



Planning Commission

# AGENDA

## REGULAR MEETING OF THE PLANNING COMMISSION

This meeting is held in a wheelchair accessible location.

Wednesday, January 17, 2024

6:00 PM

North Berkeley Senior Center

1901 Hearst Avenue, Berkeley

See “**MEETING PROCEDURES**” below.

All written materials identified on this agenda are available on the Planning Commission webpage: <https://berkeleyca.gov/your-government/boards-commissions/planning-commission>

### PRELIMINARY MATTERS

- 1. Roll Call:** **Merker, Blaine**, appointed by Councilmember Kesarwani, District 1  
**Vincent, Jeff, Chair**, 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**, appointed by Councilmember Hahn, District 5  
**Marthinsen, Emily**, appointed by Councilmember Wengraf, District 6  
**Twu, Alfred**, appointed by Councilmember Robinson, District 7  
**Hauser, Savlan**, appointed by Councilmember Droste, District 8  
**Ghosh, Barnali, Vice Chair**, appointed by Mayor Arreguín
- 2. Land Acknowledgement:** The City of Berkeley recognizes that the community we live in was built on the territory of xučyun (Huchiun (Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley’s residents have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley’s incorporation in 1878. As stewards of the laws regulating the City of Berkeley, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today. The City of Berkeley will continue to build relationships with the Lisjan Tribe and to create meaningful actions that uphold the intention of this land acknowledgement.

- 3. **Order of Agenda:** The Commission may rearrange the agenda or place items on the Consent Calendar.
- 4. **Public Comment:** Comments on subjects not included on the agenda. Speakers may comment on agenda items when the Commission hears those items. (See “Public Testimony Guidelines” below):
- 5. **Planning Staff Report:** In addition to the items below, additional matters may be reported at the meeting. **Next Commission meeting: February 7, 2024**
- 6. **Chairperson’s Report:** Report by Planning Commission Chair.
- 7. **Committee Reports:** Reports by Commission committees or liaisons. In addition to the items below, additional matters may be reported at the meeting.
- 8. **Approval of Minutes:** Approval of Draft Minutes from the regular meeting on December 6, 2023.
- 9. **Future Agenda Items and Other Planning-Related Events:** None.

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

- 10. **Action:** **Public Hearing: Demolition Ordinance**  
**Recommendation:** Review the revised proposed zoning ordinance amendments to Berkeley Municipal Code Chapter 23.326 (Demolition and Dwelling Unit Controls). Take public comment, discuss, and make a recommendation to City Council.  
**Written Materials:** Attached.  
**Presentation:** N/A.
- 11. **Action:** **2024 Nominations for February Election**  
**Recommendation:** Nominate Commissioners for Chair and Vice Chair.  
**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:** None.

**Communications:**  
- General

**Late Communications:** (Received after the packet deadline):

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

## **ADJOURNMENT**

### **Meeting Procedures**

#### **Public Testimony Guidelines:**

Speakers are customarily allotted up to two minutes each and may not cede their time to another speaker. The Commission Chair may limit the number of speakers and the length of time allowed to each speaker to ensure adequate time for all items on the Agenda. **To speak during Public Comment or during a Public Hearing, please line up behind the microphone.** Customarily, speakers are asked to address agenda items when the items are before the Commission rather than during the general public comment period. Speakers are encouraged to submit comments in writing. See “Procedures for Correspondence to the Commissioners” below.

#### **Consent Calendar Guidelines:**

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

#### **Procedures for Correspondence to the Commissioners:**

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

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

**Communications are Public Records:** Communications to Berkeley boards, commissions, or committees are public records and will become part of the City’s electronic records, which are accessible through the City’s website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission, or committee, will become part of the public record.** If you do

not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service, or in person, to the Secretary of the relevant board, commission, or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the Secretary to the relevant board, commission, or committee for further information.

**Written material** may be viewed in advance of the meeting at the Department of Planning & Development, Permit Service Center, **1947 Center Street, 3<sup>rd</sup> Floor**, during regular business hours.

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

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

*Please refrain from wearing scented products to public meetings.*



Planning Commission

1                   **DRAFT MINUTES OF THE REGULAR PLANNING COMMISSION MEETING**  
2                   **December 6, 2023**

3    The meeting was called to order at 6:02 p.m.

4    **Location:** North Berkeley Senior Center, 1901 Hearst Avenue, Berkeley, CA 94709

5    **1. ROLL CALL:**

6       **Commissioners Present:** Debra Sanderson (alternate for Blaine Merker), Christina Oatfield,  
7       Elisa Mikiten, Emily Marthinsen, Alfred Twu, Barnali Ghosh, Kathleen Haskell (alternate for  
8       Savlan Hauser), and Chris Lee-Egan (alternate for Jeff Vincent).

9  
10      **Commissioner Absent:** Blaine Merker (excused), John E. Moore (excused), Savlan Hauser  
11      (excused), and Jeff Vincent (excused).

12  
13      **Staff Present:** Secretary Anne Hersch, Clerk Zoe Covello, and Justin Horner.

14   **2. LAND ACKNOWLEDGEMENT.**

15      Vice Chair Ghosh thanked everyone for attending in light of a difficult last few weeks. She  
16      acknowledged that it can be hard to attend a meeting, where it can feel as if there's no war  
17      going on, and that it can become more and more challenging as it feels the world is falling  
18      apart. She wanted to also acknowledge what has been happening and how it's effecting our  
19      community, and highlighted that we are a global community, so members of our city are  
20      impacted. She reminded all to take care of themselves and engage with the issue as best we  
21      can. She noted that all of this is ultimately about land, and how we are custodians of it, and  
22      how it can be shared equitably with all members of the community.

23   **3. ORDER OF AGENDA:** No changes.

24   **4. PUBLIC COMMENT PERIOD:** 1.

25   **5. PLANNING STAFF REPORT:**

- 26       • Planning Manager Anne Hersch introduced herself and shared that she will be serving  
27       as secretary for the next few meetings.
- 28       • Associate Planner Justin Horner reported out on City Council's first reading of the  
29       Southside Zoning ordinance updates
  - 30           ○ The second reading of will be on December 12, 2023
  - 31           ○ Changes will go into effect on March 1, 2024

32   **Information Items:**

- 33 • *Tuesday, November 21<sup>st</sup>* – City Council heard the first reading of an ordinance with  
34 amendments relating to the Southside Zoning Implementation Program of the 2023-2031  
35 Housing Element Update were brought to City Council. The City Council accepted staff's  
36 recommendation, and added provisions regarding prevailing wage for projects in the  
37 Southside, consistent with the Planning Commission's September 15<sup>th</sup>, 2023 letter to the  
38 City Council. The City Council also referred to the City Manager related items regarding  
39 ground floor pedestrian-oriented open space, green roofs, requiring windows in  
40 bedrooms, and citywide prevailing wage requirements.  
41 <https://berkeleyca.gov/sites/default/files/documents/2023-11-14%20Item%2013%20Amendments%20to%20Berkeley%20Municipal%20Code%20Title%202023%20%28Zoning%20Ordinance%29%200.pdf>  
42  
43  
44 • *Upcoming: Saturday, December 9<sup>th</sup>, 10am-11pm* – The City of Berkeley will be holding a  
45 Winter Weather Preparedness Workshop at Berkeley Corporation Yard (1326 Allston  
46 Way). Attendees will be able to learn about Berkeley's stormwater infrastructure and  
47 provide feedback on the 2024 Local Hazard Mitigation Plan:  
48 <https://berkeleyca.gov/community-recreation/events/hello-winter-weather-preparedness-workshop-strawberry-creek-park>  
49  
50

51 **Communications:**

- 52 • General.

53 **Late Communications:**

- 54 • Supplemental Packet One.  
55 • Supplemental Packet Two.

56 **6. CHAIR REPORT:**

- 57 • None.

58  
59 **7. COMMITTEE REPORT:** Reports by Commission committees or liaisons. In addition to the  
60 items below, additional matters may be reported at the meeting.

- 61  
62 • None.

63 **8. APPROVAL OF MINUTES:**

64 Motion/Second/Carried (Mikiten/Marthinsen) to approve the Planning Commission Meeting  
65 Minutes from November 1, 2023.

66  
67 Ayes: Oatfield, Mikiten, Marthinsen, Twu, and Ghosh. Noes: None. Abstain: Sanderson, Lee-  
68 Egan, and Crandall. Absent: Moore. (5-0-3-1)

69

70 **9. OTHER PLANNING RELATED EVENTS:**

- 71 • None.

72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111

**AGENDA ITEMS**

**10. Public Hearing: Demolition Ordinance**

Associate Planner Justin Horner presented proposed amendments to the Berkeley Municipal Code Chapter 23.326 (Demolition and Dwelling Unit Controls) to the Commissioners. The Commissioners asked staff questions, held a public hearing, then discussed the proposed ordinance language, before ultimately determining that a subcommittee should be formed to work with staff on further fleshing out the ordinance before passing it to City Council.

Motion/Second/Carried (Ghosh/Sanderson) to close the public hearing at 6:59pm.  
Ayes: Sanderson, Lee-Egan, Oatfield, Mikiten, Marthinsen, Twu, Crandall, and Ghosh. Noes: None. Abstain: None. Absent: Moore. (8-0-0-1)

**Public Comments: 5**

Motion/Second/Failed (Oatfield/Mikiten) to recommend the ordinance to City Council as proposed by staff and direct staff to consider integrating comments 1 and 3 in the supplemental communication brought by Commissioner Mikiten (in Supplemental Packet 2) at 8:24pm.  
Ayes: Oatfield and Twu. Noes: Sanderson, Lee-Egan, Marthinsen, Crandall, and Ghosh. Abstain: Mikiten. Absent: Moore. (2-5-1-1)

Motion/Second/Failed (Twu/Mikiten) to recommend the portion of the ordinance to City Council that addresses multi-family (2+ units) demolitions, and for staff to incorporate comments 1 and 3 in the supplemental communication brought by Commissioner Mikiten (in Supplemental Packet 2) to City Council at 8:32pm.  
Ayes: Lee-Egan and Twu. Noes: Sanderson, Oatfield, Mikiten, Marthinsen, Crandall, and Ghosh. Abstain: None. Absent: Moore. (2-6-0-1)

Substitute Motion/Second/Failed (Twu/Lee-Egan) to recommend the portion of the ordinance to City Council that addresses multi-family (5+ units) demolitions at 8:40pm.  
Ayes: Twu. Noes: Sanderson, Oatfield, Marthinsen, Crandall, and Ghosh. Abstain: Lee-Egan and Mikiten. Absent: Moore. (1-5-2-1)

Motion/Second/Carried (Ghosh/Mikiten) to recommend that the Commission make a subcommittee comprised of Commissioner Mikiten, Commissioner Oatfield, Commissioner Marthinsen, and Commissioner Twu to work with staff to edit the demolition ordinance into three categories:

112  
113  
114  
115  
116  
117  
118  
119  
120  
121

1. The demolition of existing multi-family housing;
2. The demolition of single-family housing; and
3. The demolition of owner-occupied ADUs,

before returning to Planning Commission with a revised ordinance at 8:47pm.

Ayes: Sanderson, Lee-Egan, Mikiten, Marthinsen, Twu, Crandall, and Ghosh. Noes: None.  
Abstain: Oatfield. Absent: Moore. (7-0-1-1)

122  
123  
124  
125  
126

Motion/Second/Carried (Oatfield/Mikiten) to adjourn the meeting at 8:49pm.

Ayes: Sanderson, Lee-Egan, Oatfield, Mikiten, Marthinsen, Twu, Crandall, and Ghosh. Noes:  
None. Abstain: None. Absent: Moore. (8-0-0-1)

127  
128  
129

**Members in the public in attendance: 7**

**Public Speakers: 6**

**Length of the meeting: 2 hr 47 minutes**





Planning and Development Department  
Land Use Planning Division

STAFF REPORT  
January 17, 2024

TO: Members of the Planning Commission

FROM: Justin Horner, Associate Planner

SUBJECT: Zoning Ordinance Amendments to Berkeley Municipal Code Chapter 23.326 (Demolition and Dwelling Unit Controls)

---

#### RECOMMENDATION

Conduct a public hearing and make a recommendation to the City Council regarding amendments to Berkeley Municipal Code Chapter 23.326 (Demolition and Dwelling Unit Control Ordinance). The existing and proposed redlined ordinances are presented in **Attachments 1** and **2**, respectively.

#### SUMMARY

State law SB 330 (Housing Crisis Act of 2019) established new provisions related to demolition of residential units. SB 330 provides optional ways to comply with these requirements. These include unit occupancy or vacancy, existing tenant income status (ex. low income), local rent control applicability (in Berkeley, this would be most properties with more than two units built before 1980), or if units were removed from the rental market pursuant to the Ellis Act.<sup>1</sup> In particular, replacement units required by SB 330 may be deed restricted to low income households or subject to local rent control. The law also addresses the rights of existing tenants that would be displaced by demolition, including relocation benefits and a right of first refusal to return to the new units at below market rate (BMR) rent. Density bonus law now reflects these requirements.

The proposed ordinance (**Attachment 2**) includes provisions to bring the Demolition Ordinance into conformance with State law, and includes a number of new Berkeley-specific provisions as recommended by the 4x4 Joint Task Force Committee on Housing and the Planning Commission's Subcommittee meeting of December 20, 2023. The proposed ordinance also includes a number of text edits, including grammatical corrections and renumbering.

---

<sup>1</sup> Under a state law called the Ellis Act (CA Gov. Code Sec. 7060 et seq.), an owner can evict tenants in order to withdraw a rental property from the rental housing market. A local ordinance, Berkeley Municipal Code Chapter 13.77, establishes specific procedures under the State law.

### REVISIONS TO DECEMBER 6, 2023 PROPOSED ORDINANCE

The proposed ordinance presented to the Planning Commission at its December 2, 2023 meeting was prepared based on multiple Planning Commission meetings and meetings of the 4x4 Joint Task Force Committee on Housing. The staff report for the December 6th 2023 Planning Commission meeting (**Attachment 3**) includes detailed discussion of those meetings, as well as the rationale for the development of the proposed ordinance.

At its December 6, 2023 meeting, the Planning Commission moved to create a Subcommittee to review the proposed ordinance in detail, and to consider suggestions and recommendations made by Commissioners at that meeting. The Subcommittee met on December 20, 2023 and recommended a number of changes to the ordinance presented to the Planning Commission at the December 6, 2023 meeting. These changes are detailed below.

- **Demolition of Single-Family Dwellings with a Zoning Certificate.** The ordinance presented on December 6, 2023 included a provision that requires a Use Permit (UP) to demolish any dwelling unit. *Program 29-Middle Housing* of the recently-adopted Housing Element includes a provision requiring the City Council to consider by-right demolition of single-family homes to encourage the development of middle housing.

**Proposed Modification:** The proposed ordinance includes a provision to allow the demolition of a single-family dwelling with a Zoning Certificate if the demolition is part of a development project that would result in a net increase in residential density. This provision changes the required permit for the demolition from a Use Permit to a Zoning Certificate. All other aspects of the ordinance, including tenant notice, tenant protections, unit replacement requirements and other provisions, would continue to apply to the demolition of single-family dwellings.

- **Demolition of Residential Units for Non-Residential Projects.** The ordinance presented on December 6, 2023 included a provision which would allow the Zoning Adjustments Board (ZAB) to approve the demolition of residential units with a finding that the demolition is necessary to permit construction of “economically beneficial uses;” that is, projects that are non-residential. Residential units demolished under this finding would not have been required to be replaced.

**Proposed Modification:** The Subcommittee recommended removal of this provision. AB 1218,<sup>2</sup> recently signed into law, applies SB 330 residential unit replacement requirements to proposed projects that do not include residential units.

- **“Equivalent” vs. “Comparable” Units.** The ordinance presented to the Planning Commission on December 6, 2023 included a requirement that residential units that are demolished shall be replaced with “equivalent” units.

---

<sup>2</sup> <https://legiscan.com/CA/text/AB1218/id/2845253>

**Proposed Modification:** Neither the ordinance, nor Title 23, includes a definition of “equivalent,” for this context. The Subcommittee therefore replaced “equivalent” with “comparable,” which is defined in the proposed ordinance.

- **Tenants’ Intent to Return.** The ordinance presented to the Planning Commission on December 6, 2023 included a provision that “tenants shall have until the date that the new units *are ready* for occupancy to decide whether to move into the newly constructed building.” [emphasis added]

**Proposed Modification:** The Subcommittee recommended more precise language to indicate the timeline by which a tenant should inform an owner of their intent to return to a unit. The proposed ordinance includes new provisions that:

- a) an owner must inform a tenant within five days of the issuance of a Certificate of Occupancy that a new unit will be ready for move in on a specific date; and
- b) tenants are to confirm in writing their intent to lease a replacement unit at any time between learning of a demolition and twenty days after the issuance of a Certificate of Occupancy for a new unit.

- **Combination of Units, Findings.** The ordinance presented to the Planning Commission on December 6, 2023 included a provision that allows the ZAB to approve a UP to eliminate a unit within a single-resident occupancy residential development undergoing a publicly-funded rehabilitation through combination with another unit, for the purposes of providing private bathrooms, kitchenettes, accessibility upgrades, or seismic safety upgrades.

**Proposed Modification:** The Subcommittee recommended additional language to broaden the acceptable purposes to include “other elements required by funding sources or programmatic needs.”

- **Combination of Units, Applicant Requirements.** The ordinance presented to the Planning Commission on December 6, 2023 includes two requirements relating to applicants intending to demolish units through combination. One requirement is that the ZAB must find that the applicant’s household has occupied the affected unit for no less than two years, and the other is that an applicant’s household must occupy the combined unit for at least two years after its completion.

**Proposed Modification:** The proposed ordinance changes this requirement from applying to the “applicant,” to applying to an “owner.” This revision would still require owner-occupancy, maintaining prohibitions on evicting tenants to combine units or immediately renting combined units, but would permit an owner-to-owner sale of a property.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

California Public Resource Code Section 21065 defines a “project” under CEQA as “an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” The proposed ordinance amendments relate only to the requirements to demolish existing structures, and would not result in any physical changes to the environment. The proposed ordinance does not consist of a discretionary action that would permit or cause any direct or indirect change in the environment. The proposed ordinance is therefore not a project under CEQA.

#### RATIONALE FOR RECOMMENDATION

The proposed ordinance includes changes required by state law, as well as policy changes recommended by the 4x4 Joint Committee Task Force on Housing and the Planning Commission’s Subcommittee.

#### NEXT STEPS

After the Planning Commission holds a public hearing and makes a recommendation to the City Council, the City Council shall hold a public hearing and vote to adopt the proposed ordinance amendments.

#### CONTACT PERSON

Justin Horner, Associate Planner, Planning and Development, [jhorner@berkeleyca.gov](mailto:jhorner@berkeleyca.gov); 510-981-7476

#### Attachments:

1. Existing Demolition Ordinance (BMC Chapter 23.326)
2. Proposed Demolition Ordinance – Redlined (BMC Chapter 23.326)
3. Planning Commission Staff Report – December 6, 2023.
4. Public Hearing Notice

Chapter 23.326  
DEMOLITION AND DWELLING UNIT CONTROL

Sections:

- 23.326.010 Chapter Purpose.
- 23.326.020 General Requirements.
- 23.326.030 Eliminating Dwelling Units through Demolition.
- 23.326.040 Eliminating Dwelling Units through Conversion and Change of Use.
- 23.326.050 Private Right of Action.
- 23.326.060 Elimination of Residential Hotel Rooms.
- 23.326.070 Demolitions of Non-Residential Buildings.
- 23.326.080 Building Relocations.
- 23.326.090 Limitations.

23.326.010 Chapter Purpose.

This chapter establishes demolition and dwelling unit control standards that promote the affordable housing, aesthetic, and safety goals of the City.

23.326.020 General Requirements.

A. *Applicability.* No dwelling unit or units may be eliminated or demolished except as authorized by this chapter.

B. *Findings.* In addition to the requirements below, the Zoning Adjustments Board (ZAB) may approve a Use Permit to eliminate or demolish a dwelling unit only upon finding that eliminating the dwelling unit would not be materially detrimental to the housing needs and public interest of the affected neighborhood and Berkeley.

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.

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.

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.

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.5.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.

B. *Buildings with a Single Dwelling Unit.*

1. *Applicability.* This subsection only applies to buildings with a single dwelling unit.

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.

C. *Accessory Buildings.* Notwithstanding anything in Municipal Code Title 23 (Zoning Ordinance) to the contrary, but subject to any applicable requirements in Municipal Code Section 3.24 (Landmarks Preservation Ordinance), accessory buildings of any size, including, but not limited to, garages, carports, and sheds, but not including any structure containing a lawfully established dwelling unit, which serves and is located on the same lot as a lawful residential use, may be demolished by right.

23.326.040 Eliminating Dwelling Units through Conversion and Change of Use.

A. *General.* The ZAB may approve a Use Permit for the elimination of a dwelling unit in combination with another dwelling unit used for occupancy by a single household if it finds that:

1. The existing number of dwelling units exceeds maximum residential density in the district where the building is located; and

2. One of the following is true:

- (a) One of the affected dwelling units has been occupied by the applicant's household as its principal place of residence for no less than two years before the date of the application and none of the affected units are currently occupied by a tenant.

(b) All of the affected dwelling units are being sold by an estate and the decedent occupied the units as their principal residence for no less than two years before the date of their death.

**B. *Limitations.***

1. Demolition is not allowed if:

(a) The building was removed from the rental market under the Ellis Act during the preceding five years; or

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

2. 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.

**C. *Effect of Noncompliance with the Two-Year Requirement.***

1. If a unit eliminated under Subsection A (General) is not occupied by the applicant's household for at least two consecutive years from the date of elimination, the affected unit must be restored to separate status.

2. This requirement shall be implemented by a condition of approval and a notice of limitation on the property, acceptable to the City of Berkeley.

3. The condition and notice will provide that if the owner's household does not occupy the unit for at least two years from the date of elimination the affected units must either be restored as separate dwelling units and the vacant unit(s) offered for rent within six months or the owner must pay a fee of \$75,000 in 2013 dollars, adjusted in May of each year according to the Consumer Price Index for the San Francisco Bay Area. The fee shall be deposited into the City of Berkeley's Housing Trust Fund.

4. The City of Berkeley may exempt an applicant from the two-year residency requirement if of an unforeseeable life change that requires relocation.

D. *Effect of Eliminating a Dwelling Unit.*

1. If eliminating a dwelling unit reduces the number of units in a building to four, the applicant shall record a notice of limitation against the subject property that the limitation on eviction of tenants under Chapter 13 (Public Peace, Morals and Welfare) shall continue to apply until:

- (a) The building is demolished; or
- (b) Sufficient units are added or restored such that the building contains at least five units.

2. The Zoning Officer may issue an AUP for a building conversion which eliminates a dwelling unit upon finding that the conversion will restore or bring the building closer to the original number of dwelling units that was present at the time it was first constructed, provided the conversion meets the requirements 23.326.040.A.1 and 2 and 23.326.040.B and C.

E. *Exceptions.*

1. The ZAB may approve a Use Permit for a change of use to a community care or a child care facility which eliminates a dwelling unit if it finds that such use is in conformance with the regulations of the district in which it is located.

2. The ZAB may approve a Use Permit to eliminate a dwelling unit through combination with another dwelling unit for the purpose of providing private bathrooms, kitchenettes, accessibility upgrades, and/or seismic safety upgrades to single-residential occupancy rooms in residential developments undergoing a publicly-funded rehabilitation.

3. Notwithstanding the general Use Permit requirement under 23.326.020 (General Requirements), a lawfully established accessory dwelling unit that is not a controlled rental unit may be eliminated with a Zoning Certificate if:

- (a) The re-conversion restores the original single-family use of the main building or lot; and
- (b) No tenant is evicted.

23.326.050 Private Right of Action.

Any affected tenant may bring a private action for injunctive and/or compensatory relief against any applicant and/or owner to prevent or remedy a violation of Sections 23.326.030 (Eliminating Dwelling Units through Demolition) and 23.326.040 (Eliminating Dwelling Units through Conversion and Change of Use). In any such action a prevailing plaintiff may recover reasonable attorney's fees.

23.326.060 Elimination of Residential Hotel Rooms.

A. *General Requirements.* Before removal, the following requirements must be met for the ZAB to approve a Use Permit for the elimination of residential hotel rooms:

1. The residential hotel owner shall provide or cause to be provided standard housing of at least comparable size and quality, at comparable rents and total monthly or weekly charges to each affected tenant.
2. One of the following three requirements shall be met:
  - (a) The residential hotel rooms being removed are replaced by a common use facility, including, but not limited to, a shared kitchen, lounge, or recreation room, that will be available to and primarily of benefit to the existing residents of the residential hotel and that a majority of existing residents give their consent to the removal of the rooms.
  - (b) Before the date on which the residential hotel rooms are removed, one-for-one replacement of each room to be removed is made, with a comparable room, in one of the methods set forth in this section.
  - (c) Residential hotel rooms are removed because of building alterations related to seismic upgrade to the building or to improve access to meet the requirements of the American Disabilities Act (ADA).

B. *Criteria for Replacement Rooms.* For purposes of this section, replacement rooms must be:

1. Substantially comparable in size, location, quality, and amenities;
2. Subject to rent and eviction controls substantially equivalent to those provided by the Rent Stabilization Ordinance or those that applied to the original rooms which are being replaced; and
3. Available at comparable rents and total monthly or weekly charges to those being removed. Comparable rooms may be provided by:
  - (a) Offering the existing tenants of the affected rooms the right of first refusal to occupy the replacement rooms;
  - (b) Making available comparable rooms, which are not already classified as residential hotel rooms to replace each of the rooms to be removed; or
  - (c) Paying to the City of Berkeley's Housing Trust Fund an amount sufficient to provide replacement rooms.
    - i. The amount to be paid to the City of Berkeley shall be the difference between the replacement cost, including land cost, for the rooms and the amount which the City of Berkeley can obtain by getting a mortgage on the anticipated rents from the newly constructed rooms.
    - ii. The calculations shall assume that rents in the newly constructed rooms shall not exceed the greater of either a level comparable to the weekly or monthly charges for the replaced rooms or the level which would be charged if no current tenant paid more than 30 percent of such tenant's gross income for rent.

C. *Exception for Non-Profit Ownership.* In a residential hotel owned and operated by a non-profit organization, recognized as tax-exempt by either the Franchise Tax Board and/or the Internal Revenue Service, residential hotel rooms may be changed to non-residential hotel room uses if the average number of residential hotel rooms per day in

each calendar year is at least 95 percent of residential hotel rooms established for that particular residential hotel.

23.326.070 Demolitions of Non-Residential Buildings.

A. *Main Non-Residential Buildings.* A main building used for non-residential purposes may be demolished with a Use Permit.

B. *Accessory Buildings.*

1. Demolishing an accessory building with less than 300 square feet of floor area is permitted as of right.
2. An accessory building with 300 square feet or more of floor area may be demolished with an AUP.

C. *Landmarks Preservation Commission Review.*

1. Any application for a Use Permit or AUP to demolish a non-residential building or structure which is 40 or more years old shall be forwarded to the Landmarks Preservation Commission (LPC) for review before consideration of the Use Permit or AUP.
2. The LPC may initiate a landmark or structure-of-merit designation or may choose solely to forward to the ZAB its comments on the application.
3. The ZAB shall consider the recommendations of the LPC in when acting on the application.

D. *Findings.* A Use Permit or an AUP for demolition of a non-residential building or structure may be approved only if the ZAB or the Zoning Officer finds that:

1. The demolition will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City of Berkeley; and
2. The demolition:
  - (a) Is required to allow a proposed new building or other proposed new use;

- (b) Will remove a building which is unusable for activities which are compatible with the purposes of the district in which it is located or which is infeasible to modify for such uses;
- (c) Will remove a structure which represents an inhabitable attractive nuisance to the public; or
- (d) Is required for the furtherance of specific plans or projects sponsored by the City of Berkeley or other local district or authority upon a demonstration that it is infeasible to obtain prior or concurrent approval for the new construction or new use which is contemplated by such specific plans or projects and that adhering to such a requirement would threaten the viability of the plan or project.

23.326.080 Building Relocations.

A. *Treatment of Building Relocation.*

1. Relocating a building from a lot is considered a demolition for purposes of this chapter.
2. Relocating a building to a lot is considered new construction and is subject to all requirements applicable to new construction.
3. When a building is relocated to a different lot within in Berkeley, the lot from which the building is removed shall be known as the source lot and the lot on which the building is to be sited shall be known as the receiving lot. In such cases all notification requirements apply to both the source and receiving lots.

B. *Findings.* The ZAB may approve a Use Permit to relocate a building upon finding that:

1. The building to be relocated is not in conflict with the architectural character, or the building scale of the neighborhood or area to which it will be relocated; and
2. The receiving lot provides adequate separation of buildings, privacy, yards, and usable open space.

23.326.090 Limitations.

A. *Unsafe, Hazard, or Danger.*

1. Notwithstanding anything to the contrary, if a building or structure is unsafe, presents a public hazard, and is not securable and/or is in imminent danger of collapse so as to endanger persons or property, as determined by the city's building official, it may be demolished without a Use Permit.

2. The Building Official's determination in this matter shall be governed by the standards and criteria in the most recent edition of the California Building Code that is in effect in the City of Berkeley.

B. *Ellis Act.* This chapter shall be applied only to the extent permitted by state law as to buildings which have been entirely withdrawn from the rental market pursuant to the Ellis Act (California Government Code Chapter 12.75).



---

ORDINANCE NO.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 23.326, DEMOLITION AND  
DWELLING UNIT CONTROLS

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

Section 1. That Berkeley Municipal Code Chapter 23.326 is hereby amended to read as follows:

Chapter 23.326 DEMOLITION AND DWELLING UNIT CONTROLS

Sections:

- 23.326.010 Chapter Purpose.
- 23.326.020 General Requirements.
- 23.326.030 ~~Eliminating Dwelling Units through Demolition.~~ Demolition of Residential Units.
- 23.326.040 Eliminating Dwelling Units through ~~Conversion and Change of Use.~~ Combination with Other Units.
- 23.326.050 ~~Private Right of Action.~~ Demolition of Accessory Buildings.
- 23.326.060 ~~Elimination of Residential Hotel Rooms.~~ Private Right of Action.
- 23.326.070 Demolitions of Non-Residential Buildings.
- 23.326.080 Building Relocations.
- 23.326.090 Limitations.
- 23.326.100 Severability

23.326.010 Chapter Purpose.

This chapter establishes demolition and dwelling unit control standards that promote the affordable housing, ~~aesthetic~~, and safety goals of the City.

23.326.020 General Requirements.

- A. ~~Applicability.~~ No ~~dwelling unit~~ Residential Unit or units may be eliminated or demolished except as authorized by this chapter.

1. ~~Findings. In addition~~ “Residential Unit” means, for purposes of this Chapter, any Dwelling Unit, any Live-Work Unit, any Residential Hotel unit, or any bedroom of a Group Living Accommodation (GLA) except a GLA in a University-recognized fraternity, sorority or co-op.
2. “Residential Unit” includes any Accessory Dwelling Unit or Junior Accessory Dwelling Unit to the requirements below, the Zoning Adjustments Board (ZAB) may approve an extent that tenant notice, protections for eviction and relocation benefits outlined in this ordinance shall apply to any Accessory Dwelling Unit or Junior Accessory Dwelling Unit that is removed from the rental market. An Accessory Dwelling Unit or Junior Accessory Dwelling Unit
2. “Residential Unit” includes Dwelling Units created without proper Use Permit(s) to eliminate or demolish a dwelling or Building Permit(s) if they have been registered with the Rent Stabilization Board or the Rent Stabilization Board has otherwise determined that a tenant-landlord relationship existed during the preceding five years.
3. “Comparable Unit” means a Dwelling Unit would not be materially detrimental to the housing needs and public interest of the affected of similar size (square footage and number of bedrooms), amenities (private open space and common facilities) and location within the city (neighborhood and Berkeley school attendance area).

23.326.030 ~~Eliminating Dwelling Units through~~ Demolition of Residential Units.

~~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. ~~(a)~~ Demolition is not allowed if:

1. ~~i.~~ The ~~building~~ Residential Unit (or units) was removed from the rental

market ~~under the Ellis Act through a no-fault eviction~~ during the preceding five years; or

2.-ii.- There ~~have been verified cases~~ is substantial evidence of harassment or threatened or actual illegal eviction during the immediately preceding three years. 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, whose determination may be appealed to the Rent Stabilization Board. ~~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,~~

B. ~~3.-~~ Procedure and Findings. ~~The ZAB may approve a~~

1. A Use Permit is required to eliminate or demolish a building constructed before June 1980 on a property containing two one or more dwelling units Residential Units, except where otherwise provided by the Zoning Ordinance. The Board shall only approve the Use Permit if any one of the following are is true:

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

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

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

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

2. A single-family dwelling can be demolished with a Zoning Certificate, if the demolition is part of a development project that would result in a net increase in

residential density.

~~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.~~

C. Landmarks and Structures of Merit. A demolition of a designated landmark or structure of merit, or of a structure in a designated historic district, must be approved by the Landmarks Preservation Commission, pursuant to Chapter 3.24.

D. Conditions of Approval. Any Residential Unit(s) that will be demolished shall be replaced with comparable units and comply with applicable affordability requirements in Chapter 23.328 [Affordable Housing Requirements] and Chapter 23.330 [Density Bonus] as they may be amended from time to time.

1. In the event that a displaced household has an income below 50% AMI, a comparable replacement unit shall be offered at a rent that is affordable to households at 30% of AMI, and the displaced household shall have the first right of refusal for that unit. Such a unit shall be counted as a Very Low-Income unit for applicable affordability requirements in Chapter 23.328.

2. In the event of a demolition of a Residential Unit created without proper Use

Permit(s) or Building Permit(s), as defined in 23.326.020(A)(3), the Building Official, Zoning Officer or Fire Marshal may determine that the replacement of such a unit is infeasible and not required under this Chapter. Such a determination shall include a finding that the replacement of the unit could not occur in compliance with Zoning Code, Building Code, Fire Code or other regulations related to public health and safety.

E. *Requirements for Occupied Units.*

~~(a)~~ *Applicability.*

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

1. ~~ii. These~~ The following 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.

2. ~~(b)~~ *Notice.* The applicant shall provide all sitting tenants and the Rent Stabilization Board notice of the application to demolish the building Residential Unit(s) no later than the date ~~it~~ the application is submitted to the City, including notice of their rights under Municipal Code ~~Section~~ Chapter 13.76 (Rent Stabilization and Eviction for Good Cause Program), Chapter 13.77 (Requirements, Procedures, Restrictions and Mitigations Concerning the Withdrawal of Residential Rental Accommodations from Rent or Lease), 13.79 (Tenant Protections: Automatically Renewing Leases and Buyout Agreements) and 13.84 (Relocation Services and Payments for Residential Tenant Households).

3. ~~(c)~~ *General Requirements.*

~~i. The applicant shall provide assistance with moving expenses and relocation assistance equivalent to the requirements set forth in Municipal Code Chapter 13.84 (Relocation Services and Payments for Residential Tenant Households).~~  
~~ii. Municipal Code Chapter 13.84 or Government Code section 66300(d)(2)(D)(i), whichever requires greater relocation assistance to~~

displaced tenants, and shall not be subject to the limitations in section 13.84.070.B.3(a). 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. Within five days of the issuance of the Certificate of Occupancy, tenants shall be notified in writing that the units will be ready for move-in on a date specified. Tenants shall confirm in writing their intent to lease the available unit at any time before 20 days after the issuance of the Certificate of Occupancy. Funding for the rent differential shall be guaranteed in a manner approved by ~~the City-~~ Council Resolution; provided, however, that any project that is carried out or funded by the state or federal government shall be subject to applicable provisions of the California Relocation Act (Government Code section 7260 et seq.) and/or the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. sections 4601- 4655).

(a) ~~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.).

4. ~~(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.~~

(a) ~~ii. Tenants of units~~ Any tenant of a Residential Unit that ~~are~~ is permitted to be demolished under this section shall have the right of first refusal to rent ~~new below-~~ a comparable unit in the new project.

(b) In the event that a displaced household is ineligible for below-market rate replacement units, a market rate ~~units designated~~ unit shall be made available to ~~replace the units that were demolished~~ household at the same rent ~~that would have applied as had been previously charged, or a lesser rent~~ if they had remained in place, as long as that is the market rate.

(c) ~~Where a displaced tenant exercises the right to rent a comparable unit, any increase in rent for the comparable unit for the duration of their tenancy shall be no greater than the lesser of 65% of 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 31) or 65% of the corresponding increase in Area Median Income (AMI) for the same calendar year.~~

~~iii. Income restrictions do not apply to displaced tenants.~~

(d) ~~iv. Exception.~~

i. ~~(1)~~ An applicant who proposes to construct a 100 percent affordable housing project is not required to comply with ~~23.326.030.A.5.a, b, and c,~~ the preceding requirements but must comply with the following requirement.

ii. ~~(2)~~ Sitting tenants who are displaced as a result of demolition and who desire to return to the newly constructed building affordable housing project 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.~~

~~B. Buildings with a Single Dwelling Unit.~~

~~1. Applicability. This subsection only applies to buildings with a single dwelling unit.~~

~~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.~~

~~C. Accessory Buildings. Notwithstanding anything in Municipal Code Title 23 (Zoning Ordinance) to the contrary, but subject to any applicable requirements in Municipal Code Section 3.24 (Landmarks Preservation Ordinance), accessory buildings of any size, including, but not limited to, garages, carports, and sheds, but not including any structure containing a lawfully established dwelling unit, which serves and is located on the same lot as a lawful residential use, may be demolished by right.~~

23.326.040 Eliminating Dwelling Units through ~~Conversion and Change of Use~~  
Combination with Other Units.

A. Process for Projects Where Density Exceeds Current Allowance. —~~General. The ZAB may~~ A Use Permit is required to eliminate one or more Residential Units by combining with another unit when the existing development exceeds currently allowable density. The ZAB shall approve a Use Permit for the elimination of ~~a dwelling unit in combination with another dwelling unit used for occupancy one or more Residential Units by a single household combining with another unit only~~ if it finds that:

1. ~~1.~~ The existing number of dwelling Residential Units exceeds the current maximum allowed residential density in the zoning district where the building is units are located; and
2. ~~2.~~ One of the following is true:
  - (a) One of the affected dwelling Residential Units has been owner-occupied ~~by the applicant's household~~ as a its principal place of residence for no less than two years before the date of the application and none of the affected units are currently occupied by a tenant.
  - (b) All of the affected dwelling Residential Units are being sold by an estate and the decedent occupied the Residential Units as their principal residence



for no less than two years before the date of their death.

B. *Process for Projects That Restore Original Development Density.* The Zoning Officer may issue an Administrative Use Permit (AUP) for a building conversion which eliminates a Residential Unit upon finding that the conversion will restore or bring the building closer to the original number of Residential Units that was present at the time it was first constructed.

C. *Limitations.* Combination is not allowed if:

1. ~~(a)~~ The building was removed from the rental market ~~under the Ellis Act through a no-fault eviction~~ during the preceding five years; or
2. ~~(b)~~ There ~~have been verified cases~~ is substantial evidence of harassment or threatened or actual illegal eviction during the immediately preceding three years. 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, whose determination may be appealed to the Rent Stabilization Board.~~

~~D.C. *Effect of Noncompliance with the Two-Year Occupancy Requirement Following Elimination*~~

1. If a Residential Unit that is eliminated ~~under Subsection A (General) through combination~~ is not owner-occupied ~~by the applicant's household~~ for at least two consecutive years from the date of elimination, the affected Residential Unit must be restored to separate status.
2. This requirement shall be implemented by a condition of approval and a notice of limitation on the property, acceptable to the City of Berkeley.
3. The condition and notice will provide that if the Residential Unit is not owner-occupied ~~owner's household does not occupy the Residential Unit~~ for at least two years from the date of elimination then the affected Residential Units must either be

restored as separate dwelling Residential Units and the vacant Residential Unit(s) offered for rent within six months or the owner must pay a fee of \$75,000 in 2013 dollars, adjusted in May of each year according to the Consumer Price Index for the San Francisco Bay Area. The fee shall be deposited into the City of Berkeley's Housing Trust Fund.

4. The City of Berkeley may exempt an applicant from the two-year residency requirement if of there is an unforeseeable life change that requires relocation.

**E. Effect of Eliminating a Dwelling Residential Unit.**

1. If eliminating a dwelling Residential Unit reduces the number of Residential Units in a building to four, the applicant shall record a notice of limitation against the subject property that the limitation on eviction of tenants under Chapter 13 (Public Peace, Morals and Welfare) shall continue to apply until:

- (a) The building is demolished; or

- (b) Sufficient Residential Units are added or restored such that the building contains at least five Residential Units.

2. The Zoning Officer may issue an AUP for a building conversion which eliminates a dwelling Residential Unit upon finding that the conversion will restore or bring the building closer to the original number of dwelling Residential Units that was present at the time it was first constructed, provided the conversion meets the requirements of 23.326.040.A.1 and 2 and 23.326.040.B and C.

~~**E. Exceptions.**~~

~~1. The ZAB may approve a Use Permit for a change of use to a community care or a child care facility which eliminates a dwelling unit if it finds that such use is in conformance with the regulations of the district in which it is located.~~

**F. Exception.** The ZAB may approve a Use Permit to eliminate a dwelling Residential Unit through combination with another dwelling Residential Unit for the purpose of providing private bathrooms, kitchenettes, accessibility upgrades, and/or seismic safety upgrades, or other elements required by funding sources or programmatic needs to single-~~residential resident~~ occupancy rooms in residential developments undergoing a

publicly-funded rehabilitation.

~~3. Notwithstanding the general Use Permit requirement under 23.326.020 (General Requirements), a lawfully established accessory dwelling unit that is not a controlled rental unit may be eliminated with a Zoning Certificate if:~~

~~(a) The re-conversion restores the original single family use of the main building or lot; and~~

~~(b) No tenant is evicted.~~

23.326.050 Demolition of Accessory Buildings.

Notwithstanding anything in Municipal Code Title 23 (Zoning Ordinance) to the contrary, but subject to any applicable requirements in Municipal Code Section 3.24 (Landmarks Preservation Ordinance), Accessory Buildings of any size, including, but not limited to, garages, carports, and sheds may be demolished by right except where the Accessory Building is occupied by a residential tenant (regardless of whether it is lawfully permitted) or otherwise contains a lawfully established Residential Unit, which serves and is located on the same lot as a lawful residential use. Such Accessory Buildings are considered Residential Units for the purposes of this Chapter.

23.326.060 Private Right of Action.

Any affected tenant may bring a private action for injunctive and/or compensatory relief against any applicant and/or owner to prevent or remedy a violation of Sections 23.326.030 (Eliminating Dwelling Units through Demolition) and 23.326.040 (Eliminating Dwelling Units through Conversion and Change of Use). In any such action a prevailing plaintiff **may shall** recover reasonable attorney's fees.

~~23.326.060 — Elimination of Residential Hotel Rooms.~~

~~A. **General Requirements.** Before removal, the following requirements must be met for the ZAB to approve a Use Permit for the elimination of residential hotel rooms:~~

~~1. The residential hotel owner shall provide or cause to be provided standard housing of at least comparable size and quality, at comparable rents and total monthly or weekly charges to each affected tenant.~~

~~2. One of the following three requirements shall be met:~~

~~(a) The residential hotel rooms being removed are replaced by a common use facility, including, but not limited to, a shared kitchen, lounge, or recreation room, that will be available to and primarily of benefit to the existing residents of the residential hotel and that a majority of existing residents give their consent to the removal of the rooms.~~

~~(b) Before the date on which the residential hotel rooms are removed, one for one replacement of each room to be removed is made, with a comparable room, in one of the methods set forth in this section.~~

~~(c) Residential hotel rooms are removed because of building alterations related to seismic upgrade to the building or to improve access to meet the requirements of the American Disabilities Act (ADA).~~

~~B. *Criteria for Replacement Rooms.* For purposes of this section, replacement rooms must be:~~

~~1. Substantially comparable in size, location, quality, and amenities;~~

~~2. Subject to rent and eviction controls substantially equivalent to those provided by the Rent Stabilization Ordinance or those that applied to the original rooms which are being replaced; and~~

~~3. Available at comparable rents and total monthly or weekly charges to those being removed. Comparable rooms may be provided by:~~

~~(a) Offering the existing tenants of the affected rooms the right of first refusal to occupy the replacement rooms;~~

~~(b) Making available comparable rooms, which are not already classified as residential hotel rooms to replace each of the rooms to be removed; or~~

~~(c) Paying to the City of Berkeley's Housing Trust Fund an amount sufficient to provide replacement rooms.~~

~~i. The amount to be paid to the City of Berkeley shall be the difference between the replacement cost, including land cost, for the rooms and the~~

~~amount which the City of Berkeley can obtain by getting a mortgage on the anticipated rents from the newly constructed rooms.~~

~~ii. The calculations shall assume that rents in the newly constructed rooms shall not exceed the greater of either a level comparable to the weekly or monthly charges for the replaced rooms or the level which would be charged if no current tenant paid more than 30 percent of such tenant's gross income for rent.~~

~~C. *Exception for Non-Profit Ownership.* In a residential hotel owned and operated by a non-profit organization, recognized as tax exempt by either the Franchise Tax Board and/or the Internal Revenue Service, residential hotel rooms may be changed to non-residential hotel room uses if the average number of residential hotel rooms per day in each calendar year is at least 95 percent of residential hotel rooms established for that particular residential hotel.~~

23.326.070 ~~Demolitions~~ Demolition of Non-Residential Buildings.

A. *Main Non-Residential Buildings.* A Use Permit is required to demolish a main building used for non-residential purposes ~~may be demolished with a Use Permit on any lot.~~

B. *Accessory Buildings.* For any lot located in a non-residential zoning district, Accessory Buildings may be demolished as follows:

1. Demolishing an accessory building with less than 300 square feet of floor area is permitted as of right.
2. An accessory building with 300 square feet or more of floor area may be demolished with an AUP.

C. *Landmarks Preservation Commission Review.*

1. Any application for a Use Permit or AUP to demolish a non-residential building or structure ~~which~~ that is 40 or more years old shall be forwarded to the Landmarks Preservation Commission (LPC) for review before consideration of the Use Permit or AUP.

2. The LPC may initiate a landmark or structure-of-merit designation or may choose solely to forward to the ZAB or Zoning Officer its comments on the application.

3. The ZAB or Zoning Officer shall consider the recommendations of the LPC ~~in~~ when acting on the application.

D. *Findings.* A Use Permit or an AUP for demolition of a main building used for non-residential ~~building or structure~~ purposes on any lot or an accessory building located on a lot in a non-residential district may be approved only if the ZAB or the Zoning Officer finds that:

1. The demolition will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City of Berkeley; and

2. The demolition:

(a) Is required to allow a proposed new building or other proposed new use;

(b) Will remove a building which is unusable for activities which are compatible with the purposes of the district in which it is located or which is infeasible to modify for such uses;

(c) Will remove a structure which represents an ~~inhabitable~~ uninhabitable attractive nuisance to the public; or

(d) Is required for the furtherance of specific plans or projects sponsored by the City of Berkeley or other local district or authority upon a demonstration that it is infeasible to obtain prior or concurrent approval for the new construction or new use which is contemplated by such specific plans or projects and that adhering to such a requirement would threaten the viability of the plan or project.

23.326.080 Building Relocations.

A. *Treatment of Building Relocation.*

1. Relocating a building from a lot is considered a demolition for purposes of this chapter.

2. Relocating a building to a lot within the city is considered new construction and is

subject to all requirements applicable to new construction.

3. When a building is relocated to a different lot within ~~in~~ Berkeley, the lot from which the building is removed shall be known as the source lot and the lot on which the building is to be sited shall be known as the receiving lot. ~~In such cases all notification requirements apply to both the source and receiving lots.~~

4. Nothing in this subsection shall exempt Residential Units relocated to the receiving lot from the provisions of BMC Section 13.76 after a building relocation if the Residential Units located within a building were otherwise subject to BMC Chapter 13.76 in the source lot.

B. *Findings.* The ~~ZAB may~~ Zoning Officer shall approve ~~a Use Permit Zoning Certificate~~ to relocate a building upon finding that ~~:The building to be relocated is not in conflict with the architectural character, or resulting development on the building scale of the neighborhood or area to which it will be relocated; and receiving lot provides adequate separation of buildings, privacy, yards, and usable open space.~~ is in conformance with applicable zoning code development standards.

23.326.090 Limitations.

A. *Unsafe, Hazard, or Danger.*

1. Notwithstanding anything to the contrary, if a building or structure is unsafe, presents a public hazard, and is not securable and/or is in imminent danger of collapse so as to endanger persons or property, as determined by the city's building official, it may be demolished without a Use Permit.

2. The Building Official's determination in this matter shall be governed by the standards and criteria in the most recent edition of the California Building Code that is in effect in the City of Berkeley.

B. *Ellis Act.* This chapter shall be applied only to the extent permitted by state law as to buildings which have been entirely withdrawn from the rental market pursuant to the Ellis Act (California Government Code Chapter 12.75).

---

23.326.100 Severability.

- A. If any part or provision of this Chapter, or the application of this Chapter to any person or circumstance, is held invalid, the remainder of this Chapter, including the application of such part or provision to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this Chapter are severable.

DRAFT





Planning and Development Department  
Land Use Planning Division

STAFF REPORT  
December 6, 2023

TO: Members of the Planning Commission

FROM: Justin Horner, Associate Planner

SUBJECT: Zoning Ordinance Amendments to Berkeley Municipal Code Chapter 23.326 (Demolition and Dwelling Unit Controls)

---

#### RECOMMENDATION

Make a recommendation to the City Council regarding amendments to Berkeley Municipal Code Chapter 23.326 (Demo Ordinance). The existing and proposed redlined ordinances are presented in **Attachments 1** and **2**, respectively.

#### SUMMARY

State law SB 330 (Housing Crisis Act of 2019) includes new provisions related to demolition of residential units. SB 330 provides optional ways to comply with these requirements, based on whether the units are occupied or vacant, whether existing tenants are low income, whether the units are subject to local rent control (in Berkeley, this would be most properties with more than two units built before 1980), or whether the units were removed from the rental market pursuant to the Ellis Act.<sup>1</sup> In particular, replacement units required by SB 330 may be deed restricted to low income households or they may be subject to local rent control. The law also addresses the rights of existing tenants that would be displaced by demolition, including relocation benefits and a right of first refusal to return to the new units at below market rate (BMR) rent. Density bonus law now mirrors these requirements.

The proposed ordinance (**Attachment 2**) includes provisions to bring the Demo Ordinance into conformance with State law, and includes a number of new Berkeley-specific provisions as recommended by the 4x4 Joint Task Force Committee on

---

<sup>1</sup> Under a state law called the Ellis Act (CA Gov. Code Sec. 7060 et seq.), an owner can evict tenants in order to withdraw a rental property from the rental housing market. A local ordinance, Berkeley Municipal Code Chapter 13.77, establishes specific procedures under the state law.

Housing. The proposed ordinance also includes a number of text edits, including grammatical corrections and renumbering.

#### CURRENT SITUATION AND ITS EFFECTS

The existing Demo Ordinance (Attachment 1) requires a Use Permit for the demolition or elimination of one or more dwelling units in Berkeley. The Zoning Adjustments Board (ZAB) may issue a Use Permit for the demolition of a dwelling unit for specific enumerated reasons:

- A building is “hazardous or unusable and is infeasible to repair”;
- “Demolition is necessary to permit construction... of at least the same number of dwelling units.”
- “The elimination of the dwelling units would not be materially detrimental to the housing needs and public interest of the affected neighborhood and the City.”

The existing ordinance includes provisions for unit replacement and the rights of sitting tenants, as well as additional situations such as:

- When housing units are demolished and no new housing units are being developed at the site (e.g., commercial development);
- When tenants have been unlawfully evicted, such as forcing a tenant out of a unit without a court order; and
- When units are being merged or converted within an existing building rather than physically demolished.

The existing ordinance includes a provision whereby applicants may pay a fee rather than provide below-market-rate replacement units, however the amount of the fee has never been established.

Demolition of dwelling units is prohibited where a building has been removed from the rental market under the Ellis Act during the preceding five years or where there have been verified cases of harassment or threatened or actual illegal eviction during the immediately preceding three years. Applicants are generally required to provide relocation benefits, including moving expenses and differential rent payments. In addition, displaced tenants are provided a right of first refusal to rent new units after the lot has been redeveloped.

#### Proposed Demolition Ordinance Provisions

The proposed ordinance (**Attachment 2**) includes provisions to bring the Demo Ordinance into conformance with State law, and includes a number of new Berkeley-specific provisions as recommended by the 4x4 Joint Task Force Committee on Housing. The proposed ordinance also includes a number of text edits, including grammatical corrections and renumbering.

The most significant changes are summarized below in Table 1, and discussed in more detail below. The primary rationales for the proposed changes include clarifying the applicability of the ordinance, expanding tenant protections, bringing the ordinance into conformance with State law, and assigning the Rent Stabilization Board (Rent Board) to administer some aspects of the ordinance rather than the ZAB.

*Applicable Unit.*

The existing ordinance indicates that it applies to a “dwelling unit or units.” The proposed ordinance includes clarifications that it applies to dwelling units, group living accommodations, residential hotel rooms, accessory dwelling units (ADUs), junior accessory dwelling (JADUs) units, and units built without permits.

*Comparable Unit.*

The existing ordinance refers to a “comparable unit” when referring to replacement units, but does not define “comparable unit.” The proposed ordinance includes an explicit definition of “comparable unit”, indicating that it should be of a comparable size, include similar amenities, and be located in a similar area of the city as the demolished unit.

*Prohibited Demolitions.*

The existing ordinance indicates that demolition is prohibited for units that have been removed from the rental stock through the Ellis Act within the past five years, or in cases where there has been substantial evidence of tenant harassment by a rental property owner, or an attempted or actual illegal eviction, within the past three years. In the latter case, the determination of whether harassment has occurred is made by the ZAB.

The proposed ordinance expands tenant protections to include any no fault eviction within the past five years, not just removal of a rental unit from the market through the Ellis Act. A “no fault eviction” is when the property owner or landlord wants to evict a tenant at no fault of the tenant, for example, when the property owner wants to move into the property.

The Rent Stabilization Board is proposed to be the deciding body for questions regarding harassment and illegal eviction, instead of the ZAB.

*Mitigation Fee.*

The existing ordinance includes a requirement to pay an in-lieu mitigation fee for every unit demolished, or the option to replace a comparable BMR unit on-site.

State law (SB330) imposes a requirement that any housing development project that requires the demolition of dwelling units must create at least as many residential dwelling units as will be demolished on-site, and requires that the City condition

approval on the provision of replacement units. Therefore, an option to “fee out” of the replacement requirement is a violation of State law, because it would not provide replacement units at the sizes and affordability levels required by SB 330. Accordingly, the proposed ordinance removes the mitigation fee section.

*Landmarks and Structures of Merit.*

While the provisions of BMC Chapter 3.24 (Landmarks Preservation Commission) apply to units proposed for demolition, the existing ordinance does not explicitly refer to this chapter. Accordingly, the proposed ordinance includes specific language referring to Chapter 3.24.

*Affordability of Replacement Units.*

The existing ordinance includes a requirement that any replacement units must be BMR units, and that the income levels of the qualifying households, and rents for the replacement units, shall be set by a resolution of the City Council. The existing ordinance also includes a requirement that the project applicant enter into a regulatory agreement with the city to provide these units.

The proposed ordinance includes more detailed provisions addressing the affordability levels of replacement units:

- The proposed ordinance requires that any demolished unit shall be replaced with equivalent units and comply with the applicable affordability requirements included in BMC 23.328 (Affordable Housing Requirements) and BMC 23.330 (Density Bonus). Referencing these sections clarifies the appropriate affordability levels for replacement units, and establishes consistent requirements across a number of affordable housing-related provisions in the BMC.
- The proposed ordinance also includes a provision that if a displaced household has an income below 50% AMI, a comparable replacement unit shall be offered at a rent that is affordable to households at 30% of AMI.

*Sitting Tenants' Rights.*

The existing ordinance establishes certain rights for sitting tenants. Sitting tenants in demolished units are entitled to a right of first refusal to move into the new building, have a right of first refusal for any BMR units, and retain those rights even if they have incomes that do not qualify for BMR units.

The proposed ordinance clarifies that tenants who do not qualify for BMR replacement units due to income limits above the area median income must still be provided a market-rate replacement unit at their prior rent. Additionally, the rent for the duration of that tenancy would be subject to Berkeley's rent control regulations. This section was added by the 4x4 Committee to provide additional rights to sitting tenants who may not qualify for BMR units.

The proposed ordinance includes additional provisions related to sitting tenants' rights. The revisions clarify that a sitting tenant's right of first refusal extends to a *comparable* unit (not just any unit) in the building, and sets the initial rent and subsequent rents for sitting tenant households that are ineligible for BMR units. These provisions go beyond what is required under State law.

*Elimination of Units through Combination with Other Units.*

The existing ordinance includes provisions regulating the elimination of dwelling units through physical combination with other units. This is usually done in cases where two units are combined to make a single larger unit. The existing ordinance requires a Use Permit, with specific findings, to move forward with such an elimination. It also prohibits such an elimination if the building was removed from the rental market through the Ellis Act in the past five years, or if there is evidence of tenant harassment or illegal eviction within the past three years, as determined by the ZAB.

The proposed ordinance permits combined units through an AUP approval if such a combination would return the building to, or move it closer towards, its permitted density. This is a provision to make it easier for units in owner-occupied buildings to be combined. The AUP requirement still includes discretionary review, the ability to set conditions, and an appeal option to the ZAB.

Elimination of a unit for a combination would not be approved if the building was vacated through any no-fault eviction, not just due to the Ellis Act, or if the tenant was subject to landlord harassment or an illegal eviction. The determination of whether landlord harassment or a real or attempted illegal eviction occurred would be made by the Rent Board Hearing Examiner, with an appeal option to the Rent Stabilization Board, instead of by the ZAB.

*Demolition of ADUs that are not Controlled.*

The existing ordinance includes a provision that allows the demolition, with a Zoning Certificate (ZC), of ADUs that are not rent controlled. The proposed ordinance removes this section, and clarifies that ADUs and JADUs are considered residential units for the purposes of the ordinance, and therefore require a Use Permit for demolition or elimination.

*Demolition of Accessory Buildings*

The existing ordinance includes a provision that permits the demolition of an accessory building that does not contain a dwelling unit, such as garages, carports, and sheds, with a ZC. The proposed ordinance includes additional clarifying language that an accessory building that is occupied by a residential tenant shall be considered a residential unit for the purposes of this chapter.

*Residential Hotel Rooms*

The existing ordinance includes a section specifically regulating the elimination of residential hotel rooms. These provisions include specific requirements related to monthly and weekly charges, and permit residential hotel rooms to be removed for the purpose of providing common use facilities (such as a kitchen, lounge, or recreation room) for remaining residents or to undertake seismic upgrades or meet the requirements of the Americans with Disabilities Act. They also include a provision allowing an owner to meet the replacement requirements through a payment to the Housing Trust Fund, which, as noted above, is not permitted under State law. The proposed ordinance removes this section, and includes language indicating that residential hotel rooms are treated as residential units for the purpose of this ordinance.

*Technical Edits, Reorganization and Renumbering*

The proposed ordinance also includes a variety of purely technical edits, and reorganization, retitling, and renumbering of some sections and subsections.

**Table 1. Summary of Revisions to Demolition Ordinance**

<b>Policy Area</b>	<b>Current Ordinance</b>	<b>Proposed Ordinance</b>	<b>Rationale</b>
<b>Applicable unit</b>	"Dwelling unit or units."	Dwelling Unit, GLA, ADU, JADU, and units built without permits 23.326.010(A)(1) – (3)	Clarification of the types of units covered.
<b>Comparable unit</b>	No definition.	"Similar size, amenities and location within the city." 23.326.010(A)(4)	Clarification by providing a definition.
<b>Demolition Prohibition: Ellis Act</b>	Prohibition applies to any unit removed via Ellis Act within the past 5 years	Prohibition applies to any "no-fault" eviction. 23.326.030(A)	Expansion of tenant protections beyond just one type of no-fault eviction (Ellis Act).
<b>Demolition Prohibition: Tenant Harassment</b>	Determination made by ZAB.	Determination made by Rent Board. 23.326.030(A)(2)	For tenant-landlord issues, the Rent Board is the subject-expert body.
<b>Mitigation Fee</b>	Includes mitigation fee option.	Removes mitigation fee option.	State Law: Demolished units must be replaced (SB 330).
<b>Landmarks and Structures of Merit</b>	No reference to Landmarks Preservation Commission (LPC) procedures.	Includes reference to LPC procedures. 23.326.030(C)	Clarification that LPC procedures apply.
<b>Replacement Units -- Affordability</b>	<ul style="list-style-type: none"> <li>Replacement unit must be "BMR" in perpetuity;</li> </ul>	<ul style="list-style-type: none"> <li>Replacement unit must comply with Chapter 23.328 (Affordability Requirements) and</li> </ul>	State Law: Existing tenant income levels impact type/affordability of replacement units (SB 330).

Policy Area	Current Ordinance	Proposed Ordinance	Rationale
	<ul style="list-style-type: none"> <li>Affordability level to be set by Council resolution;</li> <li>Regulatory agreement with the City required.</li> </ul>	23.330 (Density Bonus); <ul style="list-style-type: none"> <li>For demolished unit with household at 50% AMI or below, replacement unit must be set at 30% AMI; and</li> <li>Allows Zoning Officer and Fire Marshall to waive replacement for health and safety</li> </ul> 23.326.030(C)	
<b>Sitting Tenants Rights</b>	<ul style="list-style-type: none"> <li>Right of first refusal to move into the building</li> <li>Right of first refusal for BMR units</li> <li>Income restrictions do not apply</li> </ul>	<ul style="list-style-type: none"> <li>Right of first refusal for a comparable unit</li> <li>For displaced tenants who rent a comparable unit, rent is controlled for duration of tenancy</li> <li>For households ineligible for BMR units, a replacement unit shall be offered at prior rent</li> </ul> 23.326.030(E)(4)	State Law: Tenant income levels impact type/affordability of replacement units (SB 330).  Additional local requirement: Income restrictions do not apply to displaced households upon their return to the property after completion of the project.
<b>Elimination of Units through Combination with other Units</b>	Use Permit required in all cases, with findings.	AUP to combine units when the combination would return the building to, or move it closer towards, its original density 23.326.040(B)	Simplification: Allow conversion of owner-occupied buildings with a lesser standard.
	Combination not allowed if the building was removed via Ellis Act within the past 5 years	Combination not allowed if vacated through no fault eviction within the past 5 years 23.326.040(C)	Expansion of tenant protections beyond just one type of no-fault eviction (Ellis Act).
	Combination not allowed if tenant harassment. Determination made by ZAB	Determination made by Rent Board Hearing Examiner, with appeal to Rent Board 23.326.040(C)	For tenant-landlord issues, the Rent Board is the subject-expert body.

<b>Policy Area</b>	<b>Current Ordinance</b>	<b>Proposed Ordinance</b>	<b>Rationale</b>
<b>Demolition of ADUs</b>	Provides path to demolition with ZC for ADUs that are not rent controlled.	Section removed. All ADUs and JADUs, regardless of rent control status, are regulated as a residential unit.	ADUs and JADUs are considered Residential Units for purpose of ordinance. <i>23.326.010(A)(2)</i>
<b>Demolition of Accessory Buildings</b>	Can be demolished by right.	Added language to clarify that Accessory Buildings that are occupied by residential tenants are considered Residential Units. <i>23.326.050</i>	Expansion of demolition controls and tenant protections.
<b>Elimination of Residential Hotel Rooms</b>	Section 23.326.060 provides specific procedures for removal of residential hotel rooms	Section removed.	Residential Hotel Rooms are considered Residential Units for purpose of ordinance. <i>23.326.010(A)(1)</i>

**BACKGROUND**

The impetus for these revisions is recent changes in State law that provide additional requirements for new housing development projects that involve the demolition of existing residential units. These provisions of SB 330 (Housing Crisis Act of 2019), which modified Government Code sections relating to zoning and density bonus, require all new housing development projects to provide replacement units of equivalent size, defined as having the same number of bedrooms as the demolished units.

At its meeting of February 1, 2023, the Planning Commission scheduled a public hearing to adopt a recommendation for the City Council of changes to the Demo Ordinance (**Attachment 3**). The Planning Commission deferred a final recommendation pending recommendations from the 4x4 Joint Task Force Committee on Housing. Staff returned to the 4x4 Joint Task Force Committee in September and October of 2023 for discussion and recommendations, which are reflected in **Attachment 2**. The proposed amendments do not include changes in permit requirement for by-right demolition of single-family homes, which will be considered in the future as part of a larger package of ‘middle housing’ zoning amendments.

**ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS**

California Public Resource Code Section 21065 defines a “project” under CEQA as “an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” The proposed ordinance amendments relate only to the requirements to demolish existing structures, and would not result in any physical changes to the environment. The proposed ordinance does not consist of a discretionary action that would permit or cause any



direct or indirect change in the environment. The proposed ordinance is therefore not a project under CEQA.

RATIONALE FOR RECOMMENDATION

The proposed ordinance includes changes required by state law, as well as policy changes recommended by the 4x4 Joint Committee Task Force on Housing.

NEXT STEPS

After the Planning Commission holds a public hearing and makes a recommendation to the City Council, the City Council shall hold a public hearing and vote to adopt the proposed ordinance amendments

CONTACT PERSON

Justin Horner, Associate Planner, Planning and Development, [jhorner@berkeleyca.gov](mailto:jhorner@berkeleyca.gov); 510-981-7476

Attachments:

1. Existing Demolition Ordinance (BMC Chapter 23.326)
2. Proposed Demolition Ordinance – Redlined (BMC Chapter 23.326)
3. Planning Commission Staff Report – Feb 1, 2023.
4. Public Hearing Notice



# PLANNING COMMISSION

---

## Notice of Public Hearing

---

### Wednesday, January 17, 2024

### Zoning Ordinance Amendments to Berkeley Municipal Code Section 23.326 (Demolition and Dwelling Unit Controls)

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, January 17, 2024 at 6:00 p.m.** at the **North Berkeley Senior Center, 1901 Hearst Avenue, Berkeley**). In accordance with the Brown Act, Planning Commission meetings will be held in person only.

The agenda will be posted on the Planning Commission website (<https://berkeleyca.gov/your-government/boards-commissions/planning-commission>) no later than 5pm on January 12, 2024.

#### PROJECT DESCRIPTION

---

Public hearing to review proposed amendments to the Demolition Ordinance, Berkeley Municipal Code Chapter 23.326, and forward a recommendation to the City Council. The proposed amendments are required pursuant to recent changes in State law that provide additional requirements for new housing development projects that involve the demolition of existing residential units. The proposed amendments would also detail additional tenant protections and affordability requirements for replacement of demolished units.

#### ENVIRONMENTAL REVIEW STATUS

---

California Public Resource Code Section 21065 defines a “project” under CEQA as “an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” The proposed ordinance amendments relate only to the requirements to demolish existing structures, and would not result in any physical changes to the environment. The proposed ordinance does not consist of a discretionary action that would permit or cause any direct or indirect change in the environment. The proposed ordinance is therefore not a project under CEQA.

#### 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:

Zoe Covello  
Planning Commission Clerk  
Email: [PlanningPC@berkeleyca.gov](mailto:PlanningPC@berkeleyca.gov)

City of Berkeley, Land Use Planning Division  
1947 Center Street, 2<sup>nd</sup> Floor  
Berkeley, CA 94704

Correspondence received by **12 pm on Tuesday, January 9, 2024**, 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 on Monday, January 15, 2024** 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.

Members of the public may submit written comments just before or at the beginning of the meeting by providing 15 printed copies of the correspondence to the Planning Commission Secretary.

### **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://berkeleyca.gov/your-government/boards-commissions/planning-commission>.

### **FURTHER INFORMATION**

---

Questions should be directed to Justin Horner, at (510) 981-7476 or [jhorner@berkeleyca.gov](mailto:jhorner@berkeleyca.gov).

Current and past agendas are available on the City of Berkeley website at: <https://berkeleyca.gov/your-government/boards-commissions/planning-commission>

## Communications

---

**From:** Covello, Zoe  
**Sent:** Wednesday, December 20, 2023 4:27 PM  
**Cc:** Shen, Alisa; Hersch, Anne  
**Subject:** 2024 Planning Commission Calendar

Good evening Commissioners,

I'm sending a reminder that our next Planning Commission meeting will take place **on Wednesday, January 17, 2024 at 6pm at the North Berkeley Senior Center.**

The 2024 calendar as approved by PC on November 1, is shown below:

Wednesday, January 17, 2024  
Wednesday, February 7, 2024  
Wednesday, March 6, 2024  
Wednesday, April 3, 2024  
Wednesday, May 1, 2024  
Wednesday, June 5, 2024  
Wednesday, July 17, 2024  
Wednesday, September 4, 2024  
Wednesday, October 9, 2024  
Wednesday, November 6, 2024  
Wednesday, December 4, 2024

Thank you and happy holidays!

Zoe

### **Zoe Covello**

Associate Planner | Planning Commission Clerk  
City of Berkeley | Land Use Planning Division  
[zcovello@cityofberkeley.info](mailto:zcovello@cityofberkeley.info)

In-office: Mon, Tues, Wed  
WFH: Thur, Fri

## Communications

---

From: Bryce Nesbitt <bryce2@obviously.com>  
Sent: Thursday, December 21, 2023 1:58 PM  
To: Planning Dept. Mailbox <Planning@berkeleyca.gov>  
Subject: Attn: Planning Commission Secretary

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Would you please forward this communication to the Planning Commission members for the 1/17 meeting?

Regarding the new SB712 requirements and Scooter Charging for Berkeley Properties.... please consider

<https://www.cnn.com/2023/11/14/us/brooklyn-fire-family-killed-lithium-battery-scooter/index.html>

brooklyn new york fire 11 12 2023

Three people were killed after a three-alarm fire broke out in a Brooklyn home Sunday, November 12, 2023.

This fatal blaze puts the city on track for a “staggering and devastating” number of fire deaths this year, according to New York City Fire Department Commissioner Laura Kavanagh.

An e-scooter with a lithium-ion battery was charging in the doorway and staircase of a Brooklyn brownstone home Sunday when it exploded and caused a wall of fire that killed Albertha West and her two relatives, according to fire officials. The blaze also left a firefighter badly injured.

Bryce Nesbitt, Berkeley CA

## Communications

---

**From:** Steven Schuyler <tell.stevenj@gmail.com>  
**Sent:** Tuesday, January 9, 2024 3:23 PM  
**To:** Planning Commission  
**Subject:** RE: Urgent Need for Regulation on Elevator Maintenance Contracts in Low-Income Apartment Complexes

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Steven Schuyler  
2175 Kittredge St,  
Berkeley, CA 94704  
C: 510-345-7866  
E: [tell.stevenj@gmail.com](mailto:tell.stevenj@gmail.com)

TO:  
City of Berkeley Planning and Zoning Department

Subject: Urgent Need for Regulation on Elevator Maintenance Contracts in Low-Income Apartment Complexes

TO WHOM IT CONCERNS,

I am writing to bring to your attention a matter of utmost importance regarding the safety and well-being of residents in low-income apartment complexes within our city. Specifically, I wish to address the urgent need for regulations requiring these complexes to maintain a current and paid-in-full maintenance contract for their elevators if they have them, with severe consequences for non-compliance.

My motivation for reaching out to you stems from a recent incident that has not only inconvenienced the residents of my apartment complex but has also raised serious concerns about the safety practices currently in place. In my building we have two elevators and they are

chronically broken. One and then the other. In the last 45, both elevators in our building malfunctioned simultaneously, leaving residents stranded and at risk. Disturbingly, when I contacted KONE, the elevator maintenance company, to report the issue, I discovered that our apartment complex had neglected to pay for their maintenance contract for a staggering 90 days.

This lapse in payment was not an oversight but a deliberate and potentially dangerous act that jeopardized the lives of every resident in the building. The thought that such negligence could occur is deeply troubling, and it underscores the need for stricter regulations to ensure the consistent and timely maintenance of elevators in low-income housing.

I respectfully urge you to consider implementing the following regulations:

- 1. Mandatory Maintenance Contracts:** All apartment complexes with low-income residents and elevators must be required by law to maintain a current maintenance contract for their elevators.
- 2. Timely Payment Requirement:** A provision should be established stipulating that fees for elevator maintenance contracts must be paid in full and on time. **Failure to do so should result in immediate consequences.**
- 3. Significant Fines for Non-Compliance:** Establish a system of significant fines for apartment complexes that fail to adhere to the mandatory maintenance contract and payment regulations. These fines should serve as a deterrent and encourage timely compliance.

Ensuring the safety and well-being of residents in our city, particularly

those in low-income housing, should be a top priority. By implementing and enforcing these regulations, we can prevent future incidents like the one my fellow residents and I recently experienced.

I appreciate your attention to this matter and trust that you will take the necessary steps to address and rectify the potential risks associated with neglected elevator maintenance contracts. Thank you for your commitment to the safety and welfare of our community.

I look forward to your reply with your intentions regarding this matter.

Sincerely,

-Steven Schuyler

--

**Maturity** is when you have the power to destroy someone who did you wrong, but you just breathe, walk away and let life take care of them.

A word of encouragement during failure is worth more than an hour of praise after success

