannabis facilitation Planning Comm-12/21/16- delivery only dispensaries, M Zone expansion, cannabis comm

Dear Alex, Gene and fellow planning commissioners,

re: 11. Discussion: Recommendation: **Zoning Ordinance Cannabis Regulations** Discuss Zoning Ordinance amendments in response to State law adopted 2017 (implemented Jan. 1, 2018)- discussed at planning commission meeting Feb. 7, continued to Feb. 21.

I am writing personally as a Berkeley citizen (43 yrs. this Feb. 28) with cannabis commissioner insights. Cannabis regulation, statewide and locally, has become quite a bit more complicated with both state and local licenses required for multiple categories. Thank you for beginning local regulation/licensing discussion last week and further discussion and review next week. Unfortunately, the cannabis commission meets a day after that. I will attempt to offer pertinent facts and info to you in the next few days to facilitate your review and recommendation.

Below, I included a 2016 email, when I believe our commissions lacked productive comprehensive interaction. Since that time period, I feel that situation no longer exists, and I am confident we can work together successfully for the mutual benefit of cannabis patients, users, businesses, Berkeley citizens, community and tax payers. See you next week.

Yours truly,
Charley Pappas

From: Charles Pappas
To: Alexander Amoroso poschman
Cc: Elizabeth Greene Jesse Ar Assistant Stefan Elgstrand Jesse L. Arreguin; City Manager
Sent: Thursday, December 22, 2016
Subject: Planning Commission meeting 12/21- delivery only dispensaries, M Zone expansion, medical cannabis commission

Dear Alex, Gene and fellow commissioners,

Due to the unfortunate tone, misunderstanding, confusion and some negativity at last night's meeting, I feel compelled to respond quickly, while some of the issues and statements are still fresh, albeit sore and tender!

As I stated in my too brief public comment, my understanding from your previous meetings was a continuing discussion and "chewing" over facts regarding M Zone expansion and delivery only dispensary zoning, especially considering so many new members joining the commission.

Point #1, while Planning Staff had ample time for a presentation, the medical cannabis commission was limited to public comment, when there was a great deal of information which could have been put forth and made the issues more clear. Later, I will offer such.

Point #2, somewhere along the line of rambling public comment and commission discussion, a somewhat disparaging tone was expressed regarding the medical cannabis commission. While several commissioners like myself are primarily involved in medical cannabis business' e.g. dispensing, cultivation, testing, baking- all mentioned in voter mandated Measure T, other members include an Elmwood atty, an ex- UC administrator, a film maker, and a restaurateur. We are undeniably and un-apologetically a well balanced, gender age, ethnicity, group acting efficiently and harmoniously, sharing insights and perspectives collectively for the benefit of the Berkeley community and citizens. FYI I will attach Measure T pertinent info.

Point #3, regarding M Zone expansion, our commission primarily seeks a cultivation ordinance and licensing process. The former which has been delayed by the BCC (for 2 years in March), citing delays "waiting for state legislation". Also over 2 years ago the commission cultivation subcommittee investigated thoroughly, with the kind assistance from WEBAIC, quite apparent M Zone limitations. At this point, the medical cannabis commission seeks ordinance and licensing approval with M Zone expansion discussion following. We disagree strongly and unanimously with Staff's year long delay proposal, especially considering Measure T 2010.

Point #4, the issue of delivery only dispensaries needs much clarification. It seemed some members of the Planning Commission believed the subject was being pushed by the medical cannabis commission. Quite the contrary as Staff pointed out, only at the end of too much ill-natured skepticism and negative tone. Evidently the City Manager and City Attorney are concerned about the already existing and proliferation of such delivery services, unlicensed / un-taxed. I plan to contact Zach Cowan after this e-mail. Finally, regarding zoning of delivery only dispensaries, for some reason Staff did not make it clear that they had originally suggested manufacturing zones for delivery services, and the medical cannabis commission proposed commercial zoning. I myself suggested even residential zoning which our commission decided against.

Point #5, the medical cannabis commission is truly sensitive to the needs, opinions, issues of WEBAIC and the West Berkeley community and citizens. Personally as a 41 year Berkeley resident and home owner, I believe with time and patience our differences can be solved.

Point #6, in conclusion, I am somewhat compelled to clear up, if possible, various medical cannabis misconceptions. In a nut shell with little detail- finally the state of California has adopted long over due regulations for a 40+ year giant underground industry (cannabis cultivation) and a 20+ year medical cannabis industry, with the specter of legalization looming. The scale of cannabis in California does not make for good comparisons with Co, Or, Wash. The wheel should not be reinvented. Locally and in other parts of California, many problems with medical cannabis are caused by the lack of political oversight. Not so in SF, but quite so SJ, LA, and somewhat so Berkeley, Oak. And yes, there are too many unprincipled individuals in medical cannabis business' willing to pay high rent with community disregard. Indeed, following examples and insights from the late great Berkeley citizen, Dr. Tod Mikuriya, in 2005 (with no Berkeley dispensary license available) I co-founded and was chairman of the Divinity Tree Patients Wellness Coop in SF through 2011. Our successful patient and community oriented (in the Tenderloin) was forced to close after forfeiture threats to our supportive landlord by the local (at that time Berkeley resident) US atty Melinda Haag, who cited our proximity (1+1/2 blocks around the corner) from a children's playground, facing across the street, a strip club and massage parlor, Times in life can be stranger than fiction...

Thank you for your time and attention to my long e-mail which I hope will bring more productive discussion and dialogue in the future. My best holiday greetings!

Respectfully,

Charley Pappas- chairman Berkeley Medical Cannabis Commission

Berkeley Medical Cannabis Commission Purpose Statement

Section 12.26.110 Medical Cannabis Commission. The purpose of this Section is to ensure that **medical cannabis provision in Berkeley** is conducted in a **safe and orderly manner** to protect the **welfare of Qualified Patients and the community**.

A. A medical cannabis commission is established. The commission shall consist of nine members. Appointments to the commission shall be made, and vacancies on the commission shall be filled, by council members, in accordance with the provisions of Sections 2.04.030 through 2.04.130. At least one commissioner Chapter 12.26 Title 12 Page 14a - Updated 12/14/10 shall be a member of a medical cannabis dispensary, one shall be a member of a collective that is not a dispensary, and one shall be a cultivator who is not primarily associated with a single dispensary and provides medical cannabis to more than one dispensary.

B. The commission shall **recommend** to the City **operational and safety standards** for Medical Cannabis **Collectives and Dispensaries**, and shall consult with any individual, organization, affiliation, collective, cooperative or other entity which seeks to open a new Medical Cannabis Collective or dispensary in Berkeley or to relocate an existing Medical Cannabis Collective or dispensary. The commission shall advise the City as to whether the proposed Medical Cannabis Collective or dispensary has a strategy for compliance with the published safety and operational standards before the new Medical Cannabis Collective or dispensary commences lawful operation.

C. The commission will **monitor** the **compliance of Medical Cannabis Collectives and dispensaries** in Berkeley for the purpose of correcting any violations of the safety and operational standards. Medical Cannabis Collectives or dispensaries found to be in willful or ongoing violation of the standards shall be deemed in violation of this Chapter and referred to the City for appropriate action. (Ord. 7161-NS § 3, 2010; Ord. 7068-NS § 3 (part), 12/08/08).

2004-2010 Summaries-Measure T, Measure JJ, Measure R

2010 Measure T- Brief Summary

Shall the Berkeley Municipal Code be amended to: allow residential medical cannabis collectives, with up to 200 square feet of cultivation; allow six locations in the Manufacturing District for cultivation; allow a fourth dispensary; require dispensaries to be at least 600' from public and private schools and other dispensaries; permit new and relocated dispensaries only in C districts; change the makeup of the Medical Cannabis Commission; and permit the Council to adopt other amendments?

2010 Measure T Additional

23E.16.070 Medical Cannabis Uses A.1. Subject to the licensing requirement of paragraph 3, four medical cannabis dispensaries as defined in Section 12.26.030 shall be permitted as of right with a Zoning Certificate in C-prefixed zones if they comply with the parking requirements applicable to the uses they include, and any security requirements promulgated by the Chief of Police. When applicable, Zoning Certificates for medical cannabis uses shall be issued without undue delay and following normal and expedient consideration of the permit application.

2008 Measure JJ

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE JJ PATIENTS ACCESS TO MEDICAL CANNABIS ACT OF 2008 This measure would amend the Berkeley Municipal Code to have the following material effects: 1. The ordinance would eliminate the existing limits on the amount of medical marijuana a qualified patient or primary caregiver can possess and cultivate, which are currently 2.5 pounds of dried cannabis (if grown outdoors) or 1.5 pounds of dried cannabis (if grown indoors), and up to 10 cannabis plants (indoors or outdoors) at any one time, unless a medical doctor authorizes the patient to possess or cultivate more. The amendment retains but modifies the current limit of 10 outdoor cannabis plants on a single parcel, to only count plants that are visible from other property. 2. The ordinance would eliminate the existing limits of 12.5 pounds of dried cannabis and 50 cannabis plants that a collective composed of qualified patients and primary caregivers can possess, and provide instead that such a collective may possess a reasonable quantity of dried cannabis and cannabis plants to meet the medical needs of patient members as long as no more cannabis is accumulated than is necessary to meet such needs.

3. The ordinance would establish a Peer Review Committee composed to certify that any new

cannabis collective or dispensary has a strategy to meet safety and operational compliance standards established by the Peer Review Committee, and to refer dispensaries found to be in willful or ongoing violation of the standards to the City for action. No such committee is currently required by law.

4. The ordinance would require the City to deputize individuals operating collectives or dispensaries, who are on the Peer Review Committee, as “Drug Control Officers” for the purpose of providing them with immunity under federal law 21 U.S.C. Section 885(d), and reasonably accommodate the provision of medical cannabis to patients and their primary caregivers within 30 days if access to cannabis is interrupted by federal law enforcement activity. There is no similar obligation imposed by current law. 5. The ordinance would provide that qualified patients may cultivate medical cannabis in their residence or on their property in compliance with BMC Chapter 12.26 governing medical cannabis protocols, as amended by this initiative, without securing a use permit. This is declaratory of existing law. 6. The ordinance would establish that medical cannabis dispensaries in compliance with BMC Chapter 12.26 governing medical cannabis protocols, as amended by this initiative, would be permitted as of right, without the need for a public hearing to secure a use permit, as a Retail Sales Use under the City’s existing zoning ordinance, BMC Title 23, in districts where such uses are otherwise permitted. Current law- such uses would be subject to use permit & require public hearing.

MEASURE JJ, the Patients’ Access to Medical Cannabis Act of 2008, ENSURES RESPONSIBLE REGULATION, PROTECTS SAFE ACCESS, and ENDS POLITICAL GRIDLOCK. MEASURE JJ is a citizens’ initiative to control medical cannabis (marijuana) through **reasonable zoning regulations and a city oversight commission**. It includes **City Council approved limits on the number and location of medical cannabis dispensaries** in our city. • MEASURE JJ ENSURES RESPONSIBLE REGULATION Currently, there is no clear framework for dispensary oversight. **JJ creates a city commission that controls dispensaries, protects neighborhoods and businesses, and helps patients. It prohibits dispensaries in residential areas.** It protects property values and neighborhood character. • JJ PROTECTS SAFE ACCESS JJ ensures that patients have access to medical cannabis that is safe, responsible, and controlled by doctors under state law. It **aligns Berkeley medical cannabis law with current state law.** • **JJ ENDS POLITICAL GRIDLOCK** JJ provides clear direction and a **framework for City staff and dispensary operators to maintain the status quo of no more than 3 well-regulated “goodneighbor” dispensaries.** JJ ensures that our tax-paying dispensaries are not shut down by the current unworkable permitting process. JJ is a fact-based, experience-proven approach to medical cannabis regulation. It **deputizes trustworthy dispensaries to work with the City to develop controls and regulations.** It recognizes existing Berkeley dispensaries’ track record of beneficial community engagement. JJ’s changes are incremental, but vital for the future of medical cannabis in Berkeley. Once again, Berkeley can lead the way in effectively integrating medical cannabis under city permission and control. Medical cannabis is working in Berkeley. To keep it working, we must take the next step: **sensible regulation.**

2004 Measure R

Shall the City’s ordinances be amended to require the City to issue a permit to medical marijuana dispensaries as a matter of right and without a public hearing, eliminate

limits on the amounts of medical marijuana possessed by patients or caregivers; and establish a peer review group for medical marijuana collectives? *Financial Implications: Possible increase law enforcement costs & possible zoning related cost savings from change in public hearing requirement for marijuana dispensary permits.*

Impartial Analysis from Berkeley's City Attorney

Measure would amend the Berkeley Municipal Code- have following material effects:

- 1. The ordinance would eliminate the existing limits on the amount of medical marijuana a qualified patient or primary caregiver can possess and cultivate**, which are currently 2.5 pounds of dried cannabis (if grown outdoors) or 1.5 pounds of dried cannabis (if grown indoors), and up to 10 cannabis plants (indoors or outdoors) at any one time, unless a medical doctor authorizes the patient to possess or cultivate more. The amendment retains but modifies the current limit of 10 outdoor cannabis plants on a single parcel, to only count plants that are visible from other property.
- 2. Ordinance would eliminate existing limits of 12.5 pounds of dried cannabis & 50 cannabis plants that a collective composed of qualified patients & primary caregivers can possess, & provide instead that such a collective may possess a reasonable quantity of dried cannabis & cannabis plants to meet medical needs of patient members** as long as no more cannabis accumulated than necessary to meet such needs.
- 3. The ordinance would establish a Peer Review Committee** composed to **certify that any new cannabis collective or dispensary has a strategy to meet safety and operational compliance standards established by the Peer Review Committee**, & to refer dispensaries found to be in willful or ongoing violation of the standards to the City for action. No such committee is currently required by law.
- 4. The ordinance would require the City to deputize individuals operating collectives or dispensaries, who are on the Peer Review Committee, as "Drug Control Officers"** for the purpose of providing them with immunity under federal law 21 U.S.C. Section 885(d), & reasonably accommodate the provision of medical cannabis to patients & their primary caregivers within 30 days if access to cannabis is interrupted by federal law enforcement activity. There is no similar obligation imposed by current law.
- 5. The ordinance would provide that qualified patients may cultivate medical cannabis in their residence or on their property in compliance with BMC Chapter 12.26** governing medical cannabis protocols, as amended by this initiative, without securing a use permit. This is declaratory of existing law.
- 6. The ordinance would establish that medical cannabis dispensaries in compliance with BMC Chapter 12.26** governing medical cannabis protocols, as amended by this initiative, **would be permitted as of right, without the need for a public hearing to secure a use permit, as a Retail Sales Use under the City's existing zoning ordinance**, BMC Title 23, in districts where such uses are otherwise permitted. Under current law such uses would be subject to a use permit and thus require a public hearing.

From: Alfred Twu [<mailto:alfredtwu@gmail.com>]
Sent: Sunday, February 18, 2018 9:46 PM
To: Amoroso, Alexander <AAmoroso@cityofberkeley.info>
Subject: Planning Commission input on potential Deconstruction Ordinance

Hi Alex,

Zero Waste Commission is evaluating ideas for a Deconstruction Ordinance, which would be a ordinance requiring that people who plan to demolish a building take it apart in a way so that materials can be reused.

In addition to conserving resources, deconstruction could also reduce stormwater, noise, and air pollution.

We're currently looking at the following options:

- ordinances passed by other cities (such as Portland, Oregon and Palo Alto)
- whether deconstruction should be mandatory, or if only a evaluation be required
- what types of buildings and renovations it would apply to
- what parts of the building it would apply to
- health and safety requirements

Please relay this info to Planning and let me know if anyone on the committee would like to provide input. They can contact me at alfredtwu@gmail.com

Thanks
Alfred Twu
Zero Waste Commissioner

Dear WEBAIC,

I am disappointed in your planning commission meeting email. I pasted below what will really be discussed, and I found no m-zone expansion mentioned anywhere in attachments (from staff). And, honestly, after your years of city politics, can you really think your worst fears will be realized tomorrow night!?!

I feel compelled to *red-line and comment* on some of your statements. I sincerely agree with most of your goals. I don't want a "greed rush" into West Berkeley, just to legitimize already existing cannabis operations. Best, Charley Pappas-district 6 cannabis commissioner

RATHER

9. Action: Public Hearing: Zoning Ordinance Cannabis Regulations
Recommendation: Hold public hearing and consider Zoning Ordinance amendments related to Cannabis regulations.
THAN (from WEBAIC email)

Planning Commission Public Hearing on Opening up MM (& MULI?) to Cannabis Growing Operations
Wednesday 2/21/18 - 7:00 pm - - North Berkeley Senior Center (corner Hearst & MLK)

Tomorrow's Planning Commission meeting will consider expanding cannabis production (growing) into the MM Zone and possibly the MULI, *Where do you get this idea from!?! This proposal and Public Hearing, without noticing potentially affected businesses, has enormous displacement potential and should NOT be done tomorrow night.*

There is enormous pressure on Council from powerful interests *Not my experience!* to open up more than the presently allowed M Zone to grow cannabis. *More like interest to do nothing- Hahn, Maio, Wengraff...stopped m-zone cultivation licensing selection process since January 2017!!*

WEBAIC's position is - since there has been demonstrated major dislocation of industry and arts in Colorado, Washington, and Oakland by highly capitalized growing operations *Even if correct, apples and oranges, I don't believe much in those states valid comparisons to 40+ year CA cannabis operations-* that we should see how this new use plays out in the now-allowed M Zone, *once the City actually has regulations in effect and growers can get a license to grow, which they can not now. Surprise! Completely agree with you!! The city is completely lagging. You should be happy that the lack of m-zone space hasn't been determined due to above "anti-permitters", but will be after 6 months of 5 or 6 permits, tops!!!*

Growers pay up to 4X+ what industry/arts pays per square foot for space, an economic incompatibility that has led to large negative consequences in loss of jobs and businesses in other jurisdictions. *You may be jumping the gun on this statement... Cannabis should... Regarding Berkeley this sentence could have various continuations- for me personally 15 years trying to open a patient community friendly medically cannabis oriented licensed permitted storefront, alas... have a place in West Berkeley but it must be integrated in such a way as to not create significant displacement, Of course, agree- preferring "inclusion and preferential licensing for existing (some underground) cannabis business operations rentals", thus not taking away rentals, impacting rental costs. especially since cannabis prices are bound to fall and long-time businesses are likely to be displaced for a new use that may not be viable in a few short years. Speculation indeed abounds, but can't we just try to move forward, "cannabis-ly speaking" with the best of intentions for patients, consumers, and community!!!*
Please attend if you can.

Commissioner Pappas previous earlier planning commission email follows below

From: Charles Pappas To: Alex Amorosa, planning commission 12:35 pm Feb 20, 2018

re: **Public Hearing: Zoning Ordinance Cannabis Regulations Hold public hearing and consider Zoning Ordinance amendments related to Cannabis regulations.**

Dear Alex, Planning Commissioners,

Please pardon the long addition to your Feb 21 meeting agenda, previously from 2016 explaining cannabis commission focus.

Below, I have shortened last week's ideas (email) in a true sense of expediency, re: **item #9**; I hope to include ordinance, licensing, selection considerations in a later email before tomorrow night's meeting..

Summary, -Our commissions, staff & elected officials

-Resolve & move forward: with new cannabis regulations for the sake of Berkeley patients, consumers, citizens, electorate, and community.

-Incorporate, include: when possible all local existing cannabis operations, certainly statewide as well.

-Planning Commission possible zoning considerations: cultivation (M-zone expansion), cannabis businesses (retail/non-retail); nurseries; micro business; cottage; private collective coops

-Lack of progress: past attempts in Berkeley, not improved a long existing stagnant status quo, e.g. 15 year 3 dispensary limit, poorly enacted new dispensary process, lack of cultivation permitting, nursery/delivery only dispensaries absence of ordinance, license permitting, unclear existing cannabis business status

-Progress now: sharing and listening, input, expression; in accordance with an informed public; Council action vs ballot measures!

-Commissioners: sensible review; previous successful absence of comment to Council; when needed productive Council recommendations.

Objections/ Comments/Input

-Discussion/regulation- Bad idea, *delivery only dispensaries not locate, ground floor unit with street frontage!?! Good idea,* *could locate in M-prefixed district, ancillary use to another cannabis business, to co-locate with manufacturing, distribution or cultivation uses. Would allow integrated microbusinesses as permitted by State law, and would not significantly impact space available in manufacturing districts.*

-Quotas- In a nutshell, regarding cannabis issues in Berkeley for over 15 years, I have not yet met a reasonable quota I liked, usually for sake of council delay/preserving status quo. An exception- 6 only large (22k sq ft) cultivation areas, providing at least 58k sq ft smaller cultivation. **Rather,** *overly restrictive quotas could limit competition and prevent new businesses from locating in Berkeley, than, there is much uncertainty about the impact that cannabis businesses will have in communities. Quotas would allow the City to add businessesslowly (!?!)* and **to evaluate impacts** (since when?) before allowing additional businesses.

-Levels of Discretion-Ok where appropriate (some buffer zones), **better** less restrictive encouraging inclusion existing businesses (some underground) for/regulation taxation in the legalization era.

-Selection Process and Equity Considerations- *Staff, options selection process to Cannabis Commission & City Council- include, incorporate equity. Equity- have at least 40% owner equity candidate, either low-income threshold/been arrested, incarceration for cannabis-related, non-violent crimes. Selection- relatively fast & inexpensive, quotas/buffers modified depending on Council chosen process. Generally agreed, with caveat, possible deferring- **cannabis commissioners can be more informed than staff, Council, & Planning Commission.***

-Commercial Cannabis Regulations and Licensing- Mayor to Council, July 25 2017, *Prohibit City from issuing new dispensary licenses until January 1, 2020, ascertain demand. Hard to find reasoning- only 3existing, this March 3 years from application process, September 2 years since last applicants chosen!*

-Additional- Cannabis issues needing attention: **cultivation licensing selection** (a lack of permits after a time period will necessitate M-zone expansion), discussion; **nursery ordinance, zoning licensing selection;** likewise **delivery only dispensaries; and microbusiness, private collective, cooperative decisions.**

Conclusion- Too often witnessed **belabored cannabis political discussions lacking perspective & correct information vs hypothetical situations, solutions seeking problems. Future positive accomplishments with inclusive interaction and ideas.**

Thanks for your attention and consideration.

Respectfully, Charley Pappas

From: Charles Pappas nberkhills@sbcglobal.net
Sent: Tue 2/20/2018 12:36 PM
To: Amoroso, Alexander <AAmoroso@cityofberkeley.info>; poschman1@comcast.net
Cc: Greene, Elizabeth <EGreene@cityofberkeley.info>; Molly Dooley Jones <mollydooleyjones@gmail.com>; Berkeley Mayor's Office <mayor@cityofberkeley.info>; Elgstrand, Stefan <SElgstrand@cityofberkeley.info>; Wengraf, Susan <SWengraf@cityofberkeley.info>; Worthington, Kriss <KWorthington@cityofberkeley.info>; Manager, C <CManager@cityofberkeley.info>; City Attorney's Office <attorney@cityofberkeley.info>; Harrison, Kate KHarrison@cityofberkeley.info
Subject: Revised #9 Action Zoning Ordinance Cannabis Regulations Planning Comm-2/21/18/input, summary

re: **Public Hearing: Zoning Ordinance Cannabis Regulations Hold public hearing and consider Zoning Ordinance amendments related to Cannabis regulations.**

Dear Alex, Planning Commissioners,

Please pardon the long addition to your Feb 21 meeting agenda, previously from 2016 explaining cannabis commission focus.

Below, I have shortened last week's ideas (email) in a true sense of expediency, re: **item #9**; I hope to include ordinance, licensing, selection considerations in a later email before tomorrow night's meeting..

Summary, -Our commissions, staff & elected officials

-Resolve & move forward: with new cannabis regulations for the sake of Berkeley patients, consumers, citizens, electorate, and community.

-Incorporate, include: when possible all local existing cannabis operations, certainly statewide as well.

-Planning Commission possible zoning considerations: cultivation (M-zone expansion), cannabis businesses (retail/non-retail); nurseries; micro business; cottage; private collective coops

-Lack of progress: past attempts in Berkeley, not improved a long existing stagnant status quo, e.g. 15 year 3 dispensary limit, poorly enacted new dispensary process, lack of cultivation permitting, nursery/delivery only dispensaries absence of ordinance, license permitting, unclear existing cannabis business status

-Progress now: sharing and listening, input, expression; in accordance with an informed public; Council action vs ballot measures!

-Commissioners: sensible review; previous successful absence of comment to Council; when needed productive Council recommendations.

Objections/ Comments/Input

-Discussion/regulation- *Bad idea, delivery only dispensaries not locate, ground floor unit with street frontage!?! Good idea, could locate in M-prefixed district, ancillary use to another cannabis business, to co-locate with manufacturing, distribution or cultivation uses. Would allow integrated microbusinesses as permitted by State law, and would not significantly impact space available in manufacturing districts.*

-Quotas- *In a nutshell, regarding cannabis issues in Berkeley for over 15 years, I have not yet met a reasonable quota I liked, usually for sake of council delay/preserving status quo. An exception- 6 only large (22k sq ft) cultivation areas, providing at least 58k sq ft smaller cultivation. Rather, overly restrictive quotas could limit competition and prevent new businesses from locating in Berkeley, than, there is much uncertainty about the impact that cannabis businesses will have in communities. Quotas would allow the City to add businesses slowly (!?!) and to evaluate impacts (since when?) before allowing additional businesses.*

-Levels of Discretion- *Ok where appropriate (some buffer zones), better less restrictive encouraging inclusion existing businesses (some underground) for/regulation taxation in the legalization era.*

-Selection Process and Equity Considerations- *Staff, options selection process to Cannabis Commission & City Council- include, incorporate equity. Equity- have at least 40% owner equity candidate, either low-income threshold/been arrested, incarceration for cannabis-related, non-violent crimes. Selection- relatively fast & inexpensive, quotas/buffers modified depending on Council chosen process. Generally agreed, with caveat, possible deferring- cannabis commissioners can be more informed than staff, Council, & Planning Commission.*

-Commercial Cannabis Regulations and Licensing- Mayor to Council, July 25 2017, Prohibit City from issuing new dispensary licenses until January 1, 2020, ascertain demand. Hard to find reasoning- only 3 existing, this March 3 years from application process, September 2 years since last applicants chosen!
-Additional- Cannabis issues needing attention: cultivation licensing selection (a lack of permits after a time period will necessitate M-zone expansion), discussion; nursery ordinance, zoning licensing selection; likewise delivery only dispensaries; and microbusiness, private collective, cooperative decisions.
Conclusion- Too often witnessed belabored cannabis political discussions lacking perspective & correct information vs hypothetical situations, solutions seeking problems. Future positive accomplishments with inclusive interaction and ideas.

Thanks for your attention and consideration.

Respectfully, Charley Pappas

Late Communications
Planning Commission

FEB 21 2018

RECEIVED
at Meeting



Kriss Worthington

Councilmember, City of Berkeley, District 7
2180 Milvia Street, 5th Floor, Berkeley, CA 94704
PHONE 510-981-7170, FAX 510-981-7177,
EMAIL kworthington@ci.berkeley.ca.us

CONSENT CALENDAR
July 25, 2017

To: Honorable Mayor and Members of the City Council
From: Councilmember Kriss Worthington
Subject: Ordinance to Clarify City Policy on Cannabis Nurseries

RECOMMENDATION:

That the Planning Commission and Medical Cannabis Commission create an ordinance to clarify city policy on cannabis and existing nurseries.

BACKGROUND:

Taking into consideration state policies on cannabis regulation, it is imperative that Berkeley follow such trends and clarify city policy on cannabis and existing nurseries. The State of California passed proposition 64 on November 8, 2016, which legalized cannabis for use by adults 21 years or older. Chapter 1 of the Proposition defines a cannabis nursery as “a licensee that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of marijuana,” and a *Type 4—Cultivation; Nursery* license is designed specifically for cannabis nurseries.

Proposition 64 adopted a zoning requirement for cannabis business. “No licensee under this division shall be located within a 600-foot radius of a school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center that is in existence at the time the license is issued, unless a licensing authority or a local jurisdiction specifies a different radius.”

Sonoma County and Humboldt County adopted the exact definition of a cannabis nursery from state law. Humboldt County sets separate zoning requirements for retail cannabis nursery and wholesale cannabis nurseries. Retail cannabis nurseries are defined as cannabis nurseries that sell their products to the public, while wholesale cannabis nurseries are defined as nurseries that distribute cannabis products to other businesses. Both counties have set square footage limitations for cannabis nurseries. Sonoma County limits cannabis nurseries to be under one acre for outdoor or under 22,000 square feet for indoor. Humboldt County limits the size of retail cannabis nurseries to under 5,000 or under 10,000, as square footage depends on use permits, and under 5 acres or no parcel size limitation for wholesale cannabis nurseries depends on the use permit. Our city should include zoning requirements and square footage limitations on cannabis nurseries.

According to Chapter 20 of the Proposition, any city within the State of California has the right to adopt and enforce local ordinances to regulate adult use cannabis businesses. It is urgent for the Planning Commission to work in conjunction with the Medical Cannabis Commission to adopt ordinances and regulations for adult use cannabis in order to emulate state progress on cannabis policy.

FINANCIAL IMPLICATIONS: Minimal.

ENVIROMENTAL SUSTAINABILITY

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

CONTACT PERSON: Councilmember Kriss Worthington 510-981-7170

Attachment:

Tentative List of Current Plant Nursery

1. Lee's Florist & Nursery

Address: 1420 University Ave, Berkeley CA 94702

District: 4

2. Berkeley Horticultural Nursery

Address: 1310 McGee Ave, Berkeley, CA 94703

District: 5

3. East Bay Nursery

Address: 2332 San Pablo Ave, Berkeley, CA 94702

District: 2

4. Oaktown Native Plant Nursery

Address: 702 Channing Way, Berkeley, CA 94710

District: 2 (~~Note: within 300 ft of Dreamland For Kids Playground, but legal~~)

5. Cactus Jungle Nursery and Garden

Address: 1509 Fourth St, Berkeley, CA 94710

District: 1 (Note: within 300 ft of Golden Gate Kids Preschool)

6. Westbrae Nursery

Address: 1272 Gilman St, Berkeley, CA 94706

District: 1 (Note: within 700 ft of Redwood Garden Preschool)

7. Spiral Gardens

Address: 2850 Sacramento St, Berkeley, CA 94702

District: 2 (~~Note: within 900 ft of San Pablo Park~~)

8. FLORA ARTE

Address: 2070 M.L.K. Jr Way, Berkeley, CA 94704

District: 4 (Note: within 900 ft of Berkeley High)

9. Native Here Nursery

Address: 101 Golf Course Dr Tilden Regional Park, Berkeley, CA 94708,
Berkeley, CA 94708

District: 6?

10. Oaktown Native Plant Nursery

Address: 2410 Roosevelt Ave, Berkeley, CA 94703

District: 4 (Note: within 900 ft of Walden Center and School)

11. Succulent & Cactus

Address: 1735 Delaware St, Berkeley, CA 94703

District: 1 (~~Note: Within 500ft of Ohlone Doggy Park~~)

12. The Gardener

Address: 1836 Fourth St, Berkeley, CA 94710

District: 1 (~~Note: Within 300 ft of Golestan Center For Language Immersion and Cultural Education~~)

Late Communications
Planning Commission

FEB 21 2018
RECEIVED
at Meeting



Feb 21, 2018

To: Planning Commission
Cannabis Commission

From: Carl Bolster
GREEN TEAM

CC: Elizabeth Greene, Sr. Planner

Re: Proposed changes to BMC regarding **Delivery Only** cannabis businesses

The following document contains comments and proposals regarding the treatment of Delivery Only cannabis business license holders. This type of license has unique circumstances that deserve special consideration in proposed city code changes.

Category	As Proposed	Comments
Buffer	Same as medicinal (600ft)	Reduce to 300 ft
Delivery Location	Ch 12.21, Residence Only	Expand to include hotels, schools, bus.
Security	Ch 12.21 G (2) H1 exempts manuf/testing from mandatory sec guards/ window bars	Add Delivery Only to exemption
ADA	Ch 12.22.040 (E) must meet retail ADA standards	Exempt Delivery Only
Zoning/ Permitting	23C.25 (H)1 Alt A (STAFF Reco) Unlimited Delivery Only permits	Alt B (PC Reco) 10 Delivery Only permits
	23C.25 (H) 2 ALT A C ZONE ONLY, NO CN	ALT A acceptable
	23C.25 (H) 2 ALT B Delivery Only located on 2 nd fl only	No 2 nd floor requirement

***Building and Construction Trades Council
of Alameda County, AFL-CIO***

7750 Pardee Lane, Suite 100
Oakland, CA 94621- btca@btcalameda.org
(510) 430-8664, Fax: (510) 430-8128

Andreas Cluver
Secretary-Treasurer

Rob Stoker
President

Rafael Gonzalez
Vice President

Auto & Marine Painters, #1176
Boilermakers, #549
Brick & Tile Layers, #3
Carpenters, #713
Carpenters, #2236
Carpet & Linoleum, #12
Cement Masons, #300
Electrical Workers, #595
Elevator Constructors #8
Glaziers #169
Insulators & Asbestos Workers, #16
Iron Workers, #378
Laborers, #67
Laborers, #304
Laborers, #886
Lathers, #68L
Millwrights, #102
Operating Engineers, #3
Painters, #3
Pile Drivers, #34
Plasterers, #66
Plumbers & Steamfitters, #342
Roofers, #81
Sheet Metal Workers, #104
Sign & Display, #510
Sprinkler Fitters, #483
Teamsters, #853
U.A., Utilities / Landscape, #355

RECEIVED
FEB 21 2018
Late Communications
Planning Commission
at Meeting

February 21, 2018

To: Berkeley Planning Commission

Re: Municipal Density Bonus

Dear Commissioners,

We support all of the 5 goals listed in the staff report for the municipal density bonus but encourage you to add a sixth goal as follows.

1. Increase density in the form of more units;
2. Increase height in the form of additional floors;
3. Provide more affordable housing;
4. Allow applicants to pay for off-site qualifying units in lieu of providing on-site units;
5. Establish numeric density standards for all zoning districts; and
6. Support the City's workforce development goals for construction labor.

Additionally, we encourage you to direct staff to incorporate the following criteria into the measure that they will prepare for you:

Developers of Projects participating in the City's Bonus Program for Workforce Development and Residential Inclusion (or whatever name the city chooses to give its bonus program) shall hire contractors who:

--are licensed according to city and state law;

--pay standard wages for the area determined pursuant to California Labor Code § 1770; and

--employ registered apprentices in an apprenticeship training program approved by the State of California or an out-of-state, federally-approved apprenticeship program.

Background:

Since the city council first began referring items to the Planning Commission related to this topic, the state of the art in municipal density bonuses has advanced a great deal. The City of Berkeley itself has set an example with a community benefits policy

for the downtown that emphasizes both affordable housing and labor standards. This is a best practice in advancing social equity in economic development the city of Los Angeles set its goals higher in 2016 with Measure JJJ which applies not just to a single specific plan but to all TOD everywhere in the city. Voters adopted Measure JJJ by 64%, and in so doing put in place a municipal density bonus that addresses affordable housing and construction related workforce development in tandem. The ALF-CIO and the Southern California Association of Non-Profit Housing jointly sponsored the measure, just as the original referral regarding Berkeley's municipal density bonus was backed jointly by the Carpenters, NPH and Center for Sustainable Neighborhoods as well as by our local nonprofit builders.

There is a strong policy as well as political rational for linking affordable housing and construction related workforce development; the construction industry has a bifurcated labor strategy with high and low road approaches.

The low road approach focuses on driving wages down and sacrifices on training and safety. Under this approach, in California, 40% of workers earn wages low enough to qualify for residence in subsidized affordable housing. So in effect, every project built with low road labor practices is just adding to the pool of low income workers who can't find affordable housing.

In contrast, the high road approach pays every worker a prevailing wage and supports them with rigorous 3 to 5-year apprenticeship programs. These programs combine classroom and on the job experience to provide them the skills they need to do high quality work efficiently and safely.

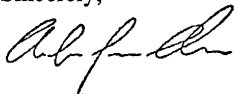
The two-tiered rate structure adopted by workers compensation insurers provides an actuarially sound proxy for the safety of the two approaches. That these insurers provide a steep discount for workers paid a prevailing wage indicates the greater safety of the union workplace.

There is an analogy that can be drawn between the construction and manufacturing industries. Both are capable of providing high quality middle class jobs. But both area also capable of employing a low road approach that entails both low wages and higher hazard. In the manufacturing context, we call the low road workplaces sweatshops. In the American residential construction industry, increasingly since the 1980s, we simply call the low road "business as usual".

The municipal density bonus is the single most powerful tool that cities have to incentivize high road residential construction, and it is economically efficient. It employs a mechanism that economists call land value recapture which reduces the inflationary pressure of rezoning on land values. In this way, it helps keep the cost of construction down even as it provides a key community benefit. That makes it a win win solution.

We believe that the city of Berkeley is ready to exhibit leadership in using this tool to advance its values and urge you to act accordingly.

Sincerely,



Andreas Cluver
Secretary-Treasurer
Building Trades Council of Alameda County