



Office of the City Manager

PUBLIC HEARING
March 10, 2026

To: Honorable Mayor and Members of the City Council
From: Paul Buddenhagen, City Manager
Submitted by: Jordan Klein, Director, Planning and Development Department
Subject: Amendments to BMC Title 23 (Zoning) to update the regulation of Nonconforming Lot Coverage, Floor Area Ratio and Density for Residential Uses in selected Zoning Districts

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt the first reading of an ordinance amending BMC Title 23 Section 23.324.050 to update the regulation of nonconforming lot coverage, 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.

FISCAL IMPACTS OF RECOMMENDATION

Adoption of the recommended amendment would not result in any costs or revenues for the City.

BACKGROUND

The need for the proposed amendment to BMC Section 23.324.050 (Conforming and Nonconforming Structures and Buildings) was identified during the implementation of the Middle Housing zoning changes, which were adopted on July 8, 2025. The Middle Housing zoning changes 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.

Middle Housing established new objective development standards and a minimum density that define a project's allowable density and maximum building envelope. Projects that meet these objective development standards can be approved ministerially.

The provisions of BMC Section 23.324.050 conflict with the intent of Middle Housing because they require applicants to obtain a Use Permit to expand structures that do not conform with the parcel's required minimum density, even though they would otherwise

meet the objective development standards. BMC Section 23.324.050 also conflicts with Middle Housing because it includes a provision that permits nonconforming residential uses to exceed maximum lot coverage and FAR by obtaining a Use Permit, even though Middle Housing standards were established to definitively define the building envelope through objective standards that cannot be exceeded with additional permits.

On January 21, 2026, staff presented a proposed Zoning Ordinance amendment to the Planning Commission at a duly noticed public hearing (**Attachment 2**). The Planning Commission unanimously adopted a resolution recommending an amended version of the staff recommendation for adoption by City Council.

CURRENT SITUATION AND ITS EFFECTS

The existing provisions of BMC Section 23.324.050 maintain discretionary approval pathways for residential projects, and therefore 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 with a Use Permit, they establish a discretionary pathway to exceed objective development standards that were established to definitively proscribe the maximum building envelope.

DISCUSSION

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.

RATIONALE FOR RECOMMENDATION

By exempting residential projects in the Middle Housing zoning districts from the provisions of 23.324.050(D)(3), the proposed amendment would:

- Reflect Middle Housing’s intent to permit ministerial approval of code-compliant residential projects by removing the requirement for a Use Permit when a proposed residential addition to a nonconforming structure complies with objective development standards.
- Reflect Middle Housing’s intent to have a single set of objective development standards that definitively proscribe the maximum building envelope by removing a discretionary pathway to exceed the Middle Housing development standards.

ALTERNATIVE ACTIONS CONSIDERED

At its January 21, 2026 meeting the Planning Commission agreed that BMC Section 23.324.050(D)(3) conflicts with the legislative intent of Middle Housing by retaining discretionary approval pathways for additions to, and enlargements of, nonconforming residential structures in the R-1, R-2, R-2A and MU-R zoning districts. The Planning Commission amended the proposed Zoning Ordinance language intending to prevent nonconforming projects from further exacerbating nonconformities:

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, as long as the project does not increase or exacerbate the nonconformity nor exceed the height limit.

The Planning Commission’s intent was to ensure that the exemption did not inadvertently exclude projects that would otherwise comply with development standards. However, staff finds that the Commission’s proposed language retains a discretionary approval pathway that would permit projects to exceed Middle Housing development standards that were established to definitively proscribe the maximum building envelope. The Planning Commission’s language exempts projects from the requirements 23.324.050(D)(3), “as long as the project does not increase or exacerbate the nonconformity nor exceed the height limit.” This language implies that if a project *does* increase or exacerbate a nonconformity, it would be subject to this section, and could therefore apply for a Use Permit to exceed maximum lot coverage. At its meeting of January 21, 2026, the Planning Commission members agreed that they did not want to create a discretionary pathway to exceed Middle Housing standards. Their proposed language, however, preserves a discretionary pathway. To address this, the Ordinance presented with this report reflects staff revisions to the Planning Commission language, to meet its intent of removing the discretionary pathway.

In addition, BMC Section 23.324.050(D)(1) permits additions or enlargements to nonconforming structures, as long as “the addition or enlargement complies with all applicable laws.” An addition, therefore, can be added to a nonconforming structure as long as it complies with all other Middle Housing development standards.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The proposed Zoning Ordinance amendment does 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 amendment 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).

The Middle Housing zoning changes are intended to encourage dense, infill development in existing urbanized areas. Such development is associated with fewer transportation-related emissions and greater overall energy efficiency, helping the City meet the goals of its Climate Action Plan.

CONTACT PERSON

Faye Mingham, Assistant Planner, Planning and Development Department, (510) 981-7484

Amendments to Title 23 regarding Nonconforming Uses,
FAR, and Density in certain Residential Zoning Districts

PUBLIC HEARING
March 10, 2026

Attachments:

- 1: Ordinance
- 2: PC Staff Report 01-21-2026
- 3: Public Hearing Notice

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 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:

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

Planning Commission
January 21, 2026

- 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

Planning Commission
January 21, 2026

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

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL
AMENDMENTS TO BMC TITLE 23 ZONING**

The public may participate in this hearing by remote video or in-person.

Notice is hereby given by the City Council of the City of Berkeley that on **TUESDAY, MARCH 10, 2026 at 6:00 P.M.** a public hearing will be conducted to consider the Planning and Development Department proposal 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 hearing will be held on March 10, 2026 at 6:00 p.m. in the School District Board Room, located at 1231 Addison Street, Berkeley CA 94702.

For further information, please contact Faye Mingham, Assistant Planner at (510) 981-7484.

A copy of the agenda material for this hearing will be available on the City's website at <https://berkeleyca.gov/> as of February 26, 2026. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology, as well as any health and safety requirements for in-person attendance.**

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, or e-mailed to council@berkeleyca.gov in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record 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 the City Council, 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 City Clerk. 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 City Clerk at (510) 981-6900 or clerk@berkeleyca.gov for further information.

Published: February 27, 2026 - The Berkeley Voice

Public Hearing required by BMC 23.412.050 and Govt Code 65853; notice provided according to Govt Code 65090 and BMC 23.404.040.

~~~~~  
I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on February 26, 2026.

---

Mark Numainville, City Clerk

