



Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: January 21, 2026

To: Members of the Planning Commission

From: Faye Mingham, Assistant Planner

Subject: Amendments to BMC Title 23 (Zoning) to update the regulation of Nonconforming Lot Coverage, Floor Area Ratio (FAR) and Density for Residential Uses in the Residential Multi-Unit 1 (R-1), Residential Multi-Unit 2 (R-2), Residential Multi-Unit 2A (R-2A), and Mixed Use-Residential (MU-R) Zoning Districts.

RECOMMENDATION:

Conduct a public hearing, receive public comment, and upon conclusion, make a recommendation to the City Council to adopt proposed amendments (**Attachment 1**) to BMC Title 23 (Zoning) Section 23.324.050 to update the regulation of nonconforming lot coverage, FAR and density for residential uses in the R-1, R-2, R-2A, & MU-R zoning districts.

BACKGROUND AND DISCUSSION

The proposed amendments to BMC Section 23.324.050 (Conforming and Nonconforming Structures and Buildings) were identified during the implementation of the Middle Housing zoning changes, which were adopted on July 8, 2025, to allow multi-family uses and residential additions through ministerial approval (i.e. with a Zoning Certificate) in the R-1, R-2, R-2A and MU-R zoning districts.

The provisions of BMC Section 23.324.050 require applicants to obtain a Use Permit for residential additions to, or enlargements of, structures that do not conform with the parcel's required minimum density. BMC Section 23.324.050 also includes a provision that permits nonconforming residential uses to exceed maximum lot coverage and FAR by obtaining a Use Permit.

These existing provisions conflict with the legislative intent of the Middle Housing zoning changes in two primary ways:

- 1) By requiring a Use Permit for residential additions that comply with objective development standards, they contradict City Council's intent to allow ministerial approval of code-compliant additions in the R-1, R-2, R-2A and MU-R zoning districts; and
- 2) By allowing a project to exceed the maximum lot coverage standard, they establish a discretionary pathway to exceed objective development standards that were established to proscribe the maximum building envelope.

The proposed amendments would remove the Use Permit requirement for residential projects that do not conform with minimum density and prohibit residential projects from exceeding maximum lot coverage and FAR through the Use Permit process in the R-1, R-2, R-2A, & MU-R zoning districts by exempting them from the provisions of BMC Section 23.324.050(D)(3) (*Nonconforming Coverage, FAR, and Density*) (**Attachment 1**), as follows:

3. *Nonconforming Coverage, FAR, and Density.*

(a) A Use Permit is required for an addition to and/or enlargement of a structure or building that exceeds the maximum allowed lot coverage, or maximum floor area ratio, or is nonconforming to minimum or maximum residential density.

(b) The ZAB may approve the Use Permit only if the project does not:

- i. Increase or exacerbate the nonconformity; or
- ii. Exceed the height limit.

[\(c\) The provisions of this section do not apply to Residential Uses in the R-1, R-2, R-2A or MU-R Zoning Districts.](#)

ENVIRONMENTAL REVIEW

The proposed amendments do not expand permissible development capacity or other new physical changes to the environment that are not already permitted and previously evaluated under CEQA. Adoption of the proposed amendments would in no way have a significant effect on the environment, and therefore is not subject to CEQA (CEQA Guidelines Section 15061(b)(3), Common Sense Exemption).

NEXT STEPS

Staff recommends that the Planning Commission conduct a public hearing, receive public comment, discuss the proposed ordinance amendments, and forward a recommendation

Title 23 Amendments to Nonconforming Coverage,
FAR and Density for Residential Uses in the
R-1, R-2, R-2A or MU-R Zoning Districts

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to the City Council to adopt the amendments, including any modifications identified through Commission discussion and action.

CONTACT PERSON

Faye Mingham, Assistant Planner fmingham@berkeleyca.gov, (510) 981-7484.

Attachments:

1. Resolution
 Exhibit A: Ordinance Amendments
2. Public Hearing Notice

**PLANNING COMMISSION
RESOLUTION NO. 2026-02**

A RESOLUTION OF THE CITY OF BERKELEY PLANNING COMMISSION RECOMMENDING THE CITY COUNCIL ADOPT THE PROPOSED ZONING ORDINANCE AMENDMENTS TO UPDATE THE REGULATION OF NONCONFORMING LOT COVERAGE, FLOOR AREA RATIO (FAR) AND DENSITY FOR RESIDENTIAL USES IN THE RESIDENTIAL MULTI-UNIT 1 (R-1), RESIDENTIAL MULTI-UNIT 2 (R-2), RESIDENTIAL MULTI-UNIT 2A (R-2A), AND MIXED USE-RESIDENTIAL (MU-R) ZONING DISTRICTS.

WHEREAS, the City of Berkeley regulates land uses on private land through the Berkeley Municipal Code, including Title 23 (Zoning); and

WHEREAS, Berkeley Municipal Code Chapter 23.324 (Conforming and Nonconforming Structures and Buildings) regulates conforming and nonconforming lots, uses, structures, and buildings; and

WHEREAS, on July 8, 2025 City Council adopted the Middle Housing zoning changes to allow multi-family uses and residential additions through ministerial approval in the R-1, R-2, R-2A and MU-R zoning districts; and

WHEREAS, Middle Housing zoning changes added minimum densities for the R-1, R-2, R-2A and MU-R zoning districts and established new development standards including lot coverage and FAR; and

WHEREAS, the current Berkeley Municipal Code Section 23.324.050 requires applicants to obtain a Use Permit for residential additions to, or enlargements of, structures that do not conform with the parcel's required minimum density; and

WHEREAS, the current Berkeley Municipal Code Section 23.324.050 allows nonconforming uses in the R-1, R-2, R-2A, & MU-R zoning districts to obtain a Use Permit to exceed maximum lot coverage and FAR standards; and

WHEREAS, these existing provisions conflict with the legislative intent of the Middle Housing zoning changes, which included establishing objective development standards that could not be exceeded through discretionary processes, and allowing ministerial approval of development projects, including residential additions, that confirm with objective standards; and

WHEREAS, the proposed ordinance amendments remove the Use Permit requirement for residential uses that do not conform with minimum density and prohibit residential uses from exceeding maximum lot coverage and FAR through the Use Permit process in the R-1, R-2, R-2A, & MU-R zoning districts to align with the legislative intent of the Middle Housing zoning changes; and

WHEREAS, on January 21, 2026, the Planning Commission held a public hearing and considered all public comments received, the presentation by City staff, the staff report, and all other pertinent documents regarding the proposed request; and

Item 10B: Nonconforming Uses BMC Amendments
ATT 1: PC Resolution and Ordinance Changes
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WHEREAS, a public hearing notice was published in the Berkeley Voice and posted in three public places pursuant to California Government Code Section 65090 on December 26, 2025 for the public hearing held on January 21, 2026; and

WHEREAS, all documents constituting the record of this proceeding are and shall be retained by the City of Berkeley Planning and Development Department, Land Use Planning Division, at 1947 Center Street, Berkeley, California; and

WHEREAS, the proposed ordinance would require by-right approval of certain qualifying housing development projects on specific sites. An action that does not include agency discretion does not meet the definition of a project (California Public Resources Code §21065) under CEQA. Therefore, projects approved pursuant to the proposed ordinance would not be subject to CEQA; and

NOW, THEREFORE, IT BE RESOLVED that the Planning Commission does hereby recommend to the City Council of the City of Berkeley to adopt the amendments to Berkeley Municipal Code (BMC) Chapter 23.324.050 contained in Exhibit A, attached hereto and hereby incorporated by reference;

Pursuant to Berkeley Municipal Code Section 23.412.060, the Planning Commission makes the following findings to support its recommendation for the Zoning Ordinance amendments:

- (1) **The proposed amendment is consistent with the General Plan and any applicable specific plan or area plan.** The amendments further General Plan policies including Program 29 of the Housing Element – Middle Housing and Affirmatively Furthering Fair Housing. The Proposed amendments are consistent with Zoning Ordinance, Zoning Map and General Plan amendments adopted by the City Council at their meeting on July 8, 2025.
- (2) **The proposed amendment is consistent with state law.** The proposed amendments would require by-right approval of certain qualifying housing development projects. An action that does not include agency discretion does not meet the definition of a project (California Public Resources Code §21065) under CEQA. Therefore, projects approved pursuant to the proposed ordinance would not be subject to CEQA.
- (3) **The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare.** The Zoning Ordinance amendments serve the public interest by simplifying and streamlining the approval of residential uses in the affected zoning districts.
- (4) **The proposed amendment is internally consistent with other applicable provisions of the Zoning Ordinance.** The proposed Zoning Ordinance amendments apply consistently to residential uses in the R-1, R-2, R-2A and MU-R zoning districts and align with the Middle Housing zoning changes adopted on July 8, 2025.

Item 10B: Nonconforming Uses BMC Amendments
ATT 1: PC Resolution and Ordinance Changes
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I HEREBY CERTIFY the foregoing resolution was passed and adopted by the Planning Commission of the City of Berkeley, at a regular meeting thereof, held on the 21st day of January 2026, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Justin Horner, Principal Planner
SECRETARY TO THE PLANNING COMMISSION

EXHIBIT A
DRAFT

ORDINANCE NO. -N.S.

AMENDMENTS TO THE CONFORMING AND NONCONFORMING STRUCTURES AND BUILDINGS CHAPTER (BMC 23.324.050) TO UPDATE THE REGULATION OF NONCONFORMING LOT COVERAGE, FLOOR AREA RATIO (FAR) AND DENSITY FOR RESIDENTIAL USES IN THE RESIDENTIAL MULTI-UNIT 1 (R-1), RESIDENTIAL MULTI-UNIT 2 (R-2), RESIDENTIAL MULTI-UNIT 2A (R-2A), AND MIXED USE-RESIDENTIAL (MU-R) ZONING DISTRICTS.

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

Section 1. That Berkeley Municipal Code Section 23.324.050(D)(3) is amended to read as follows:

23.324.050 Conforming and Nonconforming Structures and Buildings.

D. Expansion and Alteration

3. Nonconforming Coverage, FAR, and Density.

(a) A Use Permit is required for an addition to and/or enlargement of a structure or building that exceeds the maximum allowed lot coverage, or maximum floor area ratio, or is nonconforming to minimum or maximum residential density.

(b) The ZAB may approve the Use Permit only if the project does not:

- i. Increase or exacerbate the nonconformity; or
- ii. Exceed the height limit.

(c) The provisions of this section do not apply to Residential Uses in the R-1, R-2, R-2A or MU-R Zoning Districts.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



PLANNING COMMISSION

Notice of Public Hearing

Wednesday, January 21, 2026

Adoption of Zoning Ordinance Amendments to Title 23 of the Berkeley Municipal Code to update the Regulation of Nonconforming Lot Coverage, Floor Area Ratio (FAR) and Density for Residential Uses in the Residential Multi-Unit 1 (R-1), Residential Multi-Unit 2 (R-2), Residential Multi-Unit 2A (R-2A), and Mixed Use-Residential (MU-R) Zoning Districts.

The Planning Commission of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 23.412.040, on **Wednesday, January 21, 2026 at 6:30 p.m.** at the **North Berkeley Senior Center**, 1901 Hearst Ave, Berkeley (wheelchair accessible). Planning Commission meetings will be held in person and online via by zoom. The link to join the zoom meeting will be shared with the meeting agenda. The agenda will be posted on the Planning Commission website (<https://berkeleyca.gov/your-government/boards-commissions/planning-commission>) no later than 5:00 p.m. on Wednesday, January 14, 2026.

PROJECT DESCRIPTION

The proposed Zoning Ordinance amendments to BMC Section 23.324.050 update the regulation of Nonconforming Lot Coverage, FAR and Density in the R-1, R-2, R-2A, & MU-R zoning districts to remove the Use Permit requirement for residential uses that do not conform with minimum density and prohibit residential uses from exceeding maximum lot coverage and FAR through the Use Permit process.

LOCATION: The proposed Zoning Code amendments would apply to residential uses in the R-1, R-2, R-2A, & MU-R zoning districts.

<https://berkeley.maps.arcgis.com/apps/webappviewer/index.html?id=2c7dfafbb1f64e159f4fdf28a52f51c6&showLayers=Berkeley%20Parcels;Planning%20and%20Building>

ENVIRONMENTAL REVIEW STATUS

The proposed zoning ordinance amendments do not include any allowances for additional development capacity or other new physical changes to the environment that are not already permitted and previously evaluated under CEQA. Adoption of the proposed amendments would in no way have a significant effect on the environment and therefore is not subject to CEQA (CEQA Guidelines Section 15061(b)(3), Common Sense Exemption).

PUBLIC COMMENT & FURTHER INFORMATION

All persons are welcome to attend the 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:

Title 23 Amendments to Nonconforming Lot Coverage,
FAR and Density for Residential Uses in the
R-1, R-2, R-2A or MU-R Zoning Districts

NOTICE OF PUBLIC HEARING
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Faye Messner
Planning Commission Clerk
Email: PlanningPC@berkeleyca.gov

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

Correspondence received by **12pm on Wednesday, January 14, 2026** 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 19, 2026** 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 **12pm on Tuesday, January 20, 2026** 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 12pm on Tuesday, January 20, 2026** 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 12 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 Faye Messner, at (510) 981-7484 or fmessner@berkeleyca.gov. Current and past agendas are available on the City of Berkeley website at: <https://berkeleyca.gov/your-government/boards-commissions/planning-commission>.