Planning Commission

AGENDA

REGULAR MEETING OF THE PLANNING COMMISSION

Click here to view the entire Agenda Packet

Wednesday, March 2, 2022
7:00 PM

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE. Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the Planning Commission will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL https://us06web.zoom.us/j/89165604580. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the “raise hand” icon by rolling over the bottom of the screen.

To join by phone: Dial **1 669 900 6833** and enter Meeting ID: **891 6560 4580.** If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.

Please be mindful that the video conference and teleconference will be recorded. All rules of procedure and decorum that apply for in-person Planning Commission meetings apply for Planning Commission meetings conducted by teleconference or videoconference.

See “MEETING PROCEDURES” below.

All written materials identified on this agenda are available on the Planning Commission webpage:https://www.cityofberkeley.info/Clerk/Commissions/Commissions__Planning_Commission_Homepage.aspx

PRELIMINARY MATTERS

1. ***Roll Call:*** **Wiblin, Brad,** appointed by Councilmember Kesarwani, District 1
   Vincent, Jeff, appointed by Councilmember Taplin, District 2
   Moore III, John E. “Chip”, appointed by Councilmember Bartlett, District 3

Oatfield, Christina, appointed by Councilmember Harrison, District 4
Mikiten, Elisa, **Chair,** appointed by Councilmember Hahn, District 5
Kapla, Robb, appointed by Councilmember Wengraf, District 6
Twu, Alfred, appointed by Councilmember Robinson, District 7
Hauser, Savlan, **Vice Chair**, appointed by Councilmember Droste, District 8
Ghosh, **Barnali,** 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. (S*ee "Public Testimony Guidelines" below):*

4. ***Planning Staff Report including Future Agenda Items:*** In addition to the items below, additional matters may be reported at the meeting.

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 9, 2022**.

8. ***Other Planning-Related Events:***

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

9. ***Action:*** ***Public Hearing on Amendments to Citywide Affordable Housing Requirements***
   Recommendation: *Conduct a public hearing on proposed amendments to comprehensively update the City's affordable housing requirements and provide a recommendation to the City Council*
   Written Materials: *Attached*
   Presentation: *N/A*

10. ***Action:*** ***Public Hearing on Technical Edits and Corrections to the New Zoning Ordinance***
    Recommendation: *Conduct a public hearing on technical edits and corrections to the new Zoning Ordinance and make a recommendation to City Council*
    Written Materials: *Attached*
    Presentation: *N/A*

11. Discussion: ***Approach to Bird Safe Berkeley Requirements Referral***
Recommendation: *Receive a presentation and provide feedback on a proposed approach to the Bird Safe Berkeley Requirements Referral*
Written Materials: *Attached*
Presentation: *N/A*

12. Action: ***Planning Commission 2022-2023 Work Plan Subcommittee Selection***
Recommendation: *Establish the Work Plan Subcommittee and appoint three Planning Commissioners by a vote.*
Written Materials: *N/A*
Presentation: *N/A*

13. Action: ***ZORP Subcommittee Election of a 4th Member***
Recommendation: *Elect by vote a fourth subcommittee member to allow additional input on this project.*
Written Materials: *N/A*
Presentation: *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:

- February 16 – Planning Commission Zoning Ordinance Revision Project (ZORP) Subcommittee Agenda Packet

Communications:

- General

Late Communications: (Received after the packet deadline):

- Supplemental Packet One – received by noon two days before the meeting
- Supplemental Packet Two
- Supplemental Packet Three

ADJOURNMENT

****** *MEETING PROCEDURES* ******

Public Testimony Guidelines:
All persons are welcome to attend the virtual meeting and will be given an opportunity to address the Commission. 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. 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.

Procedures for* Correspondence *to the Commissioners:
All persons are welcome to attend the virtual hearing and will be given an opportunity to address the Commission. Comments may be made verbally at the public hearing and/or in writing before the hearing. The Commission may limit the time granted to each speaker.

Written comments must be directed to the Planning Commission Secretary at the Land Use Planning Division (Attn: Planning Commission Secretary), 1947 Center Street, Second Floor, Berkeley CA 94704, or via e-mail to: **apearson@cityofberkeley.info**. All materials will be made available via the Planning Commission agenda page online at this address: https://www.cityofberkeley.info/PC/.

Correspondence received by **12 noon, nine days** before this public meeting, will be included as a Communication in the agenda packet. Correspondence received after this deadline will be conveyed to the Commission and the public in the following manner:

- Correspondence received by **12 noon two days** before this public meeting, will be included in a Supplemental Packet, which will be posted to the online agenda as a Late Communication and emailed to Commissioners one day before the public meeting.

- Correspondence received after the above deadline and before the meeting will be included in a second and/or third Supplemental Packet, as needed, which will be posted to the online agenda as a Late Communication and emailed to the Commissioners by 5pm on the day of the public meeting.

Note: It will not be possible to submit written comments at the meeting.

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.

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.

Meeting Access: 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.

I hereby certify that the agenda for this regular meeting of the Planning Commission was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on **February 23, 2022**.

_____

Alene Pearson
Planning Commission Secretary

Planning Commission

DRAFT MINUTES OF THE REGULAR PLANNING COMMISSION MEETING
February 9, 2022

The meeting was called to order at 7:01 p.m.

Location: Virtual meeting via Zoom

1. **ROLL CALL:**
   Commissioners Present: Barnali Ghosh, Savlan Hauser, Robb Kapla, Elisa Mikiten, Christina Oatfield, Alfred Twu, Jeff Vincent, and Brad Wiblin.

   Commissioners Absent: Chip Moore.

   Staff Present: Secretary Alene Pearson, Zoe Covello, Grace Wu, and Sara Stephens

2. **ORDER OF AGENDA:** No changes.

3. **PUBLIC COMMENT PERIOD:** 0

4. **PLANNING STAFF REPORT:**

- February 8 – City Council update
  - City Council adopted the second reading of the new ADU Ordinance
  - It will go into effect on March 14, 2022
- February 16 – ZORP Subcommittee Meeting reminder
- March 2 – Planning Commission meeting to hear the following:
  - Public Hearing: Citywide Affordable Housing Requirements
  - Public Hearing: Technical Edits and Corrections to the Zoning Ordinance
  - Discussion: Bird Safe Glass Referral
  - Commissioners will select a subcommittee to develop the Planning Commission Workplan

Information Items:

ADUs:

- February 8 – City Council: Item 2 Second Reading of Ordinance No. 7,797-N.S. the local Accessory Dwelling Unit (ADU) Ordinance
- January 25 – City Council: Item B Response to City Council Action on October 26, 2021 Regarding Short Term Referral for Amendments to the ADU Ordinance for Public Safety
- January 18 – City Council: Item 23 Response to City Council Action on October 26, 2021 Regarding Short Term Referral for Amendments to the ADU Ordinance

Civic Arts Commission Referral:

- January 25 – Civic Arts Commission: Item 11 *Affordable housing for artists in Berkeley* Report and other Artist Live, Work, and Live-work opportunities to the Housing Element Update

Housing Advisory Commission Housing Preference Policy:

- February 3 – Housing Advisory Commission: Item 3 Housing Preference Policy Report

Communications:

- General.

Late Communications: *See agenda for links.*

- Supplemental Packet One
- Supplemental Packet Two
- Supplemental Packet Three

5. CHAIR REPORT:

- None.

6. COMMITTEE REPORT: Reports by Commission committees or liaisons. In addition to the items below, additional matters may be reported at the meeting.

- None.

7. APPROVAL OF MINUTES:

Motion/Second/Carried (Mikiten/Vincent) to approve the Planning Commission Meeting Minutes from January 19, 2022.
Ayes: Ghosh, Hauser, Kapla, Mikiten, Oatfield, Twu, Vincent, and Wiblin. Noes: None. Abstain: None. Absent: Moore. (8-0-0-1)

8. OTHER PLANNING RELATED EVENTS:

- Chair Mikiten provided an update about her meeting with Berkeley Design Advocates regarding the Residential Objective Standards project.

AGENDA ITEMS

9. Planning Commission Elections

The Commission held elections for Chair and Vice Chair of the Planning Commission.

Motion/Second/Carried (Ghosh/Vincent) to elect Commissioner Mikiten as Chair of the Planning Commission and Commissioner Hauser as Vice Chair of the Planning Commission at 7:13pm. Ayes: Ghosh, Hauser, Kapla, Mikiten, Oatfield, Twu, Vincent, and Wiblin. Noes: None. Abstain: None. Absent: Moore. (8-0-0-1)

Public Comments: 0

10. Housing Element Update and Draft Environmental Impact Report (EIR) Scoping Session

Senior planner Grace Wu and CEQA consultant Karly Kaufman provided a project update on the Housing Element and the Draft Environmental Impact Report and took comments from commissioners on issues the EIR should address.

Public Comments: 0

Motion/Second/Carried (Ghosh/Kapla) to adjourn the Planning Commission meeting at 8:14pm. Ayes: Ghosh, Hauser, Kapla, Mikiten, Oatfield, Twu, Vincent, and Wiblin. Noes: None. Abstain: None. Absent: Moore. (8-0-0-1)

Members in the public in attendance: 11
Public Speakers: 0
Length of the meeting: 1 hr 13 minutes

Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: March 2, 2022

TO: Members of the Planning Commission

FROM: Alisa Shen, Principal Planner, Land Use Planning Division

SUBJECT: Citywide Affordable Housing Requirements Update

RECOMMENDATION

Conduct a public hearing on proposed amendments to comprehensively update the City's affordable housing requirements and provide a recommendation to the City Council to:

- Amend Berkeley Municipal Code (BMC) Chapter 23.328, updating the citywide Affordable Housing Requirements (AHR) in the Zoning Ordinance;
- Repeal existing administration and zoning code sections that refer to affordable housing requirements, BMC Section 22.20.065, and Section 23.312.040(A)(6);
- Rescind Resolution No. 68,074-N.S. related to fees, exemptions, and administration of inclusionary affordable housing and in-lieu programs;
- Adopt a Resolution addressing regulations for a voucher program and establishing an in-lieu fee pursuant to BMC Section 23.328.020(A)(2).

BACKGROUND

The City of Berkeley has a strong history of programs and initiatives to retain existing affordable and rent controlled tenant housing, protect tenants from displacement, and create new affordable housing including deed-restricted income-qualified housing. City Council has adopted multiple, interrelated referrals to staff and Commissions to explore revisions to the City's affordable housing requirements for new development that are currently codified in several sections of the Berkeley Municipal Code, including:

- BMC 21.28: Condominiums and Other Common Interest Subdivisions
- BMC 22.20: Mitigations and Fees—Conditions of Approval for Development Projects
- BMC 23.326: Demolition and Dwelling Unit Controls[1]

[1] Recently adopted revisions to the City's Zoning Ordinance (Title 23 of the Berkeley Municipal Code) went into effect December 1, 2021. The new Zoning Ordinance is still under Title 23 of the Berkeley

- BMC 23.328: Inclusionary Housing
- BMC 23.312: Live/Work
- BMC 13.76: Rent Stabilization and Eviction for Good Cause

There have also been changes to State laws that govern affordable housing requirements, streamlining, dwelling unit replacement, and density bonus incentives. There are also numerous locally adopted implementing resolutions that set fee amounts and exemptions. In addition, the City has administrative guidelines and practices to implement the State and local requirements.

Based on the complexity of various Council referrals, State laws and local regulations, the City engaged the consulting firm Street Level Advisors to evaluate existing regulations and potential changes in order to comprehensively update the City's affordable housing requirements.

The work to date has included:

- **October 2020:** Street Level Advisors presented a range of identified policy issues and solicited feedback from the public, the Planning Commission and a range of stakeholders including affordable housing developers and advocates, market-rate developers, and the Planning Commission, Housing Advisory Commission, Zoning Adjustments Board, and Rent Stabilization Board.
- **May 2021:** Street Level Advisors prepared a memorandum analyzing 14 categories of potential changes to the City's affordable housing requirements based on Council referrals and stakeholder and public feedback. Staff and Street Level Advisors presented the proposed changes to the Planning Commission and City Council to inform drafting of the attached ordinance and resolution.[2]

DISCUSSION

Proposed amendments to affordable housing requirements are in response to related City Council referrals, as well as in response to changed State laws that govern affordable housing requirements and density bonus incentives. Amendments will serve to consolidate affordable housing requirements into a single framework and enhance the existing requirements through the standardization and simplification of certain fees and requirements, the provision of new options by which requirements can be met, and through various administrative changes (**Attachment 1**). Proposed changes will also provide regulations for a voucher program and the establishment of a new in-lieu fee

Municipal Code but has different numbering and better organization. Under the previous or "legacy Zoning Ordinance", the section pertaining to Demolition and Dwelling Unit Controls was BMC Section 23.C.08, the section pertaining to Inclusionary Housing was 23.C.12 and the section about affordable housing requirements for Live/Work units in 23.E.20.

[2] May 5, 2021 Planning Commission Staff Report: https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2021-05-05_PC_Item%209(1).pdf. May 18, 2021 City Council Work Session Report: https://www.cityofberkeley.info/Clerk/City_Council/2021/05_May/Documents/2021-05-18_WS_Item_02_Updating_Citywide_Affordable_pdf.aspx

calculated on a per-square-foot basis to further support the provision of affordable housing pursuant to BMC Sec. 23.328.020(A)(2) (**Attachment 2**).

These proposed changes are briefly summarized below, along with the corresponding recommendation(s) from the memorandum prepared by Street Level Advisors, which has been updated to reflect input received since the May 2021 Planning Commission and Council Work Sessions **(Attachment 3).** Not all of the proposed changes from the Street Level Advisors memo are included in the final recommendations below, based on further staff review of the policy and practice implications. The Commission is encouraged to review all of the consultant's recommendations to inform the overall discussion.

A. Summary of Proposed Changes

1. **Consolidate Affordable Housing Requirements.** As authorized by the passage of Assembly Bill 1505, the proposed ordinance consolidates the City's existing regulations by addressing both rental and ownership projects (including live/work units and Group Living Accommodations) into an amended BMC Chapter 23.328, Affordable Housing Requirements, allowing for the deletion of the sections of the BMC where these topics were originally addressed (BMC Sections 22.20.065, and 23.312.A6). The proposed amendments impose on-site affordable housing requirements and an in-lieu fee as an alternative to on-site units (rather than a mitigation fee).[3]

2. **Establish a Per-Square-Foot In-lieu Fee.** Instead of the existing method of calculating fees based on a per-unit basis, the proposed ordinance authorizes the Council to set fees, and the proposed resolution sets the affordable housing in-lieu fee at $45 per gross residential square foot, which was shown to be roughly equivalent to the current fee for projects with typically sized units, collected at the time of Certificate of Occupancy (as opposed to the current practice of providing a discount if paid at time of Building Permit issuance). The fee would be automatically adjusted annually based on change to an established index such as the California Construction Cost Index. It is recommended to conduct a future feasibility study and consider whether to impose a higher or lower fee after a period of changing market trends (e.g., three years or more into the future).[4]

3. **Incentivize Extremely Low-Income (30% of AMI) Units.** The City's current rules require that 40% of all VLI units be offered first to Housing Choice voucher holders and 40% be offered first to Shelter+Care voucher holders. The proposed

[3] Street Level Advisors Memorandum (Jan. 2022): Recommendation 1.1, 1.2, 1.3 and 1.4. Note: Staff is in the process of determining the appropriate "effective date" of the draft ordinance and resolution and will add this to the draft documents that are prepared for Council consideration and adoption.
[4] SLA Jan. 2022 Memo, Recommendations 2.1 and 3.1.

changes would require that all of the required VLI units be offered to voucher holders (50% to Housing Choice voucher holders and 50% to Shelter+Care voucher holders) before being marketed to other income eligible households.[5] As noted in the Street Level Advisors' memo, this change along with along with the way that the City's requirements interact with the State Density Bonus will serve to slightly increase the share of ELI tenants served without adding layers of complexity to the program since voucher holders in both programs generally have incomes well below 30% AMI.

4. **Retain a Residual Fee for "Mixed Compliance" Projects.** Currently, rental projects that provide 20% of the total project units as affordable units on-site are exempt from paying fees. Half of the required units (or 10% of total units) must be for VLI residents and half (10% of total units) must be for Low Income (LI) residents. Projects that provide less than 20% of the required affordable units on-site are also required to provide at least half of those units restricted to VLI tenants and pay a fee for the residual units according to a formula that gives credit for those units that are provided on-site. The proposed ordinance continues the current requirements, and provides that projects approved pursuant to SB35 (with at least 50% of the total units restricted to LI) must meet the City's VLI standard (10% of total units) to satisfy the inclusionary requirement and thus not have any residual fee obligation.[6]

5. **Standardize Ownership and Rental Fees.** The feasibility analysis prepared by Street Level Advisors found that the City's existing requirements for ownership/condominium projects resulted in an equivalent per-square-foot fee ranging from $54 to $75, which is considerably higher than the equivalent per-square-foot fees estimated for rental projects (e.g. $45 per square foot). The analysis noted that imposing a higher fee would tend to discourage home ownership development. Setting the fee at $45 per square foot for both rental and ownership projects would "level the playing field" and still generate substantial in-lieu fees per unit because ownership units tend to be larger than rental units. It also simplifies administration as some projects may convert from rental to ownership. The proposed ordinance authorizes the City Council to set fees, and as noted above, the proposed resolution sets the affordable housing in-lieu fee at $45 per gross residential square foot for both rental and ownership projects.[7]

6. **Standardize Live-Work Requirements.** The proposed ordinance consolidates the affordable housing requirements for live/work units from BMC 23.312 into BMC 23.328 and removes the exemption for live/work projects from inclusionary and fee requirements, so that the same requirements would apply to live/work

[5] SLA Jan. 2022 Memo, Recommendation 4.1.
[6] SLA Jan. 2022 Memo: Recommendation 5.2.
[7] SLA Jan. 2022 Memo, Recommendation 6.1.

projects as any other project except for the "affirmative marketing" provision (which was carried forward from the existing requirements).[8]

7. **Add a Land Dedication Option.** The proposed ordinance adds an option for developers to dedicate land, if authorized by the City Manager, for an approved non-profit housing developer. Donated land must be equal or greater in value than the in-lieu fee that otherwise would be required.[9]

8. **Provide a Family-Sized Units Option.** The proposed ordinance allows applicants the option to provide affordable units whose total size is at least 20% of the residential square footage (rather than a unit-for-unit equivalent), if each of the affordable units is either a two-bedroom or three-bedroom unit.[10] In reviewing this proposal, staff identified some implementation concerns:

   - Leasing three-bedroom units to Section 8 and Shelter Plus Care voucher holders has historically been difficult to accomplish. This clause may ultimately undermine the ordinance's goal to serve Extremely Low-Income Households;

   - There are also concerns regarding establishing reasonable standards for unit sizes for each proposed development.

9. **Remove Exemption for Most Group Living Accommodation (GLA) Projects and Prohibit Provision of On-Site Units in GLAs.** The proposed ordinance would remove the current exemption for Group Living Accommodations (GLAs) from inclusionary and fee requirements. Fraternities, sororities and other specially designated units recognized by the University of California would retain their exemption. The proposed ordinance would also prohibit projects with an average of more than 3 bedrooms per unit from selecting the on-site option in order to reduce administrative burdens; and adopt a local density bonus that enables these projects to access the benefits of the State Density Bonus in exchange for an increased in-lieu fee instead of on-site units.[11]

10. **Reduce Fees for Small / "Missing Middle" Projects.** The proposed ordinance eliminates the exemption for projects of one to four units and replaces it with a tiered fee that steps up for projects with less than 12,000 gross residential square feet by reducing the fee by $2 per square foot for each 1,000 square foot increment less than 12,000 sf, as shown in the Table below.[12]

[8] SLA Jan. 2022 Memo: Recommendations 7.1.
[9] SLA Jan. 2022 Memo: Recommendation 8.1.
[10] SLA Jan. 2022 Memo: Recommendation 9.1.
[11] SLA Jan. 2022 Memo: Recommendations 7.2, 11.1 and 11.2.
[12] SLA Jan. 2022 Memo: Recommendations 12.1 and 12.2.

Table 1. Proposed Tiered Square-Foot Based Fee

Gross Residential Square Feet	Fee per Square Foot
12,000+	$45
11,000-11,999	$43
10,000-10,000	$41
9,000-9,999	$39
8,000-8,999	$37
7,000-7,999	$35
6,000-6,999	$33
5,000-5,999	$31
4,000-4,999	$29
3,000-3,999	$27
2,000-2,999	$25
1,000-1,999	$23
<1,000	$21

The Planning Commission can also consider a flat fee of $45 per square foot, the estimated equivalent of the City's current unit-based fee.

At this time, we do not have feasibility analyses for how this fee affects small projects (less than four units).

11. **Cap Annual Rate of Rent Increases.** The proposed ordinance stipulates that any increase in rent of an affordable unit offered for rent shall be no greater than the increase in the Consumer Price Index for All Urban Consumers (CPI-U) in the San Francisco-Oakland-San Jose region as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics, for the twelve-month period ending the previous December 30 but not to exceed the corresponding increase in AMI for the same calendar year. [13] This is a change from the current ordinance which ties rent increases to the increase in Area Median Income (AMI) only. The goal is to ensure that rent increases do not result in a high housing cost burden or displacement of existing tenants. Over the past decade, annual increases in AMI are generally higher than the average increase in income of lower income households, resulting in unintended adverse impacts to tenants. This is in part due to the displacement of lower income households from the county, coupled with the increase in higher income earners moving to the county. However, while changes in CPI-U has traditionally been more stable than changes to AMI, this may change as we enter into an inflationary cycle. Staff recommends additional analysis to determine the impact of tying rent increases to CPI-U instead of AMI. Further, staff recommends that the method of annual rent increases be removed from the ordinance and incorporated into the administrative regulations.

[13] SLA Jan. 2022 Memo: Recommendation 13.

12. **Administrative Changes**. The proposed ordinance also recommends a number of administrative changes, as outlined below.[14]

    a. Require compliance plans. Developers of new projects will be required to submit an Affordable Housing Compliance Plan indicating their proposed strategy for complying with the City's affordable housing requirements. The Applicant for any Use Permit or Zoning Certificate for a Housing Development Project shall submit an Affordable Housing Compliance Plan to the Zoning Officer. The Affordable Housing Compliance Plan, as modified by the Zoning Officer or Board, may be incorporated as a condition of approval of any Use Permit or Zoning Certificate issued to the Applicant. The Affordable Housing Compliance Plan must be submitted and approved by the City as a condition of approval for any Building Permit.
    b. Authorize administrative citations. The proposed ordinance explicitly authorizes the creation of a proposed schedule of fines for monitoring and compliance violations to be included in the program guidelines.
    c. Deduct required fees/costs from gross rent. Language in the proposed ordinance was clarified to include any other mandatory fees imposed by the property-owner as a condition of tenancy in addition to tenant-paid utilities in determining whether a unit is affordable to Very Low-Income or Low-Income Households.
    d. Increase the amount of administrative set-aside from 10% to 15%. The proposed ordinance states that 15 percent of In-Lieu Fees collected may be used to pay for administration of the In-Lieu Fee or the Housing Trust Fund program, due to the increasing size and complexity of the City's portfolio of BMR units. At least 85% of In-Lieu Fees collected shall be deposited into a fund designated for use in the City's Housing Trust Fund program.

B. Topics to Be Addressed In A Separate Process

In a separate process led by the 4x4 Joint Task Force Committee on Housing, proposed changes to the City's regulation of demolitions are also under discussion. Demolition requirements help protect existing rental-controlled housing by regulating and compensating for the elimination of such units which occurs through modifications to existing housing stock (e.g., removing kitchens, combining units). This 4x4 process involves representatives from the Rent Board and City Council, and the ordinance will be reviewed by the Housing Advisory Commission, Planning Commission, and other interested parties before advancing to City Council for review and possible action.

A number of proposed changes to the City's condominium conversion regulations were presented in the memorandum prepared by Street Level Advisors. These included

[14] SLA Jan. 2022 Memo: Recommendation 14.1 - 14.4.

simplifying the calculation of the required fee, reducing the fees under certain circumstances and allowing flexibility in the use of the fees (allocating a portion of the fees to administer the condominium conversion program and/or the Housing Trust Fund and the remainder to go into the Housing Trust Fund).[15] These recommendations require additional consideration and may require additional nexus and feasibility analyses. Thus, changes to BMC Chapter 21.28, Condominiums and Other Common Interest Subdivisions, will be considered separately from the proposed changes to BMC Chapter 23.328 (and associated changes to BMC 22.20 and BMC 23.312 that are included in the proposed ordinance).

NEXT STEPS

Staff will bring recommendations from the Planning Commission and the Housing Advisory Commission regarding the draft ordinance and resolution to the City Council.[16]

Attachments:

1: Draft Ordinance Amending Berkeley Municipal Code (BMC) Chapter 23.312 Updating the Citywide Affordable Housing Requirements in the Zoning Ordinance and Repealing BMC Sections 22.20.065, and Section 23.312.040(A)(6); and
2: Draft Resolution for Regulations for Voucher Program and Establishing an In-Lieu Fee Pursuant to BMC Section 23.328.020(A)(2) and Rescinding Resolution No. 68,074-N.S.
3: Updating Affordable Housing Requirements for the City of Berkeley: Analysis and Recommendations. Prepared by Street Level Advisors, Revised February 2022.

[15] See SLA Jan. 2022 Memo, Recommendations 10.1 - 10.5.
[16] See Street Level Advisors Jan. 2022 Memo, Recommendations 10.1 - 10.5.

ORDINANCE NO. -N.S.
AFFORDABLE HOUSING REQUIREMENTS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 21.28.080, Section 22.20.065, and Section 23.312(A)(6) are hereby repealed.

Section 2. That Berkeley Municipal Code Chapter 23.328 is amended to read as follows:

~~23.328.010 Chapter Purpose and Applicability.~~

~~A. *Purpose.* The purpose of this chapter is to:~~

~~1. Promote Housing Element goals to develop affordable housing for households with incomes below the median, as defined in this chapter, or, in the case of limited equity cooperatives, households with incomes below 120 percent of the median.~~

~~2. Require the inclusion of affordable dwelling units in specified proposed developments ("projects").~~

~~B. *Applicability.*~~

~~1. The following types of projects must comply with the inclusionary housing requirements of this chapter:~~

~~(a) Residential housing projects constructing five or more dwelling units.~~

~~(b) Residential housing projects constructing one to four new dwelling units when:~~

~~i. Such units are added to an existing one to four-unit property developed after August 14, 1986; and~~

~~ii. The resulting number of units totals five or more.~~

~~(c) Residential housing projects proposed on lots with a size and zoning designation that allows construction of five or more dwelling units.~~

~~2. This chapter does not apply to dormitories, fraternity and sorority houses, boarding houses, residential hotels, or live/work units.~~

3. Live/work units are subject to Low-Income inclusionary provisions in Section 23.312 (Live/Work).

4. This chapter sets forth specific inclusionary housing requirements for the Avenues Plan Area, which prevails over any conflicting requirements set forth elsewhere. (Ord. 7787-NS § 2 (Exh. A), 2021)

23.328.020 General Requirements.

A. *Minimum Percent of Units.*

1. Any project subject to this chapter is required to include at least 20 percent of the total number of dwelling units within the project as inclusionary units, except that limited equity cooperatives are required to include at least 51 percent of their units as inclusionary units.

2. In applying the percentages above, any decimal fraction above a whole number of dwelling units shall be paid as an in-lieu fee as stated in Section 23.328.040 (Requirements Applicable to All Inclusionary Units).

B. *Median Income Levels.* For the purpose of determining the median income levels for households under this chapter, the City shall use the Oakland Primary Metropolitan Statistical Area (PMSA) statistical figures that are available to the City from the most recent U.S. Census. (Ord. 7787-NS § 2 (Exh. A), 2021)

23.328.030 Payment of In-Lieu Fees as an Alternative to Providing Inclusionary Units.

A. *Applicability.*

1. As an alternative to providing inclusionary units required in an ownership project, the applicant may elect to enter in an agreement with the City to pay fees as set forth in this section in-lieu of providing units that are not required to be provided at below market prices pursuant to Government Code Section 65915.

2. This section applies to projects for which all required permits have already been issued, as long as no units within such a project have been sold.

B. *Deposit.* The fee shall be deposited in the City's Housing Trust Fund.

C. *Fee Amount.*

~~1. The in-lieu fee shall be 62.5 percent of the difference between the permitted sale price for inclusionary units and the amounts for which those units are actually sold by the applicant.~~

~~2. The fee shall be calculated and collected based on the sales prices of all of the units in a project to which the inclusionary requirement applies, such that the fee as charged shall be a percentage of the difference between the actual sales price for each unit, and the sales price that would have been permitted had that unit been an inclusionary unit.~~

~~3. The percentage shall be determined using the following formula: the number of units for which an in-lieu fee is substituted for an inclusionary unit divided by the total number of units to which the inclusionary ordinance applies, multiplied by 62.5 percent.~~

~~4. This fee shall only apply to units in a project that are counted in determining the required number of inclusionary units in a project and shall not apply to any units provided as a density bonus.~~

~~5. If the City Manager determines that an actual sales price does not reflect the fair market value of a unit, the City Manager shall propose an alternate price based on the fair market value of the unit.~~

~~6. If the developer and the City Manager cannot agree on a fair market value, the City Manager shall select an appraiser to prepare an appraisal of the unit and the appraised value shall be used as the market value.~~

~~D. *Calculation of Inclusionary Sales Price.*~~

~~1. The allowable inclusionary sales price for the purpose of calculating the in-lieu fee amount shall be three times 80 percent of the Area Median Income (AMI) last reported as of the closing date of the sale of the unit, with the exception that if the developer has already been authorized to charge an inclusionary sale price based on development costs pursuant to Ordinance 6,790-N.S. (adopted January 27, 2004, sunsetted February 19, 2006) the allowable inclusionary sale price for the purposes of this section shall be the price permitted under that ordinance.~~

~~2. Area median income (AMI) shall be calculated in accordance with the affordability regulations established by the City Manager pursuant to Section 23.328.080 (Administrative Regulations).~~

E. *Time of Payment of Fee.* The developer shall pay the in-lieu fee no later than the closing date of the sale of a unit as a condition of the closing. (Ord. 7787-NS § 2 (Exh. A), 2021)

23.328.040 Requirements Applicable to All Inclusionary Units.

A. *Recipient Requirement.*

1. All inclusionary units other than those in limited equity cooperatives shall be sold or rented to:

(a) The City or its designee; or

(b) Low-Income, Lower-Income, or very low-income households.

2. Units in limited equity cooperatives shall be sold or rented to households whose gross incomes do not exceed 120 percent of the Oakland PMSA median.

B. *Agreement.* The applicant shall execute a written agreement with the City indicating the number, type, location, approximate size, and construction schedule of all dwelling units and other information as required to determine compliance with this chapter.

C. *Timing.* All inclusionary units in a project and phases of a project shall be constructed concurrently with, or before, the construction of non-inclusionary units.

D. *Criteria.* All inclusionary units shall be:

1. Reasonably dispersed throughout the project;

2. Of the same size and contain, on average, the same number of bedrooms as the non-inclusionary units in the project; and

3. Comparable with the design or use of non-inclusionary units in terms of appearance, materials, and finish quality.

E. *In-Lieu Fee Requirement.* In projects where calculating the inclusionary requirement results in a fraction of a unit, the fraction shall be paid in the form of an in-lieu fee to the City.

1. Where Government Code Section 65915 does not apply, the in-lieu fee shall be the fractional value of the difference between development cost (excluding marketing costs and profit) and actual sales price for the average comparable unit in projects.

2. Where Government Code Section 65915 does apply, the in-lieu fee shall be the difference between affordable cost for an appropriately-sized household and the fractional value of the average comparable actual sales price for the fraction of the unit in projects to require a density bonus or equivalent incentive.

F. *Use of In-Lieu Fees.*

1. The in-lieu fee shall be used by the City or its designee (such as a non-profit housing development corporation) to provide, construct, or promote the creation or retention of low-income housing in Berkeley.

2. The use of in-lieu fees for specific housing programs shall be brought before the Housing Advisory and Appeals Board for review and approval.

G. *Exceptions.* Where the applicant shows, and the City agrees, that the direct construction and financing costs of the inclusionary units, excluding marketing cost and profit (and also excluding land costs if a density bonus or equivalent incentive is provided), exceeds the sales prices allowed for inclusionary units by this chapter, the Zoning Adjustments Board (ZAB) may approve one or more of the following measures to reduce costs or increase profitability:

1. Reduce the floor area or the interior amenities of the inclusionary units, provided that such units conform to applicable building and housing codes.

2. Increase the number of bedrooms in the inclusionary units.

3. In a home ownership project, construct rental units in a number required to meet the inclusionary provisions of this chapter applicable to rental housing projects.

4. Waive the in-lieu fees for fractions of units. (Ord. 7787-NS § 2 (Exh. A), 2021)

23.328.050 Inclusionary Unit Requirements for Rental Housing Projects.

A. *General Rental Requirements.*

1. All inclusionary units shall be occupied by low, lower, or very low-income households.

2. The maximum rental price for inclusionary units shall be affordable to an appropriate-sized household whose income is 81 percent of the Oakland PMSA median.

~~3. In projects requiring more than one inclusionary unit, at least 50 percent of those units shall be rented at a price that is affordable to low or lower-income households, provided that the City can make available rental subsidies through the federal Section 8 Existing Housing Program or an equivalent program.~~

~~4. When there is an uneven number of inclusionary units, the majority of units shall be priced to be affordable to a household at 50 percent of median income if subsidies are available.~~

~~5. If no rental subsidies are available, all inclusionary unit prices shall be affordable to households at 81 percent income of the Oakland PMSA median.~~

~~6. If an applicant agrees to provide 10 percent Lower-Income inclusionary units, the rental price for such units shall be affordable to a household with income that is 60 percent of the Oakland PMSA median.~~

~~7. Dwelling units designated as inclusionary units shall remain in conformance with the regulations of this section for the life of the building.~~

~~8. The City or its designee shall screen applicants for the inclusionary units and refer eligible households of the appropriate household size for the unit.~~

~~9. For purposes of occupancy, the appropriate household size standards used by the housing authority for the federal Section 8 Existing Housing Program or any future equivalent program shall be used.~~

~~10. The applicant or owner shall retain final discretion in the selection of the eligible households referred by the City.~~

~~11. The owner shall provide the City with data on vacancies and other information required to ensure the long-term affordability of the inclusionary units by eligible households.~~

~~B. *Affordability Defined.* A unit shall be considered affordable if the rent (including utilities) does not exceed 30 percent of a household's gross income.~~

~~1. Gross household income and utility allowance shall be calculated according to the guidelines used by the Berkeley Housing Authority for the federal Section 8 Existing Housing Program.~~

2. For purposes of calculating rent, appropriate household size shall be determined by using the schedule contained in the administrative regulations developed for this chapter. (Ord. 7787-NS § 2 (Exh. A), 2021)

23.328.060 Inclusionary Unit Requirements for Ownership Projects.

A. *General Sale Requirements.* Inclusionary units in ownership projects shall be sold as set forth below:

1. Inclusionary units in ownership projects shall be sold at a price that is affordable to an appropriate-sized household whose income is no more than 80 percent of the area median income reported for the Oakland PMSA for households of that size, unless the cost of development of the unit is greater than the affordable sales price.

2. Appropriate sizes of household and the ratio of income to sales price for affordable units shall be defined by City Manager regulation.

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

B. *Right of First Refusal and Purchaser Preference.*

1. The applicant for a project other than a limited equity housing cooperative is required to give right of first refusal to purchase any or all new inclusionary units to the City or a City designee for a period of not less than 60 days as evidenced by issuance of a certificate of occupancy.

2. Should the City choose not to exercise its right of first refusal, it shall provide the applicant or owner with a purchaser or with a list of eligible purchasers within a period of not less than 60 days.

(a) If the list is not provided, the applicant may select a low-income purchaser of the applicant's choice as long as the City verifies income eligibility and the unit is sold at an affordable price as described in this chapter.

(b) The City shall maintain a list of eligible low-income households and review the assets and incomes of prospective purchasers of the inclusionary units on a project-by-project basis and refer potential purchasers to the applicant or owner.

~~3. All purchasers of inclusionary units shall be first-time home buyers from low, lower, or very low-income households.~~

~~4. Purchasers are also required to occupy the unit except that such requirement may be waived with the approval of the City. In such cases, the unit shall be rented to a low, lower, or very low-income household at a rent affordable by such households.~~

~~5. Preference of inclusionary units are as follows:~~

~~(a) First preference will be given to eligible Berkeley residents.~~

~~(b) Second preference will be given to eligible persons employed in Berkeley.~~

~~(c) Other preferences may also be established administratively, with Planning Commission review, to help meet the City's Housing Element goals.~~

~~6. The City shall advise all prospective purchasers on the City's eligibility list of the resale restrictions applicable to ownership of inclusionary units and shall provide purchasers with a Declaration of Restrictions applicable to ownership of inclusionary units.~~

~~7. Purchasers of inclusionary units in limited equity cooperatives at time of first occupancy shall be first time home buyers with gross incomes no greater than 120 percent of the Oakland PMSA median.~~

~~8. Subsequent purchasers of inclusionary units in limited equity cooperatives shall be first time home buyers whose yearly gross income is no more than 44 percent of the cost of a unit at the time of sale, provided that such income is no more than 110 percent of the Oakland PMSA median.~~

~~C. *Resale Restrictions.* All inclusionary units developed under this chapter except for those in limited equity cooperatives are subject to the resale restrictions set forth below.~~

~~1. Home ownership inclusionary units offered for sale or sold under the requirements of this chapter shall be offered to the City or its designee for a period of at least 60 days by the first purchaser or subsequent purchasers from the date of the owner's notification to the City of intent to sell.~~

~~2. The resale price of the unit shall not exceed the original price and customary closing costs, except to allow for:~~

(a) The lower of any increase of either the Consumer Price Index (CPI) for all urban consumers (as produced by the U.S. Bureau of Labor Statistics or its successor agencies) applicable to the Oakland PMSA; or

(b) The increase as measured in household income guidelines published annually by the U.S. Department of Housing and Urban Development (or its successor agencies) for the Oakland PMSA.

3. The resale formula shall supersede and replace the earlier resale formula in deed restrictions executed between February 19, 1987 (adoption date for Ordinance 5791-N.S.) and May 23, 2006.

(a) The City, or its designee, shall notify each such owner of this change to the resale formula contained in their deed restriction within 60 days of adoption of this section.

(b) All other terms and conditions of these deed restrictions shall remain in effect.

4. If the City does not act on its right of first refusal, the same procedure for new inclusionary units shall be used for selection of a purchaser.

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

6. The City or its designee may monitor resale of inclusionary units in limited equity cooperatives.

7. The City or its designee shall monitor the resale of ownership of inclusionary units.

8. The owners of any inclusionary units shall attach, lawfully reference in the grant deed conveying title of any such inclusionary ownership unit, and record with the County Recorder a Declaration of Restrictions provided by the City, stating the restrictions imposed pursuant to this chapter. Violators of any of the terms may be prosecuted by the City. (Ord. 7787-NS § 2 (Exh. A), 2021)

23.328.070 Special Requirements for Avenues Plan Area.

A. *City Council Findings.* The City Council finds and determines that:

1. The Avenues Plan process identified several regional and Berkeley-specific barriers to housing development.

2. Among the Berkeley-specific barriers were:

~~(a) High land prices;~~

~~(b) Lengthy, difficult, and uncertain permit processes; and~~

~~(c) Insufficient financing, especially for affordable housing projects.~~

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

~~4. The policy to encourage housing in this area is reflected in several documents, including, but not limited to, the City's Housing Element of the General Plan, the Concept Plan for the General Plan revision, the Downtown Plan, the South Berkeley Area Plan, the West Berkeley Plan, and the University Avenue statement of planning of goals.~~

~~5. Despite the City's support for housing in this area, new housing development here has been limited and this has hindered revitalization of the area.~~

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

~~7. These changes will also assist the buyer of below market rate inclusionary units, by allowing buyers to gain greater appreciation on their investments (market conditions permitting), making the investment more similar to conventional home ownership, while retaining the long term affordability of inclusionary units.~~

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

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

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

~~B. *Applicability.*~~

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

2. This section applies on the streets and the addresses listed in Table 23.328-1. The area of applicability consists of the entire C-DMU District and portions of the C-C, C-U, C-SA, C-W, C-N, R-2A, R-3, and R-4 districts as indicated in the table. Within this area, this section supersedes any inconsistent provisions in this chapter.

Table 23.328-1. AVENUE AREAS PLAN AREA: STREET AND ADDRESS RANGE

Street	Address
Acton	1940—2100
Addison	841--1145 odd, 1846 up
Adeline	All
Alcatraz Avenue	1700—1937
Allston Way	1901--1999 odd, 2000 up
Ashby Avenue	1830--2117, 2118--2198 even
Bancroft Way	2000—2300
Berkeley Square	All
Berkeley Way	1200--1800 even only, 1800--1920, 1920--2000 even only, 2000 up
Blake	1800—2100
Bonar	2000—2099
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

C. *Definitions.* For purposes of this section, the following definitions apply:

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

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

(a) Is at least 850 square feet in area if two bedrooms or 1,100 square feet if three bedrooms or more;

(b) Contains at least two lawful bedrooms;

(c) Contains at least as many bathrooms as the corresponding two-bedroom market rate units; and

(d) Is sold at a price that is affordable to an appropriate sized household whose income is no more than 80 percent of the metropolitan area median as reported by the Department of Housing and Urban Development (HUD).

D. *Number of Inclusionary Units Required.*

1. The number of inclusionary units required are shown in the Table 23.328-2.

Table 23.328-2. NUMBER OF INCLUSIONARY UNITS REQUIRED

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

2. For every five units which the applicant can show with bona fide sales documents have been sold at a price at or below that affordable to an appropriately sized household with an income of 100 percent of metropolitan area median, the applicant is released of the obligation to provide one inclusionary unit.

3. For every 10 affordable family-sized units, the applicant is released of the obligation to provide one inclusionary unit sold at a price at or below that affordable to an appropriately sized household with an income of 100 percent of metropolitan area median.

4. Within the area of applicability for that portion of a project wherein both the inclusionary and the non-inclusionary units contain at least as many bathrooms as the corresponding two-bedroom market rate units, only 10 percent of units must be inclusionary.

E. *Pricing Requirements.*

1. The first inclusionary unit in projects with units for sale shall be sold at a price that is affordable to an appropriately sized household whose income is no more than 80 percent of the Oakland PMSA median as reported by HUD.

2. Except as otherwise provided in Section 23.328.070.C.2.d above, the second inclusionary unit shall be sold at a price that is affordable to an appropriate sized household whose income is no more than 100 percent of the PMSA median and subsequent inclusionary units shall be sold alternately at these price levels.

~~3. Inclusionary sale units in projects in the Avenues Plan Area shall be sold at a price such that first year housing cost (including homeowners' association dues, if any) for a household of appropriate size with an income at the targeted level shall not exceed 33 percent of income.~~

~~4. This cost shall be calculated assuming that the buyer makes a 10 percent down payment, which shall not be considered a portion of the cost.~~

~~5. The housing cost shall be calculated for each project at the time the condominium association budget is approved by the California Department of Real Estate and shall not be changed after that time for that project, regardless of future changes in cost.~~

~~6. The resale price of inclusionary units within the Avenues Plan Area may increase at the rate of increase of the Consumer Price Index for all urban consumers (CPI-U) applicable to the metropolitan area. (Ord. 7787-NS § 2 (Exh. A), 2021)~~

~~23.328.080 Administrative Regulations.~~

~~The City Manager or the City Manager's designee shall promulgate rules and regulations pertaining to this chapter, including but not limited to setting and administering gross rents and sale prices, requiring guarantees, entering into recorded agreements with applicants and taking other appropriate steps necessary to ensure that the required Low-Income and very Low-Income dwelling units are provided and occupied by Low-Income households. (Ord. 7787-NS § 2 (Exh. A), 2021)~~

~~23.328.090 Fees.~~

~~The City Council, by resolution, may establish fees for the administration of this chapter. (Ord. 7787-NS § 2 (Exh. A), 2021)~~

23.328.010 Findings.

A. The State of California has established a Regional Housing Needs Allocation (RHNA) process under which it allocates a "fair share" of the regional housing need, updated periodically, to each local jurisdiction. The "fair share" allocated to Berkeley increased significantly based on the regional housing needs determination finalized in late 2021. The sixth cycle of the RHNA for the San Francisco Bay Area allocates to Berkeley a "fair share" that calls for adequate sites for 8,934 housing units for the period from 2023 to 2031, including sites for 2,446 Very Low-Income units, 1,408 Lower-

Income units, and 1,416 Moderate Income units. Under the state Housing Element Law, the City must update its Housing Element to provide adequate sites for its updated “fair share” allocation by 2023.

B. The Bay Area suffers from a shortage of affordable housing. As the Bay Area region experiences increased economic growth and a high demand for housing, housing prices continue to rise, which leads to displacement of low-income residents and exacerbates the shelter crisis that has led to unacceptably high rates of homelessness in the City of Berkeley and the Bay Area region.

C. In 1990, the City established the Housing Trust Fund program to pool available funding for affordable housing development. The Housing Trust Fund program is funded by federal, state, and local revenues, including by in-lieu fees paid by developers of market-rate housing projects under the City’s existing affordable housing ordinances.

D. The City Council hereby finds that there is a legitimate public interest in the provision of affordable housing to address the crises of displacement, homelessness, and lack of housing affordability in the City, and that there is a significant and increasing need for affordable housing in the City to meet the City‘s regional share of housing needs under the California Housing Element Law.

E. The City Council further finds that the public interest would best be served if new affordable housing were integrated into new market-rate residential developments to facilitate economically diverse housing, while providing alternative options to the on-site construction of affordable housing to replenish the City’s Housing Trust Fund program or allow for the construction of affordable housing on land dedicated by market-rate housing developers.

23.328.020 Definitions.

A. “Affordable Unit” means a Residential Unit that is in perpetuity affordable to Very Low-Income Households or Lower-Income Households, as defined in California Health and Safety Code sections 50052.5 and 50053.

B. “Affordable Housing Compliance Plan” means an enforceable commitment by an Applicant to comply with the requirements of this Chapter that identifies the number and type of Affordable Units, the amount of In-Lieu Fees, and/or the parcels of land (or portions thereof) that will be provided and/or paid by the Applicant to comply with those requirements.

C. “AMI” means the area median income applicable to the City of Berkeley, as defined by the U.S. Department of Housing and Urban Development, or its successor provision, or as established by the City of Berkeley in the event that such median income figures are no longer published by the U.S. Department of Housing and Urban Development.

D. "Applicant" means any individual, person, firm, partnership, association, joint venture, corporation, entity, combination of entities or authorized representative thereof, who undertakes, proposes and/or applies to the City for, any residential development.

E. "Housing Development Project" means a development project, including a mixed-use project, involving the construction or title conversion of one or more Residential Units.

F. “Housing Trust Fund” means the program to finance low- and moderate-income housing established by Resolution No. 55,504-N.S., or any successor fund established for the same purpose.

G. "Lower-Income Household" shall mean a household whose income does not exceed the low-income limits applicable to Alameda County, as defined in California Health and Safety Code section 50079.5 and published annually pursuant to Title 25 of the California Code of Regulations, Section 6932 (or its successor provision) by the California Department of Housing and Community Development.

H. “Residential Unit” means, for purposes of this Chapter, any Dwelling Unit, any Live-Work Unit, or any bedroom of a Group Living Accommodation (GLA) except a GLA in a University-recognized fraternity, sorority or co-op; provided, however, that for purposes of this Chapter, “Residential Unit” shall not include any Accessory Dwelling

Unit or Junior Accessory Dwelling Unit that is accessory to a Single Family Dwelling. Residential Units shall not include any density bonus units that an Applicant is entitled to construct under Government Code section 65915.

I. "Very Low-Income Household" shall mean a household whose income is no more than 50% of AMI, as defined in California Health and Safety Code section 50105.

23.328.030 Affordable Housing Requirements.

A. Requirement to Construct Affordable Units

1. Except as otherwise provided in this Chapter, no permit for the construction of any Housing Development Project shall be issued unless at least 20% of the Residential Units are Affordable Units.

2. In lieu of providing Affordable Units pursuant to Paragraph 1, an Applicant may comply with this Chapter by providing Affordable Units that comprise at least 20% of the residential square footage of the Housing Development Project, provided that each of the affordable units is either a two-bedroom or three-bedroom unit.

3. Affordable Units shall be (a) reasonably dispersed throughout the Housing Development Project; (b) on average, the same size as and contain the same number of bedrooms as other Residential Units in Housing Development Project (provided, however, that no affordable unit may have more than three bedrooms); and (c) comparable to other Residential Units in the Housing Development Project in terms of appearance, materials, and finish quality. Residents of Affordable Units shall have access to the same common areas and amenities that are available to residents of other Residential Units in the Housing Development Project.

4. At least 50% of the required Affordable Units in the Housing Development Project shall be offered for rent at a rent that is affordable to Very Low-Income Households, up to a maximum requirement of 10% of the total units in the

Housing Development Project if the project provides more Affordable Units than are otherwise required by this Chapter.

5. In determining whether a unit is affordable to Very Low-Income or Low-Income Households, maximum allowable rent for any affordable unit shall be reduced by an amount equal to the value of the City-published utility allowance provided for Tenant-paid utilities and any other mandatory fee imposed by the property owner as a condition of tenancy.

6. Any increase in rent of an occupied Affordable Unit shall be no greater than the increase in the Consumer Price Index for All Urban Consumers (CPI-U) in the San Francisco-Oakland-San Jose region as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics, for the twelve-month period ending the previous December 30 but not to exceed the corresponding increase in AMI for the same calendar year.

7. All Affordable Units shall be subject to a recorded affordability restriction requiring in perpetuity that each Affordable Unit be sold at an affordable sales price or offered for rent at an affordable rent, as defined this Chapter.

8. The City Manager or their designee shall adopt rules and regulations (a) establishing the affordable sales price or affordable rent for each Affordable Unit, consistent with the requirements of Health and Safety Code sections 50052.5 and 50053; and (b) ensuring that Affordable Units are sold or rented to Very Low-Income and Lower-Income Households, consistent with the requirements of this Chapter.

9. Affordable Units designated for Very Low-Income Households shall be offered for rent to tenants receiving assistance under the Section 8 Program (42 U.S.C. Section 1437f), the Shelter Plus Care Program (42 U.S.C. Section 11403 *et. seq.*), or any similar state or federally funded rent subsidy program prior to being offered to other potential tenants.

10. Inclusionary Live-Work Units shall be affirmatively marketed by the developer of a project to income-eligible persons performing a work activity permitted in the district where the project is located whose type of work causes them to have a requirement for a space larger in size than typically found in residential units.

11. The owner of any Affordable Unit offered for rent must report to the City annually the occupancy and rents charged for each Affordable Unit, and any other information required pursuant to rules and regulations adopted by the City Manager or their designee.

12. An Affordable Unit that is constructed to qualify for a density bonus under Government Code section 65915 that otherwise meets the requirements of this Chapter shall qualify as an Affordable Unit under this Chapter.

B. Option to Pay In-Lieu Fee

1. In lieu of providing some or all of the Affordable Units required under this Chapter (including any fractional units), an Applicant may elect to pay a fee, the amount of which the City Council may establish by resolution ("In-Lieu Fee"). The City Council may by resolution differentiate among types, classes, and locations of Housing Development Projects to the maximum extent permitted by law; may establish separate fees and criteria for the provision of units that are affordable to Very Low-Income Households and units that are affordable to Low-Income Households; and may establish the method for calculation of the In-Lieu Fee.

2. Up to 15 percent of In-Lieu Fees collected may be used to pay for administration of the In-Lieu Fee or the Housing Trust Fund program. At least 85% of In-Lieu Fees collected shall be deposited into a fund designated for use in the City's Housing Trust Fund program.

3. All In-Lieu Fees shall be paid prior to the issuance of a Certificate of Occupancy, or if no Certificate of Occupancy is required, prior to the occupancy of the Housing Development for any purpose.

C. Land Dedication Option

1. The requirements of this Chapter may be satisfied by the dedication of land in lieu of constructing Affordable Units within the Housing Development Project if the City Manager or their designee determines that all of the following criteria have been met:

a. Marketable title to the site is transferred to the City, or an affordable housing developer approved by the City, prior to the commencement of construction of the Residential Development pursuant to an agreement between the Applicant and the City.

b. The site has a General Plan designation that authorizes residential uses and is zoned for residential development at a density to accommodate at least the number of Affordable Units that would otherwise be required under Paragraph A.

c. The site is suitable for development of the Affordable Units, taking into consideration its configuration, physical characteristics, location, access, adjacent uses, and applicable development standards and other relevant planning and development criteria including, but not limited to, factors such as the cost of construction or development arising from the nature, condition, or location of the site.

d. Infrastructure to serve the dedicated site, including, but not limited to, streets and public utilities, are available at the property line and have adequate capacity to serve the maximum allowable residential density permitted under zoning regulations.

e. The site has been evaluated for the presence of hazardous materials and for the presence of geological hazards and all such hazards are or will be mitigated to the satisfaction of the City prior to acceptance of the site by the City.

f. The value of the site upon the date of dedication is equal to or greater than the in-lieu fee that would otherwise be required under Paragraph A.

2. The City shall solicit proposals from affordable housing developers to construct restricted income units on the site dedicated to the City, but if the City is unable to obtain a qualified affordable housing developer to construct a viable affordable housing development on the property within two years of its solicitation or to commence construction within five years, the City may sell, transfer, lease, or otherwise dispose of the dedicated site for any purpose. Any funds collected as the result of a sale, transfer, lease, or other disposition of sites dedicated to the City shall be deposited shall be deposited into a fund designated for use in the City's Housing Trust Fund program.

D. Optional Density Bonus for Small Projects. A Housing Development Project having 20 or fewer Residential Units (including any density bonus units authorized under this Paragraph) shall be entitled to a density bonus of 35 percent, provided that the Applicant complies with the requirements of this Section solely by paying an In-Lieu fee, the amount of which shall be established by resolution of the City Council. An applicant that elects to use the optional density bonus for small projects shall not be permitted to combine the bonus available under this paragraph with a State Density Bonus pursuant to Gov. Code section 65915 et seq. For purposes of this Paragraph, a "density bonus" means a density increase over the otherwise maximum allowable gross residential density under the zoning ordinance as of the date an application is complete or, if applicable, a preliminary application is submitted.

23.328.040 Waiver or Modification of Affordable Housing Requirements.

A. The City Manager or their designee may waive or modify the requirements of this Chapter at their sole discretion where any of the following conditions are established:

1. A project providing low- or moderate-income housing is funded in whole or in part by the City's Housing Trust Fund program;

2. The implementation of the requirements of this Chapter would violate the rights of any person under the California or United States Constitutions, any federal law, or any state law governing a matter of statewide concern and applicable to a charter city; or

3. The benefits of the project to the City outweigh the detriment of foregoing the provision of Affordable Housing or the contribution of In-Lieu fees to the Housing Trust Fund program. In weighing the benefits and detriment to the City, the following factors may be considered:

a. The impact of the requirements of this Chapter on the feasibility of a Housing Development Project;

b. Other economically beneficial uses of the Applicant's property;

c. The burdens the Housing Development Project places on the City in terms of increased demand for affordable housing, child care, public facilities or amenities, or other impacts which reasonably may be anticipated to be generated by or attributable to the Housing Development Project; and

d. The impact on the Housing Trust Fund program of foregoing the payment of any In-Lieu fee that would otherwise be made.

B. The Applicant shall bear the burden of proof to establish eligibility for a waiver or modification of the requirements of this Chapter.

23.328.050 Implementation.

A. The Applicant for any Use Permit or Zoning Certificate for a Housing Development Project shall submit an Affordable Housing Compliance Plan to the Zoning Officer. The Affordable Housing Compliance Plan, as modified by the Zoning Officer or Board, may be incorporated as a condition of approval of any Use Permit or Zoning Certificate issued to the Applicant. The Affordable Housing Compliance Plan must be submitted and approved by the City as a condition of approval for any Building Permit.

B. The City Manager or their designee may promulgate additional rules and regulations consistent with the requirements of this Chapter.

C. The City Council may by resolution establish fees for the implementation and administration of this Chapter and may establish administrative penalties for violations of this Chapter.

Section 5. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

RESOLUTION NO. _____

ADOPTING REGULATIONS FOR VOUCHER PROGRAM AND ESTABLISHING AN IN-LIEU FEE TO SUPPORT THE PROVISION OF AFFORDABLE HOUSING PURSUANT TO BERKELEY MUNICIPAL CODE SECTION 23C.12.030.B and RESCINDING RESOLUTION 65,074-N.S.

WHEREAS, Berkeley Municipal Code ("BMC") Section 23.328 establishes a requirement that 20% of Residential Units (as defined) in market-rate developments be offered for rent or sale at affordable rents or prices, as defined ("Affordable Units");

WHEREAS, BMC Section 23.328 authorizes the City Council to establish by resolution preferences for renting Affordable Units offered for rent to tenants receiving assistance under the Section 8 Program (42 U.S.C. Section 1437f), the Shelter Plus Care Program (42 U.S.C. Section 11403 *et. seq.*), or similar state or federally funded rent subsidy program;

WHEREAS, BMC Section 23.328 authorizes developers of market-rate housing to pay a fee in lieu of complying with the requirement to provide on-site affordable housing ("In-Lieu Fee");

WHEREAS, BMC Section 23.328 authorizes the City Council to establish the In-Lieu Fee by resolution, and further authorizes the Council to differentiate among types, classes, and locations of Housing Development Projects to the maximum extent permitted by law; to establish separate fees and criteria for the provision of units that are affordable to Very Low Income Households and units that are affordable to Low Income Households; and to establish the method for calculation the In-Lieu Fee;

WHEREAS, the City retained Street Level Advisors to provide analysis and recommendations for updating the City's affordable housing requirements, the scope of which included a financial feasibility study of the City's affordable housing mitigation fees;

WHEREAS, Street Level Advisors prepared a Financial Feasibility Analysis dated April 27, 2021, which determined that an affordable housing fee of $45 per residential square foot would be financially feasible;

WHEREAS, Street Level Advisors recommended certain modifications to the $45 per residential square foot affordable housing fee that would not adversely impact the financial feasibility of housing development projects, including (1) differentiating between fees for units that are affordable to Very Low-Income Households and Low-Income Households ("Very Low-Income Units" and "Low-Income Units," respectively); and (2) charging a lower / tiered fee for smaller projects.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley as follows:

1. The In-Lieu Fee authorized and provided for by BMC Section 23.328 shall be $45 per Residential Square Foot (defined as the gross square footage within all of the dwelling units, less any credit for on-site Affordable Housing Units), and shall be automatically increased annually based on changes the California Construction Cost Index unless otherwise provided for by BMC Section 23.328 or by this Resolution.

2. For Housing Development Projects having a Residential Square Footage of less than 12,000 square feet, the In-Lieu Fee shall be calculated as follows:

Gross Residential Square Feet	Fee per Square Foot
12,000+	$45
11,000-11,999	$43
10,000-10,000	$41
9,000-9,999	$39
8,000-8,999	$37
7,000-7,999	$35
6,000-6,999	$33
5,000-5,999	$31
4,000-4,999	$29
3,000-3,999	$27
2,000-2,999	$25
1,000-1,999	$23
<1,000	$21

3. All Very Low-Income Units must be offered to tenants receiving assistance under the Section 8 Program (42 U.S.C. Section 1437f) or the Shelter Plus Care Program (42 U.S.C. Section 11403 *et. seq.*) before being marketed to other income-eligible households. The allocations shall be divided equally between the Section 8 Program (50%) and the Shelter Plus Care Program (50%). The majority of the Very Low-Income units shall be designated for the Shelter Plus Care Program when there is an uneven number of units.

4. Exemptions. The In-Lieu Fee shall be waived for the following Housing Development Projects:

    a. Residential Units offered at no cost to support nonprofit public benefit activities.

    b. A Residential Unit that replaces a unit that has been destroyed by fire, earthquake or other disaster, if the applicant files a complete permit application within two years after destruction of any such Residential Unit; provided, however, the In-Lieu Fee shall be assessed on any net increase in gross Residential Square Footage.

    c. A Residential Unit that is expanded, renovated, or rehabilitated unless the unit was vacant for more than two years before the applicant filed a complete permit application for such expansion, renovation or rehabilitation, in which case the fee will apply to the net new Residential Square Footage.

5. Notwithstanding anything to the contrary, the City Manager or their designee may waive all or part of the In-Lieu Fee adopted by this Resolution pursuant to BMC Section 23.328.

BE IT FURTHER RESOLVED that Resolution 65,074-N.S. is hereby rescinded.

Street Level Advisors

Updating Affordable Housing Requirements for The City of Berkeley, CA

Analysis and Recommendations

Revised February 2022[1]

[1] Previous version: 4/27/21. See 5/5/21 PC Meeting - Item 9 – Attachment 1: https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2021-05-05_PC_Item%209(1).pdf

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Summary of Proposed Changes

	CURRENT	PROPOSED OPTION(S)
Ordinance	***Rental***: Affordable Housing Mitigation Fee (BMC 22.20.065)	Affordable Housing Requirements Ordinance (one ordinance that addresses requirements for rental, ownership and live/work units)
	Ownership: Inclusionary Housing Requirements (BMC 23C.12)	
On-site Unit Income Targets	***Rental***: 10% of total units @ 50% of AMI, 10% of total units at 80% of AMI	No change
	Ownership:20% of total units @ 80% of AMI	
Base Fee	***Rental***: $39,746 per market rate unit	$45 per gross residential square foot
	Ownership: 62.5% of the difference between market and affordable price for inclusionary unit.	
VLI Incentive	40% of VLI units marketed to Housing Choice Voucher holders, 40% to Shelter+Care holders.	All VLI Units must be offered to voucher holders first (50% to Housing Choice and 50% to Shelter + Care).
Mixed Compliance Incentive	Projects that provide less than 20% on-site receive the same reduction in fee whether units are VLI or LI	More expensive/higher need VLI units reduce remainder fee by more than LI units.
Live Work and GLA	Live Work Ordinance (BMC 23E.20) exempts projects from IH and AHMF, requires 20% of live work units be affordable at 80% of AMI. Units with Group Living Accommodations (GLA) occupancy are also exempt.	Remove special exemption for Live Work and GLA units. Affirmative marketing of Live Work units to artists/others who need larger units still required.
Land Dedication	None	Create new Land Dedication Option
Family Size Unit Incentive	None	Projects that provide 2 and 3-bedroom BMR units may choose to provide 20% of total Residential Square Feet instead of 20% of units.
Condo Conversion	Nexus Fee calculation or 8% of market value. 50% reduction in fee for owner occupied units	8% of market value. 50% reduction expanded to include tenants who buy units at conversion, and nonprofit/cooperative/cohousing projects
Maximum Unit Size	None	Projects with average unit size >3BR may not choose on-site unit option
Small Project Exemption	Projects with <5 units are exempt	Exemption removed; Reduced fee for projects with fewer than 12,000 gross residential square feet, phased in as size increases. Offer a local density bonus to projects providing <5 BMR units that

		choose in lieu fee.
Cap on rent increases	BMR Unit rents increase along with HUD Area Median Income	Limit annual rent increases to the change in the Consumer Price Index

Overarching Goals for Updating Requirements:

Center racial and economic equity by reversing exclusionary zoning

Berkeley has committed to pioneering policies that attempt to undo some of the harm caused by exclusionary zoning practices. In addition to its rent control and tenant protection policies, the City's Inclusionary Housing requirements are central to its efforts to build a more racially and economically integrated future.

Two key goals of the program are to ensure that affordable housing is included in all parts of the City and to promote the inclusion of affordable units within market-rate housing.

There has been quite a bit of academic research into the benefits of economic integration and the emerging consensus is that the location of affordable housing matters.[2] Much of the City's affordable housing is concentrated in neighborhoods with the greatest health and safety challenges and the least economic opportunity. Integrating affordable housing into every neighborhood offers significant health and economic advantages, particularly for low-income children. While the same research has consistently not found additional benefits from locating affordable units in the same buildings as market rate housing (beyond the neighborhood benefits), requiring affordable units in new market rate buildings has been a key way that cities have succeeded in locating affordable housing in certain 'high opportunity' neighborhoods.

Currently, both the Affordable Housing Mitigation Fee (AHMF) and Inclusionary Housing Requirements (IHO) ordinances allow developers to choose to either provide on-site units or pay a fee into the City's Affordable Housing Trust Fund program. Several recent Council referrals have focused on either reducing or eliminating the fee option in order to encourage more on-site affordable housing units in mixed income buildings. Other council referrals have called on the City to encourage payment of fees, which allow investment in non-profit owned 100% affordable projects. These projects leverage outside affordable housing funding to build more units at deeper levels of affordability and also offer critical social services.

While increasing the share of on-site affordable units continues to be an important community goal, it is important to note that this is not the only way that Berkeley is achieving the goal of

[2] The Urban Institute compiled a very helpful summary of several dozen research studies on the benefits of mixed income communities. *urban.org/uploadedpdf/412292-effects-from-living.pdf*

overcoming the legacy of segregation. Most of Berkeley falls into what is generally considered a moderate- to high-opportunity area, in part because the City offers high-quality schools to students regardless of which neighborhood they live in. At the same time, Berkeley has been successful in locating nonprofit affordable housing in most parts of the City. These broader realities reduce the pressure on the City's inclusionary housing policy to produce affordable units on-site in every building and allow the City to pursue a balanced strategy of private and publicly sponsored provision of affordable housing in every neighborhood. An appropriate goal might be for the City to target a mix of on-site units in most market rate buildings while maintaining the collection of critical fees to support nonprofit affordable properties.

Though our analysis confirmed that Berkeley's current rules appear to strongly favor payment of the fee, the actual record of projects over the past few years paints a different picture and shows that Berkeley's current policy is already achieving this kind of mix, with the majority of projects providing on-site units and paying a prorated fee.

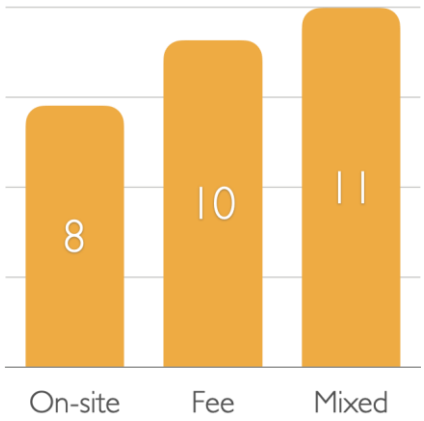
Currently, providing an on-site affordable unit is generally far more costly to a developer than paying the associated fee. Just as an example, Street Level Advisors calculated that for a hypothetical Berkeley rental property, providing one on-site Very Low Income unit would reduce the resale value of a building by about $483,000. One on-site Low Income unit would reduce the building value by $340,000. Opting out of providing either of those units would require payment of an Affordable Housing Mitigation Fee totaling only $198,730.[3] While the specifics differ for each building based on the local market rents, in this example on-site costs more than twice as much as paying the current fee.

We estimate that the current AHMF costs roughly $45 per gross residential foot, and the on-site requirements cost a typical project roughly $114 per foot.

In spite of this, between 2012 and 2020 nearly two-thirds of Berkeley's projects have included some affordable units on-site and just under one-third have fully complied through the on-site option. Figure 3 shows that the mixed compliance option (some units plus some fee) has been the most popular option. There are likely several reasons for this, including political pressures, but one clear factor is the State Density Bonus (SDB). The State requires cities to allow developers who include affordable units to build more units on a site than would otherwise be allowed and to take advantage of certain planning and zoning concessions which make it easier to get projects built. Under the current rules, projects that provide at least 11% of their base project units affordable to Very Low-Income residents qualify for the maximum benefit under the Density Bonus. These benefits cause many Berkeley projects to include 11% affordable units on-site and pay the fee for the remaining units. A recent change to state law will allow a 50% density bonus to projects that provide 15% VLI units (among other options). This change should result in even more on-site units in Berkeley even under the current City ordinance.

[3] Because Berkeley requires $39,746 per unit or 1 on-site unit for every 5 units (20%), every on-site unit that is included reduces the fee by 5 times $39,746.

FIGURE 1: Compliance Option Selected 2012 - 2020



Encourage a mix of units and fees

The changes proposed below clarify Berkeley's policy to make on-site affordable units the preferred default requirement for both rental and ownership projects but allow payment of a fee as an alternative in order to:

1) continue to generate significant fee revenue to support nonprofit affordable housing projects throughout the City, and
2) offer flexibility for projects to choose between multiple compliance options depending on different circumstances.

Ideally, the proposed changes will encourage a mix of fees and units over time with fees coming primarily from projects where on-site units would be less feasible (e.g. due to economies of scale) or more difficult to monitor.

The proposed Affordable Housing Requirements ordinance would be structured so that providing on-site units is the default requirement for nearly all projects, with an exception for small projects and co-living type projects which would be encouraged to pay the fee. It might be possible to remove the fee option entirely, but state law requires cities to offer multiple compliance options such as a fee in their inclusionary housing ordinances. Ideally, the program would be structured such that the cost to a project of providing units on-site is more similar to the cost of paying the fee. This would maintain flexibility but reduce the incentive to pay the fee rather than provide units.

Over time, strong demand for housing in Berkeley should mean that higher fees are practical, but our analysis of current market conditions suggests that 2021 is a particularly risky time to raise Berkeley's housing fees. The Covid-19 pandemic has created uncertainty in the real estate market and led to falling rents throughout the region. The multi-family rental prototypes we studied earned returns that were just barely above the minimums required for financial feasibility. The recommendations below call for restructuring the fee to be calculated on a per square-foot basis but setting it, for the moment, at a level which is financially comparable to

the current fee for most projects. Once the housing market has recovered from the effects of the pandemic, we recommend evaluating a fee increase which would bring the cost of the fee option closer to the cost of on-site compliance.

More immediately, the proposed changes recognize the growing popularity of mixed compliance based on the State Density Bonus and aim to increase the number of on-site units primarily by increasing the prevalence of these mixed compliance projects. Together these changes should increase the number of affordable units provided on-site within market rate projects throughout Berkeley without dramatically reducing the affordable housing fee revenue that the City's HTF program receives.

Continue Berkeley's legacy of value capture

A key goal of Berkeley' inclusionary housing ordinance and Affordable Housing Mitigation Fee has been to ensure that new real estate development projects in Berkeley contribute benefits for the whole community. This principle of Public Value Capture (or Land Value Capture) calls on the City to closely evaluate the profitability of real estate projects and set its housing requirements at a level which captures a share of the profits to support housing for our lowest income residents. Careful value capture requires close attention to the financing and economic realities of development in order to ensure that the City is capturing the appropriate amount of financial returns.

Appendix A contains a detailed description of Street Level Advisors financial feasibility study. Building on past studies conducted in support of Berkeley's Affordable Housing Mitigation Fee, we analyzed a single hypothetical rental and a single condominium building prototype in order to better understand the financial feasibility of these projects under the current program and under the proposed changes described below.

For rental projects, our model suggests that most projects would not be able to feasibly comply with the current 20% on-site requirement but that projects that choose to pay the fee or access the State Density Bonus by providing some units on-site and paying a partial fee would both earn returns that are just barely above the threshold we identified for feasibility (5% yield on cost). The returns for density bonus projects are comparable to the fee alternative because the additional cost of providing some units on-site is offset by the additional benefit of building more units on the same site.

For our rental prototype (described in Appendix A), the proposed fee of $45 per gross square foot results in a virtually identical return to what the project would see under the current fee. A higher fee ($55 per square-foot) would result in a marginal return. The proposed approach of providing more 'credit' for projects that provide on-site VLI units than those that provide LI units results in modest increases in the returns available to mixed compliance projects that take advantage of the State Density Bonus. While this small difference is not critical for this prototype, it is likely that there would be projects where this difference would result in on-site

affordable units in projects that would otherwise have paid the fee entirely (or not moved forward at all).

Figure 2: Comparison of Returns - Rental

Scenario	Base Units	Bonus Units	LI Units	VLI Units	Fee $	Yield on Cost	% of Base	% of Total
Current Policy								
$39,746 Per Unit Fee	72	0	0	0	$2,861,712	5.08%	0%	0%
Onsite Units	72	0	7	7	$0	4.94%	19%	19%
Mixed Compliance - 11% VLI	72	25	0	8	$2,265,522	5.07%	11%	8%
Mixed Compliance - 15% VLI	72	36	0	11	$2,106,538	5.10%	15%	10%
Proposed Alternatives								
$45 Per Foot Fee	72	0	0	0	$2,967,750	5.07%	0%	0%
$55 Per Foot Fee	72	0	0	0	$3,627,250	4.99%	0%	0%
Mixed Compliance (Weighted) - 11% VLI	72	25	0	8	$2,350,809	5.10%	11%	8%
Mixed Compliance (Weighted) - 15% VLI	72	36	0	11	$2,184,925	5.12%	15%	10%

For ownership projects, there is no Yield on Cost metric; feasibility is generally evaluated based on the profit from sales as a percent of the total development cost. Because there have been very few recent condo projects in Berkeley, it is not possible to identify the exact threshold for feasibility. One common benchmark considers projects that earn more than 10% profit to be 'feasible." We found that neither the current fee nor the current on-site requirement resulted in profit as a percent of development cost above this 10% threshold. The proposed switch to a $45 per square-foot fee would result in profit just above 10% while a higher $55 per square-foot fee would result in profit closer to 9%.

Figure 3: Comparison of Returns - Ownership

Scenario	Total Units	LI Units	Fee $	Profit % of Cost
Current Policy				
Current Fee (based on sale prices)	56	0	$3,810,847	8.00%
Onsite Units	56	11	$0	1.13%
Proposed Alternatives				
$45 Per Foot Fee	56	0	$2,767,050	**10.88%**
$55 Per Foot Fee	56	0	$3,381,950	9.16%

Continue progress on housing goals

The Bay Area and the Berkeley community need more housing. Rapidly rising housing costs and growing displacement pressures are the result of a systemic shortage of housing. While building more housing alone would not be sufficient to address the current inequities, we cannot

overcome our housing challenges without building significantly more housing. The Regional Housing Needs Allocation (RHNA) requires Berkeley to permit nearly 9,000 new homes at all income levels during the period from 2023 to 2031.

To meet this historic challenge, Berkeley's affordable housing policies must balance two critical but competing goals.

1) We must set affordable housing requirements high enough to produce meaningful levels of affordable housing, and
2) We must ensure that they are not too high for developers to accommodate.

If Berkeley sets its requirements too low, it may see construction that only serves to further existing inequity and racial exclusion. But if requirements are set too high, the result could be that little or no new housing is built, which would itself perpetuate the inequities which drive ongoing displacement of existing residents and push prices and rents up to levels which effectively prevent new low- and moderate-income households, including many households of color, from moving to Berkeley.

Berkeley's current affordable housing requirements (both the on-site requirements and the fee options) are somewhat higher than other East Bay jurisdictions (see Figure 6 below). But in spite of the relatively high costs, construction is continuing in Berkeley. Even during the pandemic, builders continue to undertake new residential projects. This suggests that Berkeley's requirements do not dramatically overburden development. However, Street Level Advisors' feasibility analysis (Appendix A) finds that the current requirements are only marginally financially feasible in today's environment. This suggests that Berkeley could see more building overall - including more affordable housing development - by slightly reducing the cost of compliance for some projects.

The proposed changes include many small adjustments to current requirements intended to make it easier for developers to understand and comply with program rules and for the City to oversee and administer. This will also facilitate transparency for the community at large. These changes are explicitly intended to make it easier to build the new housing that Berkeley desperately needs. However, the proposed changes attempt to achieve this while simultaneously maintaining or increasing the overall contribution that new market-rate housing makes to the provision of affordable housing in Berkeley.

Under the proposed changes, some types of projects are asked to contribute more and others less (relative to the existing inclusionary requirements), but the goal is to maintain or increase the number of on-site units and the amount of fees available to the HTF program. The proposed changes do this by reducing the fee assessed to projects with relatively smaller units and increasing the fee on projects with large or extra large units. They will also slightly reduce the fee due from projects that provide some units on-site. These changes should encourage more projects to build some units on-site while also improving overall feasibility so that more housing projects are able to move forward.

Work within the City's existing administrative capacity

Berkeley's current affordable housing requirements are among the most complex in the region, but the City has fewer administrative staff than many other jurisdictions. HHCS currently has a total of 1.3 FTE to implement the BMR program:

- 0.20 FTE to work on new projects (apply requirements, meet with applicants, draft and execute regulatory agreements);
- 1.0 FTE monitor for completed projects, funded by an annual monitoring fee on BMR units; and
- 0.10 FTE related policy work and program supervision.

Adopting changes to the City's affordable housing requirements that increase administrative requirements would only be possible if new General Funds could be identified to support the implementation. As the City's BMR portfolio expands, funding for an additional monitor should be a consideration as well. Implementing local affordability requirements is not an eligible use of federal funds, so local funds are required to support this activity.

The proposed changes described below add complexity to the rules in several places but attempt to offset the complexity by streamlining and eliminating administrative challenges in several other places. The goal is to design a program which the City can successfully implement with existing staffing resources.

Proposed Changes in Detail:

1. Consolidate Affordable Housing Requirements into a single framework

Proposed Changes:

1.1. Combine the requirements of the Affordable Housing Mitigation Fee (AHMF) and Inclusionary Housing (IH) ordinances into a single "Affordable Housing" ordinance which would impose on-site affordable housing requirements for both ownership and rental projects.

1.2. The fee would be structured as an "in lieu fee" offered as an alternative to on-site units, rather than as a mitigation fee.

1.3. The new ordinance would also replace the affordable housing requirements sections of the Condo Conversion and Live/Work ordinances.

1.4. To the extent possible, standardize the requirements that are applied to different projects to simplify implementation of the program.

1.5. The new ordinance would apply to all new project applications received after a date specified several months after adoption.

Background and Analysis:

Prior to 2009, Berkeley had a single Inclusionary Zoning Ordinance (BMC Chapter 23C.12) which applied to both ownership and rental projects. In 2009, a Court of Appeals decision known as *Palmer/Sixth Street Properties LP v. City of Los Angeles* prevented California jurisdictions from enforcing inclusionary housing requirements on rental properties. Like many other cities, Berkeley responded by adopting an Affordable Housing Mitigation Fee (AHMF) (BMC section 22.20.065). Instead of requiring on-site units and then offering an in lieu fee as an alternative, the AHMF ordinance requires payment of a fee and allows the provision of on-site units as an alternative. This approach allowed Berkeley to achieve its policy goals without violating the restrictions imposed by the Palmer decision. But it created a situation in which the City had two different ordinances that attempt to impose similar requirements. The provisions of the Inclusionary Housing Ordinance that applied to rental housing remained in the Berkeley Municipal Code but were unenforceable and superseded by the AHMF ordinance.

In 2018, the California Legislature passed AB1505 which effectively overturned the Palmer decision and authorized the implementation of inclusionary housing requirements applied to rental properties. This legislation has allowed a number of cities to update their programs to combine rental and ownership requirements under a single inclusionary housing ordinance.

For example, in June 2019, the Mountain View City Council completed a two-phase process to update its Below Market Rate Program requirements. Mountain View now requires any new residential development, whether rental or ownership, to provide 15% of its units at affordable

rents.[4] Similarly, after suspending its inclusionary rental housing requirement in 2011 to comply with the Palmer decision, the City of Menlo Park updated its Below Market Rate Housing Program to subject all new residential developments to its affordable housing requirements.[5]

Berkeley's new Affordable Housing Requirements (AHR) ordinance would address both rental and ownership projects (including Live/Work and Group Living Accommodations) and would impose an on-site affordable housing requirement for both while allowing payment of an in lieu fee.

2. Calculate the fee on a per square-foot basis

Proposed Change:

2.1. Calculate affordable housing fees on a per square-foot basis instead of per unit. Initially set the fee at $45 per gross residential square foot, which is roughly equivalent to the current fee for projects with typically sized units. Collect the fee at the time of Certificate of Occupancy eliminating the current discount for earlier payment. Increase the fee amount automatically based on the change in the California Construction Cost Index.

Background and Analysis:

Some stakeholders have expressed concerns that projects that propose units with large numbers of bedrooms are not being required to pay an appropriate fee. Because Berkeley charges its AHMF on a per unit basis, a project that chooses to include a number of 5-bedroom units for example, would pay far less proportionally than a similarly sized project with studio, 1- and 2-bedroom units. It is not clear whether this savings is enough to cause developers to choose much larger bedroom configurations since these large unit 'co-living' projects are a trend nationwide. But it is clear that Berkeley's ordinance creates an incentive for projects that select this configuration and there does not seem to be a public policy reason for Berkeley to prefer these extra-large units. While there are benefits to projects that include 'family sized' 2 and 3-Bedroom units (discussed in proposed change #9 below), beyond 3 bedrooms, new units are generally housing multiple unrelated individuals rather than families.

A number of cities have changed to calculating in lieu fees on a per square-foot basis. San Francisco and Santa Barbara both made this change in 2019 and San Jose made a similar change in early 2021. Instead of charging a flat fee per unit, the City would charge the fee for each square foot of residential space in the building regardless of how the building is divided up into

[4] City of Mountain View, Below Market Rate Program, https://www.mountainview.gov/depts/comdev/preservation/homebuying/bmrhousing/default.asp

[5] City of Menlo Park, BMR Requirements for Residential Developers, https://www.menlopark.org/DocumentCenter/View/1493/BMR-Requirements-for-Residential-Developers

units. As an example, a 25,000 square foot building would pay the same fee whether it was split up into 50 small studios or 15 multi-bedroom co-living units.

Currently, in Berkeley, every rental project would pay $39,746 per unit (assuming that they provided no units on-site). For a typical project, this is equivalent to a fee of $45 per gross residential square foot, as illustrated in the table below.

“Gross Square Feet – Residential” is defined as all of the square footage of a new building (as defined in BMC 23F.04.010) minus any exclusively commercial space or indoor parking area. In a typical project, the gross square footage is roughly 1.25 times the net square footage.

We conducted a market analysis in order to estimate a per square-foot fee which would be equivalent to the current AHMF. We collected data on the unit sizes of 18 recent Berkeley projects. We then multiplied the average unit sizes by 1.25 to estimate the gross square footage of each of these projects. For each project, we calculated an ‘equivalent per square-foot fee’ by dividing the fee that the project would have paid under the current rules (assuming no on-site units) by the gross square footage. The equivalent per square-foot fees ranged from $38 to $65. The typical fee was approximately $45 which corresponds to an average unit size of 705 square feet.[6] Figure 4 shows the distribution of average unit sizes and equivalent square foot fees.

Figure 4: Impact of unit size on equivalent square foot fee calculation

[6] This excludes several outlier projects with very large or very small units.

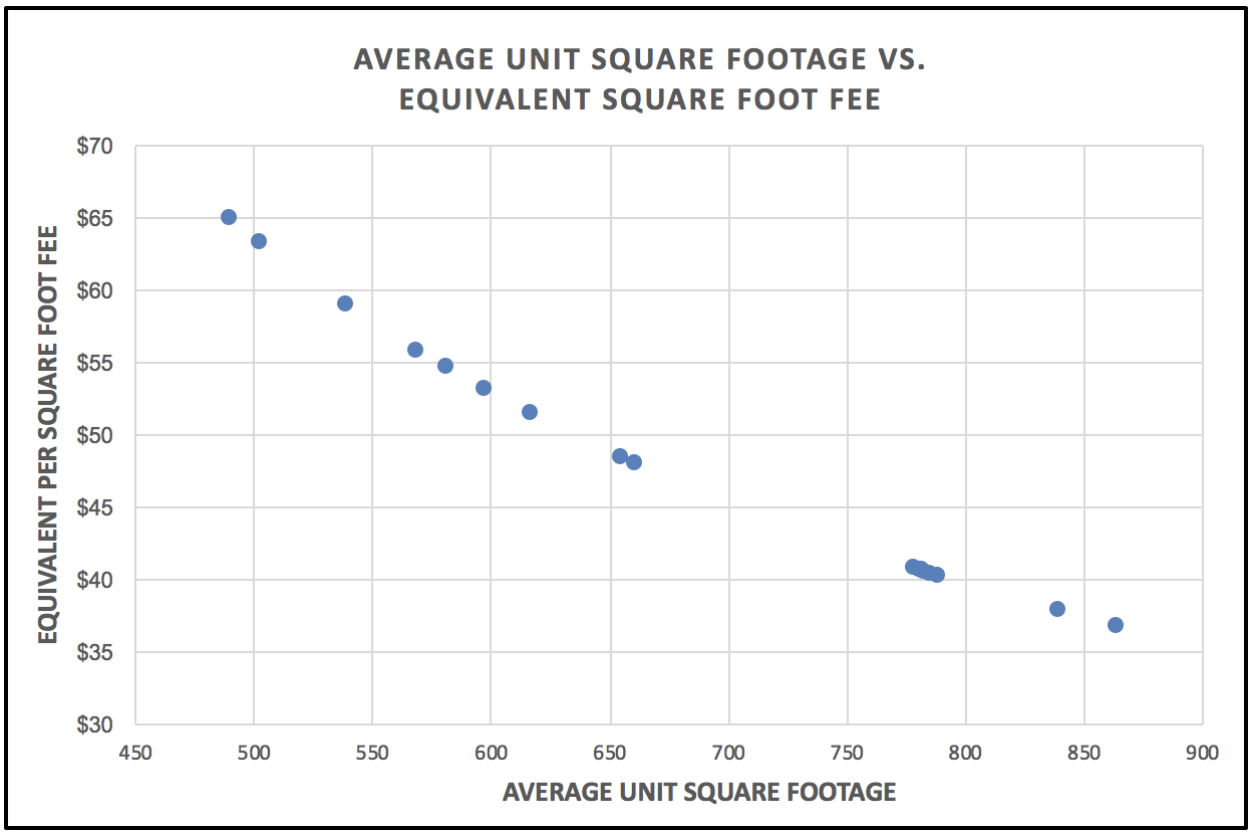


Figure 5 shows a sample of recent projects in order to illustrate the impact of switching to a per square-foot fee. Under the current per unit fee, projects that have the same number of units like Avalon and Hillside Village would pay the same amount of fee. The equivalent per square-foot fees ($37.91 vs. $48.14) show that Avalon is getting a much better deal by paying less relative to its size.

The per square-foot fee adjusts for the difference in project sizes. If Berkeley switched to a standard fee of $45 per square-foot, projects with small units such as the Delaware Apartments would pay a lower total fee while projects with large units such as Higby would pay higher total fees.

Figure 5: Equivalent per foot fees for recent projects - Examples

Project Name	Total Units	Average Unit Square Footage	Current Fee (Assuming $39,746 per unit)	Equivalent Per square-foot Fee	Projected Fee (assuming $45/sq.foot)
Higby	98	864	$3,895,108	$36.82	$4,760,145
Avalon	94	839	$3,736,124	$37.91	$4,434,615
Stonefire	98	782	$3,895,108	$40.65	$4,311,900
Hillside Village	94	661	$3,736,124	$48.14	$3,492,405
The Dwight	99	617	$3,934,854	$51.57	$3,433,680
The Delaware	51	581	$2,027,046	$54.72	$1,667,025

For comparison, Figure 6 provides fee levels for nearby jurisdictions.

Figure 6: Comparison of Inclusionary Housing Requirements and Fee Levels for Other Jurisdictions

City	% Affordable Housing Required On-site	Fee	Notes
Alameda	15% for all multifamily projects	$20,342 Per Unit	No alternative to fee for buildings of 9 or fewer units
Emeryville	20% for all multifamily projects	$31,032 Per Unit	
Fremont	12.9% for rental	$27.00 Per Residential Square Foot	
Hayward	6% for rental, 10% for ownership	$19.37 Per Residential Square Foot	Lower fees for high-density condos
Livermore	10% downtown, 15% everywhere else	$29.23 Per Residential Square Foot	Projects with 10 or more units may not pay fee
Oakland	10% if low- or moderate- income units, 5% if very low-income units	For multi-family: $22,000 per unit in Zone 1, $17,750 in Zone 2, $12,000 in Zone 3	
Pleasanton	15% for all multifamily projects	$45,083 per unit	
San Francisco	20% for small projects, 25% for large rental, 33% for large ownership	$199.50 Per Gross square foot times affordable percent	Equivalent to $60 per square-foot for many projects.
San Jose (proposed)	15% for all multifamily projects	Moderate Market Areas: $18.26 per net residential foot Strong Market Areas: $43	

The current AHMF ordinance allows developers to choose between paying a higher fee (currently $39,746) at the Certificate of Occupancy when a project is nearly complete or a reduced fee (currently $36,746) earlier when a project receives a building permit. Nearly all projects have selected the higher fee because of the high value that developers place on the ability to pay the fee later. Paying later reduces their financing costs and lowers their overall financial risk. Removing the option to pay early would recognize this reality and eliminate an additional element of administrative complexity and communication challenge.

The existing Affordable Housing Mitigation Fee is automatically adjusted by the annual percentage change in the California Construction Cost Index published by the California Department of General Services, every other year. The automatic adjustment is applied to all projects that have not received final approval by the City of Berkeley prior to the date of the automatic adjustment. This automatic adjustment ensures that the fee keeps pace (roughly) with what it costs the City and its nonprofit partners to construct new affordable housing using the fee revenue. This method should remain in place.

3. Evaluate the potential for higher fees when the market is stronger

Proposed Change:

3.1. In order to encourage more on-site units, phase in a slightly higher fee once the housing market has stabilized. Conduct an updated feasibility analysis within 3 years, increase the per square-foot fee if the analysis shows that typical projects could support the higher fee.

Background and Analysis:

Under current market conditions, Berkeley's on-site compliance option (20%) is significantly more costly for most projects relative to the cost of the Affordable Housing Mitigation Fee or In-lieu Fee. This creates an incentive for projects to choose to pay the fee instead of providing units on-site. In spite of this incentive, the majority of projects have provided some level of on-site units because the State Density Bonus provides an even stronger incentive to include affordable units on-site, and the units count against the fee obligation as well.

Ideally, the on-site unit and in-lieu fee requirements would be more closely aligned so that they represented similar costs for most projects. This kind of alignment would likely result in a higher number of on-site units without entirely eliminating the fee revenue which is critical to Berkeley's HTF program. Aligning the economics of these two options would require either raising the fee or lowering the on-site requirement considerably.

In rough terms, the on-site requirement would need to be lowered to about 15% in order to represent a cost to most rental projects that was equivalent to the cost of the current AHMF. However, none of the local stakeholders we spoke with suggested that there would be public support for lowering Berkeley's on-site requirement.

A number of stakeholders, on the other hand, suggested raising the fee. This seems to be the more obvious path to aligning the cost of the two options and increasing the share of units on-site. However, our feasibility analysis (Appendix A) suggests that 2021 would be a particularly risky time to raise the affordable housing fee. The Covid-19 pandemic has created uncertainty in the real estate market. Rents in Berkeley have fallen significantly and rents in high-cost newly constructed buildings may have fallen more than the average. At the same time, construction costs have not (yet) fallen leaving most multi-family housing developments in a precarious position. Builders are still moving forward with new rental buildings in Berkeley but the City's volume of new applications has fallen relative to recent years. It seems likely that Berkeley will continue to be a desirable location for new housing over the long term but it is not yet clear whether there will be a protracted slow down in new building throughout the region following the pandemic.

While the level of local fees, including affordable housing fees, is just one small factor that developers consider when they decide whether or not to move forward with a project, Berkeley already charges more than most other East Bay jurisdictions and increasing the fee at this time could contribute to a greater slow down in new building.

For this reason, we are recommending that Berkeley allow for a period of housing market recovery before considering an increase in the Affordable Housing Fee. The City could plan on an update to the feasibility analysis in one to three years or wait for evidence that either rents have begun increasing or that construction costs have begun to fall before reconsidering the level of the fee.

4. Incentivize Extremely Low-Income (30% of AMI) units

Proposed Changes:

4.1. Require all VLI Units to be offered to voucher holders (50% to Housing Choice Voucher Holders and 50% to Shelter + Care Voucher Holders) before being marketed to other income eligible households.

Alternative:

4.2. Retain the current rules which require 40% of VLI units be offered first to Housing Choice Voucher Holders and another 40% be offered first to Shelter + Care Voucher Holders.

Background and Analysis:

A number of local stakeholders have expressed a desire to see Berkeley's program provide relatively more units to serve Extremely Low-income (ELI) households (below 30% of Area Median Income) who face the most acute housing challenges.

Some cities achieve this by creating a formula which allows developers to substitute a smaller number of units targeting Extremely Low Income residents for some portion of otherwise required on-site BMR units. Los Angeles's Transit Oriented Communities (TOC) program requires affordable units in exchange for a significant density bonus. The TOC program allows developers to choose between providing a greater number of low-income units or a smaller number of more deeply affordable Extremely Low Income units. Even though the rents on the ELI units are much lower, many developers have chosen this option because they can provide fewer affordable units (and more market rate units). Between 30% and 50% of the BMR units produced through the program have targeted ELI households and this program has driven a significant increase in the total number of income restricted ELI units produced in LA. In 2020, 34% of new BMR units in LA were restricted to ELI tenants.

While this type of approach might increase the number of ELI units in Berkeley, it is worth noting that Berkeley is already a national leader in serving ELI households through inclusionary housing. *Currently 29% of Berkeley's BMR tenants have incomes below 30% of AMI* and the share of ELI tenants is likely to increase noticeably under current rules. Berkeley's AHMF requires that at least half of BMR units must target 50% of AMI and, *of those*, 40% must be offered first to Housing Choice voucher holders from the Housing Authority and another 40% must be offered first to Shelter Plus Care voucher holders managed by the City's Housing and Community Services division. Voucher holders in both programs generally have incomes well below 30% of AMI. And because of the acute shortage of inexpensive market rate housing, most of the households that receive vouchers in Berkeley are unable to use them in the market. This approach has benefits for developers as well. The City allows the property to receive the contract rent offered by the subsidy program as long as the tenant's share of rent is below the BMR limit. The contract rents are generally far below the market rent for brand new buildings but also quite a bit higher than the BMR affordable rent for 50% AMI units. Because of the voucher, the ELI tenants, on the other hand, generally pay much less than the 50% AMI affordable rent.

In addition, because of the way Berkeley's requirements interact with the State Density Bonus (SDB), developers tend to favor the 50% AMI units. As a result, 77% of Berkeley's BMR units approved since 2012 have been regulated as 50% AMI units. If this pattern continues and, going forward, 80% of these units are reserved for voucher holders, then we would expect voucher holders to make up 62% of new BMR tenants.

A 2020 State law (AB 2345) expands the SDB beginning in January 2021. Developers will now be allowed to build 50% more units if they provide at least 15% VLI units (among other options). This new law should result in a greater number of on-site VLI units and, as a result, a greater number of ELI/voucher tenants. At some point, it is likely that the City would exhaust

the supply of unused vouchers and some of these units would ultimately be leased to Very low Income tenants (below 50% of AMI) instead.

In addition to its success in serving ELI tenants in BMR units, the City currently requires that at least 20% of units in all projects funded with the Housing Trust Fund be affordable to ELI tenants.

Requiring that all VLI units first be offered to voucher holders would slightly increase the share of ELI tenants housed going forward while also removing an element of complexity from the program and simplifying otherwise complex rounding issues.

5. Adjust the residual fee for mixed compliance projects

Proposed Change:

5.1. Encourage more mixed compliance projects by changing the calculation of the remaining fee due when projects provide less than 20% affordable units on-site. Restructure the remainder fee so that providing VLI (50% AMI) units reduces the fee due by more than providing LI (80% AMI) units.

Alternative:

5.2. Continue the current practice of providing the same reduction in fee for any units, whether they serve VLI tenants or LI tenants.

Background and Analysis:

Currently rental projects that provide 20% affordable units on-site are exempt from the Affordable Housing Mitigation Fee (AHMF). Half of these units must be for Very Low Income (VLI) residents earning less than 50% of AMI and half must be for Low Income (LI) residents earning less than 80% of AMI. When a developer provides a portion of the required units on-site, the City has a formula that is used to determine the remaining fee. For example, if a project provides half of the required on-site units, they also owe half of the fee that would have been due. In order to access the benefits of the State Density Bonus, the majority of recent projects have selected this mixed compliance option.

Under the current rules, providing any on-site affordable housing unit reduces the fee that is due by the same amount regardless of whether the unit provided is a LI or a VLI unit. But because the VLI units rent for much less, they are much more costly to provide on-site. When a developer agrees to provide any permanently affordable unit, they will receive less rental income from that unit throughout the life of the project than they would from a market-rate unit. As a result, each affordable unit in a project decreases the value of a building - the amount that a building could be sold for. Street Level Advisors estimated the cost of providing these units on-site for a hypothetical six story project and found that a VLI unit reduces the value by $483,000 while a LI unit reduces value by $340,000.

One way to encourage more projects to provide some units on-site would be to restructure the remainder fee so that providing VLI (50% AMI) units reduces the fee due by more than providing LI (80% AMI) units. Based on the relative affordable rents, providing 10% VLI units could relieve the developer of $30 of the $45 per square-foot remainder fee, while providing 10% LI units could relieve them of only $15 of the $45 per square-foot fee. Projects providing fewer than the 10% of units required in either category would pay a fee adjusted proportionally.[7]

Figure 7: Examples to illustrate partial compliance - 100 unit project

Example	VLI units	LI Units	Fee
On-site Only	10	10	$0
Fee Only	0	0	$45
Only VLI	10	0	$15
Only LI	0	10	$30
Half Each	5	5	$22.50
11% VLI	11	0	$12
15% VLI	15	0	$0

This change would increase the feasibility of the mixed compliance options and should result in on-site units from some projects that would have otherwise selected to pay the fee. However it is important to note that this mixed compliance option is already the most popular option and appears to be financially feasible without this change.

6. Standardize ownership fees

Proposed Change:

6.1. Apply the same per square-foot fee for both rental and ownership units. Continue to require different income targeting for ownership units.

[7] The formula for calculating the reduction in fee could be (Full Fee* 1.33 / 20) * (actual % of VLI units) + (Full Fee * .67 /20) * (actual % of LI units). If the full fee is $45 per square-foot, then each 1% of VLI units would reduce the fee due by $3 per square-foot and each 1% of LI units would reduce the fee by $1.50 per square-foot.

Alternative:

6.2. Charge any project that chooses to record a Condominium Map a higher fee of $55 per square-foot.

Background and Analysis:

Many local stakeholders are under the impression that Berkeley's current Inclusionary In-Lieu Fee for ownership projects is higher than the Affordable Housing Mitigation Fee for rental projects. Berkeley has seen very few ownership projects in recent years, so it is difficult to directly compare, but our analysis suggests that this is true, both on a per unit and per square-foot basis.

In lieu of each affordable unit, the current Inclusionary Housing Ordinance allows payment of a fee equal to 62.5% of the difference between the market price and the "affordable" price. To estimate the equivalent per square-foot fee that this rate yields, we used proprietary data from Property Radar to calculate average square footages and market values for Berkeley condos, shown in Figure 8.

Figure 8: Condo pricing estimates

Berkeley Condo Sales 2021			Prototype (New Building)
Unit Size	**Avg Sqft**	**Avg Value**	**Projected Value**
Studio	646	$620,752	
1-BR	814	$703,556	$725,000
2-BR	1117	$853,125	$925,000
3-BR	1571	$995,797	$1,100,000

It is likely that newly built condos would sell for higher than average prices but there have not been enough Berkeley condo projects in recent years to calculate appropriate projections for new buildings only. We have assumed sale prices for newly built condo units would be roughly 5 to 10% higher than the citywide average condo sales prices.

The IHO defines the affordable price for the purpose of calculating the fee as three times (3x) the Area Median Income (AMI) adjusted for household size. We used those prices to estimate in lieu fees. We then multiplied those numbers by 20% to yield the equivalent per unit fee, which range from $48,000 to $85,000. This suggests that the fees required for ownership projects in the IHO are indeed higher than the $39,746 per unit currently required for rental

projects under the AHMF. Our estimates for the equivalent per square-foot fees for ownership projects range from $54 to $75, which is higher than the typical equivalent per square-foot fees that we found for rental projects. Projects with very high cost condo units would face even higher fees.

Figure 9: Estimated BMR Ownership Fees 2021

Unit Size	Sq Ft	Market Price	Affordable Price	In Lieu Fee	In Lieu Fee Per Unit	In Lieu Fee per Sq Ft
Studio	646	$620,752	$234,960	$241,120	$48,224	$75
1BR	814	$703,556	$250,650	$283,066	$56,613	$70
2BR	1117	$853,125	$282,000	$356,953	$71,391	$64
3BR	1571	$995,797	$313,200	$426,623	$85,325	$54

Note that the median condo value in Berkeley has risen dramatically in recent years, from a low of $364,000 in 2012 to $900,000 in January 2021.[8] Because prices have risen much faster than income, the in lieu fee has risen too.

We analyzed the financial feasibility of the current fees for hypothetical affordable ownership projects (Appendix A) and found that the current fees resulted in profits that fall below commonly used benchmarks for necessary profit. High cost condos might be able to pay the fee and earn the minimum required profit but projects with sales prices closer to Berkeley's average condo prices were not. However, under current conditions, more typically priced condos were able to pay the proposed rental fee of $45 per square-foot and remain financially feasible. While there have not been enough condo projects in Berkeley recently to draw strong conclusions, this exercise lends support to the assertion that the relatively high level of Berkeley's fee for ownership projects is contributing to developer's choice to build rental rather than ownership housing.

The current policy appears to discourage homeownership development. Some local stakeholders have expressed an interest in adjusting the policy to give developers, and ultimately Berkeley residents, more choice between rental and homeownership housing. Setting the fee at $45 per square-foot for both types of project would level the playing field considerably. The typical ownership unit would still pay more because ownership units tend to be larger. As an alternative, many cities charge homeownership units slightly more. Setting

[8] Zillow Home Value Index for Condos/Co-ops, https://www.zillow.com/berkeley-ca/home-values

Berkeley's fee at, for example, $55 per square-foot for ownership projects would slightly disincentivize ownership but by less than the current fee approach.

Addressing rental projects that record condo maps

Another reason to consider standardizing the fee between rental and ownership projects stems from the fact that a growing number of new multi-family buildings are recording condominium maps but opening initially as rental housing projects. This gives project owners the flexibility to later sell the rental units as condos if housing market conditions change. The added flexibility makes it easier for developers to access project financing or to access financing on better terms.

For projects that provide on-site affordable rental units, the City records restrictions which require that the BMR units remain affordable rentals for the life of the project. But the potential for projects that are initially rental and pay the AHMF but later convert to ownership is not addressed in Berkeley's current code. Projects that paid the AHMF as rental projects and later sold condo units would owe an additional fee, but monitoring and collecting this fee is administratively and legally challenging.

Some cities have responded to this trend by requiring projects that record a condo map when they are first built to pay a higher affordable housing fees that would be due for ownership projects even if the building is initially operated as rental housing. This would not be practical under Berkeley's current approach because the ownership in lieu fee is set based on the actual sale price of units but those may not be determined for many years (if ever). Setting a single in lieu fee that would be applied to both rental and ownership projects at the time of development would eliminate this complexity. Alternatively, setting a higher fee per square-foot for projects with a Condo Map would also provide a practical alternative, though it might increase costs on rental projects that are not likely to ever actually convert to ownership but need the Condo Map in order to access certain financing sources.

7. Standardizing Live Work and GLA requirements

Proposed Change:

7.1. Remove the exemption for Live / Work projects from IHO/AHMF ordinances; apply the same requirements to Live / Work projects as any other project except for the "affirmative marketing" provision

7.2. Remove the exemption for units with Group Living Accommodations (GLA) tenancy (and consider retaining an exemption for University-recognized GLAs)

Background and Analysis:

A 2018 Council Referral (2018-09-12, Item 17) called for the elimination of the affordable housing requirements in the Live Work Ordinance and removal of the live/work exemptions

from both the IHR and AHMF ordinances. This action would simply apply the Inclusionary Housing or AHMF ordinances to Live Work exactly as they are applied to other projects.

Live/Work units are currently exempt from both the Inclusionary zoning ordinance and the Affordable Housing Mitigation fee. Instead, Berkeley's Live Work Ordinance (Berkeley Municipal Code 23E.20) requires projects that create 5 or more Live/Work units to include 1 inclusionary unit affordable to 80% of AMI for every 5 Live/Work units created. The inclusionary requirements in the Live/Work ordinance differ from the requirements applied to other projects. Affordable units under the Live/Work ordinance are all targeted to 80% of AMI. In addition, the Live Work Ordinance specifically allows inclusionary Live/Work units to be smaller, have lesser finishes and be located anywhere in a project while both the IHR and AMHF ordinances require units to be the same size, have comparable finishes and be distributed throughout a project.

There is one provision of the Live/Work ordinance which is specific to Live/work affordable units which it would make sense to retain or move to the new ordinance. Inclusionary live/work units must be affirmatively marketed to "income-eligible persons performing a work activity permitted in the District where the project is located whose type of work causes them to have a requirement for a space larger in size than typically found in residential units." The ordinance currently provides no standards for documenting tenants' need for live/work space or rules for waiving this requirement in the event that a tenant with this need cannot be found within a reasonable period.

The ordinance currently exempts Group Living Accommodations (GLA) units, but because this classification represents a type of tenancy rather than a specific type of unit, it would make sense to subject GLA units to the Affordable Housing Requirements like any other unit. Fraternities, sororities, and other specially designated units managed by the University would retain their exemption. Further study could be necessary to assess the impact of this change on project feasibility.

8. Add a land dedication option

Proposed Change:

8.1. Add a land dedication option which authorizes the City Manager to approve donation of land to the City or an approved nonprofit housing developer. Donated land must be appraised for a value of at least 75% of the in lieu fee which would otherwise be due, be sufficiently sized and zoned to support multifamily housing development and otherwise be suitable for affordable housing development.

Alternative:

8.2. Don't add a land dedication option - continue with two compliance options; on-site units or in lieu fee, though this would leave projects newly excluded from the on-site option with only one compliance option.

Background and Analysis:

Some stakeholders have suggested that the program would be stronger if Berkeley allowed developers to comply by providing off-site affordable projects, preserving existing 'naturally occurring affordable housing' or dedicating land for affordable housing development. We evaluated the feasibility of adding off-site and preservation options and concluded that Berkeley currently lacks the staff capacity necessary to effectively implement these complex options. However, it is worth noting that the City can and does use in lieu fee revenue collected to finance both off-site projects and preservation/rehabilitation projects. By collecting fees and then going through the existing procedures for the HTF and Small Sites programs, the City avoids the need to develop new detailed rules and closely monitor developer implementation of these alternatives.

The third option, land dedication, however, provides an outcome which the City cannot achieve on its own through the use of fee revenue. While this option also would require detailed rules to avoid abuse, it may be less challenging than off-site or preservation options and is likely to be used in far fewer cases.

Access to sites is one of the key barriers facing affordable housing developers. Market rate developers sometimes end up with control over sites which could be better used for affordable housing. Sometimes market rate projects are large enough to set aside a portion for affordable housing. In these, somewhat rare, cases, it is sometimes more affordable for the developer to donate land for affordable housing than to build on-site units or pay an in lieu fee. If the donated site is appropriate for affordable housing, it can save significant time and make new projects possible. Of course, if sites are not appropriate, land donation can result in a significant burden on City resources. If the policy were to include a land dedication option, the City would need to develop detailed guidelines which outlined site requirements and retain the option to only accept sites when there is a high probability that they will be developable for affordable housing including, for example, expressions of interest from local affordable housing developers.

9. Provide a family sized units option

Proposed Change:

9.1. In lieu of providing 20% of units at affordable prices, allow projects to provide affordable units comprising 20% of the Gross Residential Floor Area in the project provided that at least 50% of those units are in 2 or 3 bedroom units.

Background and Analysis:

Berkeley's IHR and AHMF ordinances currently require that on-site BMR affordable units be of the same type and size as market rate units in the property. As the cost of construction has risen, there has been a trend for market rate projects to include smaller and smaller

apartments and this has meant that the BMR units have been shrinking as well. Some stakeholders have asked the City to consider ways to incentivize more 'family sized' units even in buildings where the market rate units are quite small. This request has been made at the same time that other stakeholders have called for the City to actively discourage units with high bedroom counts (i.e., co-living units).

It seems that in the current context the City should be encouraging 2 and 3-bedroom units but not larger ones. One way to achieve this is to require that projects set aside a given percentage of floor area for affordable housing instead of a percentage of units if the majority of those units are 2 and 3-bedroom units.

When New York City adopted their Mandatory Inclusionary policy for the first time in 2016, rather than requiring a percentage of units be affordable, they required that the affordable units make up a percentage of net residential floor area.[9] This allows developers to include larger or smaller affordable units. Projects offering smaller BMR units may need to provide more units and projects offering larger units would provide fewer units. Cambridge, MA, a city with size and demographic similarities to Berkeley, also switched to this method in 2017, but with the additional condition that large developments (30,000 square feet or more) are required to include 3-bedroom affordable units.[10] Both of these approaches would add considerable complexity to already complex rules in Berkeley. The proposed change would continue to require 20% of units for most Berkeley projects, but would add an alternative for projects that chose to offer mostly 2 and 3 bedroom BMR units.

10. Simplify the requirements for condominium conversions

Proposed Changes:

10.1. Calculate the Condo conversion fee at 8% of the market value of converted units.

10.2. Reduce the conversion fee to 4% for any unit that is and has been occupied by an owner as his or her principal place of residence for at least 5 consecutive years immediately prior to the date that the fee is paid, including as a tenant in that unit immediately prior to ownership.

10.3. Also reduce the conversion fee to 4% for any co-housing unit, any unit that is part of a housing cooperative, or conversion undertaken by a nonprofit developer.

10.4. Continue to allow a further 25% discount in the fee if it is paid at the time of conversion rather than at the time of sale of condo units.

10.5. Add flexibility in the use of conversion fees. Allow up to 10% of conversion revenue to be used for Condominium Conversion program delivery and/or Housing Trust

[9] New York City Mandatory Inclusionary Housing Program, https://www1.nyc.gov/site/planning/plans/mih/mandatory-inclusionary-housing.page

[10] City of Cambridge Inclusionary Housing, https://www.cambridgema.gov/CDD/housing/inclusionaryhousing

Fund program and project monitoring and enforcement or related program administrative costs with the remaining 80% placed into the Housing Trust Fund.

Background and Analysis:

Berkeley's Condominium conversion ordinance (CCO) (Berkeley Municipal Code [BMC] Chapter 21.28 et seq.) requires payment of an Affordable Housing Mitigation Fee at the time that rental properties are converted to condominium ownership. Between 1992 and 2009 this mitigation fee recaptured essentially the entire difference in affordability that resulted from conversion. This had the effect of discouraging conversions. In 2005, the state Court of Appeal held that cities could not prohibit conversion of rental units to Tenants in Common ownership (TIC). Since then, the City has sought to encourage conversion of rental units to condominiums rather than TICs because of difficulties that can arise for people who invest in TIC properties. It has done so by imposing a de facto cap on the affordable housing mitigation fee charged for conversion to condominiums since 2009.

Nexus Fee Calculation: Under the current ordinance the AHMF for condo conversions is calculated through a complex 'nexus formula' that considers costs of ownership, rental and mortgage rates. Alternatively, owners can choose to pay 8% of the sales price (or 4% for 2-unit buildings) instead of the Nexus Fee if they agree to limit rent increases for any existing tenants. This alternative calculation generally results in much lower fees. As a result, the nexus-based fee method has been used very rarely. We recommend that all condominium conversions be subject to the 8%/4% fee, and that all sitting tenants be provided protections and an opportunity to purchase.

Examples:
Nexus Formula: Rental Costs = $1,500 per month x 12 months/year = $18,000 annually Ownership Cost (including principal, interest, taxes, insurance, and homeowners' association dues) = $2,700 per month x 12= $32,400 Assume a mortgage rate of 6.5 percent. Increased housing cost due to ownership conversion of the unit = $32,400 - $18,000 = $14,400 Mitigation Fee = $14,400/0.065 = $221,538

Alternative Formula: Sale price for converted unit = $400,000. If owner agrees to limit rents to existing or future tenants. Mitigation fee = 8% x $400,000 = $32,000.

Discount for Owner Occupants/Tenant Conversion: Currently, the condo conversion ordinance provides a 50% reduction in the fee to owners who have lived in their units for the 5 prior years. However, only owners who resided in their units on June 30, 2010 are currently eligible.

If the property contains three or more units, the affordable housing mitigation fee for a unit that is occupied by an owner as their principal place of residence for at least 5 consecutive years immediately prior to the date of sale, including as a tenant in that unit immediately prior to ownership, shall be reduced by 50 percent, but only if the owner owned and resided in the unit as of June 30, 2010.

A Council referral had proposed to extend the 50% reduction to tenants in addition to owners who have lived in a unit for at least 5 years prior to conversion so long as the building was 4 or fewer units.

> *If the property contains 4 units or fewer, the affordable housing mitigation fee for a unit that is and has been occupied by an owner as his or her principal place of residence for at least 5 consecutive years immediately prior to the date of conversion or sale, including as a tenant in that unit immediately prior to ownership, shall be reduced by 50 percent.*

It is not clear why this tenant conversion benefit should be limited based on building size. The current ordinance is limited to properties with 3 or more units while the referral was limited to 4 or fewer units. The proposed change would apply to owner occupied or tenant purchased units in buildings of any size.

Although instances of condominium conversion by nonprofits, in co-housing projects, or in housing cooperatives are quite rare, it makes sense to extend the fee reduction to these cases as well.

Use of Fee Revenue: The current condo conversion ordinance does not allow any of the Mitigation Fee revenue to be used for program administration, but the program can be staff-intensive to implement. The AMHF and IHR Ordinances allow a portion of fee revenue to be used for program administrative staffing.

11. Prohibit on-site units for Group Living Accommodation (GLA)

Proposed Change:

11.1. Prohibit projects with an average of more than 3 bedrooms per unit from selecting the on-site option in order to reduce administrative burdens.

11.2. Adopt a local density bonus that enables these projects to access the benefits of the State Density Bonus in exchange for an increased in lieu fee instead of on-site units.

Background and Analysis:

Group Living Projects: It is challenging to regulate and monitor BMR units in co-living and group living projects where individuals generally lease bedrooms not apartments. It is difficult to find eligible households who can both qualify for and afford 4-bedroom or larger BMR units and the households that would most benefit from large BMR units might be less interested in living in a building that was primarily targeting students and young adults. Additionally, it is typical for groups of unrelated adults renting larger units together to change composition frequently, which makes maintaining current documentation of eligibility more complicated for owners and therefore compliance more difficult for the City to monitor.

Local Density Bonus: Berkeley cannot prevent developers from providing on-site affordable units in order to qualify for the benefits of the State Density Bonus (SDB). It would be possible for the City to simply require some projects to pay the full fee even if they provide on-site units for the purpose of accessing the density bonus but this would impact the feasibility of small projects and projects that provide large bedroom count units. An alternative would be for the City to adopt a limited local density bonus program for these projects that are not allowed to provide on-site units under the City's ordinance. This local bonus could provide access to all of the benefits of the State Density Bonus (including additional density and other planning concessions) in exchange for a fee rather than on site units. We calculated that, for a typical rental project, providing 11% (of base units) on-site increases the cost of compliance relative to paying the fee only by $10 per square-foot. If a local density bonus offered the benefits of 35% increased density and other concessions to projects that paid $55 per square-foot (instead of $45) this option would be no more or less attractive to developers than the current State Density Bonus option. In other words, if a co-living project could access the density bonus in exchange for a fee of $55 per square-foot they would generally choose that option rather than provide onside units.

12. Change requirements for small projects/missing middle projects

Proposed Changes:

12.1. Eliminate exemption for 1-4 unit projects and replace it with a tiered fee that steps up gradually for projects with less than 12,000 gross residential square feet, by reducing the fee by $2 per square-foot for each 1000 square foot increment less than 12,000.

12.2. Offer a local density bonus, equal to the State Density Bonus, to projects providing <5 BMR units that choose the in lieu fee.

Alternative:

12.3. Eliminate exemption for 1-4 unit projects and expect even very small projects to contribute the full fee.

Background and Analysis:

Currently both the AHMF and the Inclusionary housing ordinance exempt buildings with 1-4 units. Presumably this exemption was motivated by a sense that very small projects would have a harder time absorbing the cost of including affordable housing into their budgets. While this is often, but not always true, there is no reason to think that suddenly at 5 units a project budget can easily afford to comply. There is a much wider range of "missing middle"-type projects that may be feasible in Berkeley at a small scale which may also struggle to meet the City's requirements. Many of these projects may be larger than 5 units.

At the same time there has been significant concern in Berkeley about the potential that developers may segment larger projects into several smaller 4-unit projects in order to circumvent the inclusionary housing or AHMF ordinance. By exempting very small projects but

then suddenly imposing the full requirement at a certain point, the current ordinance creates an incentive to build projects in 4-unit increments.

One approach to this challenge would be to impose the fee (at some level) on every project (with the exception of Accessory Dwelling Units), but to reduce the fee for small projects. Many cities just impose a lower fee for smaller projects. San Jose just amended their program to set the fee at a level that is 50% lower for projects with fewer than 20 units. However, this approach still creates a big step up at 20 units. An alternative is to gradually phase in higher fees as the size of the project increases. Figure 10 shows the schedule that would result from a $2 decrease in the fee for each increment of 1000 gross residential square feet below 12,000.

Figure 10: Proposed schedule for small project phase-in

Gross Residential Square Feet	Fee per square-foot
12,000+	$45
11,000-11,999	$43
10,000-10,000	$41
9,000-9,999	$39
8,000-8,999	$37
7,000-7,999	$35
6,000-6,999	$33
5,000-5,999	$31
4,000-4,999	$29
3,000-3,999	$27
2,000-2,999	$25
1,000-1,999	$23
<1,000	$21

Reducing the fee for small projects would have an uncertain impact on Berkeley's future fee revenue. The City would collect less revenue from small projects with at least 5 units, but would begin collecting fees from 1 to 4 unit projects. Offering a local density bonus to projects providing less than 5 BMR units that choose the in lieu fee would likely reduce the number of projects with a small number of on-site BMR units that need to be monitored while also increasing total fee revenue.

Small projects pose a special challenge for program administration and monitoring. Monitoring compliance for a building with one or two regulated units requires a similar investment of staff time as a project with 20 BMR units. Often the owners of smaller buildings have fewer resources and less outside professional property management support and as a result, they often find the burdens of compliance more challenging, and require relatively more intervention and training from City staff.

Many cities address this by encouraging developers of small properties to select the fee or other option rather than providing on-site BMR units which may prove difficult to monitor.

Redwood City prohibits the on-site units option for projects with fewer than 20 total units, effectively requiring these projects to pay the in lieu fee.

In Berkeley, however, because so many projects select mixed-compliance, there is a real risk that projects with more than 20 total units could end up including only a very small number of on-site BMR units. For example a 40 unit project selecting on-site compliance (20%) would provide 8 BMR units but if they chose to only provide 10% on-site and pay a fee for the remainder they would only provide 4 BMR units on-site. Removing the on-site option for projects that would result in fewer than 5 BMR units would force these projects to either pay the fee entirely or fully comply through the on-site option. Either option would simplify monitoring enormously.

13. Cap the annual rate of rent increases

Proposed Change:
13.1. Limit the annual increase in BMR affordable rents for occupied units to no more than the annual change in the Consumer Price Index. Allow rents to be marked up to the maximum 'affordable' rents based on HUD AMI calculations whenever units turn over.

Alternative:
13.2. Limit the annual rent increase to no more than 10% in any single year.

Background and Analysis:
Sudden increases in the Area Median Income can result in large changes in the allowable affordable rent which can negatively impact BMR tenants. Similarly, some property owners fail to annually adjust rents as allowed by the current ordinance. They are allowed to 'catch up' by raising the rents by a larger amount later but this too can cause sudden shocks in rent for vulnerable tenants.

Limiting the amount that rent can be increased for occupied BMR units would provide stability and predictability for tenants. This change, however, will have a real impact on the operating budgets of projects with on-site BMR units. The current rules tie rents to changes in the Area Median Income (AMI). Over the past several decades the AMI has risen quite a bit faster than the Consumer Price Index. While the AMI is generally a measure of what people in the area earn, the rapid increase in the AMI has been driven, in part, by the growth of high paying jobs and the influx of higher income residents throughout the Bay Area rather than a rise in the wages and other income that lower-income residents earn. As a result, 'affordable' rents have risen faster than what many low-income tenants can comfortably 'afford.'

Limiting the rate of rent increases will have a real impact on the operating budgets of buildings that include on-site units. As long as units remain occupied, the rents may rise

more slowly than building operating costs. It is likely that this change in policy will make the on-site option slightly less attractive to developers and increase the likelihood of projects selecting to pay the fee in lieu. However, a growing number of Berkeley projects are including on-site VLI units and then filling those units with residents who hold housing vouchers. The policy should continue to allow these properties to collect the full voucher payment standard which might increase faster than CPI without impacting affordability for the residents. This reliance on vouchers should mean that many density bonus projects would not be impacted by a rule tying rent increases to CPI.

14. Administrative changes

a. Require compliance plans

Proposed Change:

14.1. Require developers of new projects to submit a simple Affordable Housing Compliance Plan at the time of Building Permit application indicating their proposed strategy for complying with the requirements of the AHR ordinance. Allow revisions to this plan at any time prior to the Certificate of Occupancy.

Background and Analysis:

Currently developers can wait until their projects are built and applying for a Certificate of Occupancy to inform the City of their intended strategy for complying with the AHMF or Inclusionary Housing Ordinance, including whether they intend to pay the fee or provide some or all of the required on-site units. Requiring developers to indicate a proposed strategy earlier in the process a) allows city staff to make plans for monitoring units or project fee revenue so that it can be invested quickly and b) ensures that developers are fully understanding Berkeley's requirements early in the development. Many cities provide a simple fill in the blanks template for this purpose and allow projects to change their plans at a later date by simply submitting a revised plan.

b. Authorize administrative citations

Proposed Change:

14.2. Explicitly authorize the creation of a proposed schedule of fines for monitoring and compliance violations to be included in the program guidelines.

Background and Analysis:

Other jurisdictions have found that having the ability to impose monetary fines is an effective tool for encouraging developer and property manager compliance with

monitoring requirements. Explicitly authorizing citations in the ordinance might help clarify staff's authority to impose these penalties.

c. Authorize annual monitoring fee for ownership units

Proposed Change:
14.3. Explicitly authorize the City to charge a fee annually to BMR Homeowners to offset monitoring costs. The fee would be assessed only on new owners going forward. The fee would be included as a housing cost in calculation of the affordable sales prices so that buyers will pay less for their units in order to make the fee affordable.

Background and Analysis:
The City currently charges owners of rental properties an annual monitoring fee but no fee is charged to BMR homeowners.

d. Deduct required fees/costs from gross rent

Proposed Change:
14.4. Clarify this language in the ordinance to make it clear that mandatory fees or costs must be deducted from the maximum allowable rent for BMR rental units.

Background and Analysis:
Currently the AHMF ordinance calls for reduction in the maximum rent based on the anticipated cost of tenant paid utilities. Some properties impose other mandatory costs such as renter's insurance or administrative fees. Current practice is to deduct any cost which is mandatory for BMR tenants from the maximum gross rent to calculate the affordable rent but this requirement is not currently outlined in the ordinance.

Appendix A: Financial Feasibility Analysis

Overview:

The City of Berkeley retained Street Level Advisors to recommend changes to its existing affordable housing requirements. Our policy recommendations are intended to increase the construction of affordable units while maintaining the financial feasibility of market-rate development. We conducted a financial feasibility study in order to understand the current housing development environment and predict how our recommended policies might affect this environment. Our study relies on a static pro forma analysis to estimate the return on investment that can be generated by typical residential developments in Berkeley.

For the rental prototype, we used a common measure of return known as yield on cost (YOC), or a project's net operating income divided by the total development cost. Based on a review of current market conditions in Berkeley and the East Bay, we concluded that projects earning a yield of at least 5.0% would be "feasible" meaning that they would likely be able to secure investment. Projects earning slightly less (between 4.5% and 5%) would be considered "marginal" meaning that some projects in this category might be able to obtain financing while others might not. Projects earning less than a 4.5% yield we considered "infeasible."

For ownership projects, the Yield on Cost cannot be calculated so we used a different measure of profitability: Profit as a percent of development cost, also called Return on Cost. Because of the lack of recent condo projects in Berkeley, we were unable to objectively determine the minimum necessary profit as a percent of cost for local ownership projects. As a point of reference, a common rule of thumb used in other studies considers projects "feasible" when profit exceeds 10-15% of development cost.

Our rental prototype is a 6-story, 72-unit development with a small amount of commercial space on the ground floor and one parking space for every two housing units. We estimate that under current conditions, rental projects that choose to pay Berkeley's Affordable Housing Mitigation Fee (AHMF) earn a Yield on Cost of 5.08% - just barely above the feasibility threshold. Projects that provide on-site units earn a yield of 4.94% just under the threshold into the marginal category. However, economic conditions are in flux due to the COVID-19 pandemic, and new projects could become more feasible in the near future.

Our prototype, revenue, and cost assumptions are based on prior studies, comparable projects, and other market research. The remainder of this memo describes these assumptions and our methodology in more detail.

Prior Studies:

Over the past decade, the City of Berkeley has evaluated the financial feasibility of its affordable housing requirements several times. Our analysis builds on the feasibility studies conducted by these consultants.

The 2015 Bay Area Economics Nexus Study contains one section that addresses the financial feasibility of new rental housing. BAE estimated the Return on Cost for a four-story, mixed-use development in the C-W zoning district at two different fee levels. In their simplified model, all 81 units are 900 square foot two-bedrooms. BAE's analysis suggested that the fee could be increased to $34,000 while maintaining the minimum necessary return on cost.

The 2016 Strategic Economics Feasibility Analysis tested a wider range of fee levels. Using a four-story model that is almost identical to the BAE model, they estimated the Yield on Cost at six fee levels between $0 and $84,391. Strategic Economics considered Yield on Cost because it is a more accurate measure of feasibility for rental housing than Return on Cost. The minimum Yield on Cost required for feasibility in their analysis was 6.5% reflecting the higher interest rate environment in 2016. They found that new developments would be marginally feasible if the fee was $45,000 and infeasible if the fee was any higher.

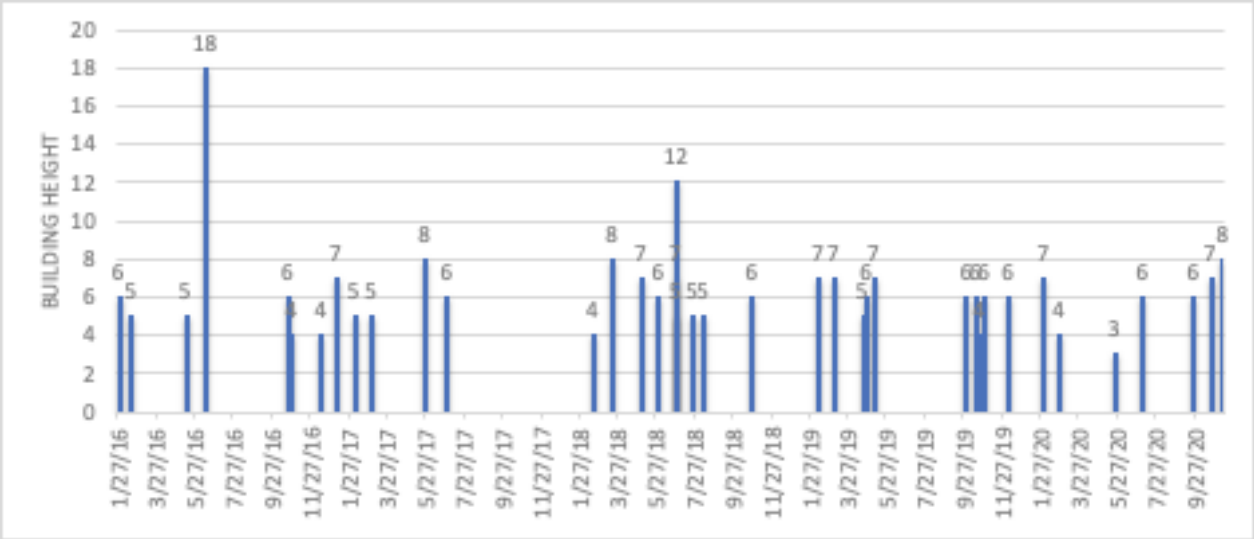
Together, the BAE and Strategic Economics analyses suggested that new rental development would be feasible at fee levels equivalent to and above the current level.

Prototypes Studied:

Rents and construction costs have escalated dramatically since the Strategic Economics analysis was published. Our recent data shows that rents are over 30% higher and the construction costs per square-foot in our model below are nearly double those in the Strategic Economics report. Our specific revenue and cost assumptions are described in the next section.

Because of these trends, the type of development project that both BAE and Strategic Economics used as their example would no longer be financially feasible in Berkeley. Driven by these same trends, the types of development projects being undertaken in Berkeley have shifted. Developers have responded to rising construction costs by building smaller units, fewer parking spaces and taller buildings on smaller lots. Figure 1 shows that developers of multi-family buildings in Berkeley have been primarily proposing 5-8 story buildings in recent years.

Figure 1: Permit applications for residential project with >20 units 2016 – 2020



Following these trends, we have used a slightly different prototype to test feasibility in today's market. Our prototype is a 6-story building with wood frame residential over a concrete podium. Where BAE and Strategic Economics assumed a 1-acre lot, we have assumed a half-acre. Our prototype includes 72 housing units and 3,000 square feet of commercial space (see Figure 2). Our model is taller but contains fewer units and less commercial space than the 4-story, 81-unit Strategic Economics prototype. The units in our model are also smaller than the units in the Strategic Economics analysis. Based on a detailed study of recent projects in Berkeley we have assumed a mix of 450 square-foot studios, 725 square-foot one-bedrooms, and 925 square-foot two bedrooms where Strategic Economics had assumed that all units would be 900 square-foot two-bedrooms.

Recent data also suggests that the capitalization rate for residential development is 4.0-4.25%, significantly lower than the cap rate of 5.0% which Strategic Economics used in 2016. Additionally, the parking ratio of 1 space per unit in the Strategic Economics study reflects the minimum parking requirements in much of the city at the time their study was published. As parking minimums have recently been eliminated, we assume a more modest parking ratio of 0.5 spaces per unit, consistent with observed occupancy rates.

Figure 2: Rental Prototype Details

Prototype Feature	Value
Project	
Construction Type	Wood Frame over Concrete Podium
Stories	6
Site Area in Acres	0.5
Gross Sq Ft	68,950
Residential Sq Ft	52,750
Common Area Sq Ft	13,200
Commercial Space Sq Ft	3,000
Residential Units	
Number of Units	72
Number of Studios	14
Number of 1BD Units	36
Number of 2BD Units	22
Studio Sq Ft	450
1BD Sq Ft	725
2BD Sq Ft	925
Parking	
Parking Ratio (Spaces / Units)	0.5
Number of Spaces	36

For the ownership prototype, we assumed larger average unit sizes. In order to facilitate comparison, we assumed a building of the same overall size (square feet) but with fewer units of larger size. We also assumed the same parking ratio (.5) as our rental prototype in order to facilitate comparison, though it is more likely that a condo project would provide 1 space per unit which would lower overall returns.

Figure 3: Ownership Prototype Details

Prototype Feature	Value
Project	
Construction Type	Wood Frame over Concrete Podium
Stories	6
Site Area in Acres	0.5
Gross Sq Ft	61,490
Residential Sq Ft	52,290
Common Area Sq Ft	9,200
Commercial Space Sq Ft	0
Residential Units	
Number of Units	56
Number of 1BD Units	35
Number of 2BD Units	18
Number of 3BD Units	3
1BD Sq Ft	850
2BD Sq Ft	1,025
3BD Sq Ft	1,365
Parking	
Parking Ratio (Spaces / Units)	0.5
Number of Spaces	28

Revenue and Cost Assumptions:

The revenue and cost assumptions used in our pro forma analysis are shown in Figure 4. The main inputs that influence project revenue are the residential rents. Our analysis of data from CoStar, RealPage, and Berkeley's Rent Stabilization Board led us to estimate that typical rents for newly built apartments in Berkeley would be approximately $3,100 for studios, $4,000 for one-bedrooms, and $4,500 for two-bedrooms. Other revenues include commercial rents of $3 per square-foot and parking revenue of $200 per space per month. These assumptions reflect rents that would have been assumed by projects prior to the pandemic. During the pandemic, rents throughout the region have fallen dramatically with some estimates showing rent in Berkeley down by 5 to 10% along with significant increases in apartment vacancy rates. The best available evidence suggests that these decreases are likely temporary. Developers in

Berkeley are moving forward on construction of new apartments which would not be financially feasible if the pandemic rents and vacancy rates were permanent.

The key input driving costs is the construction cost estimate of $400 per gross square foot. This assumption is based on actual construction costs for comparable East Bay projects and studies that estimate the construction cost inflation rate. Other important development cost assumptions include land at $8,000,000 per acre and parking construction costs at $50,000 per space. We assume that soft costs - which include architecture, engineering, and inspection fees – equal 22% of hard costs. Our estimates for land, parking, and soft costs rely on data from several comparable Berkeley projects but, of course, these figures vary quite a bit between actual projects. Financing costs include the construction loan interest rate of 4.5% and the initial construction loan fee of 1.0%. Our financing cost assumptions are based on independent estimates of prevailing interest rates and data from comparable Berkeley projects.

The current inclusionary housing rules require that 80% of on-site VLI units be offered first to housing voucher holders. Berkeley allows developers to charge the full Housing Authority Payment Standard rent for these units even when it exceeds the rent that could be charged to a VLI tenant with no voucher. We have assumed these slightly higher rents for 80% of any VLI units on-site.

Note: The COVID-19 pandemic caused an uncommon economic crisis that the US is only beginning to recover from. It is unclear what persistent impacts the pandemic will have on the housing development environment and consequently on our model. We cannot be certain how inputs such as construction costs and rents will change or how investors that finance development will respond to this uncertainty. Over the past year construction costs have continued to rise while rents have fallen across the Bay Area. This combination has made it harder for real estate projects to achieve feasibility, but these trends do not appear to be lasting. Our model reflects conditions as they were at the beginning of 2020.

Figure 4: Revenue and Cost Assumptions

Revenue/Cost	Assumption	Unit of Measure
Residential Revenue		
Studio Rent	$3,100	per unit per month
1BD Rent	$4,000	per unit per month
2BD Rent	$4,500	per unit per month
Ownership Revenues		
1BD Price	$725,000	per unit
2BD Price	$925,000	per unit
3BD Price	$1,100,000	per unit
Other Revenues		
Commercial Rent	$3.00	per sq ft per month
Parking Revenue	$200	per space per month
Development Costs		
Construction Costs	$400-$415	per gross sq ft
Land Costs	$8,000,000	per acre
Parking Costs	$50,000	per space
Soft Costs	20-22%	of hard costs
Financing Costs		
Construction Loan Interest Rate	4.5%	annual rate
Loan to Cost Ratio	70%	of total cost
Period of Initial Loan	24	months
Initial Construction Loan Fee	1.0%	of loan
Average Outstanding Balance	60%	of loan
Operating Costs		
Rental Vacancy Rate	4%	of units unoccupied
Rental Operating Cost	35%	of revenues

Policy Scenarios:

We built a financial model using the project prototypes described above in order to test the impact of potential changes to the City's affordable housing requirements on the feasibility of

residential development. We ran the model for the same hypothetical projects under a number of different policy assumptions. First, we established the returns that would be available under the current law depending on which performance option the project selected.

Current Program Scenarios

Rental

Current Fee: Under this alternative, we assume the hypothetical project elects to pay Berkeley's current Affordable Housing Mitigation Fee (AHMF) of $39,746 for each unit in the building. A project paying the fee would not be eligible for the density bonus.

Current On-site Units: Under this alternative, we imagine the project selecting instead to provide on-site units as provided under the current AMHF ordinance. The project would provide 7 Very Low Income (VLI) units (10%) and 7 Low Income (LI) units (10%). For the sake of comparison, we have assumed that the project does not access the density bonus though it would likely qualify.

Current Mixed Compliance – 11% VLI: The most common approach in recent years has been for projects to provide enough units on-site in order to maximize the benefits of the State Density Bonus and pay a fee to cover the remainder of their obligation under Berkeley's AHMF. Prior to 2021, projects that provided 11% of base units as restricted Very Low Income units on-site would receive the maximum 35% density bonus. We have assumed that our hypothetical project could increase the total number of housing units by 35% (from 79 to 97) with no increase in land costs[11].

Current Mixed Compliance – 15% VLI: In 2020 the State Legislature approved an expansion of the State Density Bonus which allows greater increases in density in exchange for more affordable housing units on-site. Now a developer can request a 50% increase in residential density if they provide, for example, at least 15% Very Low Income units. We have analyzed the profitability of a hypothetical

[11] Our analysis does not attempt to capture the full financial value of the density bonus. In addition to the right to build more housing units on a given site, state law allows developers to request a number of planning concessions based on the amount of affordable housing that they provide. These concessions clearly provide real value which can increase the profitability of projects. However, because the dollar value of concessions is abstract and highly dependent on the particular project, we have not attempted to include this in our financial modeling. As a result, our conclusions are likely to slightly understate the difference between the returns from density bonus and other types of projects.

project assuming a 50% increase in units with 15% of base units (10% of total units) restricted to VLI residents under current rules.

Ownership

Current On-site Compliance: A for-sale project that elected to provide on-site affordable units would be required to provide 20% of units to be affordable to and occupied by Low Income households earning less than 80% of AMI.

Current In Lieu Fee (Based on Sales Prices): Alternatively, a developer may pay an in lieu fee calculated based on 62.5% of the difference between the market price and the affordable price. This approach results in a different level of fee for different projects depending on the market prices of units in the project. For the sake of illustration, we estimated a range of current market prices based on average condo sales prices listed on Zillow.com and calculated the fee which would be due.

Figure 5: Condo Pricing Assumptions

Estimated BMR Ownership Fees 2021						
Unit Size	**Sq Ft**	**Estimated Market Price**	**Affordable Price**	**In Lieu Fee**	**In Lieu Fee Per Unit**	**In Lieu Fee per Sq Ft**
1BR	814	$703,556	$250,650	$283,066	$56,613	$70
2BR	1117	$853,125	$282,000	$356,953	$71,391	$64
3BR	1571	$995,797	$313,200	$426,623	$85,325	$54

Alternative Policy Options

In addition to evaluating the performance of the prototype under the current policy rules, we considered several alternative scenarios based on the proposed policy changes.

Rental

$45 Per square-foot Fee: Under this alternative, we assumed that the City adopted a fee of $45 per gross square foot (excluding parking and commercial space) and we evaluated the returns for a prototype project that elected to pay this fee in full with no on-site BMR units.

$55 Per square-foot Fee: This alternative assumes full payment of a higher fee per square-foot.

Mixed Compliance (Weighted)– 11% VLI: In this alternative we have assumed a $45 per square-foot fee is adopted along with an adjusted formula for determining the remainder fee for mixed compliance projects. We assumed that each 1% of VLI units provided would reduce the fee due by $3 per square-foot and each 1% of LI units would reduce the fee by $1.50 per square-foot. In this alternative, we assume a project that provides 11% of the base units (equivalent to 8% of total units) as VLI in order to receive a 35% density bonus.

Mixed Compliance (Weighted)– 15% VLI: In this alternative we assume a project that provides 15% of the base units (equivalent to 10% of total units) as VLI in order to receive a 50% density bonus under state law. As with the scenario above, this alternative assumes that the formula for calculating the remaining fee for mixed compliance provides greater reductions for projects that provide VLI units.

Ownership

$45 Per Square-foot Fee: In this scenario, we have assumed that the City adopts a single per square-foot rate of $45 which would be applied to all projects whether rental or ownership.

$55 Per Square-Foot Fee: This alternative assumes that the City adopts a higher per square-foot fee for ownership projects (or any project that records a condominium map).

Findings:

For rental projects, our model suggests that most projects would not be able to feasibly comply with the current 20% on-site requirement but that projects that choose to pay the fee or access the State Density Bonus by providing some units on-site and paying a partial fee would both earn returns that are just barely above the threshold which we identified for feasibility (5% yield on cost). The returns for density bonus projects are comparable to the fee alternative because the additional cost of providing some units on-site is offset by the additional benefit of building more units on the same site.

For this prototype, the proposed fee of $45 per gross square foot results in a virtually identical return. A higher fee ($55 per square-foot) would result in a marginal but very close to feasible

return. The proposed approach of providing more 'credit' for projects that provide on-site VLI units than those that provide LI units results in modest increases in the returns available to mixed compliance projects that take advantage of the State Density Bonus. While this small difference is not critical for this prototype, it is likely that there would be projects where this difference would result in on-site affordable units in projects that would otherwise have paid the fee entirely (or not moved forward at all).

Figure 6: Comparison of Returns - Rental

Scenario	Base Units	Bonus Units	LI Units	VLI Units	Fee $	Yield on Cost	% of Base	% of Total
Current Policy								
$39,746 Per Unit Fee	72	0	0	0	$2,861,712	5.08%	0%	0%
Onsite Units	72	0	7	7	$0	4.94%	19%	19%
Mixed Compliance - 11% VLI	72	25	0	8	$2,265,522	5.07%	11%	8%
Mixed Compliance - 15% VLI	72	36	0	11	$2,106,538	5.10%	15%	10%
Proposed Alternatives								
$45 Per Foot Fee	72	0	0	0	$2,967,750	5.07%	0%	0%
$55 Per Foot Fee	72	0	0	0	$3,627,250	4.99%	0%	0%
Mixed Compliance (Weighted) - 11% VLI	72	25	0	8	$2,350,809	5.10%	11%	8%
Mixed Compliance (Weighted) - 15% VLI	72	36	0	11	$2,184,925	5.12%	15%	10%

For ownership projects, we found that neither the current fee nor the current on-site requirement resulted in profit as a percent of development cost above the benchmark of 10%. The proposed switch to a $45 per square-foot fee would result in profit just above 10% while a higher $55 per square-foot fee would result in profit closer to 9%.

Figure 7: Comparison of Returns - Ownership

Scenario	Total Units	LI Units	Fee $	Profit % of Cost
Current Policy				
Current Fee (based on sale prices)	56	0	$3,810,847	8.00%
Onsite Units	56	11	$0	1.13%
Proposed Alternatives				
$45 Per Foot Fee	56	0	$2,767,050	**10.88%**
$55 Per Foot Fee	56	0	$3,381,950	9.16%

Sensitivity Analysis:

Revenues and Costs: The feasibility projections above are highly sensitive to assumptions about rents and construction costs. These assumptions are different from one project to the next and change in somewhat unpredictable ways over time. The heat table in Figure 8 below shows the

yields on cost that our model predicts for a range of different scenarios in regard to construction costs and rents for our prototype. This table shows returns for a 6-story rental project that selects the proposed $45 per square-foot fee option. The axes indicate how these scenarios compare with current construction cost and rent levels. The (0%, 0%) cell in the center of the table represents the estimated yield on cost for projects given today's rents and construction costs. The (-10%, 10%) cell in the top right represents the yield for projects if rents decrease 10% and construction costs increase 10% relative to current levels. Green cells represent situations in which projects will be feasible, with expected yields on cost at or above 5%. The redder a cell is, the less feasible projects will be. A rise in construction costs will increase the total development cost of a project, making it less feasible. A drop in market rents will decrease the rental income a project can expect, also making it less feasible.

Figure 8: Yield on Cost Sensitivity to Rents and Construction Costs

		Construction Costs										
		-10%	-8%	-6%	-4%	-2%	0%	2%	4%	6%	8%	10%
Rents	-10%	5.07%	4.96%	4.85%	4.75%	4.65%	4.56%	4.47%	4.38%	4.30%	4.22%	4.14%
	-8%	5.18%	5.07%	4.96%	4.85%	4.76%	4.66%	4.57%	4.48%	4.40%	4.32%	4.24%
	-6%	5.29%	5.18%	5.07%	4.96%	4.86%	4.76%	4.67%	4.58%	4.49%	4.41%	4.33%
	-4%	5.40%	5.29%	5.17%	5.07%	4.96%	4.86%	4.77%	4.68%	4.59%	4.50%	4.42%
	-2%	5.52%	5.40%	5.28%	5.17%	5.07%	4.96%	4.87%	4.77%	4.68%	4.60%	4.51%
	0%	5.63%	5.51%	5.39%	5.28%	5.17%	5.07%	4.97%	4.87%	4.78%	4.69%	4.61%
	2%	5.74%	5.62%	5.50%	5.38%	5.27%	5.17%	5.07%	4.97%	4.87%	4.78%	4.70%
	4%	5.85%	5.73%	5.60%	5.49%	5.38%	5.27%	5.17%	5.07%	4.97%	4.88%	4.79%
	6%	5.97%	5.84%	5.71%	5.59%	5.48%	5.37%	5.26%	5.16%	5.07%	4.97%	4.88%
	8%	6.08%	5.95%	5.82%	5.70%	5.58%	5.47%	5.36%	5.26%	5.16%	5.07%	4.97%
	10%	6.19%	6.06%	5.93%	5.80%	5.69%	5.57%	5.46%	5.36%	5.26%	5.16%	5.07%

With current rents and construction costs, projects are just barely feasible with estimated yields of 5.07%. However, if rents rise by just 2% and construction costs remain flat, projects will become more feasible with expected yields of 5.17%. As expected, yields increase as rents rise and decrease as construction costs rise. Yield on cost is just slightly more sensitive to construction costs than rents. Construction costs falling by 10% will increase yields a bit more than rents rising by 10%.

Parking: The feasibility of new rental development in Berkeley is also highly sensitive to assumptions about the amount of parking provided. The parking ratio is the number of parking spaces divided by the number of residential units. Before 2021, Berkeley's zoning regulations mandated projects in some districts to have parking ratios of at least 1. Berkeley recently eliminated minimum parking requirements, making parking ratios of 0 possible.

Figure 9 shows the yields on cost that our model predicts for a range of parking scenarios. In our model, parking ratios are used to describe the amount of parking provided by a project. Creating parking spaces is expensive and limits the area available for the project's residential or amenity space. As a result, higher parking ratios reduce a project's yield on cost and projected feasibility. Our model predicts that projects that provide no parking will be solidly financially feasible while projects that provide 1 space per unit are not currently feasible.

Figure 9: Yield on Cost Sensitivity to the Parking Ratio

Parking Ratio				
0.00	0.25	0.50	0.75	1.00
5.34%	5.20%	5.07%	4.94%	4.82%

Even with strong financial incentives and no City parking requirements, most projects are likely to include significant amounts of parking. Depending on the location of the project, tenants may see parking as a necessary building amenity. In other cases, project investors insist on some level of parking. When Seattle eliminated parking requirements in many parts of the city, one study found that most projects still included parking. In areas with no parking requirement, nearly 30% of new buildings provided no parking after the mandate was removed. But the remaining 70% provided parking even though it was not required by the city. Figure 10 shows that the average project provided .49 parking spaces per unit.

Figure 10: Seattle parking reform results

Minimum Number of Required Parking Spaces/Unit	Number of Development Projects	Average Parking Ratio	Buildings That Exactly Met Requirement	Buildings That Provide Parking Above Requirement		
				<0.5 Spaces/Unit	0.5-1.0 Spaces/Unit	>1.0 Spaces/Unit
0	570 (65.6%)	0.49	29.5%	24.2%	39.0%	7.4%

Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: March 2, 2022

TO: Members of the Planning Commission

FROM: Justin Horner, Associate Planner

SUBJECT: Public Hearing on Zoning Ordinance Amendments that Address Technical Edits and Corrections to Berkeley Municipal Code (BMC) Title 23 – Package #1

RECOMMENDATION:
Conduct a public hearing to discuss amendments to the following sections of the Berkeley Municipal (BMC) and make a recommendation to City Council.

- BMC Section 23.326.030 (Eliminating Dwelling Units through Demolition)
- BMC Section 23.204.020 (Allowed Land Uses)
- BMC Section 23.204.100 (C-SA Zoning District)
- BMC Section 23.204.110 (C-T Zoning District)
- BMC Section 23.204.130 (C-DMU District)
- BMC Section 23.204.140 (C-W Zoning District)
- BMC Section 23.206 (Manufacturing Districts)
- BMC Section 23.302.040 (Home Occupations)
- BMC Section 23.304.060 (Accessory Buildings and Enclosed Accessory Structures)
- BMC Section 23.322.030 (Required Parking Spaces)
- BMC Section 23.502.020 (Glossary)

BACKGROUND

On October 12, 2021, the City Council passed Ordinance No. 7,787-NS, which repealed the then-existing Title 23 of the Berkeley Municipal Code and zoning maps ("the old Zoning Ordinance") and adopted a new Title 23 of the Berkeley Municipal Code and zoning maps ("the new Zoning Ordinance"). The new Zoning Ordinance became effective December 1, 2021.

The new Zoning Ordinance was created as a customer service improvement and was limited in scope to changes that reorganized and reformatted Title 23 to make the City's zoning code easier to understand and administer. Minor "consent changes" were approved by City Council where changes were needed to bring the Ordinance into compliance with State law or to codify zoning interpretations (*Attachment 2*). Other than the "consent changes", no substantive changes were intended by City Council.

As part of City Council's approval action, staff was directed to regularly return to the City Council with amendments necessary to maintain the integrity of the new Zoning Ordinance. Amendments presented under this direction should be for the purposes of clarifying the new Zoning Ordinance, fixing mistakes in transcription and correcting unintentional errors. Substantive changes in planning policy are not to be included in this set of routine amendments, but should be presented as separate Zoning Ordinance amendments, consistent with BMC Chapter 23.412 (Zoning Ordinance Amendments).

PROPOSED ZONING ORDINANCE AMENDMENTS

Since the new Zoning Ordinance came into effect on December 1, 2021, a number of clean-up amendments have been identified. The project team anticipated technical edits and corrections during the roll-out of the new Zoning Ordinance and was prepared with an efficient process and schedule for addressing these requests. This report is the product of that process and is labeled "Package #1" because we expect a few more of these reports will come before Planning Commission over the course of the next year.

The proposed Zoning Ordinance amendments are presented in two categories. The first category includes nine amendments that require an explanation or justification. These amendments are presented below with information on what was in the old Zoning Ordinance, what is in the new Zoning Ordinance, and why amendments are necessary. The second category includes technical edits such as simple spelling, punctuation or grammatical errors. These amendments are summarized in *Table 1: Text Edits and Other Routine Amendments*.

Category One Zoning Ordinance Amendments

1. BMC Section 23.326.030.A (Eliminating Dwelling Units through Demolition)

Old Zoning Ordinance: Pursuant to Section 23C.08.020.B of the old Zoning Ordinance, demolition of a building constructed prior to June 1980 containing two or more units….

> "will not be allowed if the building was removed from the rental market under the Ellis Act during the preceding five (5) years or there have been verified cases of harassment or threatened or actual illegal eviction during the immediately preceding three years."

New Zoning Ordinance: The above provision was not carried over into Section 23.326.030.A of the new Zoning Ordinance, which governs elimination of Buildings with Two or More Units Constructed Before June 1980.

Proposed Amendment: Add the following to Section 23.326.030.A (Eliminating Dwelling Units through Demolition – Buildings with Two or More Units Constructed Before June 1980). This language is identical to language currently in the new Zoning Ordinance for buildings with a single dwelling unit.

> **23.326.030.A.2 Limitation.**
> (a) Demolition is not allowed if:
> i. The building was removed from the rental market under the Ellis Act during the preceding five years; or

ii. There have been verified cases of harassment or threatened or actual illegal eviction during the immediately preceding three years.

(b) Where allegations of harassment or threatened or actual illegal eviction are in dispute, either party may request a hearing before a Rent Board Hearing Examiner. The Rent Board Hearing Examiner will provide an assessment of the evidence and all available documentation to the ZAB. The ZAB shall determine whether harassment or threatened or actual illegal eviction occurred.

2. *BMC Section 23.204.020 (Allowed Land Uses)*

Old Zoning Ordinance: Pursuant to Section 23C.22.020 of the old Zoning Ordinance, Short-Term Rentals were only permitted in residential uses in the following zoning districts: R-1, R-1A, R-2, R2A, R-3, R-4, R-5, R-S, R-SMU, C-DMU, C-1, C-NS, C-SA, C-T, C-W, and MU-R.

New Zoning Ordinance: This provision was not accurately carried over into Table 23.204-1: Allowed Land Uses in the Commercial Districts in the new Zoning Ordinance. Table 23.204-1 does not reflect that Short-Term Rentals are not permitted in the C-E, C-SO and C-AC districts.

Proposed Amendment: Amend Table 23.204-1: Allowed Uses in Commercial Districts to read:

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see **Error! Reference source not found.**(B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	**COMMERCIAL DISTRICTS**											**USE-SPECIFIC REGULATIONS**
	C-C	**C-U**	**C-N**	**C-E**	**C-NS**	**C-SA**	**C-T**	**C-SO**	**C-DMU**	**C-W**	**C-AC**	
Short-Term Rental	See 23.314			NP	See 23.314			NP	See 23.314		NP	

3. *BMC Section 23.204.100 (C-SA Zoning District)*

Old Zoning Ordinance: Section 23E.52.060.E of the old Zoning Ordinance includes provisions regulating automobile and motorcycle sales that include outdoor activities in the C-SA district. These regulations apply to a Dealership Overlay Area, which the old Zoning Ordinance describes with text.

New Zoning Ordinance: The new Zoning Ordinance replaced the text description of the C-SA Dealership Overlay Area with a map (Figure 23.204-2 C-SA Dealership Overlay Area). However, all of the parcels located in the Overlay Area have since been rezoned to C-AC. Therefore, there is no need for the map or the Dealership Overlay. Text

changes to the C-SA are necessary to clarify that vehicle sales with outdoor activities are not permitted anywhere in the C-SA district, and to remove standards related to vehicle sales with outdoor activities. Additional text changes are necessary to replace "automobile and motorcycle" with "vehicle," to be consistent with usage throughout the new Zoning Ordinance and the terms in the Glossary.

Proposed Amendment: Amend Section 23.204.100.B.5 to read:

5. ~~Automobile/Motorcycle~~ Vehicle Sales.

   a. **Applicability.**

   i. In the C-SA district, small vehicle service is not permitted. Small vehicle sales that are exclusively indoor operations are permitted with a Zoning Certificate. Otherwise, a Use Permit is required.

   ii. All new or relocated ~~automobile or motorcycle~~ vehicle sales in the C-SA district shall comply with the requirements of this subsection.

   iii. Expansions or modifications of existing ~~automobile or motorcycle~~ vehicle sales are:

      1. Encouraged to comply with standards in Paragraph c (Standards) below where feasible; and

      2. Shall not increase or exacerbate a non-conformity with these standards.

b. ~~**Where Allowed**~~ **Sales with Outdoor Activities.** New or relocated ~~automobile or motorcycle~~ vehicle sales uses with outdoor activities, including but not limited to storage and display of vehicle inventory~~, are limited to the Dealership Overlay Area as shown in **Error! Reference source not found.**~~. are not permitted. Vehicle sales uses must be exclusively indoor operations.

[delete Figure 23.204-2: C-SA Dealership Overlay Area]

c. **Standards**.

   ~~*i.* **Street Frontage.** Outdoor vehicle display is permitted only along Shattuck Avenue and Adeline Street and is limited to 30 percent of the lot frontage on those streets.~~

   ~~*ii.* **Area for Outdoor Uses.** A maximum of 40 percent of the lot area may be used for outdoor uses, including but not limited to vehicle display and storage. Adequate landscaping and/or fencing shall be used to filter the view of outdoor uses from the adjacent right-of-way and abutting properties, with the exception of outdoor vehicle display;~~

   i. **Service Entries.** Vehicle and repair service entries may not exceed 20 percent of the primary lot frontage, no entrance may exceed a width of 20 feet. The primary street frontage is the frontage towards which the primary building entrance is oriented.

ii. **Transparency.** At least 60 percent of any new building shall be within 10 feet of the right-of-way along the primary street frontage and 60 percent of the street-facing facade shall be comprised of clear glass.

iii. **Repair Activities.** All vehicle repair activities shall be conducted indoors.

iv. **Noise.** All noise-generating equipment and activities, such as vehicle repair, shall be shielded by noise-attenuating materials. Outdoor amplification is not permitted.

v. **Lighting.** Exterior light standards and fixtures shall not be taller than 20 feet, shall achieve uniform light coverage and minimize glare, shall use light cutoffs to control light spillover onto adjacent properties and urban sky glow, and shall use low energy light fixtures consistent with the City's goals for energy efficiency.

vi. **Vehicle Storage.** No vehicles shall be stored in the public right-of-way.

4. *BMC Section 23.204.100 (C-SA Zoning District)*

Old Zoning Ordinance: Section 23E.52.070.B of the old Zoning Ordinance includes provisions regulating maximum heights for Main Buildings in the C-SA. Maximum height limits vary in the C-SA depending upon the location of properties in three subareas within the district.

New Zoning Ordinance: Section 23.204.100.D of the new Zoning Ordinance includes development standards for the C-SA district. These development standards include maximum heights, which are detailed in Table 23.204-28 C-SA Maximum Building Heights and a map, Figure 23.204-3 C-SA Building Height Subareas.

Both the Table and the Figure refer to parcels that have since been rezoned to C-AC. Therefore, the map, Figure 23.204-3 C-SA Building Height Subareas, must be amended to exclude those parcels that are no longer in the C-SA district. The amended map has no parcels in Subarea 2. The map's legend requires a change to reflect that.

Similarly, Table 23.204-28 C-SA Maximum Building Heights must be amended to remove Subarea 2 and renumber the remaining height subareas.

Proposed Amendment: Amend Table 23.204-28: C-SA Maximum Building Heights to read:

Building Land Use	Maximum Height Subarea 1	~~Subarea 2~~	Subarea ~~2~~ 3
Non-Residential Uses	36 ft and 3 stories	~~24 ft and 2 stories~~	24 ft and 2 stories
Mixed Use and Residential Only	60 ft and 5 stories [1]	~~50 feet and 4 stories [1]~~	36 ft and 3 stories [1]
[1] In mixed-use buildings, the third story and above must be used for residential purposes entirely.			

The amended map, Figure 23.204-3 C-SA Building Height Subareas is included as *Attachment 4*.

5. *BMC Section 23.204.110 (C-T Zoning District)*

Old Zoning Ordinance: Pursuant to Section 23E.56.070 of the old Zoning Ordinance, the Zoning Adjustments Board may approve a Use Permit for a project located in the C-T district, north of Dwight Avenue, to increase a project's maximum height to 75 feet if at least 50% of the total building floor area is for residential use. The old Zoning Ordinance did not include a maximum number of stories for such a project.

New Zoning Ordinance: In the new Zoning Ordinance, Table 23.204-33: C-T Allowed Heights and FAR Increases includes a maximum height of "75 ft and 6 stories" for a project located North of Dwight Way, adding the stories limitation where none previously existed.

Proposed Amendment: Amend Table 23.204-33: C-T Allowed Heights and FAR Increases to read:

Project Location	Allowed Increase	
	Height	FAR
South of Dwight Way	65 ft. and 5 stories	No increase allowed
North of Dwight Way	75 ft. ~~and 6 stories~~	6.0

6. *BMC Section 23.204.130 (C-DMU District)*

Old Zoning Ordinance: Section 23E.68.070.C of the old Zoning Ordinance sets forth minimum setbacks for projects in the C-DMU district. Setback requirements are included for a property's Front Lot Line, Interior Side Lot Line and Rear Lot Line. There are no additional setback requirements for a property's "street side" lot line.

New Zoning Ordinance: Table 23.204-39: C-DMU Setback Standards of the new Zoning Ordinance includes setback requirements for a property's street side lot line that are equivalent for those on a property's front lot line.

Proposed Amendment: Amend the column headings of Table 23.204-39: C-DMU Setback Standards to read:

Portion of Building at Height of:	Front ~~or Street Side~~	Minimum Interior Side		Minimum Rear
		65' and less from lot frontage	Over 65' from lot frontage	

7. *BMC Section 23.204.140 (C-W Zoning District)*

Old Zoning Ordinance: Table 23E.64.030 of the old Zoning Ordinance permits Group Living Accommodations in the C-W District with a Use Permit. Although Section 23.64 does include development standards, it includes no minimum lot area requirement per Group Living Accommodation Resident.

New Zoning Ordinance: Table 23.204-42: C-W Development Standards in the new Zoning Ordinance includes a minimum lot area requirement per Group Living Accommodation Resident of 350 square feet.

Proposed Amendment: Amend the Lot Area Minimum section of Table 23.204-42: C-W Development Standards to read:

Basic Standards		**Supplemental Standards**
Lot Area Minimum		
New Lots	No minimum	23.304.020--Lot Requirements
Per Group Living Accommodation Resident	~~350 sq. ft.~~ No minimum	

8. *BMC Section.206.020 (Manufacturing Districts)*

Old Zoning Ordinance: Table 23E.72.030 of the old Zoning Ordinance indicates that all residential uses are Prohibited in the M district. Accessory Dwelling Units are residential uses.

New Zoning Ordinance: Table 23.206-1 Allowed Land Uses in Manufacturing Districts in the new Zoning Ordinance indicates that Accessory Dwelling Units are Permitted in the M district.

Proposed Amendment: Amend Table 23.206-1 Allowed Land Uses in Manufacturing Districts to read:

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply	**MANUFACTURING DISTRICTS**				**Use-Specific Standards** Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	M	**MM**	**MU-LI**	**MU-R**	
Residential Uses					
Accessory Dwelling Unit	NP	NP	NP	See **Error! Reference source not found.**	

9. *BMC Section 23.322.030 (Required Parking Spaces)*

Old Zoning Ordinance: Section 23D.24.080 of the old Zoning Ordinance included required off-street parking for projects located in the ES-R (Environmental Safety-Residential) district.

New Zoning Ordinance: Table 23.322-1 Required Off-Street Parking in Residential Districts does not include the off-street parking requirements for projects in the ES-R district.

Proposed Amendment: Amend Table 23.322-1 Required Off-Street Parking in Residential Districts to read:

Land Use	Number of Required Off-street Parking Spaces
Residential Uses	
Accessory Dwelling Unit	See Chapter **Error! Reference source not found.**
Dwellings, including Group Living Accommodations	R-3, R-4, and R-5 Districts (1-9 units): If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per unit. R-3, R-4, and R-5 District (10 or more units): If located on a roadway less ~~than 26 feet in width in the Hillside Overlay:~~ 1 per 1,000 sq ft of gross floor area. ES-R: 1 per 1,000 sq ft of gross floor area or one per bedroom, whichever is greater. All Other Districts: If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per unit All Other Locations: None required
Dormitories, Fraternity and Sorority Houses, Rooming & Boarding Houses, Senior Congregate Housing	If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per each 5 residents, plus 1 for manager. All Other Locations: None required.
Rental of Rooms	ES-R: 1 per each roomer or boarder, in addition to any required parking for Dwellings. All Other Districts: If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per each two roomers. All Other Locations: None required
Non-Residential Uses	
All non-residential uses except uses listed below	R-SMU District: 1 per 1,000 sq. ft. All Other Residential Districts: See **Error! Reference source not found.**.A.2
Community Care Facility	One per two non-resident employees
Food Service Establishment	1 per 300 sq. ft.
Hospital	R-SMU District: 1 per 1,000 sq. ft. All Other Residential Districts: 1 per each 4 beds plus 1 per each 3

Land Use	Number of Required Off-street Parking Spaces
	employees
Library	1 per 500 sq. ft. of publicly accessible floor area
Nursing Home	1 per 3 employees
Medical Practitioners	1 per 300 sq. ft.
Non-Medical Offices	R-SMU District: 1 per 1,000 sq. ft. All Other Residential Districts: 1 per 400 sq. ft.
Hotels, Tourist	1 per 3 guest/sleeping rooms or suites plus 1 per 3 employees

10. *BMC Section 23.502.020 (Glossary)*

Old Zoning Ordinance: Section 23F.04 of the old Zoning Ordinance consisted of definitions of terms used in the old Zoning Ordinance, similar to the Glossary that is now Section 23.502.020 of the new Zoning Ordinance.

Section 23F.04 of the old Zoning Ordinance included a definition of Retail Products Store, which included a list of examples of types of Retail Products Stores. One type of Retail Product Store, "Flower and Plant Stores" included a note that this type "excludes nurseries." Nurseries were instead captured under another Retail Product Store type, "Garden Supply Stores, Nurseries."

New Zoning Ordinance: Section 23.502.020.R of the new Zoning Ordinance includes a new definition, "Retail, General," which was compiled from the list of Retail Product Store types from the old Zoning Ordinance, but which eliminated some of the subtypes of retail stores. The definition of Retail, General in the new Zoning Ordinance correctly includes nurseries. However, the definition also mistakenly excludes nurseries in its last sentence, as the exclusion of nurseries from one *type* of Retail Produce Store in the old Zoning Ordinance was inadvertently carried as an exclusion from the *entire* Retail, General definition in the new Zoning Ordinance.

Proposed Amendment: Amend the definition of Retail, General in Section 23.502.020.R to read:

Retail, General. A retail establishment engaged in the sales of personal, consumer, or household items to the customers who will use such items. This use includes antique stores, art galleries, arts and crafts supply stores, bicycle shops, building materials and garden supplies stores, clothing stores, computer stores, cosmetic/personal care items, department stores, drug paraphernalia stores, drug stores, fabric, textile and sewing supply shops, flower and plant stores, food product stores, furniture stores, garden supply stores, nurseries, gift/novelty shops, household hardware and housewares stores, household electronics/electrical stores, jewelry/watch shops, linen shops includes bedding, musical instruments and materials stores, office supply stores, paint stores, photography equipment supply stores, secondhand stores, sporting goods stores, stationery, cards and paper goods stores toy stores and variety stores. This use

excludes video rental stores, service of vehicle parts, ~~nurseries,~~ and firearm/munition sales.

Category Two Zoning Ordinance Amendments

The following table includes minor text edits, along with a rationale for each edit.

Table 1: Text Edits and Other Routine Amendments

Zoning Ordinance Section	Proposed Amendment	Rationale
23.204.020 Table 23.204-1 (Allowed Uses in the Commercial Districts)	ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.030020(B) [#] = Table ~~Note~~ Permit Requirement * Use-Specific Regulations Apply	Correcting an inaccurate internal reference
23.302.040.A (Home Occupations – Definitions)	Remove entire section	Glossary already contains exact same definition language. Stating it twice raises the opportunity for discrepancies in future updates. One location for definitions is best practice.
23.304.060.C.2 (Accessory Buildings and Enclosed Accessory Structures)	~~2~~ 3. Rebuilding and Replacement	Section misnumbered
23.502.020.F.3.A (Glossary: Family Day Care Home)	(a) *Small Family Day Care Home.* A family day care home~~s~~ for eight or fewer children, including children who live at the home.	Grammatical correction
23.502.020.F.3.B (Glossary: Family Day Care Home)	(b) *Large Family Day Care Home.* A family day care home~~s~~ for nine to fourteen children, including children who live at the home.	Grammatical correction

NEXT STEPS

Staff recommends that the Planning Commission hold a public hearing, receive public testimony, and recommend to City Council adoption of the proposed Zoning Ordinance amendments.

ATTACHMENTS

1. Ordinance – Zoning Ordinance Amendments
2. Consent Changes Matrix
3. Public Hearing Notice
4. Amended Figure 23.204-3 C-SA Building Height Subareas

ORDINANCE NO. -N.S.

AMENDING TITLE 23 OF THE BERKELEY MUNICIPAL CODE TO CORRECT UNINTENTED ERRORS AND MAKE NON-SUBSTANTIVE, TECHNICAL EDITS TO THE ZONING ORDINANCE

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 23.326.030 is amended to read as follows:

23.326.030 Eliminating Dwelling Units through Demolition

A. *Buildings with Two or More Units Constructed Before June 1980.*

1. *Applicability.* This subsection only applies to building with two or more units constructed before June 1980.

2. *Limitation.*

(a) Demolition is not allowed if:

i. The building was removed from the rental market under the Ellis Act during the preceding five years; or

ii. There have been verified cases of harassment or threatened or actual illegal eviction during the immediately preceding three years.

(b) Where allegations of harassment or threatened or actual illegal eviction are in dispute, either party may request a hearing before a Rent Board Hearing Examiner. The Rent Board Hearing Examiner will provide an assessment of the evidence and all available documentation to the ZAB. The ZAB shall determine whether harassment or threatened or actual illegal eviction occurred.

~~2~~3. *Findings.* The ZAB may approve a Use Permit to demolish a building constructed before June 1980 on a property containing two or more dwelling units if any of the following are true:

(a) The building containing the units is hazardous or unusable and is infeasible to repair.

(b) The building containing the units will be moved to a different location within Berkeley with no net loss of units and no change in the affordability levels of the units.

(c) The demolition is necessary to permit construction of special housing needs facilities such as, but not limited to, childcare centers and affordable housing developments that serve the greater good of the entire community.

(d) The demolition is necessary to permit construction approved pursuant to this chapter of at least the same number of dwelling units.

~~3~~4. *Fee Required.*

(a) The applicant shall pay a fee for each unit demolished to mitigate the impact of the loss of affordable housing in Berkeley.

(b) The amount of the fee shall be set by resolution of the City Council.

(c) *In Lieu of a Fee.*

i. In lieu of paying the impact fee, the applicant may provide a designated unit in the new project at a below market rate to a qualifying household in perpetuity.

ii. The affordability level of the below market rent and the income level of the qualifying household shall be set by resolution of the City Council.

iii. The applicant shall enter into a regulatory agreement with the City of Berkeley to provide the in lieu units.

~~4~~5. *Occupied Units.*

(a) *Applicability.*

i. The requirements in this subsection apply if units to be demolished are occupied.

ii. These requirements do not apply to tenants who move in after the application for demolition is submitted to the City if the owner informs each prospective tenant about the proposed demolition and that demolition constitutes good cause for eviction.

(b) *Notice.* The applicant shall provide all sitting tenants notice of the application to demolish the building no later than the date it is submitted to the City, including notice of their rights under Municipal Code Section 13.76 (Rent Stabilization and Eviction for Good Cause Program).

(c) *General Requirements.*

i. The applicant shall provide assistance with moving expenses equivalent to in Chapter 13.84 (Relocation Services and Payments for Residential Tenant Households).

ii. The applicant shall subsidize the rent differential for a comparable replacement unit, in the same neighborhood if feasible, until new units are ready for occupancy. Funding for the rent differential shall be guaranteed in a manner approved by the City.

iii. *Exception.* An applicant who proposes to construct a 100 percent affordable housing project is not required to comply with this subsection but must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended and the California Relocation Act (Government Code sections 7260 et seq.).

(d) *Sitting Tenants Rights.*

i. Sitting tenants who are displaced as a result of demolition shall be provided the right of first refusal to move into the new building.

ii. Tenants of units that are demolished shall have the right of first refusal to rent new below-market rate units designated to replace the units that were demolished, at the rent that would have applied if they had remained in place, as long as their tenancy continues.

iii. Income restrictions do not apply to displaced tenants.

iv. *Exception.*

(1) An applicant who proposes to construct a 100 percent affordable housing project is not required to comply with 23.326.030.A.4.a, b, and c, but must comply with the following requirement.

(2) Sitting tenants who are displaced as a result of demolition and who desire to return to the newly constructed building will be granted a right of first refusal subject to their ability to meet income qualifications and other applicable eligibility requirements when the new units are ready for occupancy.

Section 2. That Berkeley Municipal Code Section 23.204.020 is amended to read as follows:

Table 23.204-1: Allowed Uses in the Commercial Districts

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see ~~23.204.030~~**Error! Reference source not found.**(B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	COMMERCIAL DISTRICTS											USE-SPECIFIC REGULATIONS
	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
Residential Uses												
Accessory Dwelling Unit	See **Error! Reference source not found.**—**Error! Reference source not found.**											
Dwellings												
Single-Family	UP(H)	UP(PH)*	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	**Error! Reference source not found.**.B.3
Two-Family	UP(PH)	UP(PH)*	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	**Error! Reference source not**

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	C-C	**C-U**	**C-N**	**C-E**	**C-NS**	**C-SA**	**C-T**	**C-SO**	**C-DMU**	**C-W**	**C-AC**	
												found..B.3
Multi-Family	UP(PH)	UP(PH)*	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	**Error! Reference source not found.**.B.3
Group Living Accommodation	UP(PH)	UP(PH)*	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	**Error! Reference source not found.**.B.3
Hotel, Residential	UP(PH)	UP(PH)*	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	**Error! Reference source not found.**.B.3
Mixed-Use Residential	UP(PH)	UP(PH)*	UP(PH)	UP(PH)	UP(PH)	UP(PH)*	UP(PH)	UP(PH)	UP(PH)	See **Error! Reference source not found.**	UP(PH)	**Error! Reference source not found.**.B.3; **Error! Reference source not found.**.B.4
Senior Congregate Housing	See **Error! Reference source not found.**.H											
Public and Quasi-Public Uses												
Child Care Center	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Cemetery/Crematory/Mausoleum	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	
Club/Lodge	UP(PH)	UP(PH)	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	UP(PH)	
Columbaria	See **Error! Reference source not found.**.C											
Community Care Facility	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	ZC	AUP	
Community Center	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Emergency Shelter	See **Error! Reference source not found.**		–	–	See **Error! Reference source not found.**							
Family Day Care Home, Large	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	
Family Day Care Home, Small	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	
Hospital	UP(PH)	UP(PH)	NP	NP	NP	NP	NP	NP	UP(PH)	UP(PH)	NP	
Library	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Mortuaries and Crematories	UP(PH)	UP(PH)	NP	NP	NP	NP	NP	NP	NP	UP(PH)	NP	
Municipal Animal Shelter	–	–	–	–	–	–	–	–	–	–	--	
Nursing Home	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Park/Playground	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	AUP	ZC	
Public Safety and Emergency Service	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Public Utility Substation/Tank	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Religious Assembly	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	AUP	UP(PH)	
School	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
School, Vocational	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	UP(PH)	AUP	
Retail Uses												
Alcoholic Beverage Retail Sale	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	NP	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	**Error! Reference source not found.**.B.2; **Error! Reference source not found.**
Cannabis Retailer	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	**Error! Reference source not found.**; 12.21; and 12.22
Cannabis Retailer, Delivery Only	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	--	**Error! Reference source not found.**;

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	C-C	**C-U**	**C-N**	**C-E**	**C-NS**	**C-SA**	**C-T**	**C-SO**	**C-DMU**	**C-W**	**C-AC**	
												12.21; and 12.22
Firearm/Munitions Business	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	NP	UP(PH)	UP(PH)*	**Error! Reference source not found.**.D
Industrial and Mining Products	–	–	–	–	–	–	–	–	–	–	--	
Pawn Shop/Auction House	UP(PH)	–	NP	NP	NP	NP	NP	NP	UP(PH)	UP(PH)	NP	
Pet Store	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	ZC [3]	UP(PH)	
Retail, General	ZC [1]	ZC [1]	ZC* [2]	ZC* [2]	ZC* [2]	ZC [1]	ZC	ZC* [2]	ZC	ZC* [3]	ZC*	**Error! Reference source not found.**.E (for department stores) **Error! Reference source not found.**.F (for drug stores)
Smoke Shop	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	NP	UP(PH)*	UP(PH)*	23.302.070.I
Personal and Household Service Uses												
Personal and Household Services, General	ZC [1]	ZC [1]	ZC [2]	ZC [2]	ZC [2]	ZC [1]	ZC	ZC [2]	ZC	ZC [5]	ZC	
Kennels and Pet Boarding	NP	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH)	NP	
Laundromats and Cleaners	AUP	AUP	UP(PH)	UP(PH)	UP(PH)	AUP	AUP	UP(PH)	UP(PH)	AUP [4]	AUP	
Veterinary Clinic	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Video Tape/Disk Rental	ZC [1]	ZC [1]	ZC [2]	AUP	ZC [2]	-	ZC	ZC [2]	ZC	ZC [5]	NP	
Office Uses												
Business Support Services	ZC [1]	ZC [1]	ZC [2]	ZC [2]	ZC [2]	ZC [1]	ZC*	ZC [2]	ZC	ZC [5]	ZC [6]	**Error! Reference source not found.**.B.6
Banks and Financial Services, Retail	AUP	AUP	UP(PH)	UP(PH)	UP(PH)	ZC [1]	AUP*	UP(PH)	ZC*	AUP	ZC	**Error! Reference source not found.**.B.6; **Error! Reference source not found.**.B.3; **Error! Reference source not found.**.D.3
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents	ZC [1]	ZC [1]	ZC* [2]	ZC* [2]	ZC* [2]	ZC [1]	ZC*	ZC* [2]	ZC*	ZC [5]	ZC [6]	**Error! Reference source not found.**.D;**Error! Reference source not found.**.B.6; **Error! Reference source not found.**.D.3
Medical Practitioners	ZC [1]	ZC [1]	AUP	NP	UP(PH)	ZC [1]	AUP*	UP(PH)	ZC*	ZC [5]	ZC [6]	**Error! Reference source not found.**.D; **Error! Reference source not found.**.B.6; **Error! Reference source not found.**.D.3
Non-Chartered Financial Institutions	UP(PH)*	UP(PH)*	NP	NP	NP	UP(PH)*	UP(PH)*	NP	NP	UP(PH)*	UP(PH)	**Error! Reference source not found.**.F **Error! Reference source not found.**.B.6
Office, Business and Professional	ZC [1]	ZC [1]	AUP*	AUP*	AUP*	ZC [1]	AUP*	AUP*	ZC*	ZC [5]	ZC [6]	**Error! Reference source not found.**.B; **Error!**

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												Reference source not found..B.6; **Error! Reference source not found.**.D.3
Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses												
Adult-oriented Business	UP(PH)*	UP(PH)*	NP	NP	NP	NP	NP	NP	UP(PH)*	UP(PH)*	NP	**Error! Reference source not found.**.A
Amusement Device Arcade	UP(PH)*	UP(PH)*	NP	NP	NP	UP(PH)*	NP	NP	UP(PH)*	UP(PH)*	UP(PH)	**Error! Reference source not found.**.B
Bar/Cocktail Lounge/Tavern	UP(PH)*	UP(PH)*	UP(PH)*	–	NP	UP(PH)*	UP(PH)*	NP	UP(PH)*	UP(PH)*	UP(PH)	**Error! Reference source not found.**.B.3; **Error! Reference source not found.**.B.2; **Error! Reference source not found.**
Commercial Recreation Center	See **Error! Reference source not found.**.A											
Dance/Exercise/Martial Arts/Music Studio	ZC [1]	ZC [1]	ZC [2]	AUP	AUP [4]	ZC [1]	ZC	AUP	ZC	ZC [7]	ZC	
Entertainment Establishment	UP(PH)	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Food Service Establishment	See **Error! Reference source not found.**.E											
Group Class Instruction	ZC [1]	ZC [1]	AUP	AUP	AUP*	ZC [1]	ZC*	AUP	ZC*	ZC	ZC	**Error! Reference source not found.**.B
Gym/Health Club	See **Error! Reference source not found.**.C											
Hotels, Tourist	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Motels, Tourist	UP(PH)	UP(PH)	NP	NP	NP	NP	NP	NP	UP(PH)	UP(PH)	NP	
Theater	UP(PH)	UP(PH)	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	NP	AUP	UP(PH)	UP(PH)	
Vehicle Service and Sales Uses												
Alternative Fuel Station	UP(PH)	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	NP*	UP(PH)	NP	AUP*	UP(PH)	**Error! Reference source not found.**.B.4; **Error! Reference source not found.**.B.3
Electric Vehicle Charging Station	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP*	AUP	
Gasoline Fuel Stations	UP(PH)	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	NP*	UP(PH)	NP	UP(PH)*	UP(PH)	**Error! Reference source not found.**.B.3
Large Vehicle Sales and Rental	AUP	NP	NP	NP	NP	NP	NP	NP	NP	AUP* [8]	NP	**Error! Reference source not found.**.B.3
Small Vehicle Sales and Service	AUP	NP	NP	NP	NP	UP(PH)*	NP	NP	UP(PH)	UP(PH)*	NP	**Error! Reference source not found.**.B.5; **Error! Reference source not found.**.B.3
Tire Sales and Service	UP(PH)	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH)*	NP	**Error! Reference source not found.**.B.3
Vehicle Parts Store	ZC [1]	NP	ZC [2]	ZC [2]	ZC [2]	ZC [1]	ZC	ZC [2]	NP	AUP* [8]	ZC	
Vehicle Rentals	AUP	NP	NP	NP	NP	NP	NP	NP	UP(PH)	AUP* [8]	NP	**Error! Reference source not found.**.B.3

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Vehicle Repair and Service	AUP	NP	NP	NP	NP	NP	NP	NP	NP	AUP* [8]	NP	
Vehicle Sales, New	AUP	NP	NP	NP	NP	UP(PH)*	NP	NP	UP(PH)	AUP* [8]	NP	**Error! Reference source not found.**.B.5 **Error! Reference source not found.**.B.3
Vehicle Sales, Used	AUP	NP	NP	NP	NP	UP(PH)*	NP	NP	UP(PH)	UP(PH)*	NP	**Error! Reference source not found.**.B.5; **Error! Reference source not found.**.B.3; **Error! Reference source not found.**.D.4
Vehicle Wash	UP(PH)	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH)*	NP	**Error! Reference source not found.**.B.3
Vehicle Wrecking	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	
Industrial and Heavy Commercial Uses												
Bus/Cab/Truck/Public Utility Depot	–	–	–	–	–	–	–	–	–	–	--	
Commercial Excavation	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	–	NP	UP(PH)	
Contractors Yard	–	–	–	–	–	–	–	–	–	AUP	--	
Dry Cleaning and Laundry Plant	UP(PH)	UP(PH)	NP	–	UP(PH)	NP	NP	NP	UP(PH)	NP	NP	
Laboratory												
Commercial Physical or Biological	AUP	AUP	NP	NP	NP	NP	NP	NP	AUP	NP	NP	
Cannabis Testing	AUP	AUP	NP	NP	NP	NP	NP	NP	AUP	AUP [9]	NP	
Manufacturing												
Construction Products	–	–	–	–		–	–	–	–	UP(PH)	--	
Light Manufacturing	–	–	–	–		–	–	–	–	AUP [8]	--	
Pesticides/Herbicides/Fertilizers	–	–	–	–		–	–	–	–	UP(PH)	--	
Petroleum Refining and Products	–	–	–	–		–	–	–	–	UP(PH)	--	
Pharmaceuticals	–	–	–	–		–	–	–	–	UP(PH)	--	
Primary Production Manufacturing	–	–	–	–	NP	–	–	–	–	UP(PH)	--	
Semiconductors	–	–	–	–	NP	–	–	–	–	UP(PH)	--	
Material Recovery Enterprise	–	–	–	–	–	–	–	–	–	–	--	
Media Production	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)*	AUP	UP(PH)	**Error! Reference source not found.**.B.4
Mini-storage	UP(PH)	NP	NP	NP	NP	NP	NP	–	UP(PH)	NP	NP	
Recycled Materials Processing	–	–	–	–	–	–	–	–	–	–	--	
Recycling Redemption Center	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	
Repair Service, Non-Vehicle	–	–	–	–	–	–	–	–	–	AUP	--	
Research and Development	–	–	–	–	–	–	–	–	–	AUP	--	
Services to Buildings and Dwellings	–	–	–	–	–	–	–	–	–	AUP	--	
Warehouse	UP(PH)	NP	NP	NP	NP	NP	NP	–	UP(PH)	NP	NP	
Warehouse-Based Non-Store Retailer	–	–	–	–		–	–	–	–	–	--	

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Wholesale Trade	–	–	–	–	--	–	–	–	–	AUP [8]	--	
Incidental Uses												
Amusement Devices	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	UP(PH)	**Error! Reference source not found.**.B
Alcoholic Beverage Service	See **Error! Reference source not found.**											
Cafeteria, On-Site	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	AUP	UP(PH)	
Columbaria	See **Error! Reference source not found.**.C											
Food and Beverage for Immediate Consumption	ZC	ZC	AUP	UP(PH)	UP(PH)	ZC	AUP	UP(PH)	ZC	ZC	ZC	
Food Service Establishment	See 23.302.070.E											
Live Entertainment	See **Error! Reference source not found.**.D											
Manufacturing	AUP	AUP	UP(PH)	UP(PH)	NP	UP(PH)	AUP	AUP	AUP	AUP	AUP	
Retail Sale of Goods Manufactured On-Site	ZC [1]	ZC [1]	ZC [2]	ZC [2]	ZC [2]	ZC [1]	ZC	ZC [2]	ZC	AUP	ZC	
Storage of Goods (>25% gross floor area)	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP	**Error! Reference source not found.**.C
Wholesale Activities	AUP*	AUP*	UP(PH)*	UP(PH)*	NP	AUP*	AUP*	AUP*	AUP*	AUP	AUP	**Error! Reference source not found.**.B.3
Other Miscellaneous Uses												
Art/Craft Studio	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	ZC [6]	
ATM, Exterior and Attached to Bank	AUP	AUP	AUP	UP(PH)	AUP	AUP	AUP	AUP*	AUP	AUP	AUP	**Error! Reference source not found.**.B.2
ATM, Interior or Exterior and Not With Bank	UP(PH)	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	UP(PH)	NP	UP(PH)*	AUP	UP(PH)	**Error! Reference source not found.**.B.2
Circus/Carnival	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Drive-in Uses	UP(PH)	NP	NP	NP	UP(PH)	UP(PH)	NP	UP(PH)	NP	NP	UP(PH)	
Home Occupations	See **Error! Reference source not found.**											
Live/Work	See **Error! Reference source not found.**											
Parking Lot/Structure	See **Error! Reference source not found.**.G											
Public Market, Open Air	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	UP(PH)	AUP	
Public Market, Enclosed	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP [9]	AUP	
Short-Term Rental	See **Error! Reference source not found.**			NP	See **Error! Reference source not found.**			NP	See **Error! Reference source not found.**		NP	
Urban Agriculture, Low-Impact	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC	ZC	**Error! Reference source not found.**
Urban Agriculture, High-Impact	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP	AUP	**Error! Reference source not found.**
Wireless Telecommunication Facility	See **Error! Reference source not found.**—**Error! Reference source not found.**											

Notes:
[1] Change of use of floor area over 3,000 square feet requires an AUP.

Change of use of floor area over 2,000 square feet requires an AUP.

Requires an AUP for uses 3,500 sq. ft. to 7,500 square feet. Requires a Use Permit for uses more than 7,500 sq. ft.

Requires a Use Permit if 5,000 sq. ft. or more.

Requires an AUP for uses 3,000 sq. ft. to 5,000 square feet. Requires a Use Permit for uses more than 5,000 sq. ft.

Requires an AUP for uses 2,500 sq. ft. or greater or 50 ft. wide or greater on Shattuck, between Ward and Russell; Adeline between Russell and the City boundary; on Ashby, east of Adeline; or on the north side of Ashby, west of Adeline.

Requires a Use Permit if 7,500 square feet or more.

Require a Use Permit if either 5,000 sq. ft. or more of floor area or 10,000 square feet or more of lot area.

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see ~~23.204.030~~**Error! Reference source not found.**(B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	COMMERCIAL DISTRICTS											USE-SPECIFIC REGULATIONS
	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
Requires a Use Permit if more than 10,000 sq. ft.												

Section 3. That Berkeley Municipal Code Chapter 23.204.100.B.5 is hereby amended to read:

5. ~~Automobile/Motorcycle~~ Vehicle Sales.

a. **Applicability.**

i. In the C-SA district, small vehicle service is not permitted. Small vehicle sales that are exclusively indoor operations are permitted with a Zoning Certificate. Otherwise, a Use Permit is required.

ii. All new or relocated ~~automobile or motorcycle~~vehicle sales in the C-SA district shall comply with the requirements of this subsection.

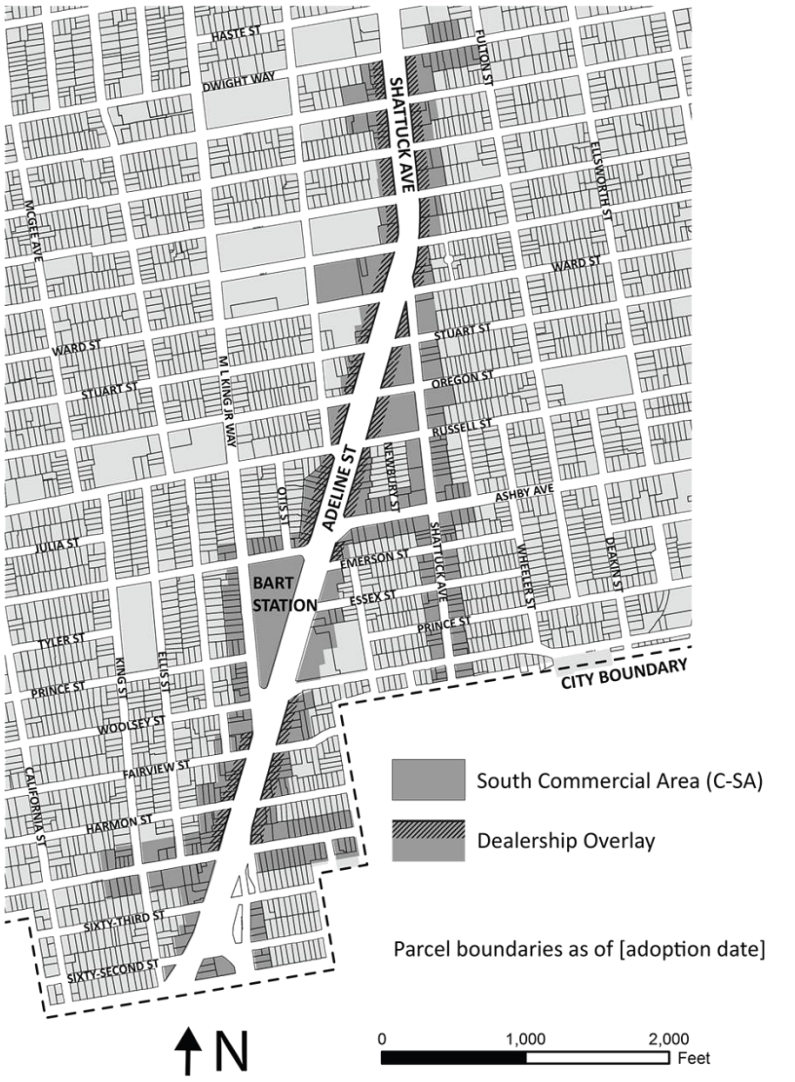
iii. Expansions or modifications of existing ~~automobile or motorcycle~~vehicle sales are:

1. Encouraged to comply with standards in Paragraph c (Standards) below where feasible; and

2. Shall not increase or exacerbate a non-conformity with these standards.

b. ~~**Where Allowed**~~ **Sales with Outdoor Activities.** New or relocated ~~automobile or motorcycle~~vehicle sales uses with outdoor activities, including but not limited to storage and display of vehicle inventory~~, are limited to the Dealership Overlay Area as shown in Figure 23.204-2: C-SA Dealership Overlay Area.~~ are not permitted. Vehicle sales uses must be exclusively indoor operations.

~~FIGURE 23.204-2: C-SA DEALERSHIP OVERLAY AREA~~



c. **Standards**.

~~*i.* **Street Frontage.** Outdoor vehicle display is permitted only along Shattuck Avenue and Adeline Street and is limited to 30 percent of the lot frontage on those streets.~~

~~*ii.* **Area for Outdoor Uses.** A maximum of 40 percent of the lot area may be used for outdoor uses, including but not limited to vehicle display and storage. Adequate landscaping and/or fencing shall be used to filter the view of outdoor uses from the adjacent right-of-way and abutting properties, with the exception of outdoor vehicle display;~~

~~*iii.*~~*i.* **Service Entries.** Vehicle and repair service entries may not exceed 20 percent of the primary lot frontage, no entrance may exceed a width of 20 feet. The primary street frontage is the frontage towards which the primary building entrance is oriented.

~~iv.~~ ii. **Transparency.** At least 60 percent of any new building shall be within 10 feet of the right-of-way along the primary street frontage and 60 percent of the street-facing facade shall be comprised of clear glass.

~~v.~~ iii. **Repair Activities.** All vehicle repair activities shall be conducted indoors.

~~vi.~~ iv. **Noise.** All noise-generating equipment and activities, such as vehicle repair, shall be shielded by noise-attenuating materials. Outdoor amplification is not permitted.

~~vii.~~ v. **Lighting.** Exterior light standards and fixtures shall not be taller than 20 feet, shall achieve uniform light coverage and minimize glare, shall use light cutoffs to control light spillover onto adjacent properties and urban sky glow, and shall use low energy light fixtures consistent with the City's goals for energy efficiency.

~~viii.~~ vi. **Vehicle Storage.** No vehicles shall be stored in the public right-of-way.

Section 4. That Berkeley Municipal Code Chapter 23.204.100.B.5 is hereby amended to read:

Figure 23.204-3 C-SA Building Height Subareas

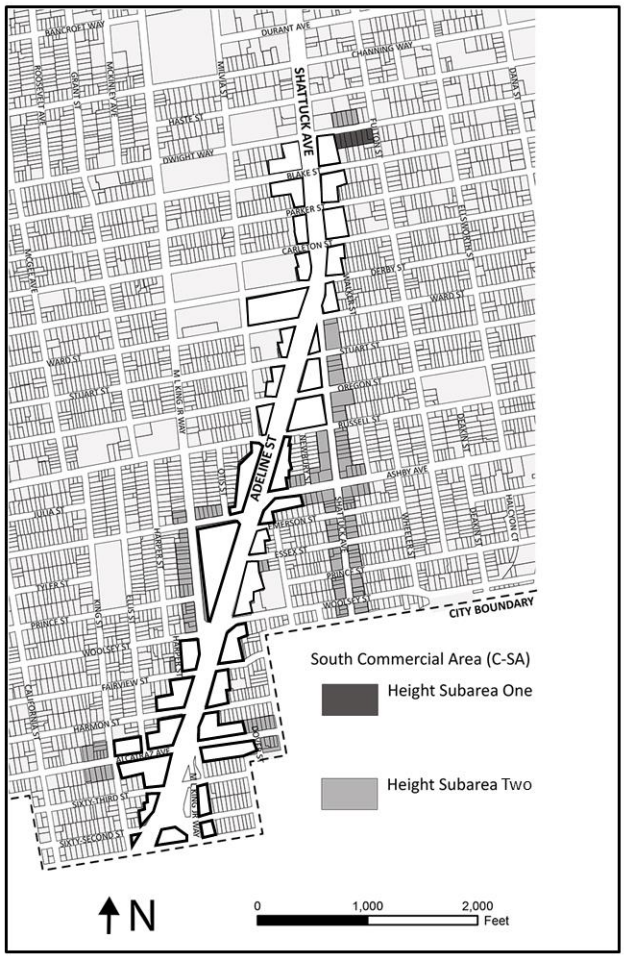


Table 23.204-28: C-SA Maximum Building Heights

Building Land Use	Maximum Height		
	Subarea 1	~~Subarea 2~~	Subarea ~~3~~2
Non-Residential Uses	36 ft and 3 stories	~~24 ft and 2 stories~~	24 ft and 2 stories
Mixed Use and Residential Only	60 ft and 5 stories [1]	~~50 feet and 4 stories [1]~~	36 ft and 3 stories [1]
[1] In mixed-use buildings, the third story and above must be used for residential purposes entirely.			

Section 5. That Berkeley Municipal Code Section 23.204.110 is amended to read as follows:

Table 23.204-33: C-T Allowed Heights and FAR Increases

Project Location	Allowed Increase	
	Height	FAR
South of Dwight Way	65 ft. and 5 stories	No increase allowed
North of Dwight Way	75 ft. ~~and 6 stories~~	6.0

Section 6. That Berkeley Municipal Code Section 23.204.130 is amended to read as follows:

Table 23.204-39: C-DMU Setback Standards

PORTION OF BUILDING AT HEIGHT OF:	FRONT ~~OR STREET SIDE~~	MINIMUM INTERIOR SIDE		MINIMUM REAR
		65' AND LESS FROM LOT FRONTAGE	OVER 65' FROM LOT FRONTAGE	
Zero to 20 feet	No minimum. 5 ft. max.	No minimum		
21 feet to 75 feet	No minimum.	No minimum	5 ft.	
76 feet to 120 feet	15 ft. min.	5 ft.	15 ft.	
Over 120 feet	15 ft. min.	15 ft.		

Section 7. That Berkeley Municipal Code Section 23.204.140 is amended to read as follows:

Table 23.204-42: C-W Development Standards

BASIC STANDARDS		SUPPLEMENTAL STANDARDS
Lot Area Minimum		**Error! Reference source not found.Error! Reference source not found.**
New Lots	No minimum ~~350 sq. ft.~~	
Per Group Living Accommodation Resident		
Usable Open Space, Minimum		**Error! Reference source not found.Error! Reference source not found.**
Per Dwelling Unit or Live/Work Unit	40 sq. ft.	
Per Group Living Accommodation Resident	No minimum	
Floor Area Ratio, Maximum	3.0	
Main Building Height, Minimum	No minimum	

Main Building Height, Maximum	40 ft. and 3 stories [1,2]	**Error! Reference source not found.Error! Reference source not found.**
Lot Line Setbacks, Minimum		**Error! Reference source not found.Error! Reference source not found.**
Abutting/Confronting a Non-residential District	No minimum	
Abutting/Confronting a Residential District	See **Error! Reference source not found.**.C.2	
Building Separation, Minimum	No minimum	
Lot Coverage, Maximum	100%	**Error! Reference source not found.Error! Reference source not found.**

Notes:
[1] 50 ft. and 4 stories allowed for mixed-use projects. The fourth floor must be used for residential or live/work purposes.
[2] On Assessor Parcel Numbers 054-1763-001-03, 054-1763-010-00 and 054-1763-003-03 the maximum height is 50 feet and 4 stories.

Section 8. That Berkeley Municipal Code Section 23.206.020 is amended to read:

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply	**MANUFACTURING DISTRICTS**				**Use-Specific Standards** Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	M	**MM**	**MU-LI**	**MU-R**	
Residential Uses					
Accessory Dwelling Unit	NP	NP	NP	See **Error! Reference source not found.**	
Dwellings					
Single-Family	NP	NP	NP	AUP*	**Error! Reference source not found.**.B.8
Two Family	NP	NP	NP	AUP*	**Error! Reference source not found.**.B.8
Multi-Family	NP	NP	NP	UP(PH)*	**Error! Reference source not found.**.B.7&8
Group Living Accommodation	NP	NP	NP	UP(PH)*	**Error! Reference source not found.**.B.8
Hotel, Residential	NP	NP	NP	NP	
Mixed-Use Residential	NP	NP	NP	UP(PH)*	**Error! Reference source not found.**.B.8&9
Senior Congregate Housing	NP	NP	NP	See **Error! Reference source not found.**.H	
Public and Quasi-Public Uses					

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply	**MANUFACTURING DISTRICTS**				**Use-Specific Standards** Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	M	**MM**	**MU-LI**	**MU-R**	
Child Care Center	NP	NP	AUP*	UP(PH)*	**Error! Reference source not found.**.B&C
Cemetery/Crematory/Mausoleum	NP	NP	NP	NP	
Club/Lodge	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)	**Error! Reference source not found.**.E
Columbaria	NP	NP	NP	–	
Community Care Facility	NP	NP	NP	ZC*	**Error! Reference source not found.**.B.3
Community Center	NP	NP	NP	UP(PH)	
Emergency Shelter	NP	NP	NP	–	
Family Day Care Home, Large	NP	NP	ZC*	AUP*	**Error! Reference source not found.**.C
Family Day Care Home, Small	NP	NP	ZC*	ZC*	**Error! Reference source not found.**.C
Hospital	NP	NP	NP	NP	
Library	NP	NP	NP	UP(PH)	
Mortuaries and Crematories	NP	NP	NP	UP(PH)*	**Error! Reference source not found.**.B.6
Municipal Animal Shelter	UP(PH)	UP(PH)	UP(PH)	–	
Nursing Home	NP	NP	NP	UP(PH)	
Park/Playground	NP	NP	NP	UP(PH)*	**Error! Reference source not found.**.C
Public Safety and Emergency Service	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Public Utility Substation/Tank	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Religious Assembly	NP	NP	NP	UP(PH)	
School	NP	NP	NP	UP(PH)*	**Error! Reference source not found.**.C
School, Vocational	NP	NP	ZC* [1]	UP(PH)	**Error! Reference source not found.**.B.12
Retail Uses					
Alcoholic Beverage Retail Sale	NP	NP	UP(PH)* [2]	NP *	**Error! Reference source not found.**.B.3; **Error! Reference source not found.**.B.2; **Error! Reference source not found.**
Firearm/Munitions Business	NP	NP	NP	NP	
Industrial and Mining Products	AUP [2]	AUP [2]	AUP [4]	NP	
Pawn Shop/Auction House	NP	NP	NP	NP	
Pet Store	NP	NP –	NP	NP	
Retail, General	NP	NP	AUP* [5]	AUP* [3]	**Error! Reference source not found.**.B.6; **Error! Reference source not found.**.B.4
Smoke Shop	NP	NP	NP	NP	
Personal and Household Service Uses					

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply	**MANUFACTURING DISTRICTS**				**Use-Specific Standards** Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	M	**MM**	**MU-LI**	**MU-R**	
Personal and Household Services, General	NP	NP	NP	AUP	
Kennels and Pet Boarding	NP	NP	NP	UP(PH)	
Laundromats and Cleaners	NP	NP	NP	AUP	
Veterinary Clinic	NP	NP	NP	UP(PH)	
Video Tape/Disk Rental	NP	NP	NP	NP	
Office Uses					
Business Support Services	NP	NP	AUP [6]	AUP [3]	
Banks and Financial Services, Retail	NP	NP	–	NP	
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents	NP	NP	–	–	
Medical Practitioners	NP	NP	NP	AUP [3]	
Non-Chartered Financial Institutions	NP	NP	–	–	
Office, Business and Professional	NP	ZC* [4]	AUP [4]	AUP [3]	**Error! Reference source not found.**.B.2
Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses					
Adult-oriented Business	-	-	NP	NP	
Amusement Device Arcade	NP	NP	–	NP	
Bar/Cocktail Lounge/Tavern	NP	NP	–	–	
Commercial Recreation Center	NP	NP	–	NP	
Dance/Exercise/Martial Arts/Music Studio	NP	NP	–	UP(PH)	
Entertainment Establishment	NP	NP	–	UP(PH)	
Food Service Establishment	See **Error! Reference source not found.**.E				
Group Class Instruction	NP	NP	–	UP(PH)	
Gym/Health Club	NP	NP	–	NP	
Hotel, Tourist	NP	NP	NP	NP	
Motel, Tourist	NP	NP	NP	NP	
Theater	NP	NP	UP(PH)*	NP	**Error! Reference source not found.**.B.10
Vehicle Service and Sale Uses					
Alternative Fuel Station	AUP [4]	AUP [4]	AUP [4]	AUP	
Gasoline/Vehicle Fuel Station	NP	NP	NP	NP	
Large Vehicle Sales and Rental	–	NP	AUP [4]	NP	
Small Vehicle Sales and Rental	–	NP	NP	NP	
Tire Sales and Service	–	–	–	NP	
Vehicle Parts Store	NP	NP	NP	UP(PH)	
Vehicle Repair and Service	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Vehicle Rentals	NP	–	–	NP	
Vehicle Sales, New	AUP* [7]	NP	NP	NP	**Error! Reference source not found.**.B.3
Vehicle Sales, Used	AUP* [7]	NP	NP	NP	**Error! Reference source not found.**.B.3
Vehicle Wash	NP	NP	NP	NP	

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply	**MANUFACTURING DISTRICTS**				**Use-Specific Standards** Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	M	**MM**	**MU-LI**	**MU-R**	
Vehicle Wrecking	AUP [7]	AUP [4]	AUP* [4]	NP	**Error! Reference source not found.**.B.11
Industrial and Heavy Commercial Uses					
Bus/Cab/Truck/Public Utility Depot	AUP [8]	AUP [8]	AUP* [4]	UP(PH)	**Error! Reference source not found.**.B.4
Commercial Excavation	UP(PH)	UP(PH)	UP(PH)	NP	
Contractors Yard	AUP [7]	AUP [7]	AUP [4]	UP(PH)	
Dry Cleaning and Laundry Plant	ZC* [9]	ZC [9]	ZC [1]	UP(PH)	**Error! Reference source not found.**.B.2
Laboratory					
Commercial Physical or Biological	NP	AUP [4]	UP(PH)*	NP	**Error! Reference source not found.**.B.5
Cannabis Testing	NP	AUP [4]	UP(PH)	NP	
Manufacturing					
Construction Products	ZC* [9]	ZC* [9]	UP(PH)*	NP	
Light Manufacturing	ZC* [7]	ZC* [7]	ZC* [1]	AUP* [3]	**Error! Reference source not found.**.B.5
Pesticides/Herbicides/Fertilizers	NP	NP	NP	–	
Petroleum Refining and Products	NP	NP	NP	–	
Pharmaceuticals	AUP [4]	AUP [4]	AUP* [4]	–	**Error! Reference source not found.**.B.7
Primary Production Manufacturing	AUP [4]	AUP [4]	NP	NP	
Semiconductors	UP(PH)	UP(PH)	NP	–	
Material Recovery Enterprise	-	-	UP(PH)	-	
Media Production	ZC [10]	ZC [10]	ZC [10]	AUP [11]	
Mini-storage	NP	NP	NP	NP	
Recycled Materials Processing	ZC* [9]	ZC* [9]	UP(PH)*	–	**Error! Reference source not found.**.H; **Error! Reference source not found.**.B.9
Recycling Redemption Center	AUP [7]	ZC [9]	UP(PH)*	AUP	**Error! Reference source not found.**.B.9
Repair Service, Non-Vehicle	ZC* [9]	ZC* [9]	ZC* [1]	AUP	**Error! Reference source not found.**.G
Research and Development	-	ZC [12]	ZC [12]	–	
Services to Buildings and Dwellings	AUP	AUP	AUP	AUP	
Warehouse	ZC [9]	ZC [9]	ZC [1]	UP(PH)	
Warehouse-Based Non-Store Retailer	ZC [9]	ZC [9]	ZC [1]	–	
Wholesale Trade	ZC [9]	ZC [9]	ZC* [1]	AUP [3]	**Error! Reference source not found.**.B.13
Incidental Uses					
Amusement Devices	NP	NP	AUP	AUP	
Alcoholic Beverage Service	See **Error! Reference source not found.**				
Cafeteria, On-Site	ZC [2]	AUP [2]	ZC [2]	AUP	
Child Care Center	NP	NP	See **Error! Reference source**		

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply	**MANUFACTURING DISTRICTS**				**Use-Specific Standards** Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	M	**MM**	**MU-LI**	**MU-R**	
			not found..B		
Columbaria	–	–	–	–	
Food and Beverage for Immediate Consumption	–	AUP [2]	–	–	
Food Service Establishment	AUP [2]	-	AUP [2]	AUP	
Home Occupations	NP	NP	NP	See **Error! Reference source not found.**	
Live Entertainment	NP	NP	UP(PH)*	UP(PH)*	**Error! Reference source not found.**.D
Retail Sales of Goods Manufactured On-Site	AUP* [13]	AUP* [14]	AUP* [14]	AUP*	**Error! Reference source not found.**.I
Storage of Goods Manufactured On-Site (>25% gross floor area)	ZC	ZC	ZC	AUP	
Wholesale Activities	ZC	ZC	ZC	AUP	
Other Miscellaneous Uses					
Art/Craft Studio	ZC* [10]	ZC [10]	ZC* [10]	AUP [11]	**Error! Reference source not found.**.A
ATM, Exterior and Attached to Bank	AUP	AUP	-	AUP	
ATM, Interior or Exterior and Not With Bank	AUP	AUP	AUP	AUP	
Circus/Carnival	NP	NP	UP(PH)*	UP(PH)	**Error! Reference source not found.**.D
Drive-in Uses	NP	NP	NP	NP	
Live/Work	NP	NP	See **Error! Reference source not found.**		
Parking Lot/Structure	See **Error! Reference source not found.**.G				
Public Market, Open Air	–	–	UP(PH)* [15]	–	**Error! Reference source not found.**.B.8
Public Market, Enclosed	–	–	AUP [5]	–	
Short-Term Rental	-	-	-	ZC*	**Error! Reference source not found.**
Urban Agriculture, Low-Impact	ZC	ZC	ZC	ZC	
Urban Agriculture, High-Impact	AUP	AUP	AUP	AUP	

Notes:
[1] Requires an AUP for uses 20,000 sq. ft. to 30,000 square feet. Requires a Use Permit for uses more than 30,000 sq. ft.
[2] Not permitted 20,000 sq. ft. or more.
[3] Requires a Use Permit if 5,000 sq. ft. or more
[4] Requires a Use Permit for uses more than 20,000 sq. ft.
[5] Not permitted over 2,000 sq. ft.
[6] Not permitted over 3,000 sq. ft.
[7] Requires a Use Permit for uses more than 40,000 sq. ft.
[8] Requires a Use Permit for uses 20,000 sq. ft. to 40,000 square feet.
[9] Requires an AUP for uses 20,000 sq. ft. to 40,000 square feet. Requires a Use Permit for uses more than 40,000 sq. ft.
[10] Requires an AUP for uses 10,000 sq. ft. to 20,000 square feet. Requires a Use Permit for uses more than 20,000 sq. ft.
[11] Allowed with Zoning Certificate if under 1,000 sq. ft.. Requires Use Permit if over 20,000 sq. ft.
[12] Requires an AUP for uses more than 20,000 sq. ft.
[13] Not permitted 1,500 sq. ft. or more.
[14] Requires a Use Permit for sales area 1,501 to 3,000 sq. ft. Not permitted over 3,000 sq. ft.
[15] Requires Use Permit for markets over 5,000 sq. ft.

Section 9. That Berkeley Municipal Code Section 23.302.040 is hereby added to read as follows:

23.302.040 – Home Occupations

A. **Definitions.**

~~1. **Home Occupation.** A home occupation is a business use conducted on property developed with Residential use, which is incidental and secondary to the residential use, does not change the residential character of the residential use, is limited so as not to substantially reduce the residential use of the legally established dwelling, accessory dwelling unit, accessory building, or group living accommodation room and is operated only by the residents of the subject residence. There are three classifications of Home Occupations. For the purposes of this section, a "customer" is considered a single paying customer, but may include more than one person receiving the services at the same time:~~

~~a. **Class I Home Occupations**. A Class I home occupation involves no more than five customer visits per day, with no more than four persons receiving services at a time. This class does not allow shipping of goods directly from the subject residence.~~

~~b. **Class II Home Occupations**. A Class II home occupation involves no more than ten customer visits per day, with no more than four persons receiving services at a time and no more than one non-resident engaging in business-related activities on-site. This class does not allow shipping of goods directly from the subject residence.~~

~~c. **Class II Home Occupation**. A Class III home occupation involves one or both of the following:~~

~~*i.* More than ten customer visits per day, with no more than four persons receiving services at a time and no more than one non-resident engaging in business-related activities on-site.~~

~~*ii.* Shipping of goods directly from the subject residence regardless of the number of customer visits per day.~~

~~2.~~1. **Permits Required.** Table Error**! No text of specified style in document.**-1 shows permits required for home occupations.

TABLE ERROR! NO TEXT OF SPECIFIED STYLE IN DOCUMENT.**-1: PERMIT REQUIREMENTS FOR HOME OCCUPATIONS**

HOME OCCUPATION	PERMIT REQUIRED

Class I	ZC
Class II	AUP
In the Hillside Overlay	Not Permitted
ES-R District	Not Permitted
Class III	
All Commercial Districts and MU-R District	UP (PH)
All other Districts, and in the Hillside Overlay	Not Permitted

~~3.~~2. **Additional Findings -- Class II and Class III Home Occupations.** To approve an AUP for a Class II home occupation or a Use Permit for a Class III home occupation, the Zoning Officer or the ZAB must make the permit findings in Section **Error! Reference source not found.** (Specific Permit Requirements) and find that, based on the circumstances of the specific use and property:

a. The degree of customer visits will not cause a significant detrimental impact on the availability of parking spaces in the immediate vicinity of the home occupation; and

b. The degree of shipping and delivery activity to and from the subject residence will be compatible with surrounding residential uses and will not cause a significant detrimental impact on pedestrian and bicyclist safety or the availability of parking spaces in the immediate vicinity of the home occupation; and

c. If the proposed home occupation will require a loading space on a regular basis, such loading space will be available on the subject property or the use of an on-street loading space will not cause a significant detrimental impact on pedestrian and bicyclist safety or the availability of parking spaces in the immediate vicinity of the home occupation; and

d. The degree of customer visits and shipping and delivery activities shall not cause a detrimental impact to public safety, as determined by the Fire Marshall.

Section 10. That Berkeley Municipal Code Section 23.304.060 is amended to read as follows:

23.304.060 – Accessory Buildings and Enclosed Accessory Structures

A. **Applicability.** This section applies to accessory buildings and enclosed accessory structures as defined in **Error! Reference source not found.** (Glossary). See Section **Error! Reference source not found.** (Unenclosed Accessory Structures in Residential Districts) and Section **Error! Reference source not found.**

(Fences) and for requirements that apply to other unenclosed accessory structures and fences.

B. **All Districts.**

5. **Attached or Close to Main Building.** An accessory building or enclosed accessory structure, other than a subterranean structure, that is attached to or within 3 feet of a wall of a main building, is considered a part of the main building for the purposes of setback requirements.

6. **Demolition.** See **Error! Reference source not found.**.C (Accessory Buildings) and **Error! Reference source not found.**.B (Accessory Buildings) for permits required to demolish accessory buildings.

C. **Residential Districts**.

5. **Permits Required.** Table Error**! No text of specified style in document.**-2 shows permits required for accessory buildings and accessory structures in Residential Districts.

TABLE ERROR! NO TEXT OF SPECIFIED STYLE IN DOCUMENT.**-2: PERMIT REQUIREMENTS FOR ACCESSORY BUILDINGS AND ENCLOSED ACCESSORY STRUCTURES**

District Location and Building/Structure Type	**Permit Required**
All Residential Districts Except ES-R	
New accessory buildings	AUP
Alterations to existing accessory buildings	ZC
Enclosed accessory structures on a lot with a main building	ZC
Enclosed accessory structures on a vacant lot without a main building	AUP
Horse stables	AUP [1]
Accessory buildings and structures with Urban Agriculture	ZC
ES-R District	
Under 100 sq. ft.	ZC
100 sq. ft. or more	UP(PH)
On a vacant lot without a main building	UP(PH)
Notes: [1] Horse stables are not permitted in the R-S and R-SMU districts	

6. **Development and Use Standards.**

a. Development Standards. Table Error**! No text of specified style in**

document.-3 shows development standards for accessory buildings and enclosed accessory structures in Residential Districts.

TABLE ERROR! NO TEXT OF SPECIFIED STYLE IN DOCUMENT.**-3: ACCESSORY BUILDING AND ENCLOSED ACCESSORY STRUCTURE STANDARDS IN RESIDENTIAL DISTRICTS**

Building/Structure Feature	Standards
Average Height, Maximum	
Less than 4 ft. from lot line	10 ft.
4 ft. to less than 10 ft. from lot line	12 ft.
10 ft. or more from lot line	24 ft.
Setbacks, Minimum	
Front of Interior Lot	50% of lot dept
Front of Through Lot	25% of lot dept
Front of Corner Lot	The setback existing or required on the adjacent lot, whichever is smaller, and the existing setback of main building on the lot
Street Side, Corner Lot	The existing setback of main building on the lot
Interior Side	4 ft. for building/structures within 75 feet of front lot line; as required by Berkeley Building Code for buildings/structures 75 feet or more from front lot line
Edge of Alley	5 ft.
Building Length [1]	24 ft.
Notes: [1] Applies to building walls generally parallel to a side lot line.	

b. **Deviation from Standards.**

i. In all Residential Districts except for the ES-R district, the Zoning Officer may approve an AUP to allow an accessory building or enclosed accessory structure to deviate from the standards in Table Error**! No text of specified style in document.**-3. In the ES-R district, deviations require ZAB approval of a Use Permit.

ii. To approve the deviation, the review authority must find that the proposed building or structure will not be detrimental to the light, air, privacy, and view of adjacent properties.

c. **Bathroom and Kitchen Facilities.** An accessory building may contain a full bathroom, including handwashing sink, toilet, and tub or shower, as well as cooking facilities, as long as the cooking facilities do not constitute a kitchen.

d. **Rentals.** An accessory building may be rented only as a short-term rental as allowed in Section **Error! Reference source not found.—Error! Reference source not found.**.

3. Rebuilding and Replacement.

a. Notwithstanding the setback standards in this section and the coverage area standards in Chapter **Error! Reference source not found.—Error! Reference source not found.**, an accessory building or enclosed accessory structure may be constructed to replace a pre-existing lawful accessory building or enclosed accessory structure, if the replacement building or structure is in the same location and has the same or smaller footprint as the previous structure. However, any such replacement structure may not exceed the average height as the previous building or structure; otherwise an AUP is required.

b. Such replacement buildings and structures are permitted as of right only if an application for a building permit for their construction is submitted at the same time as an application for a building permit for the demolition of the pre-existing building or structure.

c. The demolition of any accessory building proposed for replacement under this section is subject to Municipal Code Chapter 3.24 (Landmark Preservation Commission

Section 11. That Berkeley Municipal Code Section 23.322.030 is amended to read as follows:

Land Use	**Number of Required Off-street Parking Spaces**
Residential Uses	
Accessory Dwelling Unit	See Chapter **Error! Reference source not found.**
Dwellings, including Group Living Accommodations	R-3, R-4, and R-5 Districts (1-9 units): If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per unit. R-3, R-4, and R-5 District (10 or more units): If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per 1,000 sq ft of gross floor area. ES-R: 1 per 1,000 sq ft of gross floor area or one per bedroom, whichever is greater. All Other Districts: If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per unit All Other Locations: None required
Dormitories, Fraternity and Sorority Houses, Rooming & Boarding Houses, Senior Congregate Housing	If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per each 5 residents, plus 1 for manager. All Other Locations: None required.

Land Use	Number of Required Off-street Parking Spaces
Rental of Rooms	ES-R: 1 per each roomer or boarder, in addition to any required parking for Dwellings. All Other Districts: If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per each two roomers. All Other Locations: None required
Non-Residential Uses	
All non-residential uses except uses listed below	R-SMU District: 1 per 1,000 sq. ft. All Other Residential Districts: See **Error! Reference source not found.**.A.2
Community Care Facility	One per two non-resident employees
Food Service Establishment	1 per 300 sq. ft.
Hospital	R-SMU District: 1 per 1,000 sq. ft. All Other Residential Districts: 1 per each 4 beds plus 1 per each 3 employees
Library	1 per 500 sq. ft. of publicly accessible floor area
Nursing Home	1 per 3 employees
Medical Practitioners	1 per 300 sq. ft.
Non-Medical Offices	R-SMU District: 1 per 1,000 sq. ft. All Other Residential Districts: 1 per 400 sq. ft.
Hotels, Tourist	1 per 3 guest/sleeping rooms or suites plus 1 per 3 employees

Section 12. That Berkeley Municipal Code Section 23.502.020 is amended to read as follows:

F. "F" Terms.

1. **Facade.** Those portions of a building, including exterior walls, porches, chimneys, balconies, parapets and roof portions, which are visible from a public right-of-way or an adjacent building.
2. **Family.** See Household.
3. **Family Day Care Home.** An establishment providing day care for 14 or fewer children in a dwelling unit as licensed by the California Department of Social Services. A family day care homes must be incidental to a residential use. The day care operator must live in the primary dwelling on the lot.
    a. **Small Family Day Care Home.** A family day care homes for eight or fewer children, including children who live at the home.
    b. **Large Family Day Care Home.** A family day care homes for nine to fourteen children, including children who live at the home.
4. **Fence.** A structure made of wood, metal, masonry or other material forming a physical barrier which supports no load other than its own weight, or a hedge,

which is designed to delineate, screen or enclose a lot, yard, open space area or other land area.

5. **Firearm/Munitions Businesses.** Any establishment which sells, transfers, leases or offers for sale, transfer or lease any gun, ammunition, munitions, gun powder, bullets, ordnance, or other firearm or firearm parts or supplies.

6. **Floor Area, Gross.** See **Error! Reference source not found.Error! Reference source not found.**.

7. **Floor Area, Leasable.** See **Error! Reference source not found.Error! Reference source not found.**.

8. **Floor Area Ratio (FAR).** See **Error! Reference source not found.Error! Reference source not found.**.

9. **Food Product Store.** A retail products store selling foods primarily intended to be taken to another location to be prepared and consumed, and the incidental preparation of food or beverages for immediate consumption off the premises.

10. **Food and Beverage for Immediate Consumption.** The sale of food or non-alcoholic beverages for immediate consumption not on the premises.

11. **Food Service Establishments.** An establishment which in whole or in part prepares food or beverages for immediate consumption on or off the premises.

    a. **Carry Out Food Store:** A store which serves food or non-alcoholic beverages for immediate consumption not on the premises, but usually in the vicinity of the store. This use is usually characterized as an establishment which serves food altered in texture and/or temperature on a customer-demand basis, puts such food in non-sealed packages or edible containers, requires payment for such food before consumption, and provides no seating or other physical accommodations for on- premises dining. Examples of this use include delicatessens and other stores without seating which sell doughnuts, croissants, ice cream, frozen yogurt, cookies, whole pizzas and sandwiches. This use excludes bakeries and food products stores.

    b. **Quick Service Restaurant:** An establishment which serves food or beverages for immediate consumption either on the premises, or to be taken out for consumption elsewhere. This use is usually characterized as an establishment in which food is cooked on a customer-demand basis, payment is required before consumption, limited or no able service is provided (no waiters), and seating or other physical accommodations for on- premises customer dining is provided. Examples of this use include establishments selling primarily hamburgers or other hot or cold sandwiches, hot dogs, tacos and burritos, pizza slices, fried chicken, or fish and chips.

c. **Full-Service Restaurant**: An establishment which serves food or beverages for immediate consumption primarily on the premises, with only a minor portion, if any, of the food being taken out of the establishment. This use is characterized as an establishment in which food is cooked or prepared on the premises on a customer-demand basis, which requires payment after consumption, and provides seating and tables for on-premises customer dining with table service (waiters).

12. **Fraternity House.** A building used for group living accommodations by an organization recognized by the University of California at Berkeley or other institution of higher learning.

13. **Front Wall.** The wall of the building nearest the front lot line.

Section 13. That Berkeley Municipal Code Section 23.502.020 is amended to read as follows:

R. "R" Terms.

1. **Rear Main Building.** A main building situated behind another main building existing or proposed on a parcel located in the R-1A district.

2. **Receiving Lot.** See Lot, Receiving.

3. **Recycled Materials Processing.** A facility that receives and processes recyclable materials. Processing means preparation of material for efficient shipment, or to an end-user's specifications, by such means as baling, briquetting, compacting, flattening, grinding, crushing, mechanical sorting, shredding, cleaning, and remanufacturing.

4. **Recycling Redemption Center.** A facility, use, or structure for the collection of recyclable goods, including beverage containers and newspapers.

5. **Related Equipment.** All equipment necessary for or related to the provision of personal wireless services. Such equipment may include, but is not limited to, cable, conduit and connectors, equipment pads, equipment shelters, cabinets, buildings and access ladders.

6. **Religious Assembly.** A building or space primarily used for an assembly of persons to conduct worship or other religious ceremonies, including, but not limited to, churches, synagogues, temples, mosques or shrines.

7. **Repair Service, Non-Vehicle.** An establishment that provides repair and maintenance services for household appliance, home electronics, office equipment, furniture and other similar items. Excludes vehicle repair.

8. **Research and Development.** An establishment comprised of laboratory or other non-office space, which is engaged in one or more of the following activities:

industrial, biological or scientific research; product design; development and testing; and limited manufacturing necessary for the production of prototypes.

9. **Resident.** A person whose primary residence is in Berkeley.

10. **Residential Care Facility.** See Community Care Facility.

11. **Residential Hotel.** See Hotel, Residential.

12. **Residential Addition.** See Addition, Residential.

13. **Residential Districts.** The districts listed under the Residential Districts heading in **Error! Reference source not found.**.

14. **Residential Hotel Room.** A room which is:

    a. Used, designed, or intended to be used for sleeping for a period of 14 consecutive days or more;

    b. Not a complete dwelling unit, as defined in this chapter; and

    c. Not a Tourist Hotel Room, as defined in this chapter.

15. **Residential Use.** Any legal use of a property as a place of residence, including but not limited to dwelling units, group living accommodations, and residential hotels.

16. **Retail, General.** A retail establishment engaged in the sales of personal, consumer, or household items to the customers who will use such items. This use includes antique stores, art galleries, arts and crafts supply stores, bicycle shops, building materials and garden supplies stores, clothing stores, computer stores, cosmetic/personal care items, department stores, drug paraphernalia stores, drug stores, fabric, textile and sewing supply shops, flower and plant stores, food product stores, furniture stores, garden supply stores, nurseries, gift/novelty shops, household hardware and housewares stores, household electronics/electrical stores, jewelry/watch shops, linen shops includes bedding, musical instruments and materials stores, office supply stores, paint stores, photography equipment supply stores, secondhand stores, sporting goods stores, stationery, cards and paper goods stores toy stores and variety stores. This use excludes video rental stores, service of vehicle parts, ~~nurseries,~~ and firearm/munition sales.

17. **Retaining Wall.** A wall designed to contain and resist the lateral displacement of soil and of which such soil is at a higher elevation on one side of the wall.

18. **Review Authority.** The City official or body responsible for approving or denying a permit application or other form of requested approval under the Zoning Ordinance.

19. **Rooming House.** A building used for residential purposes, other than a hotel, where lodging for 5 or more persons, who are not living as a single household, is

provided for compensation, whether direct or indirect. In determining the number of persons lodging in a rooming house, all residents shall be counted, including those acting as manager, landlord, landlady or building superintendent. See also Boarding House.

Section 14: Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

BASELINE ZONING ORDINANCE CONSENT CHANGES MATRIX

Topic	Description	BZO Location	Existing Location	Rationale for Change
23.102 – Introductory Provisions				
Effective Date	Statement of when the Ordinance becomes effective	23.102.020	NEW	Provide effective date
Authority	States that if state law referenced in Zoning Ordinance is amended, the Zoning Ordinance is deemed amended to reference the amended state law	23.102.030	NEW	Added for clarity
Laws of Other Agencies	Removes statement that uses and structures must comply with regulations and laws of other governmental agencies.	N/A	23B.56.040	It is unnecessary to state that uses and structures must comply with the law. Removed for clarity
Approvals Required	Describes approvals required for land uses and development	23.102.050 D	NEW	Expands on existing Section 23A.12.010 to reflect current practice
Conflict with State or Federal Regulations	Explains how to handle conflicts with State and Fed law	23.102.070	NEW	Consistent with the Supremacy Clause of the United States Constitution and Article XI, Section 5(a) of the California Constitution
Conflicts with Other City Regulations	New language: “Where the Zoning Ordinance conflicts with other ordinances, resolutions, or regulations of the City of Berkeley, the more restrictive controls.”	23.102.070.B	NEW	Clarity needed on how to handle conflicting requirements. The Zoning Ordinance does not supersede other City regulations.

Topic	Description	BZO Location	Existing Location	Rationale for Change
Conflicts with Private Agreements	Adds statement that the City is not responsible for monitoring or enforcing private agreements.	23.102.070.C	NEW	Clarifies City role in neighbor disputes involving private agreements
Pending Applications	Clarifies status of applications submitted during transition from ZO to BZO	23.102.080 C	NEW	Necessary to inform status of applications submitted during transition to BZO
Nonconformities	Defines what is considered nonconforming at the time of BZO adoption	23.102.080 E	NEW	Adds up-front reference to nonconformity chapter alongside other transitional provisions
23.104 – Interpreting the Zoning Ordinance				
Purpose	States purpose of chapter	23.104.010	NEW	BZO standard includes purpose statement for each chapter
Authority	Clarifies existing Zoning Officer authority	23.104.020	NEW see 23B.12.020	More accurately state ZO's authority
Rules of Interpretation	New rules of interpretation relating to: meaning and intent; harmonious construction; lists and examples; references to other regulations, publications, and documents; technical and non-technical terms; terms not defined; public officials and agencies; tenses and plurals. New harmonious construction language replaces existing language: "In case of conflict between any of the provisions of this Ordinance, the most restrictive shall apply."	23.104.030	23A.080.010	Provides for consistent application of rules

Topic	Description	BZO Location	Existing Location	Rationale for Change
Zoning Map	Clarifies intention to follow city limits	23.104.050 A 3	NEW	Greater clarity to resolve uncertainty in zoning district boundaries
23.106 Rules and Measurement				
Chapter Purpose	States chapter purpose	23.106.010	NEW	BZO standard includes purpose statement for each chapter
Building Separation	Defines method of building separation measurement (outer wall to outer wall)	23.106.080 A	NEW	Codifies existing practice and increases clarity
23.108 –Zoning Districts and Map				
Chapter Purpose	States chapter purpose	23.108.010	NEW	BZO standard includes purpose statement for each chapter
C-C and C-U Districts	C-1 zone split into two zones: Corridor Commercial (C-C) and University Avenue Commercial (C-U) district. C-U includes University Avenue Strategic Plan Overlay standards.	23.108.020.A	23A.16.020.A	Simplifies and clarifies C-1 rules inside and outside of University Avenue Strategic Plan area
Purpose of Overlay Zones	Explains purpose of overlay zones	23.108.020.C.1	NEW	Provide definition; explains that Overlay Zone regulations are in addition to regulations of underlying zone (not a replacement)

Topic	Description	BZO Location	Existing Location	Rationale for Change
Applicability of Overlay Zone Standards	Existing language: "the height, coverage, parking and usable open space shall comply with the provisions of the underlying district." BZO language: "If the overlay zone applies a standard to a property that conflicts with the underlying district, the overlay zone standard governs. If the overlay zone is silent on a standard in the underlying district, the underlying district standard applies."	23.108.020.C.3	23A.16.030.C	Corrects statement inconsistent with existing use of overlay zones
23.202 – Residential Districts				
Allowed Land Uses	In Residential Districts, unlisted uses are prohibited	23.202.020.B	NEW	Codifies existing practice, making explicit that if a use is not listed in the Allowed Uses Table for Residential Districts, the use is prohibited.
Open Space for ADUs in R-1 District	Removes requirement for ADUs to include usable open space. All standards for ADUs will be addressed in updated ADU chapter.	Table 23.202-2	23D.16.070.F	Codifies existing practice consistent with Gov't Code Section 65852.2
23.206 – Manufacturing Districts				
Industrial Performance Standards	Removes statements allowing City Manager to establish industrial performance standards.	23.206.040.F	23E.64.070.E 23E.72.070.E 23E.76.070.E 23E.80.D 23E.84.070.H	Language is unnecessary and implies authorization is required for other similar requirements.

Topic	Description	BZO Location	Existing Location	Rationale for Change
23.302 – Supplemental Use Regulations				
Warehouse Storage for Retail Use	Allows on-site storage of goods as an accessory use to a primary retail use in all districts where retail is permitted	23.302.070.J	NEW	Codifies existing practice of allowing retail establishments to store their goods on-site if retail is permitted.
23.304 – General Development Standards				
Setback Projections – Disabled Access	Allows projections into setbacks to accommodate the disabled with a reasonable accommodations request.	23.304.030.B.4	23D.04.030.A2	Confirm with The Americans with Disabilities Act, and the California Fair Employment and Housing Act
Building Height Projections – Public Buildings in Residential Districts	Deletes "the height limit for schools, buildings for religious assembly use, hospitals and other public buildings shall not exceed the height limit permitted for that district. This is true for all uses."	23.304.050.A	23D.04.020.A; 23E.04.020.A	Removal of extraneous language. Calling out these uses implies other uses may exceed height limit, which is not true.
Adeline Corridor Plan	States that projects in the Adeline Plan Area are subject to mitigation measures in the Adeline Plan FEIR	23.304.140.D	NEW	Adds Adeline Corridor Plan to list of existing plans

Topic	Description	BZO Location	Existing Location	Rationale for Change
23.310 – Alcohol Beverage Sales and Service				
Chapter Purpose	States purpose of chapter	23.310.010	NEW	BZO standard includes purpose statement for each chapter
23.320 – Cannabis Uses				
Chapter Purpose	States purpose of chapter	23.320.010	NEW	BZO standard includes purpose statement for each chapter
23.324 – Nonconforming Uses, Structures and Buildings				
Chapter Purpose	States purpose of chapter	23.324.010	NEW	BZO standard includes purpose statement for each chapter
23.326 – Demolition and Dwelling Unit Control				
Chapter Purpose	States purpose of chapter	23.326.010	NEW	BZO standard includes purpose statement for each chapter
23.328 – Inclusionary Housing				
Required Inclusionary Units in Avenues Plan Area	Deletes “Except as provided in this chapter” from 23C.12.080E, which conflicts with 23C.12.080B: “Within this area, the provisions of this section superseded any inconsistent provisions of this chapter.”	23.328.070.D.1	23C.12.080.E	Maintain internal consistency
23.402 – Administrative Responsibility				
Chapter Purpose	States purpose of chapter	23.402.010	NEW	BZO standard includes purpose statement for each chapter

Topic	Description	BZO Location	Existing Location	Rationale for Change
Review and Decision-Making Authority	Describes purpose of summary table	23.402.020.A	NEW	Description of table
Review and Decision-Making Authority	Defines authority roles (Recommend, Decision, Appeal)	23.402.020.B	NEW	Explains notation meaning
Planning and Development Department	Defines duties of Planning and Development Department	23.402.030	NEW	Codifies existing role and summarizes responsibilities
Landmarks Preservation Commission	Refers reader to BMC Chapter 3.24 for roles and responsibilities of Landmarks Preservation Commission	23.402.050.B	NEW	Provides clarity on LPC role
ZAB Responsibilities and Powers	Provides that City Council may assign additional responsibilities to ZAB	23.402.070.C.2	NEW	Codifies existing Council authority
City Council	Provides that City Council has authority to take actions related to the Zoning Ordinance consistent with existing law	23.402.090.C	NEW	Codifies existing Council authority
23.404 – Common Permit Requirements				
Purpose and Applicability	States purpose of chapter; clarifies that the chapter applies to all discretionary permits, not just use permits and variances	23.404.010	NEW	BZO standard includes purpose statement for each chapter. Clarifies existing practice
Multiple Permit Applications	Clarifies how applications are handled when they require more than one discretionary permit	23.402.020.F	NEW	Codifies existing practice
Review Timeline	Adds statement that City will abide by Permit Streamlining Act	23.404.030.A.3	NEW	Codifies existing practice. Recognizes

Topic	Description	BZO Location	Existing Location	Rationale for Change
				compliance with state law is required
Project Evaluation and Staff Reports	Describes role of staff in reviewing, analyzing and presenting project applications	23.404.030.D	NEW	Codifies existing practice
CEQA	Add statement that City will review projects for CEQA compliance	23.404.030.E	NEW	Codifies existing practice. Recognizes that compliance with state law is required
Timing of Notice	Permits PC or CC to extend notice periods for applications of major significance	23.404.040.C.3	NEW	Best practice in compliance with Gov't Code Section 65091
Zoning Ordinance Amendment Noticing	Adds notice requirements for Zoning Ordinance Amendments	23.404.040.C.4	NEW	Adds notice requirement for Zoning Ordinance Amendments. New requirement here is the same as for discretionary permits
Additional Notice	Adds "The Zoning Officer, Planning Commission or City Council may require additional public notice as determined necessary or desirable."	23.404.040.C.7	NEW	Codifies existing practice
Public Notice for Design Review	States that there is no requirement to mail or post notices in advance of a Design Review Committee meeting	23.404.040.D.2.b	NEW	Codifies existing practice
Public Hearings	Clarifies that hearings will be conducted consistent with procedures developed by the review authority	23.404.050.A	NEW	Codifies existing practice and recognizes that review authorities are empowered to create their own procedures.

Topic	Description	BZO Location	Existing Location	Rationale for Change
Time and Place of Hearings	Clarifies that meetings will be held at time and place for which notice was given unless there is not a quorum	23.404.050.B	NEW	Codifies legal requirement consistent with Gov't Code Section 65091
CEQA Action	Adds that action on a permit's CEQA determination must be taken before a permit is approved	23.404.050.G	NEW	Codifies CEQA Guidelines Sections 15074 and 15090
Exceptions to Protect Constitutional Rights	Allows the City Council as well as ZAB to make exceptions to protect constitutional rights and clarifies that the exception can be made when acting on any permit and is not tied to a Variance	23.404.050.I	23B.44.050	Best practice. Council needs this ability in addition to ZAB to protect City from legal challenge
Payment for Service	Adds that applicant shall pay for mediation or conflict resolution services	23.040.050.J.7	NEW	Codifies existing practice
Effective Dates	Adds effective dates of Council actions on Zoning Ordinance amendments and legislative matters, and permits, appeals and non-legislative matters. Adds effective dates of actions by the Zoning Officer, Design Review Committee or ZAB	23.404.060.A	NEW	Codifies current practice and legal requirements consistent with Gov't Code Section 65853-65857
Expiration of Permit	Adds that if a permit is not exercised after one year, it will not lapse if the applicant has made a substantial good faith effort to obtain a building permit and begin construction.	23.404.060.C.2.b	23B.56.100.C &D	Best practice
Expiration of Permit	Defines a lapsed permit as "void and of no further force and effect," and that a new permit application mist be submitted to establish a use or structure.	23.404.060.C.3	NEW	Provides explicit definition of what a lapsed permit means and makes explicit the

Topic	Description	BZO Location	Existing Location	Rationale for Change
				requirement to reapply.
Permit Revocation - City Council Hearing	Removes requirement for the City Council hearing must occur within 30 days after the ZAB issued its recommendation.	23.404.080.D.2	23B.60.050.B	CC hearing within 30 days of ZAB decision is frequently infeasible. Council can hold hearing "at its discretion."
23.406 – Specific Permit Requirements				
Variances - Eligibility	Existing Language: "The Board may grant Variances to vary or modify the strict application of any of the regulations or provisions of this Ordinance with reference to the use of property, the height of buildings, the yard setbacks of buildings, the percentage of lot coverage, the lot area requirements, or the parking space requirements of this Ordinance." BZO Language: "The ZAB may grant a Variance to allow for deviation from any provision in the Zoning Ordinance related allowed land uses, use-related standards, and development standards."	23.406.050.B.1	23B.44.010	ZAB should have authority to grant a variance to any use or development-related standard, not just uses, heights, yard setbacks, lot coverage, lot area, or parking
Variances – Not Allowed	Adds: "A Variance may not be granted to allow deviation from a requirement of the General Plan."	23.406.050.C	N/A	Codifies state law consistent with Gov't Code Section 65906.
Design Review – Changes to Approved Projects	Describes features of minor changes to approved projects that may be approved administratively: "A change that does not involve a feature of the project that was: 1) a specific consideration by the review authority in granting the approval; 2) a condition of approval; or 3) a basis for a finding in the project CEQA determination.	23.406.070.N	N/A	Codifies current practice
Reasonable Accommodations – Review Procedure	Existing Language: "If an application under this chapter is filed without any accompanying application for another approval, permit or entitlement under this title or Title 21, it shall be heard and acted upon at the same time and in the	23.406.090.E.1	23B.52.040.B	The Americans with Disabilities Act, and the California Fair

Topic	Description	BZO Location	Existing Location	Rationale for Change
	same manner, and be subject to the same procedures, as the application that would normally be required to modify the provision which is the application seeks to modify, as determined by the Zoning Officer." BZO Language: "For a Reasonable Accommodation application submitted independently from any other planning permit application, the Zoning Officer shall take action within 45 days of receiving the application."			Employment and Housing Act Existing language requires the application to be reviewed in the same manner as a Variance. This conflicts with state and federal law.
23.410 – Appeals				
Appeals – Remanded Matters	Removes option for prior review authority to reconsider application without a public hearing.	23.410.040.G	23B.32.060.D	Remanded matters require public hearing
23.412 – Zoning Ordinance Amendments				
Zoning Ordinance Amendments – Initiation	Deletes language to allow for amendments initiated without a public hearing.	23.412.020	23A.20.020.C	Existing language conflicts with Gov't Code Section 65853-65857
Zoning Ordinance Amendments – Planning Commission Hearing	Removes requirement to hold Planning Commission hearing within 30 days of initiation.	23.412.040.A	23A.20.030.A	CC hearing within 30 days of PC decision is frequently infeasible. Council can hold hearing consistent with Public Notice section.
Zoning Ordinance Amendments – Effect of Planning	Deletes language that uses or structures not yet established must conform to Planning Commission recommendation before Council approval, when amendments become effective only after Council adoption.	23.412.040.C	23A.20.050.B	New regulations can only take effect after Council adoption.

Topic	Description	BZO Location	Existing Location	Rationale for Change
Commission Recommendation				
Zoning Ordinance Amendments – City Council Hearing	Removes language requiring the Planning Commission recommendation to be forwarded to the Council within 30 days and consideration by Council within 60 days for Commission decision.	23.412.050.A	23A.20.040	CC hearing within 60 days of PC decision is frequently infeasible. Council can hold hearing consistent with Public Hearings and Decision section.
Zoning Ordinance Amendments – City Council Action	Removes option for Council to act on amendment without a public hearing.	23.412.050.A	23A.20.060.A &B	Conflicts with Gov't Code Section 65853-65857
Zoning Ordinance Amendments – Effective Date	Removes language about "more restrictive" amendments going into effective immediately upon adoption of ordinance.	23.412.050.C	23A.20.070	Conflicts with Gov't Code Section 65853-65857
Zoning Ordinance Amendments – Findings	Adds findings for Zoning Ordinance amendments	23.412.060	N/A	Best Practice.
23.502 – Glossary				
Defined Terms	Adds definitions to undefined terms in existing Zoning Ordinance	23.502	23F.04	Best practice.

PLANNING COMMISSION

Notice of Public Hearing

Wednesday, March 2, 2022

Zoning Ordinance Amendments that Address Technical Edits and Corrections to the Berkeley Municipal Code Sections 23.326.030 (Eliminating Dwelling Units through Demolition); 23.204.020 (Allowed Land Uses); 23.204.100 (C-SA Zoning District); 23.204.110 (C-T Zoning District); 23.204.130 (C-DMU District); 23.204.140 (C-W Zoning District); 23.206 (Manufacturing Districts); 23.302.040 (Home Occupations); 23.304.060 (Accessory Buildings and Enclosed Accessory Structures); 23.322.030 (Required Parking Spaces); 23.502.020 (Glossary)

The Planning Commission of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 23.412, on **Wednesday, March 2, 2022 at 7:00 p.m**. **The hearing will be conducted via Zoom** – see the Agenda for meeting details. The agenda will be posted on the Planning Commission website (https://www.cityofberkeley.info/PC) no later than 5pm on February 25, 2022.

PUBLIC ADVISORY: This meeting will be conducted exclusively through videoconference and teleconference. Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the Planning Commission will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available

PROJECT DESCRIPTION: On October 12, 2021, the City Council passed Ordinance No. 7,787-NS, which repealed the then-existing Title 23 of the Berkeley Municipal Code and zoning maps ("the old Zoning Ordinance") and adopted a new Title 23 of the Berkeley Municipal Code and zoning maps ("the new Zoning Ordinance"). The new Zoning Ordinance became effective December 1, 2021.

As part of City Council's approval action, staff was directed to regularly return to City Council with any required amendments to the new Zoning Ordinance to aid in clarity, fix mistakes in transcription, or correct unintentional errors discovered as part of the transition from the old to the new Zoning Ordinance. The public hearing will consider a set of amendments to the new Zoning Ordinance that address these errors. No substantive changes to planning policy are included in this set of amendments.

PUBLIC COMMENT & FURTHER INFORMATION

All persons are welcome to attend the virtual hearing and will be given an opportunity to address the

Commission. Comments may be made verbally at the public hearing and/or in writing before the hearing. Written comments must be directed to:

Alene Pearson
Planning Commission Secretary
Email: apearson@CityofBerkerley.info

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

Correspondence received by **12 pm on Wednesday, February 23, 2022**, will be included as a Communication in the agenda packet. Correspondence received after this deadline will be conveyed to the Commission and the public in the following manner:

- Correspondence received by 12pm noon two days before this public hearing will be included in a Supplemental Packet, which will be posted to the online agenda as a Late Communication one day before the public hearing.
- Correspondence received by 5pm one day before this public hearing, will be included in a second Supplemental Packet, which will be posted to the online agenda as a Late Communication by 5pm on the day of the public hearing.
- Correspondence received after 5pm one day before this public hearing will be saved as part of the public record.

Note: It will not be possible to submit written comments at the meeting.

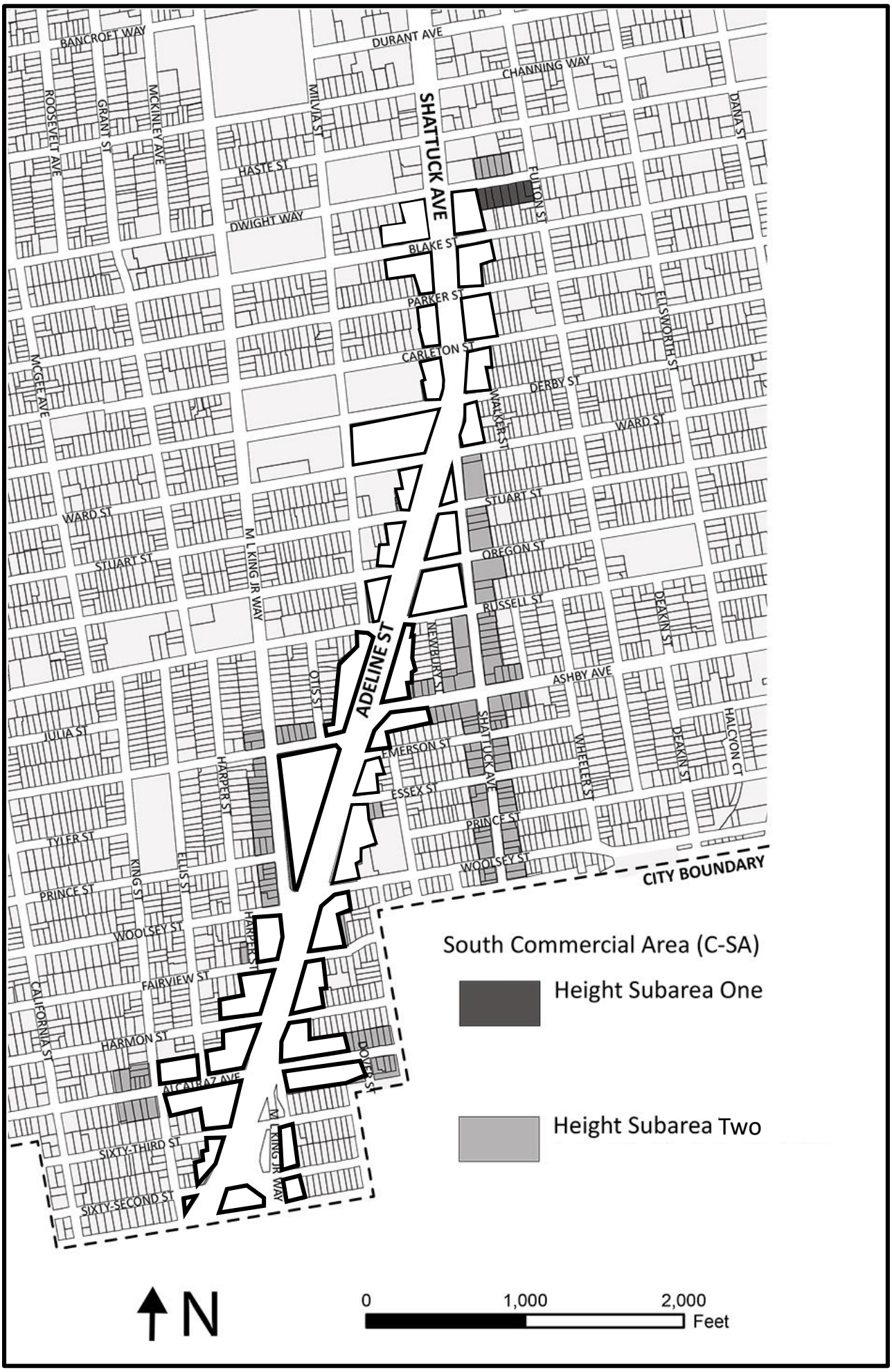
COMMUNICATION ACCESS

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. All materials will be made available via the Planning Commission agenda page online at https://www.cityofberkeley.info/PC/.

FURTHER INFORMATION

Questions should be directed to Alene Pearson, at (510) 981-7489 or apearson@cityofberkeley.info. Current and past agendas are available on the City of Berkeley website at:
https://www.cityofberkeley.info/PC/

Figure 23.204-3 C-SA Building Height Subareas



Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: March 2, 2022

TO: Members of the Planning Commission

FROM: Zoe Covello, Assistant Planner

SUBJECT: Bird Safe Berkeley Requirements Referral

SUMMARY

On November 12, 2019, the Community Environmental Advisory Commission presented an action item to the City Council, recommending that the City of Berkeley amend the Berkeley Municipal Code (BMC) to include a new Chapter establishing bird safety requirements for new construction and significant renovations, as well as a new Chapter establishing a Dark Skies Ordinance. City Council unanimously adopted the Bird Safe Berkeley Requirements Referral (see Attachment 1) requesting the City Manager develop a response. This report provides background on bird safety requirements and recommends next steps for Planning Commission's consideration.

BACKGROUND

Birds do not have the same depth perception or contrast sensitivity as humans; as such they cannot see glass. And at night, which is when most birds migrate, guided by magnetic sensors in their retinas that pick up on red and warm-white light, light distracts and disorients them, often leading to collisions.[1] It's estimated that between one hundred million and one billion birds die every year in collisions with manmade structures.[2] According to the Audubon Society, bird collisions with windows are a leading cause of human-induced bird deaths in the United States, second only to outdoor house cats.

Why is it relevant to Berkeley?

Berkeley is located within the Pacific Flyway, a major migratory route for birds. When birds encounter unfamiliar urban areas along the migratory path, they are at particular risk for collisions and death. The City is also adjacent to the San Francisco Bay, one of North America's most ecologically important estuaries and an international biodiversity hotspot because of the large number of birds, animals, and plants found there, many of

[1] https://www.audubon.org/news/building-collisions-are-greater-danger-some-birds-others
[2] http://nas-national-prod.s3.amazonaws.com/documents/loss_et_al_bird-building_collisons_condor_2014.pdf

which are found nowhere else. The region is also recognized as a site of "Hemispheric Importance" for shorebirds by the Western Hemisphere Shorebird Reserve Network.[3] Alameda County has recorded 407 species of resident and migratory bird species, including Least Terns, Ridgway's Rails, and a variety of other uniquely local and/or threatened species.

As pointed out in the CEAC report, new buildings can be designed to reduce bird deaths from collisions without compromising cost or aesthetics. Many compliance methods can be incorporated into design or construction with no additional cost or effort for architects or engineers, and in some cases, bird safe measures help achieve other desirable environmental goals -- like improved building energy efficiency.

Existing bird safety regulations in Berkeley

There are currently no bird safety measures required for newly constructed or renovated buildings in Berkeley. There are some zoning regulations providing guidance or limitations on outdoor lighting (see BMC 23.304.100(E) [Site Features in Residential Districts], BMC 23.304.130(C)(2) [Non-residential Districts Abutting a Residential District], as well as the City of Berkeley's Downtown Area Plan and the Southside zoning regulations (BMC 23.204.100(B)(5)(c)(vii)), but there is no citywide policy preventing excessive light pollution.

What do bird safe requirements look like?

In an effort to mitigate these deaths, municipalities around the country have started adopting bird safety requirements – which primarily take the form of requiring bird safe glass and reducing light pollution at night.

Glass and façade treatments are the most common methods of prevention, and include solutions such as fritted and frosted glass, angled glass, ultra-violet glass, and film and art treatment of glass. The "2 by 4 rule" - patterns of 1/4-inch dots or stripes 4 inches apart horizontally or 1/8-inch dots or stripes 2 inches apart vertically - and other patterns that meet that rule, were found to greatly reduce bird-glass collisions.

Other primary methods of prevention include, but are not limited to:

- Installing exterior screens or netting
- Reducing large areas of transparent or reflective glass
- Keeping curtains or shades drawn
- Turning non-emergency lighting off at night (particularly during migration in February-May and August-November) [4]
- Putting lights on timers or photo-sensitive switches
- Cleaning buildings in the daytime
- Locating greenery away from clear glass
- Site design measures like fine-grained ventilation grates and gardens without mirrors

[3] https://ca.audubon.org/conservation/conservation/seas-shores/san-francisco-bay
[4] https://www.bloomberg.com/news/features/2022-01-04/how-to-design-buildings-to-prevent-bird-crashes

How are municipalities implementing requirements?

There are a variety of ways these regulations can be implemented. The referral suggests creating a new chapter in the Zoning Ordinance. Here are some other options, as well as the pros and cons of each option, as identified by the City of Emeryville:

- CEQA Review – The city could develop and apply general standards to mitigate potential impacts on migratory wildlife, which is part of the standard CEQA checklist for projects requiring environmental review.
- Project Conditions of Approval – Standard Conditions of Approval for projects could be amended to include new enforceable standards for bird safe measures for applicable projects.
- Design Guidelines – The Design Guidelines could be modified to include a section that would include standards that apply to applicable projects during Design Review. This would provide some flexibility in enforcement, as guidelines are not regulations and projects that bypass discretion are not subject to review or compliance.
- Planning Regulations – The Berkeley Municipal code could be amended to include new standards (as proposed by CEAC), providing consistent application to all projects.

  Building Regulations – The Berkeley Municipal Code could be amended to include new standards under a local building code amendment, which would apply to all projects requiring a building permit.

Existing ordinances in Bay Area cities

San Francisco adopted the first bird-safe building ordinance in the United States in 2011, requiring glass façade treatment be applied to the lower 60 feet of buildings within a 300-foot buffer of two-acre open spaces. Oakland followed San Francisco, adopting measures applicable to buildings adjacent to one-acre open spaces. Similarly, Richmond adopted an ordinance in 2016 requiring the treatment of the lower 60 feet of glass adjacent to one-acre open spaces and panes with areas of 24 feet or more.

Alameda has also developed a bird safety ordinance, adopted in 2018, which applies to new construction and window replacements, as well as lighting. Both Emeryville's 2020 building standards ordinance and CEAC's recommended amendments to the zoning ordinances are modeled after Alameda's. A table detailing bird safe requirements in Alameda, Emeryville, Oakland, and CEAC's recommended ordinance is attached (see Attachment 2).

DISCUSSION

The referral includes two draft ordinances for Planning Commission's consideration. Staff proposes the following approach to this referral:

1. *Identify Implementation Opportunities and Challenges:* As stated above, draft language in the referral is similar to ordinances adopted in Emeryville and

Alameda a few years ago. Staff will reach out to planning staff in Emeryville and Alameda regarding lessons learned from ordinance implementation and suggest any necessary modifications.

2. *Confirm Consistency with California Building Code:* Since California Building Code is amended on a three-year cycle, staff will check with the Berkeley Building Official to ensure there are no conflicts in proposed zoning language and local or California Building Code.

3. *Confirm Consistency with Design Guidelines:* The Design Review Committee (DRC) has reviewed this referral and expressed an interest in seeing it move forward. Staff will work with the Secretary of the DRC to ensure the Committee's comments are addressed and that the Committee is informed of the referrals' progress as it makes its way through the public review.

4. *Redraft Zoning Language According to the BZO Style Guide*: The Baseline Zoning Ordinance or BZO – now referred to as the Zoning Ordinance – included a style guide. Since this referral predated adoption of the BZO, the draft ordinances will need to be modified to follow the style guide.

5. Finally, staff requests that the Commissioners consider the following questions:

- Does the Commission suggest modifications to staff's proposed approach?
- Should the standards apply citywide, or near large open spaces with vegetation and/or water?
- Should the standards apply to the lower 60 feet of buildings or to the entire building?
- Does the Commission have any other suggestions to inform the drafting of bird safe building standards in Berkeley?

After receiving this information, staff will draft a new ordinance or ordinances that follow the BZO style guide. This draft ordinance will then be shared with Planning Commission for consideration and development of a recommendation to City Council.

ATTACHMENTS

1. CEAC Report / City Council Referral
2. Local Ordinance Comparison Table

Community Environmental Advisory Commission

ACTION CALENDAR
November 12, 2019

To: Honorable Mayor and Members of the City Council

From: Community Environmental Advisory Commission (CEAC)

Submitted by: Ben Gould, Chairperson, CEAC

Subject: Bird Safe Berkeley Requirements

RECOMMENDATION:
Refer to the Planning Commission and the City Attorney the attached ordinance amending Berkeley Municipal Code Title 23C, adding a new Chapter 23C.27 establishing bird safety requirements for new construction and significant renovations and a new Chapter 23C.28 establishing a dark skies ordinance, for review and approval.

FISCAL IMPACTS OF RECOMMENDATION:
Potential for small additional ongoing costs associated with slightly increased requirements for staff review of new construction proposals to ensure compliance.

CURRENT SITUATION AND ITS EFFECTS
Bird safety is aligned with the City of Berkeley's Strategic Plan, advancing our goal to be a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

According to the Audubon Society, bird collisions with windows is a leading cause of human-induced bird deaths (second only to outdoor house cats). Berkeley is located in the midst of the Pacific Flyway, a major migratory route for birds including hummingbirds, robins, blackbirds, numerous shorebirds, raptors, and more. When these birds encounter unfamiliar urban areas along the migratory path, they are at particular risk for collisions and death.

At present, there are no bird safety measures required for new construction or renovations. As a result, it is possible that new and existing buildings may incorporate features which pose preventable hazards to local and migratory birds.

Unfettered outdoor lighting also poses known risks to birds, as well as generating unwanted light pollution. The City of Berkeley's Downtown Area Plan[1], as well as

[1] Lighting, City of Berkeley Downtown Area Plan. Accessed August 2019: https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_DAP/Chapter%2012%20Lighting.pdf

Southside zoning regulations (BMC 23E.52.070.F.7), provide guidance or limitations on outdoor lighting, but no general policy exists citywide to prevent excessive light pollution from outdoor lighting.

At its September 12, 2019 meeting, the Community Environmental Advisory Commission voted to recommend the adoption of Bird Safe Berkeley requirements. Moved by Goldhaber, second by Hetzel, carried 6-0-0-2 (Ayes: Simmons, Ticconi, Hetzel, De Leon, Goldhaber, Gould. Noes: None. Abstained: None. Absent: Varnhagen, De Leon).

BACKGROUND

Berkeley is in the midst of the Pacific Flyway, a major migratory route for birds. The city is also adjacent to San Francisco Bay, one of North America's most ecologically important estuaries and a site of Western Hemispheric importance for shorebirds and waterfowl. Alameda County has recorded 407 species of resident and migratory bird species, including least terns, Ridgway's rails, and a variety of other uniquely local and/or threatened species.

New buildings can be designed to reduce bird deaths from collisions without compromising cost or aesthetics – in fact, many of the compliance methods in the attached ordinance can be incorporated into design or construction with virtually no additional cost or difficulty for architects or engineers, and in some cases facilitate achieving other environmental goals (like improved building energy efficiency).

Several other Bay Area cities have adopted bird safety ordinances, including San Francisco, Oakland, Alameda, and Richmond. The attached proposed ordinance is developed from the City of Alameda's adopted ordinance.

In addition, birds are drawn to light, whether from the moon or artificial lights, and lights affixed to buildings or structures pose a risk that birds may crash into them. A special danger comes from very bright lights, as well as lights aimed upward.

ENVIRONMENTAL SUSTAINABILITY

Implementing the Bird Safe Berkeley ordinance will ensure new construction does not pose undue hazards to local and migratory birds, thereby reducing human impact and benefiting the environment.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The proposed amendment to BMC Title 23C is categorically exempt from CEQA under CEQA Guidelines Sections 15061(b)(3), 15307, and 15308.

RATIONALE FOR RECOMMENDATION

Berkeley's strategic plan calls for being a global leader in protecting the environment. The bird-safe glazing design standards contained within have been found to be effective at reducing or eliminating bird deaths, and can be implemented with little or no additional costs. The window size threshold for requiring implementation is the most stringent in the nation, and as a result adopting this policy strongly aligns with Berkeley's strategic plan. The dark skies ordinance is straightforward and simple, yet effective at reducing excessive and unwanted light pollution while conserving energy.

ALTERNATIVE ACTIONS CONSIDERED

CEAC considered taking no action on bird safety standards, but concluded that the environmental benefits substantially outweighed the burden imposed. CEAC also considered a less stringent window size requirement (of twenty-four (24) square feet instead of eight (8) square feet), but determined that window size was not a significant factor in either bird safety or cost or ease of compliance.

CEAC considered taking no action on dark skies, but concluded that the environmental benefits outweighed the burden imposed. CEAC also considered a more stringent dark skies ordinance, but concluded it would be unnecessarily difficult to enforce with minimal additional benefits.

CITY MANAGER

The City Manager takes no position on the content and recommendations of the Commission's Report.

CONTACT PERSON

Ben Gould, Chairperson, CEAC, 510-725-9176

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE TITLE 23C TO ESTABLISH GENERAL REQUIREMENTS FOR BIRD SAFETY IN BUILDINGS AND EXTERIOR LIGHTING FIXTURES; ADDING CHAPTER 23C.27 AND CHAPTER 23C.28

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That the Berkeley Municipal Code Chapter 23C.27 is added to read as follows:

Chapter 23C.27
BIRD SAFETY

Sections:

23C.27.010 Purpose

The purposes of the Bird Safety related regulations contained in this Chapter is to reduce bird mortality from windows or other specific building features known to increase the risk of bird collisions.

23C.27.020 Applicability

The bird-safe building standards apply to the following types of projects when such projects require a building permit:

A. New Construction. New buildings with two (2) or more stories, and one or more façades in which glass constitutes fifty percent (50%) or more of the area of the individual façade. The bird-safe glazing requirement must be met on any window with dimensions of at least two (2) feet by four (4) feet, or an area of eight (8) square feet or more, located on such façade.

B. Window Replacement. On buildings with two (2) or more stories, and one or more facades in which glass constitutes fifty percent (50%) or more of the area of the individual façade, replacement of any window or other rigid transparent material with dimensions of at least two (2) feet by four (4) feet, or an area of eight (8) square feet or more. The requirement does not apply on existing windows that are not proposed to be replaced.

C. New or Replaced Glass Structures. Any structure that has transparent glass walls twenty-four (24) square feet or more in size, including but not limited to freestanding glass walls, wind barriers, skywalks, balconies, greenhouses, and rooftop appurtenances.

23C.27.030 Exemptions

The bird-safe building standards shall not apply to the following:

A. The replacement of existing glass on historic structures. However, the standards shall apply to new exterior additions to historic structures, and new construction on the site of historic structures, that are differentiated from the historic structures, if determined by the Planning Director to be consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties.

B. Glazing on the ground floor of commercial storefronts directly fronting a public street, alley, or sidewalk.

23C.27.040 Standards

A. Bird-Safe Glazing Requirement. At least ninety percent (90%) of the glazing on any building façade or freestanding glass structure shall include features that enable birds to perceive the glass as a solid object. The requirement can be satisfied by using one or more of the following treatments to be determined by the Planning Director as part of an application for a building permit:

1. External screens installed permanently over glass windows such that the windows do not appear reflective.
2. Light-colored blinds or curtains.
3. Opaque glass, translucent glass, or opaque or translucent window film.
4. Paned glass with mullions on the exterior of the glass.
5. Glass covered with patterns (e.g., dots, stripes, images, abstract patterns, lettering). Such patterns may be etched, fritted, stenciled, silk- screened, applied to the glass on films or decals, or another method of permanently incorporating the patterns into or onto the glass. Elements of the patterns must be at least one-eighth (1/8) inch tall and separated no more than two (2) inches vertically, at least one-quarter (1/4) inch wide and separated by no more than four (4) inches horizontally, or both (the "two-by-four rule").
6. Ultraviolet (UV)-pattern reflective glass, laminated glass with a patterned UV-reflective coating, or UV-absorbing and UV-reflecting film that is permanently applied to the glass. Where patterns are used, they shall meet the two-by-four rule.
7. Other glazing treatments providing an equivalent level of bird safety and approved by the Planning Director as part of building plan review.

B. Alternative Glazing Compliance. As an alternative to meeting subsection 4(a), Bird-Safe Glazing Requirement, an applicant may propose building and fenestration designs and/or operational measures that will minimize bird collisions and achieve an equivalent level of bird safety. The applicant shall submit a bird collision reduction plan along with the application for design review or other discretionary permit required for the project. The bird collision reduction plan shall be prepared by a qualified biologist. Design and operational solutions may include but need not be limited to the following techniques, singularly or in combination:

1. Layering and recessing glazed surfaces.
2. Angled or faceted glazing that minimizes reflectivity and transparency.
3. Louvres.
4. Overhangs and awnings.
5. Glass block.
6. Bird netting with openings one (1) square centimeter or smaller.
7. Decorative grilles that allow birds to perceive the grilles, together with the glass behind them, as solid.
8. Glass embedded with photovoltaic cells.
9. Placement of landscaping in such a way as to minimize bird collisions.

Section 2. That the Berkeley Municipal Code Chapter 23C.28 is added to read as follows:

Chapter 23C.28
DARK SKIES

Sections:

23C.28.010 Purpose

The purpose of the Dark Skies ordinance is to ensure exterior light fixtures are pointed downwards and turn off whenever possible, minimizing light pollution, sky glow, and hazardous risks to birds, while ensuring adequate illumination for safety, security, and the enjoyment of outdoor areas, including travel on public roads.

23C.28.020 Applicability

The dark skies ordinance applies to any project that requires a building permit or electrical permit for:

A. New exterior lighting, including lighting fixtures attached to buildings, structures, poles, or self-supporting structures; or

B. Additions or replacements of existing exterior light fixtures, including upgrades and replacements of damaged or destroyed fixtures.

23C.28.030 Exemptions

The following types of lighting are exempt from the requirements of this subsection:

A. Emergency lighting. Temporary emergency lighting used by law enforcement or emergency services personnel, a public utility, or in conjunction with any other emergency service.

B. Construction lighting. Temporary lighting used for construction or repair of roadways, utilities, and other public infrastructure.

C. Lighting Required by Building Code or Other Regulations. Lighting for exit signs, stairs, ramps, points of ingress/egress to buildings, and all other illumination required for building codes, OSHA standards, and other permitting requirements imposed by state, or federal agencies.

D. Signs. Signs and sign lighting.

E. Athletic Field Lights. Athletic field lights used within a school campus or public or private park.

F. Neon, Argon, and Krypton. All fixtures illuminated solely by neon, argon, or krypton.

G. Water Features. Lighting used in or for purposes of lighting swimming pools, hot tubs, decorative fountains, and other water features.

H. Flag Lighting. Lighting used to illuminate a properly displayed United States flag and/or State of California flag.

I. Holiday Displays. Seasonal and holiday lighting.

J. Temporary Lighting. Temporary lighting allowed under a permit.

K. Historic Fixtures. Historic lighting fixtures or fixtures that exhibit a historical period appearance, as determined by the Planning Director.

L. Architecture, Historic Structures, and Public Art. Lighting on historic structures, special architectural features, public art, monuments, and other similar objects of

interest shall be exempt if the lamps emit less than one thousand six hundred (1600) lumens per fixture and together draw less than one hundred (100) watts. However, the standards shall apply to new exterior additions to historic structures, and new construction on the site of historic structures, that are differentiated from the historic structures, if determined by the Planning Director to be consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties.

M. Low-Voltage Landscape Lighting. Low-voltage landscape lighting such as that used to illuminate fountains, shrubbery, trees, and walkways, provided that it uses no more than sixty (60) watts and no more than seven hundred and fifty (750) lumens per fixture.

23C.28.040 Standards

To minimize the harmful effects of light pollution, new construction and major renovation projects shall meet the following standards:

A. Outdoor lighting shall be no brighter than 3000 Kelvin.

B. Outdoor lighting shall be shielded and directed, with a full cut off fixture of no more than 2.5% of lamp lumens at or above 90°, and no more than 10% of lamp lumens at or above 80°.

C. Wherever feasible, require motion sensors or timers to prevent unnecessary energy use and light pollution.

D. Light shows and beams of light are not permitted during spring or fall migration seasons, roughly February 15 to May 31, and August 15 to November 30, respectively.

Bird Safety Berkeley Referral - Local Ordinance Comparison Table

		Sections			
Jurisdiction	**Form of Standard**	**Purpose**	**Applicability**	**Exemptions**	**Standards**
Berkeley	Proposed Planning Regulations (amendment to municipal code) – as recommended by CEAC)	**Purpose of Bird Safety Ordinance:** To reduce bird mortality from windows or other specific building features known to increase the risk of bird collisions.	Standards that apply to projects that require a building permit: **a) New Construction.** New buildings with two (2) or more stories, and one or more façades in which glass constitutes fifty percent (50%) or more of the area of the individual façade. The bird-safe glazing requirement must be met on any window with dimensions of at least two (2) feet by four (4) feet, or an area of eight (8) square feet or more, located on such façade. **b) Window Replacement.** On buildings with two (2) or more stories, and one or more facades in which glass constitutes fifty percent (50%) or more of the area of the individual façade, replacement of any window or other rigid transparent material with dimensions of at least two (2) feet by four (4) feet, or an area of eight (8) square feet or more. The requirement does not apply on existing windows that are not proposed to be replaced. **c) New or Replaced Glass Structures.** New or Replaced Glass Structures. Any structure that has transparent glass walls twenty-four (24) square feet or more in size, including but not limited to freestanding glass walls, wind barriers, skywalks, balconies, greenhouses, and rooftop appurtenances.	Standards shall not apply to the following: **A. The replacement of existing glass on historic structures.** However, the standards shall apply to new exterior additions to historic structures, and new construction on the site of historic structures, that are differentiated from the historic structures, if determined by the Planning Director to be consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties. **B. Glazing on the ground floor of commercial storefronts** directly fronting a public street, alley, or sidewalk.	**A. Bird-Safe Glazing Requirement.** At least ninety percent (90%) of the glazing on any building façade or freestanding glass structure shall include features that enable birds to perceive the glass as a solid object. The requirement can be satisfied by using one or more of the following treatments to be determined by the Planning Director as part of an application for a building permit: 1. External screens installed permanently over glass windows such that the windows do not appear reflective. 2. Light-colored blinds or curtains. 3. Opaque glass, translucent glass, or opaque or translucent window film. 4. Paned glass with mullions on the exterior of the glass. 5. Glass covered with patterns (e.g., dots, stripes, images, abstract patterns, lettering). Such patterns may be etched, fritted, stenciled, silk- screened, applied to the glass on films or decals, or another method of permanently incorporating the patterns into or onto the glass. Elements of the patterns must be at least one eighth (1/8) inch tall and separated no more than two (2) inches vertically, at least one-quarter (1/4) inch wide and separated by no more than four (4) inches horizontally, or both (the "two-by-four rule"). 6. Ultraviolet (UV)-pattern reflective glass, laminated glass with a patterned UV reflective coating, or UV-absorbing and UV-reflecting film that is permanently applied to the glass. Where patterns are used, they shall meet the two-by-four rule. 7. Other glazing treatments providing an equivalent level of bird safety and approved by the Planning Director as part of building plan review. **B. Alternative Glazing Compliance.** As an alternative to meeting the above Bird Safe Glazing Requirement, an applicant may propose building and fenestration designs and/or operational measures that will minimize bird collisions and achieve an equivalent level of bird safety. The applicant shall submit a bird collision reduction plan along with the application for design review or other discretionary permit required for the project. The bird collision reduction plan shall be prepared by a qualified biologist. Design and operational solutions may include but need not be limited to the following techniques, singularly or in combination: 1. Layering and recessing glazed surfaces. 2. Angled or faceted glazing that minimizes reflectivity and transparency. 3. Louvres. 4. Overhangs and awnings. 5. Glass block. 6. Bird netting with openings 1 square centimeter or smaller 7. Decorative grilles that allow birds to perceive the grilles, together with the glass behind them, as solid. 8. Glass embedded with photovoltaic cells

Bird Safety Berkeley Referral - Local Ordinance Comparison Table

					9. Placement of landscaping in such a way as to minimize bird collisions.
		Purpose of Dark Skies Ordinance: To ensure exterior light fixtures are pointed downwards and turned off whenever possible, minimizing light pollution, sky glow, and hazardous risks to birds while ensuring adequate illumination for safety, security, and enjoyment of outdoor areas, including travel on public roads.	The dark skies ordinance applies to any project that requires a building permit or electrical permit for: **a) New exterior lighting**, including lighting fixtures attached to buildings, structures, poles, or self-supporting structures; or **b) Additions or replacements of existing exterior light fixtures**, including upgrades andreplacements of damaged or destroyed fixtures.	The following types of lighting are exempt from the requirements of this subsection: **A. Emergency Lighting.** Temporary emergency lighting used by law enforcement or emergency services personnel, a public utility, or in conjunction with any other emergency service. **B. Construction Lighting**. Temporary lighting used for construction or repair of roadways, utilities, and other public infrastructure. **C. Lighting Required by Building Code or Other Regulations**. Lighting for exit signs, stairs, ramps, points of ingress/egress to buildings, and all other illumination required for building codes, OSHA standards, and other permitting requirements imposed by state, or federal agencies. **D. Signs**. Signs and sign lighting. **E. Athletic Field Lights.** Athletic field lights used within a school campus or public or private park. **F. Neon, Argon, and Krypton**. All fixtures illuminated solely by neon, argon, or krypton. **G. Water Features**. Lighting used in or for purposes of lighting swimming pools, hot tubs, decorative fountains, and other water features. **H. Flag Lighting.** Lighting used to illuminate a properly displayed United States flag and/or State of California flag. **I. Holiday Displays.** Seasonal and holiday lighting. **J. Temporary Lighting.** Temporary lighting allowed under a permit. **K. Historic Fixtures.** Historic lighting fixtures or fixtures that exhibit a historical period appearance, as determined by the Planning Director. **L. Architecture, Historic Structures, and Public Art.** Lighting on historic structures, interest shall be exempt if the lamps emit less than one thousand six hundred (1600) lumens per fixture and together draw less than one hundred (100) watts. However, the standards shall apply to new exterior additions to historic structures, and new construction on the site of historic structures, that are differentiated from the historic structures, if determined by the Planning Director to be consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties. **M. Low-Voltage Landscape Lighting.** Low-voltage landscape lighting such as that used to illuminate fountains, shrubbery, trees, and walkways, provided that it uses no	To minimize the harmful effects of light pollution, new construction and major renovation projects shall meet the following standards: **A.** Outdoor lighting shall be no brighter than 3000 Kelvin. **B.** Outdoor lighting shall be shielded and directed, with a full cut off fixture of no more than 2.5% of lamp lumens at or above 90°, and no more than 10% of lamp lumens at or above 80°. **C.** Wherever feasible, require motion sensors or timers to prevent unnecessary energy use and light pollution. **D.** Light shows and beams of light are not permitted during spring or fall migration seasons, roughly February 15 to May 31, and August 15 to November 30, respectively.

Bird Safety Berkeley Referral - Local Ordinance Comparison Table

				more than sixty (60) watts and no more than seven hundred and fifty (750) lumens per fixture.	
Mountain View	Amendment to the Green Building Code Also developed Bird Safe Design Standards and Guidelines and Nesting Bird Protection Standards and Guidelines for the North Bayshore Precise Plan	**Purpose of the Bird Safe Design Standards:** To minimize adverse effects on native and migratory birds, new construction and major renovations will incorporate design measures to promote bird safety. These measures will help reduce the likelihood of building collision fatalities through façade treatments and light pollution reduction. These measures apply to both residential and non-residential land uses except where specified.	**Per the Green Building Code**: Bird-safe glass shall be installed on the exterior of the structure where: **a)** The structure is equal to or greater than ten thousand (10,000) square feet; or **b)** The applicable precise plan requires it. Additionally, the mandatory new construction green building requirements requires bird-safe glass installed in: **a)** Mixed-use buildings greater than or equal to 10,000 sf **b)** Hotels greater than or equal to 10,000 sf **c)** Commercial buildings greater or equal to 10,000 sf **Design standards are applicable in the North Bayshore neighborhood.** Nesting bird protection standards are applicable to all new construction, building additions, building alterations, and tree/shrub removal.	Per the Design Standards as outlined in the North Bayshore Precise Plan: **Exceptions to the design requirements**. The City may waive or reduce any of this chapter's bird safe design requirements based on analysis by a qualified biologist indicating that proposed construction will not pose a collision hazard to birds.	Per the Design Standards as outlined in the North Bayshore Precise Plan: **Bird Safe Design Standards** **A. All new construction, building additions, and/or building alterations** shall adhere to the Bird Safe Design standards in the North Bayshore Precise Plan. **B. Façade treatments**. No more than 10% of the surface area of a building's total exterior façade shall have untreated glazing between the ground and 60' above ground. (Ex. Opaque glass, covering clear glass surface with patterns, using paned glass with fenestration patterns, using external screens over non-reflective glass) **C. Occupancy Sensors**. For non-residential development, occupancy sensors or other switch control devices shall be installed on non-emergency lights. The lights should be programmed to shut off during non-work hours and between 10pm and sunrise. **D. Funneling of flight paths**. New construction shall avoid funneling of flight paths along buildings or trees toward a building façade. **E. Skyways/Walkways/or Glass Walls.** New construction and building additions shall avoid building glass skyways, walkways, freestanding glass walls, transparent building corners. New construction and building additions should reduce glass at the tops of buildings, especially when incorporating a green roof into the design. **Guidelines** **A. Bird collision best management practices** to promote bird safety. 1. Collision monitoring 2. window covering 3. Work station lighting and window coverings 4. Daytime maintenance **B. Handling of food waste** (to avoid attracting wildlife) **Nesting Bird Protection Standards** **A. Pre-activity surveys.** If construction, building additions, or removal of trees and shrubs occurs between February 1 and August 31, pre-activity surveys for nesting birds shall be conducted by a qualified biologist. **B. Nest buffers.** If an active nest is found sufficiently close to work areas to be disturbed by these activities, the biologist in coordination with the California Department of Fish and Wildlife, shall determine the extent of a disturbance-free buffer zone to be established around the nest. Typical buffer zones are 300 feet for raptors and 100 feet for non-raptors. **Guidelines** **Avoidance of nesting season.** If construction, building additions, or removal of trees and shrubs is scheduled to take place outside the nesting season, impacts to protected nesting birds would be avoided.

Bird Safety Berkeley Referral - Local Ordinance Comparison Table

Emeryville *(looked to Alameda as basis for their ordinance*)	Building standards (ordinance amendment to zoning code) Article 8. Bird Safe Buildings.	The purpose of the Bird Safe Buildings Ordinance: To reduce the risk of bird-to-building collisions.	Standards are applied to projects that require a building permit: **a) New Construction.** New buildings, additions, and renovations involving new glass or other rigid transparent material. **b) Window replacement.** Any replacement window, glass door, or other rigid transparent material. **c) Glass structures.** Any new or replacement structure that has transparent glass or rigid transparent walls, including but not limited to freestanding glass walls, wind barriers, skywalks, balconies, greenhouses, gazebos, pavilions, passageways, and rooftop appurtenances. The bird-safe glazing requirement must be met on any window or contiguous glazed segment (area with mullions and/or frames) with an area of 12 sf or more.	N/A	**A. Bird-Safe Glazing Requirement.** At least 90% of the glazing on any building facade or glass structure, and all glass near plants or water features shall include features that enable birds to perceive the glass as a solid object. The requirement can be satisfied using one or more of the following treatments: 1. External screens installed permanently over glass such that the glass does not appear reflective. 2. Translucent or opaque glass or film applied to glass. 3. Glass covered with patterns such as dots, stripes, images, art, or abstract patterns. Such patterns may be etched, fritted, stenciled, silk-screened, or applied to the glass as films or decals, or other method of permanently incorporating the patterns into or onto the glass. Elements of the pattern must meet the 2x4 rule. 4. Weatherproof grates, netting or cords mounted outside of the glass, near but not touching the glass, meeting the 2x4 rule. 5. Grooved glass block. 6. Other glazing treatments providing an equivalent level of bird safety and approved by the Planning Director. **B. Alternative Compliance.** An applicant may propose building and fenestration designs that will minimize bird collisions and achieve an equivalent level of bird safety. The applicant shall submit a bird collision reduction plan along with their project application. Shall be prepared by a qualified biologist. Design solution may include, but need not be limited to: 1. Layering and recessing of glazed surfaces 2. Angled or faceted glazing that minimizes reflectivity and transparency 3. Louvre or grates not meeting the 2x4 rule 4. Overhangs or awnings 5. Clear (non-grooved) glass block 6. Grilles that allow birds to perceive them 7. Glass embedded with photovoltaic cells 8. Placement of landscaping in such a way as to minimize bird collisions, including but not limited to placing outdoor plants directly against windows **C. Interior Lighting** 1. Nonresidential spaces shall have automatic light shutoff systems using timers, photo sensors, motion sensors, or a combo thereof 2. Shades, blinds, curtains, or other window coverings for all windows shall be included as part of the construction project for which the building permit is issued **D. Site Design** 1. No mirrors shall be placed in or near planted areas or water features or in locations where they would reflect trees, plants, or water 2. Vent grates shall meet the 2x4 rule

Bird Safety Berkeley Referral - Local Ordinance Comparison Table

Alameda	Building standards (ordinance amendment to zoning code)	**Bird Safe Glass** To reduce bird mortality from windows or other specific building features known to increase the risk of bird collisions.	Apply to the following types of projects when applying for a building permit: **a) New Construction.** New buildings that are greater than 35' in height and have one or more façade in which glass constitutes 50% or more of the area of an individual façade. The req must be met on any window or unbroken glazed segment with an area of 12 sf or more **b) Window Replacement.** On buildings that meet the 35'/50%, the replacement of any window or other rigid transparent material with 12 sf or more. Does not apply to existing windows that are not proposed to be replaced. **c) New or Replaced Glass Structures.** Any structure with transparent glass walls or any unbroken glazed segment 24sf or more in size, including but not limited to freestanding glass walls, wind barriers, skywalks balconies, greenhouses and rooftop appurtenances.	Shall not apply to the following: **A. Historic Structures.** The replacement of existing glass on historic structures. However, the standards shall apply to new exterior additions to historic structures and new construction on the site of historic structures that are differentiated from the historic structures **B. Glazing on Commercial Storefronts.** The ground floor of commercial storefronts directly fronting a public street, alley, or sidewalk.	**A. Bird Safe Glazing Requirements.** At least 90% of the glazing on any building façade or freestanding glass structure shall include features that enable birds to perceive the glass as a solid object. The requirement can be satisfied using one or more of the following treatments to be determined by the Planning Director as part of an application for a building permit: 1. External screens installed permanently over glass windows such that the windows do not appear reflective. 2. Light colored blinds or curtains. 3. Opaque glass, translucent glass, or opaque or translucent window film. 4. Paned glass with mullions on the exterior of the glass. 5. Glass covered with patterns (e.g., dots, stripes, images, abstract patterns, lettering). Such patterns may be etched, fritted, stenciled, silk-screened, applied to the glass on films or decals, or another method of permanently incorporating the patterns into or onto the glass. Elements of the patterns must meet the 2x4 rule. 6. UV-pattern reflective glass, laminated glass with a patterned UV-coating, or UV-absorbing and UV-reflecting film that is permanently applied to the glass. Where patterns used, must meet 2x4 rule 7. Other glazing treatments providing an equivalent level of bird safety and approved by the Planning Director as part of the building plan review. **B. Alternative Compliance.** Alternative to meeting 4a, must present a bird collision reduction plan prepared by a biologist. Design/solutions may include the following: 1. Layering and recessing glazed surfaces 2. Angled or faceted glazing that minimizes reflectivity/transparency 3. Louvres 4. Overhangs/awnings 5. Glass block 6. Bird netting 7. Decorative grilles 8. Glass embedded with photovoltaic cells 9. Placement of landscaping in such a way as to minimize bird collisions
		Dark Skies Ordinance A. Allow adequate illumination for safety, security, utility, and the enjoyment of outdoor areas. B. Prevent excessive light and glare on public roadways	Unless otherwise expressly stated, the standards of this subsection (c), Outdoor Lighting, apply to any project that requires a building permit or electrical permit for: **a) New exterior lighting**, including lighting fixtures attached to buildings, structures, poles, or self-supporting structures; or **b) Additions or replacements of existing exterior light fixtures**, including upgrades and replacements of damaged or destroyed fixtures	**Exemptions**. The following types of lighting are exempt from the requirements of this subsection (c), Outdoor Lighting: **A. Emergency Lighting**. Temporary emergency lighting used by law enforcement or emergency services personnel, a public utility, or in conjunction with any other emergency service. **B. Construction Lighting**. Temporary lighting used for the construction or repair of roadways, utilities, and other public infrastructure. **C. Airport Lighting**. Lighting for public and private airports and any other uses that are regulated by the Federal Aviation Administration.	**Standards.** Exterior lighting shall be consistent with these standards: **A. Shielding.** All exterior lighting fixtures shall be fully shielded, and lighting shall be directed downward, with the following exceptions: 1. **Low-voltage Landscape Lighting.** Low-voltage landscape lighting such as that used to illuminate fountains, shrubbery, trees, and walkways, may be unshielded provided that it uses no more than sixty (60) watts, or twelve (12) watt equivalent LED, and emits no more than seven hundred fifty (750) lumens per fixture. 2. **Architecture and Public Art.** Uplighting may be used to highlight special architectural features, historic structures, public art and monuments, and similar objects of interest.

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		and private properties. C. Minimize artificial outdoor light that can have a detrimental effect on human health, the environment, astronomical research, amateur astronomy, and enjoyment of the night sky. D. Minimize light that can be attractive disorienting, and hazardous to migrating and local birds.		**D. Lighting Required by Building Codes or Other Regulations.** Lighting for communication towers, exit signs, stairs/ramps, points of ingress/egress to buildings, and all other illumination required by building codes, OSHA standards, and other permitting requirements imposed by state or federal agencies. **E. Signs**. Signs and sign lighting. (See Section 30-6.6, Illumination of Signs, for sign lighting standards.) **F. Athletic Field Lights.** Athletic field lights used within a school campus or public or private park, provided, however, that athletic field lights shall be selected and installed so as to minimize glare and light trespass outside the playing area. Athletic field lights shall be turned off no later than 11:00 p.m. or where an event requires extended time, no later than thirty (30) minutes after conclusion of the event. **G. Neon, Argon, and Krypton.** All fixtures illuminated solely by neon, argon, or krypton. **H. Fossil Fuel Light.** All outdoor light fixtures producing light directly through the combustion of fossil fuels, such as kerosene lanterns, and gas lamps. **I. Water Features.** Lighting used in or for the purpose of lighting swimming pools, hot tubs, decorative fountains, and other water features. **J. Flag Lighting.** Lighting used to illuminate a properly displayed United States flag and/or State of California flag. **K. Holiday Displays.** Seasonal and holiday lighting **L. Temporary Lighting.** Temporary lighting allowed under a Special Events Permit or Film/Photography Permit	Lamps used for such uplighting shall use less than one hundred (100) watts, or twenty (20) watt equivalent LED, and emit less than one thousand six hundred (1,600) lumens per fixture. 3. **Historic Lighting Fixtures.** Lighting fixtures that are historic or that exhibit a historical period appearance, as determined by the Planning Director, need not be fully shielded. **B. Light Trespass.** Exterior lighting shall be directed downward and away from property lines to prevent excessive glare beyond the subject property. No light, combination of lights, or activity shall cast light exceeding one (1) foot-candle onto an adjacent or nearby property, with the illumination level measured at the property line between the lot on which the light is located and the adjacent lot, at the point nearest to the light source. **C. Correlated Color Temperature for Light-Emitting Diode (LED) Lighting.** All LED light sources shall have a maintained correlated color temperature of less than or within the range of two thousand seven hundred to three thousand (2,700—3,000) Kelvins. **D. Security Lighting.** Adequate lighting shall be provided to protect persons and property and to allow for the proper functioning of surveillance equipment. 1. Security lighting shall consist of shielded fixtures that are directed downward. Floodlights shall not be permitted. 2. Vertical features, such as walls of a building, may be illuminated for security to a height of eight (8) feet above grade. 3. Security lights intended to illuminate a perimeter, such as a fence line, are allowed only if regulated by a programmable motion detection system and compliant with the light trespass limitations in subsection (b). 4. Security lighting fixtures that utilize one hundred (100) or more watts, or twenty (20) watt equivalent LED, or emit one thousand six hundred (1,600) or more lumens shall be controlled by a programmable motion-sensor device, except where continuous lighting is required by the California Building Standards Code. **E. Parking Lot Lighting.** Parking lot lighting shall be consistent with the standards of Section 30-7.17, Illumination of Parking Areas. **F. Service Station Canopies.** Service station canopies are subject to the following standards: 1. Lighting fixtures in the ceiling of canopies shall be fully recessed in the canopy. 2. Light fixtures shall not be mounted on the top or fascia of such canopies. 3. The fascia of such canopies shall not be illuminated, except for approved signage. **G. Street and Park Lighting.** Lighting installed within a public or private right-of-way or easement for the purpose of illuminating streets or roadways and lighting in City parks shall be in accordance to lighting

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					standards of the Public Works Department and Alameda Recreation and Parks Departments, except all LED lighting shall have a maintained correlated color temperature of less than or within the range of two thousand seven hundred to three thousand (2,700—3,000) Kelvins. **Code Compliance.** All exterior lighting shall be consistent with all applicable parts of the California Building Standards Code. In the case of any conflict between the standards of this section and the California Building Standards Code, the later shall prevail.
Oakland	Bird Safety Measures added to Building Permit Requirements	N/A	Applies to all construction projects which include glass as part of the building's exterior and at least one of the following: **a)** The project is located immediately adjacent to a substantial water body (e.g. Oakland Estuary, SF Bay, Lake Merritt) **b)** The project is located immediately adjacent to rec area or park larger than 1 acre which contains substantial vegetation **c)** The project includes a substantial vegetated or green roof but excluding container gardens **d)** The project includes an existing or proposed substantial vegetated area (generally contiguous one acre in size or larger) located directly adjacent to project buildings. **e)** The structure contains an atrium which will contain vegetation.	N/A	**A. Bird Collision Reduction Measures** **Requirement: Project applicant shall submit a Bird Collision Reduction Plan for City review and approval to reduce potential bird collisions to the max feasible extent.** The Plan shall include all of the following mandatory measures, as well as applicable and specific project Best Management Practice (BMP) strategies to reduce bird strike impacts to the maximum feasible extent. The Project applicant shall implement the approved Plan. *Mandatory measures include all of the following:* 1. Comply with federal aviation safety regulations for large buildings by installing minimum intensity white strobe lighting with three second flash instead of solid red or rotating lights. 2. Minimize the number of and co-locate rooftop-antennas and other rooftop structures. 3. Monopole structures or antennas shall not include guy wires. 4. Avoid the use of mirrors in landscape design. 5. Avoid placement of bird-friendly attractants (i.e. landscaped areas, vegetated roofs, water features) near glass unless shielded by architectural features taller than the attractant that incorporate the bird friendly treatments no more than two inches horizontally, four inches vertically, or both (the "two-by-four" rule). **B. Glazing Treatments** Apply bird friendly glazing treatments to no less than 90 percent of all windows and glass between the ground and 60 feet above ground or to the height of existing adjacent landscape or the height of the proposed landscape. Examples of bird friendly glazing treatments include the following: 1. Use of opaque glass in window panes instead of reflective glass. 2. Uniformly cover the interior or exterior of clear glass surface with patterns (e.g., dots, stripes, decals, images, abstract patterns). Patterns can be etched, fritted, or on films and shall have a density of no more than two inches horizontally, four inches vertically, or both (the "two-by-four" rule). 3. Install paned glass with fenestration patterns with vertical and horizontal mullions no more than two inches horizontally, four inches vertically, or both (the "two-by-four" rule). 4. Install external screens over non-reflective glass (as close to the glass as possible) for birds to perceive windows as solid objects.

					5. Install UV-pattern reflective glass, laminated glass with a patterned UV reflective coating, or UV-absorbing and UV-reflecting film on the glass since most birds can see ultraviolet light, which is invisible to humans. 6. Install decorative grilles, screens, netting or louvers, with openings no more than two inches horizontally, four inches vertically, or both (the "two-by-four" rule). 7. Install awnings, overhangs, sunshades, or light shelves directly adjacent to clear glass which is recessed on all sides. Another option is to use louvers with 2" x 4" spacing. 8. Install opaque window film or window film with a pattern or design or marketing message which also adheres to the 2" x 4" rule for coverage. **C. Reduce Light Pollution** Examples include the following: 1. Extinguish nighttime architectural illumination treatments during bird migration season (February 15 to May 31 and August 1 to November 30). 2. Install time switch control devices or occupancy sensors on non-emergency interior lights that can be programmed to turn off during non-work hours and between 11:00 p.m. and sunrise. 3. Reduce perimeter lighting whenever possible. 4. Install full cut off, shielded or directional lighting to minimize light spillage, glare or light trespass. 5. Do not use beams of lights during the spring (February 15 to May 31or fall migration (Aug 15 to November 30). **D. Bird Safety** B.M.P.s to include the implementation of a building operation and management manual that promotes bird safety. Example measures in the manual include the following: 1. Donation of discovered dead bird specimens to an authorized bird conservation organization or museum (i.e. U.C. Berkeley Museum of Vertebrate Zoology) to aid in species identification and to benefit scientific study, as per all federal, state and local laws. 2. Distribution of educational materials on bird-safe practices for the building occupants. Contact Golden Gate Audubon or American Bird Conservancy for materials. 3. Asking employees to turn off task lighting at their work stations and draw office blinds, shades, curtains or other window coverings at end of work day. 4. Install interior blinds, shades, or other window coverings in windows above the ground floor visible from the exterior as part of the construction contract, lease agreement, or CC&Rs. 5. Schedule nightly maintenance during the day or to conclude before 11 p.m., if possible. When Required: Prior to approval of construction-related permit Initial Approval: Planning and Zoning Division Monitoring/Inspection: Building Services Division

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					E. Implementation of Bird Collision Reduction Plan After Construction **Requirement:** The project applicant shall continue to implement the approved Bird Collision Reduction Plan following construction of the project. When Required: Ongoing Initial Approval: N/A Monitoring/Inspection: Building Services Division

Planning & Development Department
Land Use Planning Division

Planning Commission Zoning Ordinance Revision Project (ZORP) Subcommittee

Subcommittee Meeting Announcement and Agenda

Click here to view the entire Agenda Packet

Date: **Wednesday, February 16, 2022**
Time: **7:00 p.m. – 9:00 p.m.**

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE. Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the Planning Commission Zoning Ordinance Revision Project (ZORP) Subcommittee will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL https://us06web.zoom.us/j/87506470747. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the “raise hand” icon by rolling over the bottom of the screen. https://us06web.zoom.us/j/87506470747

To join by phone: Dial **1 669 900 6833** and enter Meeting ID: **875 0647 0747.** If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized.

Please be mindful that the video conference and teleconference will be recorded. All rules of procedure and decorum that apply for in-person Planning Commission Zoning Ordinance Revision Project (ZORP) Subcommittee meetings apply for Planning Commission Zoning Ordinance Revision Project (ZORP) Subcommittee meetings conducted by teleconference or videoconference.

See “MEETING PROCEDURES” below.

Pursuant to section 54954.3 of the California Government Code, public comment during this special meeting is intended to provide an opportunity for members of the public to directly address the Planning Commission Subcommittee concerning any item that has been described in the notice for the meeting before or during consideration of that item. This limits public comment to only the items listed on this agenda

The Planning Commission ZORP Subcommittee consists of three of the nine Commissioners: Robb Kapla, Jeff Vincent and Brad Wiblin.

AGENDA

1. ***Call to Order***

2. ***Discussion:*** ***Objective Standards for Multi-Unit and Mixed-Use Residential Projects***
   Recommendation: *Receive presentation and provide feedback on proposed 2-4 Unit Land Use and Development Standards in the R-1, R-1A, R-2, R-2A and MU-R zoning districts outside of the Hillside Overlay.*
   Written Materials: *Attached*
   Presentation: *N/A*

3. ***Adjournment***

Communications: None.

Late Communications: Attached

Late Communications: (Received and distributed at the meeting)

MEETING PROCEDURES

Public Testimony Guidelines: All persons are welcome to attend the virtual meeting and will be given an opportunity to address the Subcommittee. Speakers are customarily allotted two to three minutes each. Speakers are encouraged to submit comments in writing. See "Procedures for Correspondence to the Subcommittee Members" below.

Procedures for Correspondence to the Subcommittee Commissioners:
Written comments should be directed to:

Justin Horner, Assoc Planner
Land Use Planning Division
1947 Center Street
Berkeley, CA 94704

E-mail: **jhorner@cityofberkeley.info**
Fax: (510) 981-7476

Correspondence received by 12 noon, eight days before this meeting, will be provided with the agenda materials provided to the Subcommittee. Note that if you submit a hard copy document of more than 10 pages, or in color, or with photos, you must provide 15 copies.

Correspondence received after this deadline will be conveyed to the Subcommittee in the following manner:

- Correspondence received by 12 noon two days before this meeting, will be conveyed to the Commission in a Supplemental Communication, which will be released around noon one day before the meeting; or

- Correspondence received after 12 noon two days before this meeting will be saved in the project administrative record.

Communications are Public Records: Communications to Berkeley boards, commissions, or subcommittees 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.

Meeting Access*: *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.

From: Pearson, Alene
Sent: Monday, February 14, 2022 8:52 AM
Subject: Planning Commissioner Academy

Hi Commissioners,
Our Department received notice of this training through California's Department of Housing and Community Services mailing list:
https://www.calcities.org/detail-pages/event/2022/03/16/default-calendar/planning-commissioners-academy
In the past, Commissioners who have been interested in attending have coordinated with their Council Members.
Best,
Alene

Alene Pearson, AICP, Principal Planner
Land Use Planning Division
Planning and Development Department
City of Berkeley
apearson@cityofberkeley.info
510-981-7489

From: Pearson, Alene
Sent: Thursday, February 17, 2022 2:01 PM
Subject: Background Information on Citywide Affordable Housing Requirements

Dear Commissioners,
Below you'll find background information on the Citywide Affordable Housing Requirements – as requested at the February meeting.

PC received an update on the project at their on May 5, 2021 meeting. A link to that agenda (with links to report and a PDF of the presentation) can be found here:
https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2021-05-05%20PC%20Agenda_linked(1).pdf

A week later, the project team presented to City Council at a worksession. You can access those agenda materials and a video of that presentation here:
Report: https://www.cityofberkeley.info/Clerk/City_Council/2021/05_May/Documents/2021-05-18_WS_Item_02_Updating_Citywide_Affordable_pdf.aspx
Presentation: http://berkeley.granicus.com/MediaPlayer.php?publish_id=81b0aa7c-b8bc-11eb-8549-0050569183fa

Let me know if you have questions.
Alene

Alene Pearson, AICP, Principal Planner
Land Use Planning Division
Planning and Development Department
City of Berkeley
apearson@cityofberkeley.info
510-981-7489

From: Pearson, Alene
Sent: Tuesday, February 22, 2022 10:15 AM
Subject: Civic Arts Commission Report for PC's review
Attachments: Item 11 Referring the Civic Arts Commission.pdf

Hello Commissioners,
The Civic Arts Commission Report on *affordable housing for artists in Berkeley* was referred to the City Manager, Planning Commission and the Housing Advisory Commission (HAC) to review and consider in the context of the Housing Element Update. This referral was included as an information item in your February agenda packet, but I am resending (see attachment) as a Communication. The item has also been shared with the HAC and the Housing Element Update project team.
Thanks,
Alene

Alene Pearson, AICP, Principal Planner
Land Use Planning Division
Planning and Development Department
City of Berkeley
apearson@cityofberkeley.info

Sophie Hahn
City Council District 5
510-981-7140
shahn@cityofberkeley.inf

CONSENT CALENDAR
January 25, 2022

To: Honorable Members of the City Council

From: Councilmember Hahn (Author), Councilmember Taplin (Co-Sponsor), Councilmember Harrison (Co-Sponsor), Councilmember Wengraf (Co-Sponsor)

Subject: Referring the Civic Arts Commission's *affordable housing for artists in Berkeley* Report and other Artist Live, Work and Live-Work opportunities to the Housing Element Update

RECOMMENDATION

1. Refer the Civic Arts Commission's report entitled *affordable housing for artists in berkeley* to the City Manager, Planning Commission, and Housing Advisory Commission to review, consider, and incorporate recommendations, to the greatest extent possible, into the Housing Element update and related planning and zoning processes.

2. Refer to the City Manager, Planning Commission, and Housing Advisory Commission consideration of the feasibility and impacts of allowing ground floor affordable live, work, and live-work space for artists in certain commercial, manufacturing, and mixed-use buildings/areas, both new-build and existing, and exploration of other opportunities for living, work and live-work space for artists.

SUMMARY/CURRENT SITUATION:

Affordable living and work-space for artists is a pressing issue for our community, with artists increasingly priced out and unable to live and work in Berkeley. Affordable housing for artists has been identified in numerous planning documents as a key need. Most recently, the Civic Arts Commission generated a report entitled *affordable housing for artists in berkeley* that reported data about the unique housing and space needs of artists, based on a survey and focus groups with diverse artists and cultural workers. (See Attachment 1: *affordable housing for artists in berkeley)*. The report was presented at the December 8, 2021 Civic Arts Commission meeting, and generated important discussion around housing and work-space affordability for artists.

Berkeley is currently engaged in an in-depth process to update the City's Housing Element. The results of the update will shape the development of housing in Berkeley for much of the next decade. A key component of the Housing Element is to identify sites that can accommodate future housing needs across income levels and other demographic factors. The Housing Element also involves the development of a variety of approaches to meet community housing and affordability needs such as zoning updates and new affordable housing requirements and programs.

With the Housing Element update process already in progress, it is important for the recently completed *affordable housing for artists in berkeley* report to be referred and the report's findings and recommendations to be incorporated into the Housing Element Update, as feasible.

In addition to the findings and recommendations of the *affordable housing for artists* report, an informal group of artists has been discussing the possibility of allowing ground-floor commercial space to be substituted for affordable artist work- or live-work space in new-buildings, or in existing buildings via conversions in some locations or building types. Because there are many elements to consider, including impacts to the retail environment, feasibility and costs, quality of work- and living-space for artists, relationship to affordable housing and community benefit requirements in new-build, locations and buildings types where artist ground floor live-, work- and live-work space may be feasible, and more, this idea is referred more generally to the City Manager, Planning Commission, and Housing Advisory Commission (HAC).

Exploration of other potential means to create, convert and/or reserve affordable living, work, and live-work space for artists is also referred, allowing the City Manager, Planning Commission, and HAC to broaden their analysis and consultation to consider all opportunities to create affordable living and work-spaces for artists.

To the extent feasible opportunities for affordable artist living and live-work space may be identified from the *affordable housing for artists in berkeley* report or through additional exploration, concepts should be incorporated into the Housing Element Update.

BACKGROUND:

The City's 2018-2027 Arts and Culture Plan Update identifies affordable artist housing as the first of five strategic goals:

Goal 1 Increase Access to Affordable Housing and Affordable Spaces for Artists and Arts Organizations
Support the long-term sustainability of the arts and culture sector by expanding the availability of affordable housing and spaces for both artists and arts organizations.

The Plan Update also includes the following introductory remarks:

"Berkeley is home to a vibrant and diverse community that strongly values its rich cultural fabric. Characterized by its collective nature, the city is famous for its distinguished university, beautiful natural setting, and its remarkable history as a home for progressive movements. Arts and culture permeate civic life in Berkeley through numerous acclaimed theaters, performing arts spaces, as well as the city's many artists. Over 150 arts and culture nonprofits operate in Berkeley and together they contribute to a dynamic, continually evolving arts and culture community that interacts closely with other sectors of the city's economy. The nonprofits that make up the arts community are particularly diverse in terms of their size and their creative disciplines.

Along with the cultural richness the arts infuse into the community, the arts sector is also a significant economic driver, generating an estimated $165 million in total economic activity. In 2017, Berkeley Mayor Jesse Arreguin stated that "in addition to fostering civic pride, a flourishing arts scene [brings] new visitors to our city and more revenue to local businesses." Currently, as the San Francisco Bay Area is experiencing substantial economic growth, rising real estate and living costs have created an especially challenging environment for the arts community in Berkeley. Some artists and arts organizations are leaving the city because they can no longer afford to live and work here."

Most recently, the Civic Arts Commission generated a report entitled *affordable housing for artists in berkeley* that reported data about the unique housing and space needs of artists, based on a survey and focus groups with diverse artists and cultural workers. (See Attachment 1: *affordable housing for artists in berkeley)*. The report was presented at the December 8, 2021 Civic Arts Commission meeting, and generated important discussion around housing and work-space affordability for artists.

Discussions of affordability in the arts ecosystem are often anecdotal, with few studies to provide comprehensive data to inform potential solutions. To provide more comprehensive information, the Civic Arts Commission requested and received a report with findings based on a survey and focus groups. The study consulted a diverse group of Berkeley artists and cultural workers and provides systematic data around the unique housing and space needs of artists. The report explicitly seeks to position Berkeley's arts community for inclusion in

the City's affordable housing efforts and to help improve the safety of local arts spaces while avoiding further displacement.

The study was initially conceptualized in 2019 in response to concerns around housing and art space affordability among artists and arts organizations in Berkeley, and was motivated by two events.

First, the 2018 Arts and Culture Plan Update for the City of Berkeley identified -- as a primary goal -- the need to increase access to affordable housing and spaces for artists, cultural workers, and arts organizations. The cultural plan specified a number of action steps towards this goal, including undertaking a data-informed assessment of current art space affordability challenges and displacement risks in Berkeley, as well as the development of strategies to protect and create affordable spaces for Berkeley artists, cultural workers, and arts organizations based on the assessment's findings.

Second, in November 2018, the voters of Berkeley approved two bond measures totaling $135 million to fund affordable housing in Berkeley. Berkeley City Council subsequently began the development of an affordable housing framework (Housing for a Diverse, Equitable and Creative Berkeley) to guide Berkeley's affordable housing policies, programs, and projects through 2030. This framework explored a wide array of affordable housing for artists and other creative workers. In July 2019, the Council referred this policy document to various Commissions for further development. However, the pandemic caused this work to be temporarily put on hold.

The survey and subsequent report on its findings was completed and released by the Civic Arts Commission in November 2021. It made several key findings and recommendations that relate to zoning and planning decisions which may potentially be made as part of the ongoing Housing Element Update.

Some key findings of the report include recommendations that the City of Berkeley:

1. Create policies that prioritize artists for new affordable housing

   Artists are an important part of the fabric of Berkeley as a city. As such, they should be part of ongoing conversations about Berkeley's housing plan. The survey results demonstrate that artists -- as a group -- have low income, a high rent burden, and have traditionally been left out of ongoing affordable housing. In order to mitigate further displacement and allow artists to continue to work and thrive in Berkeley, the City could consider creating a priority category for artists who meet income qualification to access affordable housing."

2. Designate some of Berkeley's upcoming affordable housing funding from Measure O for units specific to artists

   "On July 24, 2019, Berkeley's Civic Arts Commission approved an amendment recommendation for Measure O that called for "significantly increas[ing] the supply of affordable housing and live/work housing for artists, artisans, and cultural workers" through adding to the zoning ordinance, incentivizing developers to build market-rate housing that includes affordable live/work units for creative workers, and incorporate live/work spaces for artists and cultural workers into large-scale affordable housing projects."

3. Consult artists when designing new policies for live/work spaces

   Across the Bay Area, responses to the Ghostship fire emphasized increased attention to artist DIY live/work spaces. These spaces were often the only options for artists to access live/work spaces that met their needs. Yet, artists have always worked to transform neighborhoods through their work and creative use of space. As Berkeley works to address affordability issues for all of its residents, consulting and involving artists in the planning process can help bring about a much-needed, new, and fresh perspective on issues such as rezoning, repurposing ground floor spaces, and requiring community benefit proposals for new development.

4. Develop artist-specific resources and technical assistance to bring artists into the existing affordable housing pipeline

   Due to the nature of their work, artists often have a unique income structure that makes applying for affordable housing more difficult. In addition, the survey shows that artists have needs for certain types of spaces that might be difficult to identify. Funding technical assistance to support artists to translate their needs and apply for the existing affordable housing pipeline could be an important step in helping artists leave inadequate living situations.

Because the report and findings include important information about the housing and space needs of artists, the *affordable housing for artists in berkeley* study is being referred to the Housing Element Update and to the Planning Commission and HAC for immediate consideration.

In addition to the findings and recommendations of the *affordable housing for artists* report, an informal task force of artists has been discussing the possibility of allowing ground-floor commercial space to be substituted for affordable artist work- or live-work space in new-buildings, or in existing buildings via conversions, in some locations or building types.

Because there are many elements to consider, including impacts to the retail environment, feasibility and costs, quality of work- and living-space for artists, relationship to affordable housing and community benefit requirements in new-build, locations and buildings types where artist ground floor live-, work- and live-work space may be feasible, and more, this idea is referred more generally to the City Manager, Planning Commission, and Housing Advisory Commission (HAC).

The presence of artists living and working around the clock has been documented as an important factor in creating more livable, animated urban areas. At the same time, retail vacancies have risen steadily in recent years as more purchasing has migrated online. The COVID-19 pandemic has accelerated this trend and led to even greater amounts of empty space, even in Berkeley's most popular commercial areas. Removing barriers to use or re-use of vacant retail/commercial spaces may be a means to provide affordable live/work spaces for artists while also activating storefronts.

To explore the possibilities of using retail/commercial space to house working artists, an informal task force including members of the Civic Arts Commission, affordable housing advocates, artists, and developers was convened. The goal of the group’s work was to increase active uses of often-vacant ground floor space and provide a new low-impact supply of affordable live/work spaces for artists.

Some of the ideas generated by this informal group include:

1. Allowing affordable live/work housing for artists in lieu of ground floor retail or commercial use in specific locations (for example, away from main commercial nodes, or on side-streets) or corridors, including the San Pablo and University Avenue corridors and/or in other appropriate locations.

2. Developing a clear set of allowable uses and criteria for tenant eligibility including the responsibility to maintain a lively street presence.

In addition to consulting with the arts community, including members of the informal task force, the City Manager, Planning Commission and HAC should consult with business and commercial property owners to fully understand the opportunities and challenges of allowing live-work in lieu of retail, and to identify the circumstances, requirements,

locations and other factors that could make affordable live-work ground floor uses work both for artists, and for the health and vitality of commercial districts.

ALTERNATIVES CONSIDERED

By referring the *affordable housing for artists in berkeley* report and its findings and other affordable living and work-space considerations to be developed simultaneous with and/or as part of the Housing Element, we can ensure that artists' unique housing, work-space and affordability needs are considered during the Update process, and incorporated as feasible in the Housing Element and other zoning and planning processes.

FISCAL & STAFF IMPACTS

Staff and the Commissions are already engaged in in-depth discussion of housing needs, zoning changes, and programs to meet housing and affordability needs communitywide. Adding more explicit consideration of the specific needs of artists, drawing from studies already completed and with input from the Arts Commission and arts community, will add important information to existing discussions. Additional formal study or consulting help is not envisioned.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

This referral asks only for concepts to be studied and incorporated into a planning process already underway, and does not entail environmental or climate impacts.

CONTACT PERSON

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Attachments

1. *affordable housing for artists in berkeley*

affordable housing for artists in Berkeley
a baseline survey

Anh Thang Dao-Shah, ph.d.& Asif Majid, ph.d
creative equity research partners
December 2021

contents

executive summary

This project aims to respond to concerns around housing and art space affordability among artists and arts organizations in Berkeley by answering two key questions:

1) What are the trends around local affordability issues that can be addressed through targeted resources and policy solutions?
2) What pre-existing housing disparities impact what artists seek in possible affordable housing solutions?

As in other parts of the Bay Area, narratives of concern around affordability in the arts ecosystem in the past decade are often anecdotal. The sector lacks comprehensive data that could inform system change solutions. To that end, this report is based on a survey and focus groups with a diverse group of artists and cultural workers in Berkeley to provide systematic data around the unique housing and space needs of artists. It seeks to better position Berkeley's arts community to participate in the City's current affordable housing efforts and help improve the safety of local arts spaces, without causing further artist displacement.

key findings

Artists are highly educated, yet have low income
Berkeley's artists and artists/cultural workers who responded to the survey are highly educated (88% have a Bachelor's degree or higher). Yet, 60% of that same group has lower, very low, or extremely low income.

Artists and cultural workers have multiple forms of employment
Only 32% of all respondents reported that they are employed full time. Others indicated that they cobble together different types of part-time and short-term contract work, as well as self-employment, in order to make ends meet.

Artists are rent burdened
Artists and artists/cultural workers disproportionately rent their living space (71%). Of those who rent, 77% are rent burdened or severely rent burdened, based on the California's Department of Housing and Community Development definitions.

Artists have a unique need for flexible live/work spaces
Responding artists and artists/cultural workers indicated, at a rate of 82%, that they do their creative work in their living space. Of those respondents, over half (56%) practice artistic disciplines that require extra ventilation.

recommendations

- **create policies that prioritize artists for new affordable housing**
- **designate some of Berkeley's upcoming affordable housing funding from measure O for units specific to artists**
- **consult artists when designing new policies for live/work spaces**
- **develop artist-specific resources and technical assistance to bring artists into the existing affordable housing pipeline**
- **pilot a guaranteed basic income program for qualifying artists**

introduction

why this project?

This project was initially conceptualized in 2019 in response to concerns around housing and art space affordability among artists and arts organizations in Berkeley. It was motivated by two events.

First, the 2018 Arts and Culture Plan Update for the City of Berkeley identified -- as a primary goal -- the need to increase access to affordable housing and spaces for artists, cultural workers, and arts organizations. The cultural plan specified a number of action steps towards this goal, including undertaking a data-informed assessment of current art space affordability challenges and displacement risks in Berkeley, as well as the development of strategies to protect and create affordable spaces for Berkeley artists, cultural workers, and arts organizations based on the assessment's findings.

Second, in November 2018, the voters of Berkeley approved two bond measures totaling $135 million to fund affordable housing in Berkeley. Berkeley City Council subsequently began the development of an affordable housing framework (Housing for a Diverse, Equitable and Creative Berkeley) to guide Berkeley's affordable housing policies, programs, and projects through 2030.This framework explored wide array of affordable housing for artists and other creative workers. In July 2019, the Council referred this policy document to various Commissions for further development. However, the pandemic caused this work to be temporarily put on hold.

As elsewhere in the Bay Area, concerns around the arts ecosystem's affordability over the past decade are mostly anecdotal, arising when a major artist or arts organization imminently faces the loss of their living and work space. These stories, while important, inadequately inform systems change solutions aimed at addressing structural concerns.

To that end, this project's goal is to develop an assessment that provides systematic data around the unique housing and space needs of artists and cultural workers. This will better position the arts community to participate in Berkeley's ongoing affordable housing efforts and help improve art space safety in Berkeley without causing further displacement of artists. Two key questions guided this project from the beginning:

1) **What are the trends around local affordability issues that can be addressed through targeted resources and policy solutions?**
2) **What pre-existing disparities could impact possible affordable housing solutions for artists?**

This second question is key to ensure the solutions we suggest do not unintentionally impact some groups more than others.

In April 2020, the COVID-19 pandemic brought a pause to the assessment project and

raised new affordability questions, as the arts community dealt with the consequences of regular lockdowns. While some local, state, and federal measures -- such as the eviction moratorium and extension of unemployment benefits to independent contractors -- helped prevent widespread displacement during the pandemic's height, the new normal brought new concerns as artists and cultural organizations continue to struggle with canceled events, lower venue capacity, and overall uncertainty.

These questions brought new urgency to the project, as well as the need to methodologically pivot and narrow the project's focus. Instead of focusing on both housing needs of artists and space needs of arts organizations as originally envisioned, this project focused on understanding the affordable housing and workspace needs of individual artists and cultural workers to ensure timely recommendations that would allow for participation in ongoing affordable housing efforts. This shift also allowed for the inclusion of additional questions that sought to understand both the short-term impact of the pandemic and the ongoing challenges that would inform long-term strategies to address affordability issues in Berkeley.

methodology and data limitations

In order to collect data directly from artists and cultural workers during the ongoing pandemic, an online survey was issued in September 2021 through the Berkeley Civic Arts Program. The survey was open for four weeks and was accompanied by a robust outreach strategy, including outreach and reminder emails through the Civic Arts Program's and City of Berkeley's mailing lists and social media channels, the direct networks of a number of arts organizations represented by members of an ad-hoc advisory group, and posting on other community-serving digital platforms like Nextdoor. A list of all survey questions is found in Appendix B.

In addition to quantitative data, this project relies on the insights of artists, cultural leaders, and the City's affordable housing experts to provide context to the affordability crisis and housing needs. Research staff conducted three focus group meetings with 21 community stakeholders, who formed an ad-hoc community advisory group.

Members of the advisory group were selected to provide different perspectives on the historic and current landscape of arts and culture in Berkeley with a specific focus on housing needs for artists and cultural workers. With research staff, the advisory group helped design survey questions, reviewed preliminary findings, and brainstormed potential solutions. A list of the advisory group participants is provided in Appendix A.

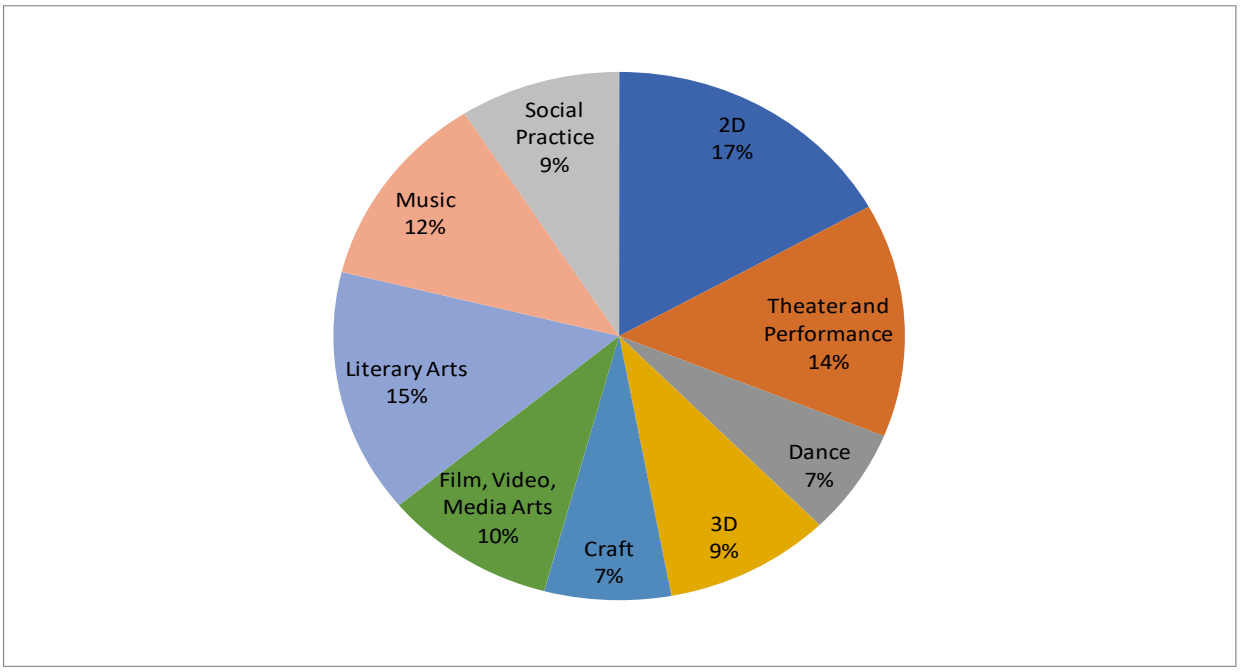
Any survey of artists must contend with the fact that there is no baseline dataset regarding the number of artists in a given community, due to the various ways artists can be defined. The most common way to define a professional group is to use IRS data that classifies someone's profession based on the income they earn from their main profession. Artists' main sources of income, however, often do not come from artwork; income sources are diverse and cross-sectoral. The same can be said for cultural workers. Plus, an artist's level of engagement with an art practice is not limited to paid opportunities. Income is thus an inadequate defining criterion. Through this survey's

grassroots and community-centered approach, this project provides a snapshot of the needs of the arts and culture sector and should be understood as baseline data that should be supplemented with ongoing and long-term data collection and analysis.

survey results

who responded?

A total of 163 artists and cultural workers responded to the survey. This constitutes 0.14% of Berkeley's population, based on data from the 2020 census. For comparison, in a similar study in 2015 in San Francisco, which involved a six-week survey and multiple in-person outreach events, 560 artists and cultural workers responded to the survey. That constituted 0.07% of San Francisco's population, based on 2010 census data. In other words, the Berkeley survey had double the response rate.



Of the Berkeley survey respondents, **48% identified as artists, 15% identified as cultural workers, and 37% identified as both artists and cultural workers**. In total, 32% of respondents do not currently reside in Berkeley, while 39% have lived in Berkeley for more than 10 years.

31%of respondents identified as LGBTQIA+

62%of respondents identified as female

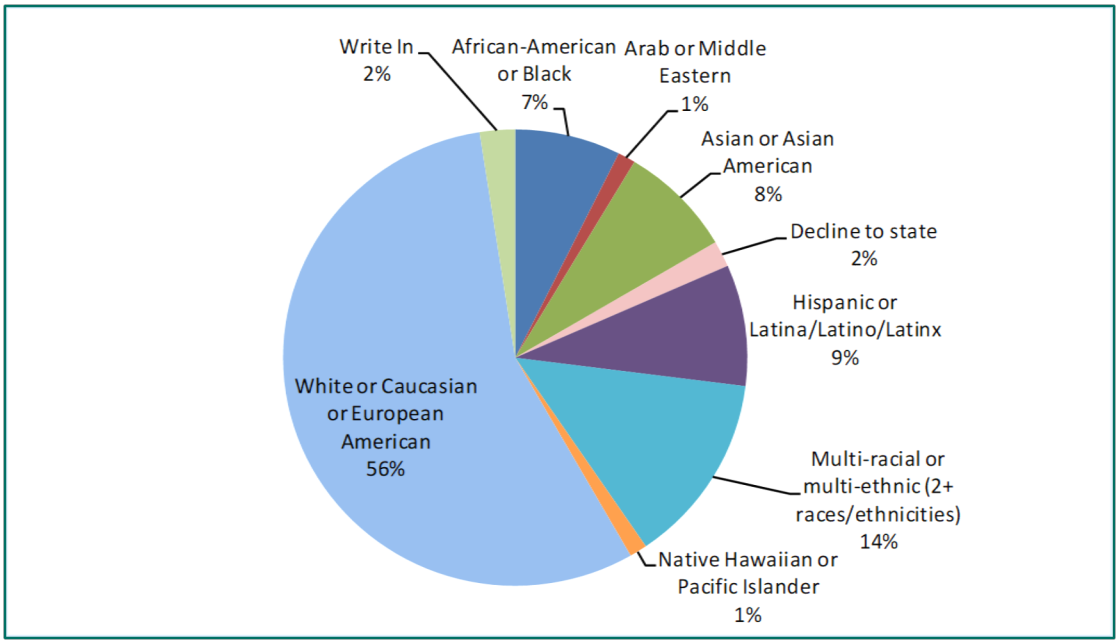


Figure 2: Race and ethnicity of survey respondents

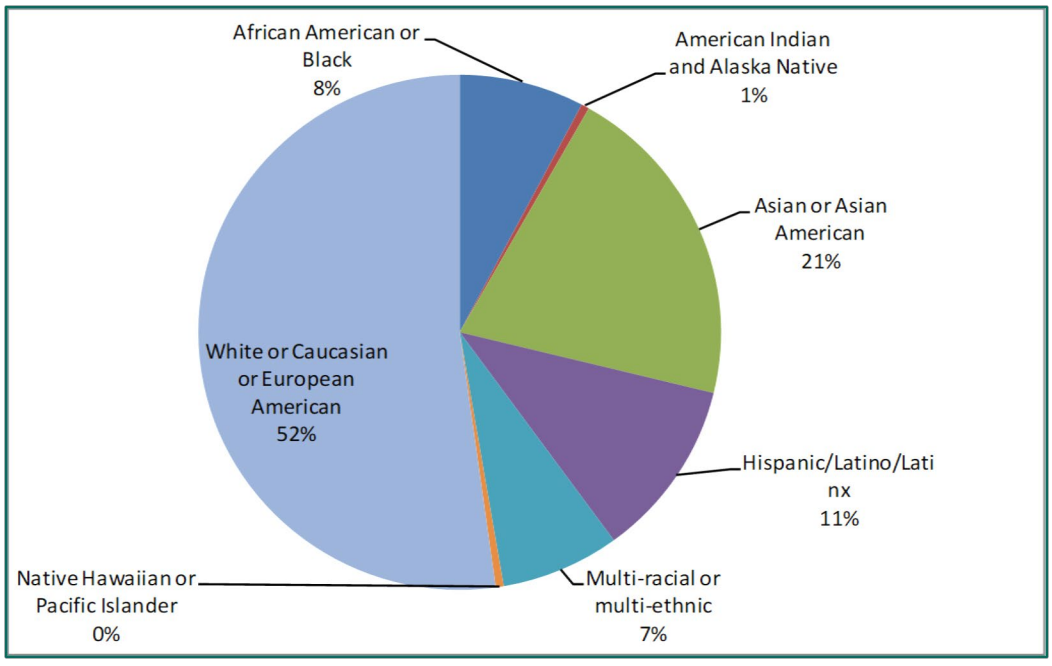


Figure 3: Race and ethnicity of City of Berkeley residents

key findings

Artist respondents are highly educated, yet have low income

Of those respondents who identified as artists or as both artists and cultural workers, 88% reported having a Bachelor's degree or higher. Of that same group, 60% reported an annual household income of $69,000 or less. According to the California Department of Housing and Community Development, in Alameda County for a single individual in 2019 (when this project and survey were first developed), annual household income of $26,050 or below constitutes extremely low income, between $26,051-$43,400 is defined as very low income, and between $43,401-$69,000 is defined as lower income. Per these categories, 60% of those who identified as artists or both artists and cultural workers have lower, very low, or extremely low income. In 2021, the upper threshold for the lower income category has risen to $76,750, meaning that artists are now even further behind financially than they were two years ago.

While low income is prevalent across the group, this rate is significantly higher among BIPOC respondents. Of respondents who identified as non-White, 72%, reported having lower, very low, or extremely low income, compared to 55% among those who identified as White or Caucasian. Due to the small number of participants, we are unable to make comparison between different groups who identify as non-White.

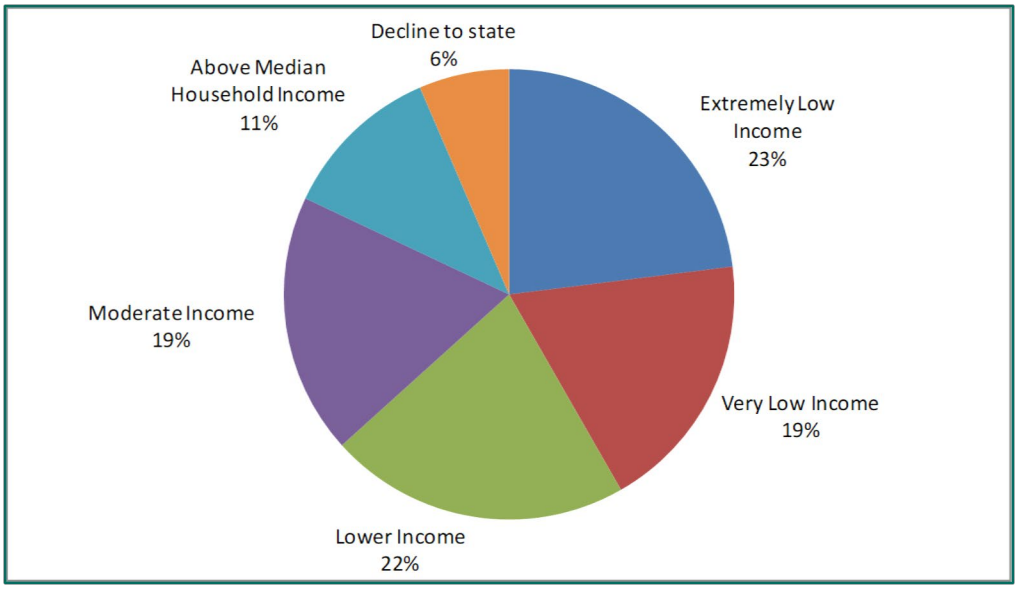


Figure 4a: Income categories for all artist respondents

Income Category	*Income Range*	*Percentage of Artist Respondents*
Extremely Low	≤ $26,050	21%
Very Low	$26,051-$43,400	16%
Low	$43,401-$69,000	23%

Median	$69,001-$78,200	17%
Moderate	$78,201-$93,850	18%
Decline to State	n/a	5%

Figure 4b: Income ranges for artist respondents

Artists and cultural workers have multiple forms of employment

Only 32% of all respondents reported that they are employed full-time. Others indicate that they engage in a patchwork of different types of part-time and short-term contract work, as well as self-employment, in order to make ends meet. Examples of employment that respondents are undertaking include: being a self-employed artist for one's own or another's art practice, being employed part time/doing regular work for pay as either a cultural worker or otherwise, doing contract work as a cultural worker or something other than a cultural worker, and undertaking unreported work for cash.

Artist respondents report being rent burdened, but are not immediately concerned with losing their housing

Among respondents who identify as artists and as both artists and cultural workers, 71% of respondents rent. Of those who rent, 77% are rent burdened or severely rent burdened. According to the US Department of Housing and Urban Development, a household or individual that spends more than 30% of their monthly household income on rent is rent burdened. Severely rent burdened households or individuals spend more than 50% of their monthly household income on rent.

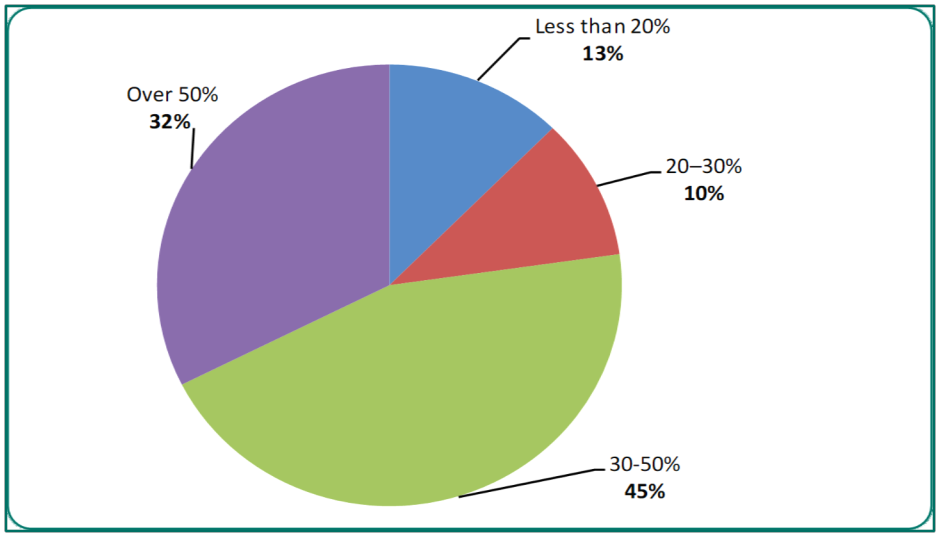


Figure 5: Respondents' percentage of monthly household income spent on rent

While studies have shown that rent burden and extremely low income decrease the health and overall wellbeing of all those impacted, for artists this burden can

fundamentally change the way they engage with their artistic practice. Qualitative comments provided by the respondents highlighted having to scale back on their practice in order to earn the income they need to pay rent. This means they are unable to focus on developing their creative practice. As one respondent, a musician, explained:

> The cost of living in the Bay Area fundamentally changes how I am able to grow in my craft. Since we are all hustling to pay rent at this level, rehearsals must be paid, limited and without a "post gig hang" - something I find central to collaborating with others. This limits how much performing I can do with others, which limits how much I can grow, experiment and contribute in my craft.

Over the long term, the lack of opportunities for artists to devote time and energy to their practice can lead to the abandonment of artistic practice altogether.
Despite respondents' high rent burden and low income, those identifying as artists and as artists/cultural workers do not indicate concerns around losing their housing in the near future.

Only 9% of respondents reported that they were evicted due to no-fault causes in the last 2 years. No-fault eviction is defined as evictions that take place when leases are not renewed without the tenant having violated any regulations as long as a notice to move out is sent to the tenant within the required time period. Landlords might choose to evict tenants who are paying rent on time and complying with regulations due to owner move in or the need to retrofit a building. In the last decade, as the affordability crisis has intensified throughout the Bay Area, no-fault eviction has often been used to let go of long-term tenants who are protected from rent increases to bring in new tenants who are charged at market rate. In the survey issued to San Francisco artists, about 30% of respondents reported that their leases were not going to be renewed due to no fault of their own.

Only 6% of respondents had to rely on the eviction moratorium during the pandemic. In total, only 9% of respondents are uncertain or very uncertain that they will be able to retain housing after the moratorium ends (20% were neither certain nor uncertain). Though seemingly at odds with other findings, this sentiment could be attributed to three factors.

First, Berkeley has strong renter protection policies. Qualitative survey responses show that many respondents who rent are aware of and rely on rent control, which helps keep their rent affordable. This is especially true with respondents who have resided in Berkeley for more than five years. Not concerned with immediate loss of housing does not mean that existing housing needs are met, however. As one respondent explained:

> The only reason I am able to remain in the Bay Area is because I have been in the same unit for a decade and we have rent control - the other apartments in my building go for over twice what we're paying. […] If I ever wanted to leave this apartment (and I do), I would have to leave the area entirely, because I can't afford anything else.

The gap between existing housing and respondents' needs is especially acute for those working in artistic disciplines that have specific space requirements like extra ventilation.

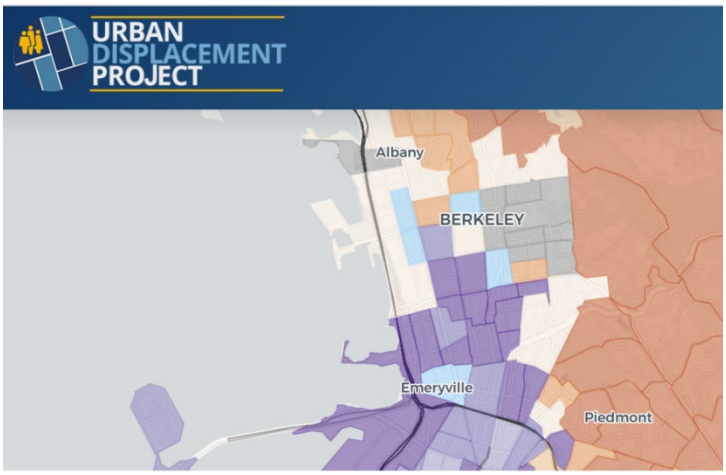
Second, the fact that the majority of respondents engage in multiple forms of employment means that they have multiple sources of income beyond their artistic practices to rely on for rental needs. However, as discussed above, in the long-term, the high burden of rent and reliance on other means of employment to make ends meet will impact artists' abilities to sustain their art. As one artist wrote:

> My housing is over 2/3 of my income, leaving little to nothing for anything over basic living expenses.

Lastly, the timing of the survey suggests that those who are currently still residing in Berkeley are the ones who managed to weather the wave of displacement that took place in the last decade through the two factors described above and we have not captured the concerns of those who already had to leave as displacement was taking place. According to the Urban Displacement Project, by 2018, almost all of Berkeley, except the immediate area surrounding University of California, Berkeley was experiencing ongoing and advanced gentrification, with a few areas already becoming exclusive and three areas in North Berkeley marked as low income and susceptible to displacement. South Berkeley area between Ashby Avenue and Emeryville border was in an advance gentrification stage with displacement having taken place between 2000 and 2018.

For comparison, the study in San Francisco took place in 2015, in the middle of the biggest wave of gentrification in the broader Bay Area. In that study, more than 1/3 of respondents expressed immediate concerns about loss of housing due to rent increase, end of lease term or fear of no-fault eviction.

Notably, South Berkeley also had high percentage of BIPOC population (between 50% and 70%). This data confirms that, like in the rest of the Bay Area, BIPOC communities are more susceptible to early displacement and the survey respondents' demographic reflects these changes in the population.



Artists have a unique need for flexible, live/work space

Of responding artists and artists/cultural workers, 82% reported that they make their art where they live, with 56% of this group requiring extra ventilation for their art.

This finding reflects the way that affordability challenges can fundamentally change an artist's practice. For artists needing extra ventilation, this could mean a choice between maintaining their own health and practicing their art, particularly if there is no adequate separation between where artists sleep, cook, and eat and where artworks are being stored, produced, or left to dry. The need for flexible and affordable live/work space has pushed artists to make choices to live in dangerous conditions that can have fatal consequences. As one artist respondent explained:

> It's really hard to find space to train that is affordable. I need at least 20' ceilings, ideally 30'. There were many affordable live/work warehouse conversions with this kind of ceiling height pre-Ghostship but many of these affordable spaces were affordable due to slumlord and very DIY situations, which often meant common housing needs like sealed roofs, consistent mail/package delivery, heating, bedroom windows/egress, were not guaranteed. The tragedy at Ghostship has led cities around the Bay Area to tighten up their policies around DIY spaces to prevent similar situations. However, without intentional creation of spaces that meet the needs of practicing artists, such policies do not solve the root cause problem that have caused artists to seek out those spaces in the first place.

recommendations

Create policies that prioritize artists for new affordable housing

Artists are an important part of the fabric of Berkeley as a city. As such, they should be part of ongoing conversations about Berkeley's housing plan. The survey results demonstrate that artists -- as a group -- have low income, a high rent burden, and have traditionally been left out of ongoing affordable housing. In order to mitigate further displacement and allow artists to continue to work and thrive in Berkeley, the City could consider creating a priority category for artists who meet income qualification to access affordable housing. Such a priority category would require working with the arts community to create an inclusive definition of what it means to be an artist. It should also take into consideration and center artists from Black, Indigenous, and People of Color (BIPOC) communities, as well as LGBTQ+ communities who have already been displaced. In doing so, artists will have an opportunity to return to Berkeley and enrich the city's social and artistic fabric.

Designate some of Berkeley's upcoming affordable housing funding from measure o for units specific to artists

On July 24, 2019, Berkeley's Civic Arts Commission approved an amendment recommendation for Measure O that called for "significantly increas[ing] the supply of affordable housing and live/work housing for artists, artisans, and cultural workers" through adding to the zoning ordinance, incentivizing developers to build market-rate housing that includes affordable live/work units for creative workers, and incorporate live/work spaces for artists and cultural workers into large-scale affordable housing projects. Other proposals included the development of a community land trust and transforming underused retail spaces and City-owned buildings into artist live/work spaces. These recommendations should be revisited and implemented, as they align with the range of qualitative responses that came through the survey. Respondents also suggesting the development of: 1) co-ops; 2) a separate affordable housing lottery specifically for those artists and cultural workers from BIPOC and other underserved communities; and 3) relationships between the City and land trusts to purchase buildings that serve as artist housing. These suggestions point to the importance of re-evaluating how zoning and other policies further disenfranchise artists and cultural workers.

Consult artists when designing new policies for live/work spaces

Across the Bay Area, responses to the Ghostship fire emphasized increased attention to artist DIY live/work spaces. These spaces were often the only options for artists to access live/work spaces that met their needs. Yet, artists have always worked to transform neighborhoods through their work and creative use of space. As Berkeley works to address affordability issues for all of its residents, consulting and involving

artists in the planning process can help bring about a much-needed, new, and fresh perspective on issues such as rezoning, repurposing ground floor spaces, and requiring community benefit proposals for new development.

Develop artist-specific resources and technical assistance to bring artists into the existing affordable housing pipeline

Due to the nature of their work, artists often have a unique income structure that makes applying for affordable housing more difficult. In addition, the survey shows that artists have needs for certain types of spaces that might be difficult to identify. Funding technical assistance to support artists to translate their needs and apply for the existing affordable housing pipeline could be an important step in helping artists leave inadequate living situations. The advisory group also recommended creating a one-stop shop that features affordable housing for artists (perhaps akin to a specialized version of San Francisco's DAHLIA housing portal),which would create a platform where artists could share information about available housing and get connected to resources like financial technical assistance. A space geared towards artists' housing needs might be especially beneficial for artists who are looking for affinity housing along the lines of race and sexual identity, which allows them to stay more connected with their own communities.

Pilot a guaranteed basic income program for qualifying artists

Acknowledging the disproportionate impact of the pandemic on a community that was already struggling due to ongoing affordability challenges, multiple cities such as San Francisco and Minneapolis have launched pilot programs providing artists from marginalized communities who meet income requirements with a monthly stipend that would help cover their basic needs. Stipends are unrestricted, so they can be spent on rent and food while artists continue their artistic practice. Due to the existing racial wealth gap, which was reflected in the survey results, such a pilot should prioritize BIPOC artists. These types of programs are gaining national attention because the arts and culture are often cited as key strategies for economic recovery. Practicing artists are essential for such recovery. The advisory group agreed that a basic income program would address two key findings in this report -- respondents' extremely low income and high rent burden -- both of which have already forced artists to significantly modify or abandon their art practices.

further research

While the survey and focus groups discussed in this report have provided a much-needed snapshot into the space needs of artists in Berkeley, limited data does not allow us to paint a comprehensive picture. The following research and data collection is recommended, in order to complement this report.

Work with arts organizations to understand the income levels and housing needs of cultural workers

Only 15% of the respondents to the survey identified exclusively as cultural workers, meaning that there was not a statistically significant sample from which to draw conclusions about the needs of cultural workers. Further research, specifically on the housing needs and income levels of cultural workers, is needed.

Conduct a disparity study

Currently, Berkeley does not have comprehensive race and ethnicity data for seekers of affordable housing. Therefore, it is impossible to determine whether or not the artists who responded to this survey are demographically representative of the population that qualifies for affordable housing. A disparity study will ensure that changes in policy will not disproportionately impact certain groups.

Continue to collect data on artists

The lack of baseline data on artists -- even as simple as the total number of artists and disciplines practiced in a given community -- prevents us from understanding the extent of the issues that artists face. More long-term data collection and analysis of artists in Berkeley will allow the city to identify trends, as well as possible challenges that can be mitigated by timely policy changes.

appendices

a: community advisory group members

Kim Anno, Berkeley Civic Arts Commission
Delores Nochi Cooper, Berkeley Juneteenth Festival
Bruce Coughran, Indra's Net Theater
Hadley Dynak, Berkeley Cultural Trust
Misty Garrett, City of Berkeley
Ashlee George, Capoeira Arts Foundation and BrasArte
Mayumi Hamanaka, Kala Art Institute
Archana Horsting, Kala Art Institute
Mildred Howard, Independent Artist
Beatriz Leyva-Cutler, BAHIA
Amanda Montez, City of Berkeley
Mirah Moriarty & Rodrigo Esteva, Dance Monks
PC Muñoz, Freight & Salvage and BCT E&I Committee
Natalia Neira, La Pena Cultural Center and BCT E&I Committee
Daniel Nevers, Berkeley Art Center
Nancy Ng, Luna Dance Institute
Kathryn Reasoner, Vital Arts
Leigh Rondon, Shotgun Theater
Irene Sazer, Independent Artist (Civic Arts Grantee)
Sean Vaughn Scott, Black Repertory Group Theater
Rebecca Selin, Gamelan Sekar Jaya
Terry Taplin, Berkeley City Council and former Berkeley Civic Arts Commissioner
Rory Terrell, Local Artists Berkeley
Tyese Wortham, CAST
Chingchi Yu, Independent Artist (Civic Arts Grantee)

b: survey questions

Messaging

Are you an artist or cultural worker struggling to find affordable housing for you and your family?

Artists and cultural workers in Berkeley and throughout the Bay Area are facing an affordability crisis that prevents them from focusing on their creative work. Through the recently completed cultural planning process, the City of Berkeley identified as a primary goal the need to protect and increase access to affordable housing for artists and cultural workers.

Currently, there is little to no data on the affordable housing concerns of Berkeley artists and cultural workers. Your responses to this survey will help the City of Berkeley create programs and policies tailored to the housing needs that are specific to Berkeley's arts sector, including affordable housing and live-work spaces.

Thank you for helping keep Berkeley affordable for artists and cultural workers.

Survey Questions

1. Are you an artist or cultural worker?
   a. Artist [proceed to question 2]
   b. Cultural Worker (staff member at an arts culture organization) [Proceed to Question 4]
   c. Both

2. If you are an artist, how would you describe your artistic practice/artwork? Select all that apply:
   a. 2D (Painting, Printmaking, Drawing, Photography, etc.)
   b. 3D (Sculpture, Installation)
   c. Theater/Performance
   d. Dance
   e. Craft
   f. Film, Video, and/or Media Arts
   g. Literary (Creative Writing, Poetry, etc.)
   h. Music
   i. Social Practice
   j. Write in_____

3. Do you work with a medium that requires extra space and/or ventilation? This may include metal welding, spray paint, etc.
   a. Yes
   b. No

4. If you are a cultural worker, do you work at a Berkeley-based arts and culture nonprofit organization?
   a. Yes
   b. No

5. What is your primary language?
   a. English
   b. Spanish
   c. Chinese (Mandarin and Cantonese)
   d. Tagalog
   e. Vietnamese
   f. Persian
   g. Portuguese
   h. Punjabi
   i. Swahili
   j. Write In:_____
   k. Decline to State

6. What is your race/ethnicity?
   a. African-American or Black
   b. American Indian or Alaska Native or Indigenous or First Nations
   c. Arab or Middle Eastern
   d. Asian or Asian American
   e. Hispanic or Latina/Latino/Latinx
   f. Native Hawaiian or Pacific Islander
   g. White or Caucasian or European American
   h. Multi-racial or multi- ethnic (2+ races/ethnicities)
   i. Write In_____
   j. Decline to State

7. What best describes your gender identity?
   a. Female (cisgender)
   b. Female (transgender)
   c. Male (cisgender)
   d. Male (transgender)
   e. Gender-fluid/Genderqueer/Gender-expansive/Non-binary
   f. Write In_____
   g. Decline to State

8. How do you describe your sexual orientation or sexual identity?
   a. LGBTQ+
   b. Heterosexual/straight
   c. Write in_____
   d. Decline to State

9. Do you identify as a person with a disability?

a. Yes
b. No

10. Please select the highest degree or level of school you have COMPLETED. If currently enrolled, mark the previous grade or highest degree already received.
a. Less than high school
b. High school diploma/GED
c. Associate's degree
d. Bachelor's degree
e. Master's degree
f. Doctorate degree

11. How many people live in your household, including yourself?
a. One [Proceed to Question 14]
b. Two
c. Three
d. Four
e. Five
f. More than five: Write In _____

12. Do you have any children under the age of 18?
a. Yes
b. No [Proceed to Question 14]

13. If yes, how many children currently live with you?
a. One
b. Two
c. Three
d. More than three
e. Write in:_____

14. What is your total household income?
a. Less than $26,050
b. $26,051-$43,400
c. $43,401-$69,000
d. $69,001-$98,549
e. More than $98,550
f. Decline to state

15. If you are an artist, do you make 50% or more of your income from your artistic practice?
a. Yes
b. No
c. I don’t know
d. I am not an artist

16. What is your current employment status? Check all that apply:
    a. Self employed artist for your own art practice
    b. Self-employed, but not for your own art practice
    c. Employed full time as a cultural worker
    d. Employed full time as something other than a cultural worker
    e. Employed part time/doing regular work for pay as a cultural worker
    f. Employed part time/doing regular work for pay as something other than a cultural worker
    g. Contract work as a cultural worker (for example: I receive a 1099 from a nonprofit arts organization organization)
    h. Contract work as something other than a cultural worker (for example: I receive a 1099 from a separate non-arts organization or business)
    i. Unreported work for cash
    j. Not employed

17. How easy is it to predict your total income from month to month?
    a. Very easy
    b. Moderately easy
    c. Neither easy nor difficult
    d. Moderately difficult
    e. Very difficult

18. How certain are you that your total income will return to pre-pandemic levels, over the next 6 months?
    a. Very certain
    b. Moderately certain
    c. Neither certain or uncertain
    d. Moderately uncertain
    e. Very uncertain

19. What percentage of your average monthly income do you spend on housing costs?
    a. Less than 20%
    b. 20%-30%
    c. 30%-40%
    d. 40%-50%
    e. More than 50%
    f. I don't know

20. What is the zip code where you work?

21. What is the zip code where you live?

22. How long have you lived in Berkeley?
    a. I do not live in Berkeley
    b. Less than a year

c. 1 - 3 years
d. 3 - 5 years
e. 5 - 10 years
f. More than 10 years
g. How long? _____

23. How long do you expect to remain in Berkeley?
a. I do not live in Berkeley
b. Less than a year
c. 1 - 3 years
d. 3 - 5 years
e. 5 - 10 years
f. More than 10 years
g. How long? _____

24. Do you own or lease your living space?
a. Lease [proceed to question 25]
b. Own [proceed to question 28]

25. What is your lease term?
a. Month to month
b. 1 year
c. 2-3 years
d. More than 3 years

26. How many square feet is your space?

27. How much do you pay in rent per month?

28. Have you been displaced due to a “no-fault” or "no-cause" eviction in the past 2 years? (A “no-fault” or “no-cause” eviction is an eviction that is no fault of the tenant, but is allowed under the law.)
a. Yes
b. No
c. I don't know

29. If you were displaced, did you have to move away from Berkeley?
a. Yes
b. No

30. If you were not displaced, did you have to rely on the eviction moratorium that Berkeley has implemented over the past 12 months?
a. Yes
b. No
c. I didn’t know that evictions had been halted over the past 12 months.

31. How certain are you that you will be able to retain your housing when the eviction moratorium ends?
    a. Very certain
    b. Moderately certain
    c. Neither certain or uncertain
    d. Moderately uncertain
    e. Very uncertain

32. Do you use your living space for housing and your creative practice?
    a. Yes [proceed to question 37]
    b. No [proceed to question 32]

33. If you have a work space that is separate from your living space, do you own or lease your work space?
    a. Lease [proceed to question 34]
    b. Own [proceed to question 36]

34. What is the lease term for your work space?
    a. Month to month
    b. 1 year
    c. 2-3 years
    d. More than 3 years

35. How much do you pay in rent per month for your work space?
    Write in_____

36. How many square feet is your work space?
    Write In_____

37. Have you been displaced from your work space due to a “no-fault” or "no-cause" eviction in the past 2 years? (A “no-fault” or “no-cause” eviction is an eviction that is no fault of the tenant, but is allowed under the law.)
    a. Yes
    b. No
    c. I don't know

38. If you were displaced, did you have to move your work space away from Berkeley?
    a. Yes
    b. No

39. Do you share your work space?
    a. Yes
    b. No

40. What are some challenges you've faced in the past when trying to access or find affordable housing?

41. Please share any ideas you have on how to ensure equitable participation of BIPOC artists and cultural producers from other historically underserved communities, as well as recommendations for local organizations that should be consulted.

42. Do you have anything else to share with us?

----------END OF SURVEY----------