



Office of the City Manager

PUBLIC HEARING

January 29, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Timothy Burroughs, Director, Planning and Development Department

Subject: Density Bonus Ordinance Revisions - Repeal Existing Section 23C.12.050 (State of California Density Bonus Requirements) and Adopt New Chapter 23C.14 (Density Bonus)

RECOMMENDATION

Conduct a public hearing, and upon conclusion, adopt the first reading of Zoning Ordinance amendments that repeal obsolete Density Bonus regulations (Section 23C.12.050: State of California Density Bonus Requirements) and adopt a new, standalone Density Bonus chapter (Chapter 23C.14) that complies with California State Government Code 65915–65918: Density Bonuses and Other Incentives.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley's Density Bonus ordinance is currently embedded in the Inclusionary Housing Requirements chapter of the Zoning Ordinance (Chapter 23C.12). That ordinance (Section 23C.12.050: State of California Density Bonus Requirements) was most recently amended in 2005 and needs updating because it references obsolete State regulations and includes requirements that are no longer in effect. The proposed amendments (see *Attachment 1*) create a stand-alone Density Bonus chapter in the Zoning Ordinance that accurately reflects and complies with State law.¹

The proposed amendments comprise the first part of Planning Commission's response to six Density Bonus-related City Council referrals. Some of these referrals specifically mention modifications to Density Bonus, whereas others suggest modifying Berkeley's development standards. The common thread that ties the referrals together is clarity around density standards or increased residential densities in return for community benefits most often valued as affordable housing (see *Attachment 2*). The Planning Commission and its Subcommittee on Affordable Housing reviewed the six referrals and developed a multi-phase approach to address referrals through an updated Density Bonus ordinance:

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

- 1) Bring the Zoning Ordinance into compliance with State Density Bonus requirements and document existing practices;
- 2) Develop a local density incentive program that would result in affordable housing production in excess of what is provided by State Density Bonus; and
- 3) Analyze and recommend modifications to Berkeley’s density standards.

The proposed Zoning Ordinance amendment included with this report, if adopted, will complete Phase 1. This step is necessary to set a new framework within which Phase 2 and Phase 3 policies can be implemented.

BACKGROUND

State Density Bonus provides incentives for developers to include affordable housing units within market-rate projects by granting increased density, and relief through concessions related to financial feasibility of the proposed project and waivers to development standards.

Density bonuses of up to 35% of the base project are mandated by the State and are based on the percentage of affordable units provided at various income levels². See below for a summary of the relationship between income levels for the inclusionary units, the percentage of affordable units provided, and the density bonus awarded.

Summary of Density Bonus Awards		
Household Income Level	Percentage of Affordable Units in Base Project (range)	Density Bonus (market rate units)
Very Low Income	5%	20%
Very Low Income	11%	35%
Low Income	10%	20%
Low Income	20%	35%
Moderate Income	10%	5%
Moderate Income	40%	35%

To illustrate how this works, a 100-unit base project with 11 very low income units would receive a 35-percent density bonus, resulting in 135 units (11 affordable and 124 market rate). If that same 100-unit base project included 10 moderate income units, it would only receive a 5-percent density bonus, resulting in 105 units (10 affordable and 95 market rate). This structure balances the public and private outcomes based on the

² Very Low Income is defined as 30-50% of Area Median Income, Low Income is defined as 50-80% Area Median Income, and Moderate Income is defined as 80-120% Area Median Income.

assumed value and cost of the affordable units, targeted income levels, and remaining market rate units.

All cities and counties are required to adopt an ordinance specifying how they will comply with State Density Bonus regulations.

On December 6, 2017, and February 7, 2018, the Planning Commission's Subcommittee on Affordable Housing (the Subcommittee) reviewed the City's Density Bonus zoning language and related referrals. Due to the complexity of State Density Bonus regulations and the scope of the six referrals, the Subcommittee suggested a three-phased approach to accomplish this work. This multi-stage approach is currently underway. Below is a summary of the work that has been accomplished to date and on-going research that will inform next steps:

- Phase 1: Develop Zoning Ordinance Amendments and Administrative Regulations

Staff prepared Zoning Ordinance language to support Phase 1 for Planning Commission consideration on February 21, 2018. Planning Commission discussed these changes, then conducted a Public Hearing on March 21, 2018 on Zoning Ordinance amendments related to Phase 1 of Density Bonus. Along with Zoning Ordinance amendments, staff revised Administrative Regulations (see *Attachment 3*) to document the process by which the Planning Department evaluates density bonus projects. Administrative Regulations are intentionally written in simple terms and provide a step-by-step procedure for staff to follow, maintaining consistency between projects and amongst staff. Administrative Regulations also allow the Planning Department to remain nimble in its workflow as State Density Bonus law continues to change.

- Phases 2 & 3: Conduct Research to Guide Local Enhancements to Density Bonus

In April 2018, the Joint Subcommittee for the Implementation of State Housing Law (JSISHL) inherited the work of the Planning Commission's Subcommittee on Affordable Housing. JSISHL considered modifications to Berkeley's Density Bonus program at its May and July meetings. During the July meeting, a number of questions were posed that either related to on-going projects or prompted new research. These efforts are described below. As information is collected and analyzed, staff will share results with JSISHL and Planning Commission. Phases 2 and 3 are expected to be completed in 2019.

Analysis of State Laws

In October 2017, the California legislature passed and the Governor signed a package of 15 housing bills, all of which went into effect on or before January 1, 2018. These laws addressed a variety of issues related to California's housing crisis, such as the timing of land use approvals, limits on local discretionary authority over housing projects, requirements and reporting deadlines for Regional Housing Needs

Allocation (RHNA) and housing element reports, and new funding measures. Staff presented an analysis of these laws to JSISHL on May 17, 2018 (see *Attachment 4*). This analysis included a discussion of Density Bonus.

One year later, the Governor signed into law 16 new housing laws that went into effect on January 1, 2019. Four of these bills amend State Density Bonus law (e.g. allow use of floor area ratio (FAR) and student housing projects in Density Bonus) and relate directly to Berkeley's Density Bonus efforts. This package of housing legislation is intended to further the effectiveness of the bills introduced in 2017 and increase affordable housing production in the state. The Planning Department has developed a matrix of 2017 and 2018 State housing legislation (see *Attachment 5*) to track newly adopted regulations and determine steps necessary to comply with changing State law.

Separately, in an effort to understand the challenges of administering State Density Bonus in the context of Berkeley's zoning regulations, the Planning Department has been analyzing proposed, entitled and completed Density Bonus projects applications. This effort includes review of best practices from neighboring and similar cities, and conversation with staff and developers to better understand how Density Bonus is being administered and its outcome in Berkeley.

Analysis of Development Standards

Parallel to the work mentioned above, the Planning Department is analyzing existing development standards in order to address the referrals presented in *Attachment 2*. Described below are four separate yet related projects that aim to better understand existing conditions and inform development of Density Bonus policies in Phase 2 and Phase 3.

Student Housing in the Southside – Staff is researching a number of questions in order to respond to ideas presented in the *More Student Housing Now Resolution* (see *Attachment 6*) and in Southside-focused referrals. The overarching theme of this work focuses on mechanisms that allow for increased density to accommodate new and affordable student housing. Research ranges from a capacity analysis to better understand built conditions in the Southside to interviews with property-owners to gauge interest in development incentives that could be implemented in Phase 2.

Density Standards in Commercial Corridors – The City of Berkeley has not established parcel-based density standards for higher density residential districts (R-3 and above) or for commercial/mixed-use zoning districts. Density Bonus projects rely on zoning development standards and basic Building Code considerations to define a “base project” from which bonus calculations are derived. The Planning Department is currently working with a consultant to assess Density Bonus project outcomes along Berkeley's commercial corridors,

where most high-density residential projects are locating. These results will be compared to best practices from other cities and will guide development of potential new density standards in Phase 3.

GIS Analysis of Development Standards – In order to evaluate referrals that request additional density and/or modifications to development standards, the Planning Department is collaborating with Berkeley’s Information Technology Department to use available technology and data to visualize existing development conditions. This same methodology will be used to evaluate future scenarios that reflect findings from concurrent research projects mentioned in this report. This effort will inform Phases 2 and 3.

Adeline Corridor Plan – During the Adeline Corridor planning process the community has voiced their desire for community benefits, including affordable housing for displaced residents and communities of color, in return for development in the Adeline Corridor. Although not directly related to the referrals presented in *Attachment 2*, the work informing the community benefit structure and/or zoning regulations can be used to guide city-wide proposals related to Phases 2 and 3.

Analysis of Development Fees

In order to understand the City’s ability to incentivize affordable housing development, the Planning Department has hired a consultant to analyze fees imposed on Berkeley development projects and assess development feasibility under a variety of fee scenarios. The results of this study will be used in Phase 2 to help develop policies that encourage construction of affordable housing above and beyond the parameters of State Density Bonus.

ENVIRONMENTAL SUSTAINABILITY

Density Bonus is a State mandated planning and permitting tool that brings flexibility into the zoning process by providing developer incentives in exchange for affordable housing. Development projects that include affordable units encourage social interactions of diverse residents thereby building a connected, resilient community. Density Bonus projects also address Berkeley’s Climate Action Plan goal to increase compact development patterns throughout the City.

RATIONALE FOR RECOMMENDATION

Zoning Ordinance amendments in this report codify existing practice, respond to changes in State law, and provide a framework for future local programs and policies.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Timothy Burroughs, Director, Planning and Development Department, 510-981-7400

Steven Buckley, Land Use Planning Manager, Land Use Planning Division, 510-981-7411

Alene Pearson, Principal Planner, Land Use Planning Division, 510-981-7489

Attachments:

- 1: Ordinance
- 2: Council Referrals
- 3: Administrative Regulations
- 4: May 17, 2018 JSISHL Staff Report on 2017 Housing Package
- 5: Matrix of 2018 & 2019 Housing Regulations
- 6: *More Student Housing Now* City Council Resolution
- 7: Public Hearing Notice

ORDINANCE NO. -N.S.

RESCINDING SECTION 23C.12.050 OF THE BERKELEY MUNICIPAL CODE AND ADDING CHAPTER 23C.14 TO THE BERKELEY MUNICIPAL CODE REGARDING DENSITY BONUS

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

Section 1. That Section 23C.12.050 of the Berkeley Municipal Code is hereby rescinded.

Section 2. That Chapter 23C.14 is hereby added to the Berkeley Municipal Code to read as follows:

Chapter 23C.14 Density Bonus

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

23C.14.010 Purpose

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

23C.14.020 Definitions

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

- A. "Administrative Regulations" means guidelines and procedures promulgated by the Planning Director that may be modified from time to time to effectively implement this ordinance.
- B. "Base Project" means the maximum allowable residential density (number and type of units) on a housing development site pursuant to the applicable zoning district or,

where no density standard is provided, as set forth in the Administrative Regulations before applying the density bonus.

- C. "Density Bonus Units" means those residential units added to the Base Project pursuant to the provisions of Section 65915 and this Chapter.
- D. "Housing Development" has the meaning set forth in Section 65915.
- E. "Incentive and Concession" means an incentive or a concession as the terms are used in Section 65915 and in particular as defined in Section 65915(k) thereof.
- F. "Qualifying Unit" means a unit that is provided at a below market-rate rent or sales price as set forth in Section 65915 in order to receive a Density Bonus and/or Waivers and Reductions and/or Incentives and Concessions.
- G. "Section 65915" means California Government Code Section 65915, as it may be amended from time to time.
- H. "Waiver and Reduction" means a waiver or a reduction as the terms are used in Section 65915 and in particular in Section 65915(e) thereof, and means any and all changes to or exemptions from physical lot development standards that are required to avoid precluding the construction of a Housing Development with Density Bonus Units, as set forth in Section 65915(e).

23C.14.030 Application Requirements

In addition to any other information required by this Title, an application for a Density Bonus must include the following information:

- A. How the proposed project will satisfy the eligibility requirements of Section 65915.
- B. For those districts without density standards, a density bonus schematic as set forth in the administrative regulations;
- C. The proposed size of the Density Bonus pursuant to Section 23C.14.040.
- D. Any Waivers and Reductions that are sought under Section 65915(e) that would be required to accommodate the Housing Development including the Density Bonus Units.
- E. Any Incentives and Concessions that are sought under Section 65915(d) accompanied by documentation of resulting cost reductions to provide for affordable housing costs.
- F. Any requested additional bonus units under Section 65915(n).

- G. Any requested parking reductions under Section 65915(p).
- H. An applicant may elect in writing to receive a Density Bonus that is less than that mandated by Section 65915, including a Density Bonus of 0 (zero). In such cases, the applicant will retain their entitlement to Incentives and Concessions.
- I. Documentation of how project complies with regulations regarding replacement units as described in Section 65915(c)(3).

23C.14.040 Density Bonus Calculations and Procedures

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

23C.14.050 Incentives and Concessions

- A. For purposes of this Chapter, the number of Incentives and Concessions are counted as follows:
 - 1. Any Incentive and Concession that would otherwise require discretionary approval by the Zoning Officer or Zoning Adjustments Board of any single dimensional lot development standard, such as height or setbacks, or any single quantitative lot development standard, such as parking or open space, counts as one.
 - 2. A proposed Incentive and Concession that would involve exceedance of a single physical lot development standard counts as one even if that exceedance would otherwise require more than one Permit (e.g., extra height may require Permits for height, FAR, and/or number of stories but would count as one Incentive and Concession for height).
 - 3. Where it is ambiguous as to whether a proposed Incentive and Concession involves one or more dimensional or quantitative lot development standards, the stricter interpretation shall apply, as determined by the Zoning Officer.
- B. In determining whether it can make the finding set forth in Section 65915(d)(1), the City will base its determination and any finding on a comparison of the project including the Density Bonus and requested Incentives and Concessions to the Base Project.
- C. The City is not required to deny a proposed Incentive and Concession solely because it is able to make a finding under Section 65915(d)(1).

- D. Unless denied under Section 65915, Incentives and Concessions will be exempt from discretionary review or Permits under this Title, other than design review.
- E. Incentives and Concessions must be justified based on the financial needs of the project, including reduced costs and increased revenue, to provide for the affordable housing costs of the qualifying units and for the project overall.

23C.14.060 Waivers and Reductions

- A. An applicant may submit to the City a proposal for Waivers and Reductions of development standards that physically preclude construction of a development project meeting the criteria of Section 65915(b).
- B. The applicant may request, and the City shall hold, a meeting to discuss Waivers and Reductions.
- C. The City may deny Waivers and Reductions if a Waiver or Reduction would have adverse impacts and/or no mitigation for such impacts, as described in Section 65915(e)(1).

23C.14.070 Qualifying Units

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

23C.14.080 Special Provisions

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

- A. [RESERVED]
- B. In addition to other required findings, Special Provisions may be awarded only when the City finds that the Density Bonus project complies with the purposes of the district in which the project is located.

23C.14.090 Regulatory Agreements

Prior to issuance of a Certificate of Occupancy for a Housing Development that has received a Density Bonus, the applicant must enter into a regulatory agreement in a form provided by the City that implements Section 65915 and this Chapter.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old Berkeley City Hall, 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.



Kriss Worthington

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ACTION CALENDAR

July 12, 2016

(Continued from May 24, 2016)

To: Honorable Mayor and Members of the City Council
From: Councilmember Kriss Worthington

Subject: Allow Increased Development Potential in the Telegraph Commercial (C-T) District Between Dwight Avenue and Bancroft Avenue and Refer to the City Manager to Develop Community Benefit Requirements, with a Focus on Labor Practices and Affordable Housing

RECOMMENDATION

That the Council immediately amend the Berkeley Zoning Ordinance to allow increased development potential in the Telegraph Commercial (C-T) District between Dwight Avenue and Bancroft Avenue and refer to the City Manager to develop community benefit requirements, with a focus on labor practices and affordable housing.

BACKGROUND

The City Council sent a referral to the Planning Commission on June 30, 2015, regarding the conflict between the 5.0 FAR adopted by the Council for the C-T District and the other development regulations in the district.

On April 20, 2016, the Planning Commission considered modifying the development standards and community benefits. The Planning Commission voted to recommend the following to the Berkeley City Council:

- a) That the staff proposed Zoning Ordinance development standards for buildings adjacent to Bancroft Way be applied to the entirety of the C-T District north of Dwight Way; and
- b) That the Council develop community benefit requirements, with a focus on labor practices and affordable housing, before implementation of the proposed Zoning Ordinance language.

FINANCIAL IMPLICATIONS:

Minimal.

ENVIRONMENTAL SUSTAINABILITY:

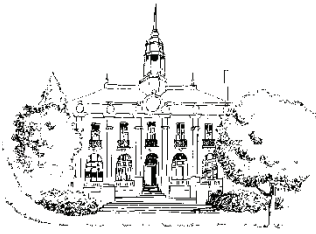
Consistent with Berkeley's Environmental Sustainability Goals and no negative impact.

CONTACT PERSON:

Councilmember Kriss Worthington 510-981-7170

Attachment:

1. April 20, 2016 Planning Commission Staff Report on "Changes to the Zoning Ordinance to Allow Development Potential Increases in the Telegraph Avenue Commercial (C-T) District"



Kriss Worthington
 Councilmember, City of Berkeley, District 7
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CONSENT CALENDAR

May 30, 2017

To: Honorable Mayor and Members of the City Council

From: Councilmembers Kriss Worthington and Ben Bartlett, and Mayor Arreguin

Subject: Planning Commission Referral for a Pilot Density Bonus Program for the Telegraph Avenue Commercial District to Generate Revenue to House the Homeless and Extremely Low-Income Individuals

RECOMMENDATION

That the Berkeley City Council refer a City Density Bonus policy for the Telegraph Avenue Commercial District to the Planning Commission to generate in-lieu fees that could be used to build housing for homeless and extremely low-income residents.

BACKGROUND

Under current state law, new development projects that get a density bonus, allowing up to 35 percent more density, are required to build inclusionary housing. Inclusionary housing is typically defined as below-market rate housing for people who earn 50 percent or 80 percent of the Area Median Income (AMI).

While it's great that developers are including some affordable housing in their market-rate projects, affordable housing for the homeless and extremely low-income who don't qualify for inclusionary units can be provided if developers instead paid fees into the Housing Trust Fund. This can be achieved through the use of a City Density Bonus for the Telegraph Avenue Commercial District, an area where many residents have expressed support for housing the homeless and the extremely low-income.

The City bonus fee would be equal to the in-lieu affordable housing mitigation fee, currently set at \$34,000 per unit. Fees paid into the fund could be leveraged with other Federal, State and Regional affordable housing sources, resulting in significantly more affordable housing built through the Housing Trust Fund than currently available. The City has important policy proposals to assist the homeless and extremely low-income residents that urgently need funding.

The pilot program of a City Density Bonus in the Telegraph Avenue Commercial District could go a long way toward easing Berkeley's critical housing shortage by increasing incentives for developers to add more housing and give the city greater ability to deliver affordable housing.

FISCAL IMPACTS

This proposal will generate millions in new revenue to the Housing Trust Fund.

ENVIRONMENTAL IMPACTS

The proposed change is consistent with City Climate Action Plan goals supporting increased residential density. Additionally, new residential construction is subject to more stringent green building and energy efficiency standards and will help reduce per capita greenhouse gas emissions.

CONTACT PERSON

Councilmember Kriss Worthington 510-981-7170

**ANNOTATED AGENDA
BERKELEY CITY COUNCIL MEETING
Tuesday, July 11, 2017
6:00 P.M.**

COUNCIL CHAMBERS - 2134 MARTIN LUTHER KING JR. WAY

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

Preliminary Matters

Roll Call: 6:03 p.m.

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

Absent: Harrison

Councilmember Harrison present 6:14 p.m.

Ceremonial Matters:

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

City Auditor Comments:

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

City Manager Comments:

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

Public Comment on Non-Agenda Matters: 3 speakers.

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

Consent Calendar

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

Vote: All Ayes.

Action Calendar – Old Business

29. **Housing Accountability Act** (*Continued from June 13, 2017. Item includes supplemental materials.*)

From: City Manager

Contact: Zach Cowan, City Attorney, 981-6950

Action: 5 speakers. M/S/C (Arreguin/Davila) to refer to the City Manager, Planning Commission, Zoning Adjustments Board, and Design Review Committee to consider the following actions, and others they may find appropriate, to address the potential impacts of the Housing Accountability Act and to preserve local land use discretion:

1. Amend the General Plan and Zoning Ordinance to adopt numerical density and/or building intensity standards that can be applied on a parcel-by-parcel basis in an easy and predictable manner. These would constitute reliable and understandable “objective general plan and zoning standards” that would establish known maximum densities. This could be done across the board or for specified districts.
2. Devise and adopt “objective, identified written public health or safety standards” applicable to new housing development projects.
3. Adopt “design review standards that are part of ‘applicable, objective general plan and zoning standards and criteria’”.
4. Quantify and set objective zooming standards and criteria under the first sentence of Government Code Section 65589.5(j) for views, shadows, and other impacts that often underlie detriment findings.

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

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

Recess: 9:10 p.m. – 9:27 p.m.

30. **Amend BMC Sections 3.78.030, 040, and 050 Related to Commission Procedures** (*Continued from June 13, 2017*)

From: Human Welfare and Community Action Commission

Recommendation: Adopt a Resolution requesting that the City Manager examine the addition of language to the Berkeley Municipal Code that clarifies aspects of the management of City of Berkeley commissions and the removal and appointment of commissioners.

Financial Implications: See report

Contact: Wing Wong, Commission Secretary, 981-5400

Action: Moved to Consent Calendar. No action taken by the City Council on this item.

Vote: Ayes – Maio, Bartlett, Harrison, Hahn, Wengraf, Worthington, Droste, Arreguin; Noes – Davila.



Kriss Worthington

Councilmember, City of Berkeley, District 7
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CONSENT CALENDAR
 10/31/2017

To: Honorable Mayor and Members of the City Council
 From: Councilmembers Kriss Worthington and Kate Harrison, and Mayor Arreguin
 Subject: City Manager and Planning Commission Referral: Facilitate primarily Student Housing by a twenty feet height increase and adjust Floor Area Ratio in the R-SMU, R-S and R-3 areas only from Dwight to Bancroft and from College to Fulton

RECOMMENDATION: Refer to the City Manager and Planning Commission to facilitate primarily Student Housing by amending the Zoning Ordinance to add a twenty feet height increase and adjust the Floor Area Ratio in the R-SMU, R-S and R-3 areas only from Dwight to Bancroft and from College to Fulton.

BACKGROUND:

In the last few years, students have become increasingly active in proposing ways to increase student housing. Housing is urgently needed in close proximity to the UC Berkeley campus as rents increase and the University population steadily rises. Students, recent graduates, employees of the University, and local businesses contribute to the local economy, create jobs for the local community, and greatly enrich the community through their presence. Implementing this action would provide a place to live for many individuals who would otherwise have to reside far from campus. Oftentimes, the quest to find living spaces is emotionally taxing for students and can decrease academic performance or leave students without affordable and safe places to live.

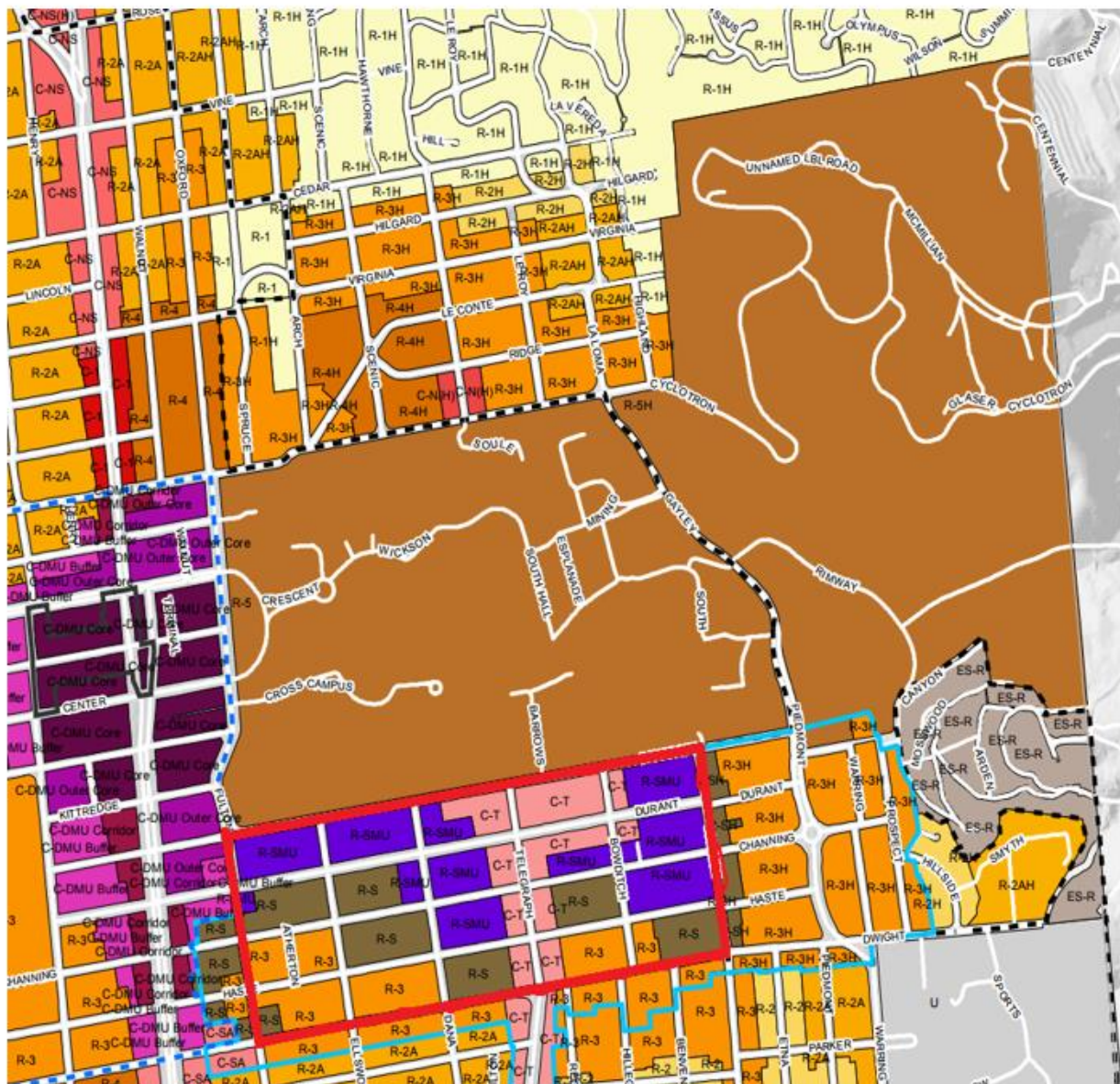
Increasing density in the area surrounding campus proves better for the environment, better for campus area businesses, and better for students. By reducing commute times, students will opt to walk or bike to class, reducing congestion on the road. A shorter commute will also increase student safety and allow students to participate in extracurricular activities that may run into the evening because students will not have to worry about how they will get home. An enhanced sense of safety in the surrounding region is beneficial for all in the community. Finally, higher density benefits campus area businesses because it brings them more customers, which supports the local economy. Previous efforts to increase south-side campus housing improved project viability specifically for the very small area of the C-T zoned blocks. Unfortunately, even blocks on Bancroft directly across from the University still have excessive restrictions.

FINANCIAL IMPLICATIONS: Minimal.

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

CONTACT PERSON: Councilmember Kriss Worthington 510-981-7170

Attachment:



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

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

**ANNOTATED AGENDA
BERKELEY CITY COUNCIL MEETING
Tuesday, November 28, 2017
6:00 P.M.**

COUNCIL CHAMBERS - 2134 MARTIN LUTHER KING JR. WAY

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – LINDA MAIO
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DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – KRISS WORTHINGTON
DISTRICT 8 – LORI DROSTE

Preliminary Matters

Roll Call: 6:04 p.m.

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

Absent: Maio, Wengraf

Ceremonial Matters:

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

City Auditor Comments:

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

City Manager Comments:

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

Public Comment on Non-Agenda Matters: 8 speakers.

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

Action Calendar – Old Business

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

From: City Manager

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

Financial Implications: None

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

Action: On the severed portion to include density standards.

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

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

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

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

High Priority

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

Action Calendar – Old Business

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

Medium Priority

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

Action Calendar – Old Business

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

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

Action Calendar – New Business

23. FY 2017 Year-End Results and FY 2018 First Quarter Budget Update

From: City Manager

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

Financial Implications: See report

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

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

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

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

From: Disaster and Fire Safety Commission

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

Financial Implications: See report

Contact: Keith May, Commission Secretary, 981-3473

	Bill (Sponsor)	Focus Area	Title	Description	Action Required by COB	Next Steps
2017 Housing Legislation	SB 35 (Wiener)	Streamline	Streamline Approval Process	Creates a streamlined approval process for developments in localities that have not yet met their housing targets, provided that the development is on an infill site and complies with existing residential and mixed use zoning. Participating developments must provide at least 10 percent of units for lower-income families. All projects over 10 units must be prevailing wage and larger projects must provide skilled and trained labor.	Yes	Review SB35 applications as they are submitted.
	AB 73 (Chiu)	Overlay	Streamline and Incentivize Housing Production	Provides state financial incentives to cities and counties that create a zoning overlay district with streamlined zoning. Development projects must use prevailing wage and include a minimum amount of affordable housing.	Optional	If COB wants to create overlay zone, identify resources.
	SB 540 (Roth)	Specific Plan	Workforce Housing Opportunity Zones	Authorizes the state to provide planning funds to a city or county to adopt a specific housing development plan that minimizes project level environmental review. Requires at least 50 percent of total housing units within that plan to be affordable to persons or families at or below moderate income, with at least 10 percent of total units affordable for lower income households. Developments projects must use prevailing wage.	Optional	If COB wants to create a WHOZ, identify resources.
	AB 1515 (Daly)	Approvals	Reasonable Person Standard	States that a housing development conforms with local land use requirements if there is substantial evidence that would allow a reasonable person to reach that conclusion.	Yes	Review and update development standards.
	AB 1397 (Low)	Zoning	Adequate Housing Element Sites	Requires cities to zone more appropriately for their share of regional housing needs and in certain circumstances require by-right development on identified sites. Requires stronger justification when non-vacant sites are used to meet housing needs, particularly for lower income housing.	Yes	Review zoning during 2023 Housing Element updates
	SB 166 (Skinner)	Housing Element	No Net Loss	Requires a city or county to identify additional low-income housing sites in their housing element when market- rate housing is developed on a site currently identified for low-income housing.	Yes	Review zoning during 2023 Housing Element updates
	AB 879 (Grayson)	Housing Element	Updates to Housing Element law	Make various updates to housing element and annual report requirements to provide data on local implementation including number of project application and approvals, processing times, and approval processes. Charter cities would no longer be exempt from housing reporting. Requires HCD to deliver a report to the Legislature on how local fees impact the cost of housing development.	Yes	Provide data to HCD as required. Waiting on updated guidelines from HCD.
	SB 2 (Atkins)	Funding	Building Jobs and Homes Act	Imposes a fee on recording of real estate documents excluding sales for the purposes of funding affordable housing. Provides that first year proceeds will be split evenly between local planning grants and HCD's programs that address homelessness. Thereafter, 70 percent of the proceeds will be allocated to local governments in either an over-the-counter or competitive process. Fifteen percent will be allocated to HCD, ten percent to assist the development of farmworker housing and five percent to administer a program to incentivize the permitting of affordable housing. Fifteen percent will be allocated to CalHFA to assist mixed-income multifamily developments.	Yes	Provide documentation to HCD in order to receive funding. Waiting on guidance from HCD.
	SB 3 (Beall)	Funding	Veterans and Affordable Housing Bond Act	Places a \$4 billion general obligation bond on the November 2018 general election ballot. Allocates \$3 billion in bond proceeds among programs that assist affordable multifamily developments, housing for farmworkers, transit-oriented development, infrastructure for infill development, and homeownership. Also funds matching grants for Local Housing Trust Funds and homeownership programs. Provides \$1 billion in bond proceeds to CalVet for home and farm purchase assistance for veterans.	No	
	AB 1505 (Bloom)	Inclusionary Housing	Inclusionary Ordinances	Authorizes the legislative body of a city or county to require a certain amount of low-income housing on-site or off-site as a condition of the development of residential rental units.	Completed	COB has an Inclusionary Ordinance.
	AB 1521 (Bloom)	Subsidized Housing	Preserve the Existing Affordable Housing Stock	Requires the seller of a subsidized housing development to accept a bona-fide offer to purchase from a qualified purchaser, if specified requirements are met. Gives HCD additional tracking and enforcement responsibilities to ensure compliance.	Yes	Discuss next steps with HHCS.
	AB 571 (Garcia)	Tax Credits	Low Income Housing Credits for Farmworkers	Makes modifications to the state's farmworker housing tax credit to increase use. Authorizes HCD to advance funds to operators of migrant housing centers at the beginning of each season to allow them to get up and running. Extends the period of time that migrant housing centers may be occupied to 275 days.	No	
	AB 2923 (Chiu and Grayson)	BART zoning	Development on BART-Owned Land	Gives BART the authority to rezone any BART-owned land within a half-mile of a BART station to set the lowest permissible limit for height, density and floor area ratio and the highest permissible parking minimums and maximums. Local jurisdictions must then adopt conforming zoning amendments within two years after BART adopts standards for a district. Qualifying projects may apply for streamlined, ministerial processing as specified in SB 35 – without having to otherwise qualify separately for ministerial processing under SB 35. Developers may also secure vested rights to develop in accordance with the newly adopted standards after entering into an exclusive negotiating agreement to develop an eligible project. Among the qualifying criteria, developers must make at least 20 percent of housing units affordable to very low-income and low-income households, with additional affordable requirements for projects that would displace housing or take place within the district's boundaries.	Not required, but COB will be actively engaged these efforts.	Collaboration with community, BART, City Council, HAC and PC on visioning and zoning of North Berkeley BART and Ashby BART stations.
	AB 2753 (Friedman)	Density Bonus	State Density Bonus Process Reforms	Expedites the processing of density bonus applications pursuant to the State Density Bonus Law. Amendments now require local governments to provide determinations to developers regarding the amount of density bonus for which a development is eligible, all reductions in parking requirements for which the applicant is eligible and whether the applicant has provided adequate information for the local government to make a determination regarding any requested incentives, concessions, waivers or reductions in required parking. The law further requires such determinations to be based on the development project at the time the application is deemed complete, and provides that the local government shall adjust the amount of density bonus and required parking based on any changes during the course of the development processing.	Yes	Review and determine necessary modifications to policies and/or procedures.
	AB 2372 (Gloria)	Density Bonus	State Density Bonus Law Floor Area Ratio Bonus	Authorizes cities or counties to grant a developer of an eligible housing development under the State Density Bonus Law a floor area ratio bonus in lieu of a bonus on the basis of dwelling units per acre. The floor area bonus is calculated based on a formula prescribed in the new statute (i.e., allowable residential base density x (site area in square feet / 43,500) x 2,250). An eligible housing development under the law is a multifamily housing development that provides at least 20 percent affordable units, is located within a transit priority area or a half-mile from a major transit stop, meets requirements for the replacement of existing units and complies with height requirements applicable to the underlying zone. The law also prohibits cities and counties from imposing parking requirements in excess of specified ratios and allows an applicant for an eligible development to calculate impact fees based on square feet and not per unit.	Not required, but COB will be considering modifications to Berkeley's Density Bonus Program.	Review and determine Zoning Ordinance amendments needed to implement
	SB 1227 (Sen. Nancy Skinner)	Density Bonus	Density Bonus for Student Housing	Extends the State Density Bonus Law to apply to student housing. It allows student housing projects where at least 20 percent of the units are affordable for lower income students to receive a 35 percent density bonus. The law also provides that the development must provide priority to students experiencing homelessness. The density bonus under the law will be calculated based on the number of beds instead of units.	Yes	Review and determine Zoning Ordinance amendments needed to implement
	AB 2797 (Assembly Member Richard Bloom)	Density Bonus	State Density Bonus Law and the Coastal Act	Reconciling the State Density Bonus Law and the Coastal Act requires the State Density Bonus Law to be harmonized with the California Coastal Act so that both statutes can be given effect within the coastal zone to increase affordable housing in the coastal zone while protecting coastal resources and access. This law supersedes the Second District Court of Appeal's opinion in <i>Kalnel Gardens, LLC v. City of Los Angeles</i> (2016) 3 Cal.App.5th 927, 944 holding that the State Density Bonus Law is subordinate to the Coastal Act.	No action required by COB.	

2018 Housing Legislation

AB 3194 (Assembly Member Tom Daly)	HAA	Housing Accountability Act Amendments	Strengthens the Housing Accountability Act (HAA). First, if the zoning for a project site is inconsistent with the general plan, a proposed housing development project cannot be considered "inconsistent" with a jurisdiction's zoning standards and cannot be required to seek a rezoning, as long as the project complies with the jurisdiction's objective general plan standards. Second, local agencies must now apply zoning standards and criteria to facilitate and accommodate development at the density allowed on the site by the general plan. Third, the Legislature declared its intent that a "specific, adverse impact on the public health and safety" – the only permissible basis on which a local government can reject or reduce the size of a project that complies with objective standards—will "arise infrequently."	Yes	COB staff will review HAA to ensure modifications are understood and accurately communicated to applicants.
SB 765 (Sen. Scott Wiener)	SB 35	SB 35 Amendments	Makes a series of "cleanup" revisions to SB 35 including 1) explicitly stating that the California Environmental Quality Act (CEQA) does not apply to the agency's determination of whether an application for a development is subject to the streamlined ministerial approval process and 2) stating that "it is the policy of the state that this section be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, increased housing supply."	Yes	COB staff will review SB35 to ensure modifications are understood and accurately communicated to applicants.
AB 2263 (Friedman)	Parking	Parking Reductions for Historic Reuse Projects	Authorizes parking reductions for a development project in which a designated historical resource is being converted or adapted. For projects converting or adapting a designated historical resource to a residential use that is located within a half-mile of a major transit stop, an agency shall not require the project to provide parking spaces greater than the number of parking spaces that existed on the project site at the time the project application was submitted. For a project converting or adapting a designated historical resource to a nonresidential use, a local agency shall provide a 25 percent reduction in the amount of parking spaces that would otherwise be required.	Yes	Review historic re-use projects as they are submitted for compliance with State law.
AB 2162 (Chiu and Daly)	Supportive Housing	Supportive Housing Use "By Right"	Requires supportive housing to be considered a use "by right" in zones where multifamily and mixed uses are permitted, including nonresidential zones permitting multifamily uses, if the proposed housing development meets specified criteria. Supportive housing is housing linked to an onsite or offsite service that assists the resident in retaining the housing, improving his or her health status and ability to live and work in the community. Qualifying criteria relates to affordability, long-term deed restrictions, nonresidential floor use providing supportive services and other design requirements. The law requires a local government to approve, within specified periods, supportive housing developments that comply with these requirements. The law prohibits the local government from imposing any minimum parking requirement for units occupied by supportive housing residents if the development is located within a half-mile of a public transit stop.	Yes	Review Zoning Ordinance for required updates.
AB 829 (Chiu)	State Funding	Prohibitions on Local Government Requirements for State Funding Assistance	Prohibits local governments from requiring a developer of obtain a letter of acknowledgment or similar document prior to applying for state assistance for a housing development. The law defines state assistance as any state funds, a state tax credit or a federal tax credit administered by the state. The legislative analysis for the bill explained that in at least one case in the state, city council members have delayed projects for supportive housing requiring financial assistance by conditioning a project to receive official sign-off from the local elected official in order to receive funding. This law ends that practice for all jurisdictions.	Yes	Review requirements for projects requesting state funding assistance to ensure compliance with State law.
SB 828 (Wiener) and AB 1771 (Bloom)	RHNA	RHNA Process Amendments	Makes changes to the RHNA process to use more data to more accurately and fairly reflect job growth and housing needs, with an emphasis on fair housing goals. New amendments revise the data that the COG must provide to HCD as part of the RHNA process. That data must now include new information regarding overcrowding rates, vacancy rates and cost-burdened housing (among other new data points). This law adds more opportunities for public comment and HCD adjustments to the council of governments' methodology for selecting RHNA targets, as well an ability for local governments to appeal RHNA targets. Additionally, the law prohibits a council of governments from using prior underproduction of housing, or stable population numbers, as justification for a determination or reduction in a local government's share of the RHNA.	No action required by COB.	COG and State will make modifications and share next steps with local municipalities as necessary.
AB 686 (Santiago)	Fair Housing	Affirmatively Further Fair Housing	Requires a public agency to administer its programs and activities relating to housing and community development in a manner to affirmatively further fair housing and not take any action that is inconsistent with this obligation. "Affirmatively furthering fair housing" means, among other things, "taking meaningful actions ... that overcome patterns of segregation and foster inclusive communities" and "address significant disparities in housing needs and in access to opportunity." Additionally, an assessment of fair housing practices must now be included in upcoming housing elements.	Yes	Review and assess Fair Housing Practices during 2023 Housing Element updates
SB 1333 (Wieckowski)	General Plan	Planning Requirements for Charter Cities	Makes charter cities subject to a number of planning laws that previously only applied to general law cities. These include laws related to general plan amendment processing, accessory dwelling unit permitting and the preparation of housing elements. Notably, the new law now requires a charter city's zoning ordinances to be consistent with its adopted general plan.	Yes	Ensure Zoning Ordinance is consistent with General Plan.
AB 1919 (Wood)	Disaster Planning	Anti-"Price Gouging" During Emergencies	Expands the existing crime of price gouging to include new rentals that were not on the market at the time of the emergency within the types of goods and services that are price-controlled in the immediate aftermath of an emergency. The law also makes other related reforms to limit rent increases and evictions following an emergency.	Yes	Check with Rent Control Board on next steps.
AB 2913 (Wood)	Building Permits	Extending the Duration of Building Permits	extends the duration of a building permit from six months (180 days) to 12 months, as long as construction has started and has not been abandoned. The law also provides that a permit is subject to the building standards in effect on the date of original issuance, and if the permit does expire, the developer may obtain approval from the local building official for one or more six-month extensions.	Yes	Update BMC to reflect building permit time lines.

STAFF REPORT

DATE: May 17, 2018

TO: Joint Subcommittee on the Implementation of State Housing Law

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

SUBJECT: State Housing Laws in the Berkeley Context

INTRODUCTION

The Legislature passed and the Governor signed a package of 15 housing bills last fall, all of which went into effect on or before January 1, 2018. These laws address a range of issues related to California's housing crisis, ranging from the timing of land use approvals to limits on local discretionary authority over housing projects to requirements and reporting deadlines for Regional Housing Needs Allocation (RHNA) and housing element reports to new funding measures. This report briefly summarizes the bills that relate to JSISHL's goals and explains the bills in the context of Berkeley's current practices and City Council's priorities. In the Discussion section, JSISHL will identify a focus area and future work based on the information presented in this memo and attachments.

BACKGROUND

Bills from the 2017 Housing Package that relate to the work of JSISHL fall into four categories:

- Amendments to the Housing Accountability Act (HAA)
- Streamlining Approvals
- Inclusionary Housing Laws
- Enforcement Bills

Bills are explained below with commentary on their relevance to the City of Berkeley¹ and their relation to City Council Referrals and Housing Action Plan Items (See *Attachment 1: Referral Matrix* and *Attachment 2: Referral Table*). Some of the bills (e.g. SB 167, AB 678, AB 1515, SB 35, AB 494, and SB 229) obligate the city to specific actions and require

¹ Bills included in 2017 Housing Package are complex. This report was authored by City of Berkeley Land Use Planning staff and is intended to provide JSISHL with a cursory overview of the laws. It is intended for JSISHL discussion purposes only.

adjustments to current practices. Other bills provide new processes and mechanisms that Berkeley can employ to achieve State and local goal towards housing development.

AMENDMENTS TO THE HOUSING ACCOUNTABILITY ACT (HAA)

SB 167 / AB 678 / AB 1515 (Amendments to the Housing Accountability Act)

jointly amend the Housing Accountability Act (HAA) to provide protections for housing development projects. Protections prohibit municipalities from denying a project or reducing its density if proposed project, regardless of affordability, adheres to General Plan and Zoning Ordinance “objective standards” and has no adverse impacts on public health and safety. For affordable projects, jurisdictions would have to make additional findings to deny a project or lower project density.

Berkeley Context: The HAA was passed to hold jurisdictions accountable for lack of housing construction. Jurisdictions -- although not in control of many factors that affect housing construction and developers choice – do control zoning approvals. It is in this context that Berkeley will need to review existing practices to stay in compliance with the HAA. Specifically:

Applicability: The HAA applies broadly to all residential development projects including mixed-use projects where 2/3 of the square footage is set aside for residential use. The HAA also applies to transitional and supportive housing, including emergency shelters.

Objective Standards: The HAA references “objective standards” without providing a definition of this term. See SB 35 under STREAMLINING BILLS for discussion of defining “objective standards” in the Berkeley context.

Consistency: The HAA changes the standards for determining whether or not a project conforms to local regulations. The HAA mandates that a project shall be deemed consistent with applicable standards if substantial evidence allows a reasonable person to conclude the project is consistent with local regulations. In addition, receipt of Density Bonus is not a basis for finding a housing project inconsistent with applicable development standards.

Findings: Currently, findings made to deny a housing project are supported by substantial evidence. The new legislation mandates that findings made to deny a housing project be supported by a preponderance of evidence. This is a less deferential standard of review and will make it difficult for staff to deny projects. It will also make it difficult for project opponents to challenge an approved project.

Response Times: The HAA requires jurisdictions to notify housing project applicants of compliance/non-compliance within 30-days (for projects with 150 or fewer units) or 60-days (for projects with more than 150 units). If a jurisdiction misses this deadline, the proposed project will default to an approval.

Financial Repercussions: Courts can issue a court order to approve a project if they rule that a jurisdiction's findings are not supported by a preponderance of evidence. If the jurisdiction does not comply with the court order, the jurisdiction can be fined \$10,000 per unit. Furthermore, if the court finds that the jurisdiction acted in bad faith in making these findings, the fine *must* be multiplied by 5.

Overall: The overall effect of these amendments to the HAA depends to some extent upon the definition of objective standards. Once this is established, the Planning Department will need to take extreme care to review and consider evidence, make findings through the lens of a reasonable person – as opposed to a technical expert – and to pay close attention to HAA response times. Depending upon the volume of applications, the City may need to identify resources to have staff available to address project workload.

Relation to Council Referrals: The following referrals are focused on establishing density standards and /or development standards and overlap with the HAA's importance of jurisdictions having clear objective standards:

- Revise General Plan and Zoning Ordinance to add written standards regarding 1) density by parcel; 2) health and safety detriments; 3) design review; and 4) view and shadow impacts. (Arreguin: July 11, 2017)
- Create specific per acre density standards, including standards for projects that include density bonus units. (Housing Action Plan Item 5)

STREAMLINING BILLS

SB 35 (Streamlined Approval for Housing Projects) allows a developer to request streamlined approval of eligible multi-family housing projects in a city that has 1) failed to issue enough building permits to meet its share of RHNA by income category or 2) has not submitted its Housing Element Annual Progress Report to the State for two consecutive years. Projects that are eligible to receive streamlining through SB 35 are granted ministerial approval without CEQA review or public input. See *Attachment 3* for SB 35 Eligibility Criteria List.

Berkeley Context:

One of the first projects to request streamlining through SB 35 is located in the City of Berkeley. As Berkeley planners work through this application, the law is being tested. The specifics of the application will not be discussed with JSISHL; however, the following information provides background on SB 35 and explains the law in the context of Berkeley's Zoning Ordinance and current practices.

City Obligation: Berkeley is subject to SB 35 streamlining for proposed developments with $\geq 50\%$ affordability. Berkeley has made insufficient progress towards issuing building permits for affordable housing -- units available to households making below 80 percent of the area median income. Insufficient

progress is defined as less than 25% permitting progress toward 5th Cycle regional housing needs assessment (RHNA) for an income category in 2017. After Berkeley submits two consecutive annual progress reports (APRs) that show sufficient progress toward its Lower income RHNA (Very Low and Low income), the City will no longer be subject to SB 35 streamlining for proposed developments with at least 50% affordability.

Site Criteria: Eligible sites can be located in districts zoned for residential or mixed use. In Berkeley, this translates to all districts except Manufacturing (M), Mixed Manufacturing (MM), Mixed Use-Light Industrial (MULI), Specific Plan (SP), or Unclassified (U). Within the eligible districts, development sites are not eligible if there is evidence of past/present soil or groundwater contamination (e.g. on the Cortese List) and the Department of Toxic Substance Control has not declared site clean for residential use. Furthermore, development sites are not eligible if a proposed project demolishes a historic structure², any rental housing occupied by tenants in the last ten years, or any housing subject to rent or pricing control.

Project Requirements: Eligible projects must comply only with current zoning standards and other objective standards identified by the City. The project developer must pay prevailing wages and use a “skilled and trained” workforce. “Objective standards and objective design guidelines” need to be clearly documented in the Zoning Ordinance to ensure Berkeley processes applications accurately. The passage of SB 35 presents an opportunity for Berkeley to review/modify findings/standards and develop application checklists/procedures to ensure objective standards are explicit and used to expedite processing of streamlined projects. Some of the funds available through SB 2 can be used to make these modifications. Guidance on the application process will be published in 2018.

Ministerial Approval: If proposed development project conflicts with objective design and zoning standards, then the City needs to provide documentation to the applicant within 60 day (for projects with 150 units or less) or 90 days (for projects with more than 150 units). Approvals for qualifying projects must be completed within 90 days (for projects with 150 units or less) or 180 days (for projects with more than 150 units). Approvals last indefinitely for projects that include public investment in housing affordability beyond tax credits where 50% of the units are set aside for low income households (income is less than 80% of AMI). Approval of all other projects expire within three years, although a one year extension may be granted if significant progress has been made towards construction. This is an incredibly expedited timeline. The Planning Department will need to dedicate staff to SB 35 applications in order to ensure deadlines are met. Missing a deadline can result in an automatic project approval.

² The definition of “historic structure” is currently being evaluated. Staff has no information on the outcome of this discussion.

Relation to Council Referrals: The following referrals overlap in intent and action with the requirements of SB 35:

- Investigate and remove barriers to housing production. (Droste: December 1, 2015 and June 27, 2017 and Housing Action Plan Item 12)
- Streamline permit process for housing projects which include greater than 50% affordable units. (Worthington: January 19, 2016 and Housing Action Plan Item 12)
- Revise General Plan and Zoning Ordinance to add written standards regarding 1) density by parcel; 2) health and safety detriments; 3) design review; and 4) view and shadow impacts. (Arreguin: July 11, 2017)
- Allow ministerial approval of zoning-compliant affordable housing projects. (Droste: December 15, 2017)
- Create specific per acre density standards, including standards for projects that include density bonus units. (Housing Action Plan Item 5)

SB 540 (Streamlined Workforce Housing Zone Projects) allows jurisdictions to establish Workforce Housing Opportunity Zones (WHOZs) which prioritize workforce and affordable housing in close proximity to jobs and transit. WHOZs must also conform to California's greenhouse gas reduction laws. WHOZ development requires environmental review (e.g. EIR) and public input, similar to the process of adopting a specific area plan. Once a WHOZ is established, WHOZ-consistent development projects are guaranteed a 60-day approval process and can be requested for 5-years after WHOZ adoption.

Berkeley Context: Berkeley's Planning Department is currently focused on a specific area plan for the Adeline Corridor. The next specific area plan that has been referred to the City Manager is focused on San Pablo Avenue. There is potential to evaluate the feasibility of including WHOZs into this specific area plan, although at this time, no resources have been allocated to this project.

Relation to Council Referrals: The following referrals overlap in intent and action with the requirements of SB 540:

- Initiate an area planning process with community outreach regarding future development on San Pablo Avenue. (Moore and Maio: July 14, 2015)
- Work with Berkeley Unified School District regarding housing affordability for local teachers in the context of SB 1413. (Worthington: September 27, 2016 and Housing Action Plan Item 11)

AB 73 (Streamlined Housing Sustainability District Projects) incentivizes municipalities to create housing in Housing Sustainability Districts (HSDs). An HSD in an overlay created with oversight from California State Housing and Community Development (HCD) on infill sites in close proximity to public transit. Establishing an HSD requires preparation of an EIR. Once established, 20% of the units built in an HSD must be affordable. Streamlined consideration of HSD housing projects are considered within 10 years of the HSD EIR and if the project pays prevailing wages.

Berkeley Context: Berkeley could leverage this law to establish an overlay in an area (near transit) where new development includes at least 20% affordable units. This could be implemented near BART, Amtrak, or bus stops that meet specific headway requirements. The City would need to identify resources for environmental analysis of proposed overlay zoning districts.

Relation to Council Referrals: The following referral tangentially overlaps in intent and action with the goals of AB 73:

- Create a zoning overlay for Adeline Corridor that would result in Community Benefits Agreements. (Bartlett: July 25, 2017)

AB 494 / SB 229 (Streamlined Accessory Dwelling Units) provides minor clarifications to State Accessory Dwelling Unit (ADU) regulations intended to streamline permitting of ADUs. Clarifications expand applicability to proposed single family homes and to residential districts where single family homes are allowed. These bills also reduce parking requirements for ADUs.

Berkeley Context: Modifications to Berkeley's ADU Ordinance that expand application to proposed single family homes and expand allowable districts for ADUs will be considered by City Council on May 15, 2018. Berkeley's ADU Ordinance currently requires no parking for ADUs.

Relation to Council Referrals: The following referrals overlap in intent and action with the goals of AB 494 and SB 229:

- Examine and eliminate barriers to building and renting Accessory Dwelling Units (ADUs). (Housing Action Plan Item 13).

INCLUSIONARY HOUSING LAWS

AB 1505: Inclusionary Housing Requirements for Rental Projects: Allows jurisdictions to adopt ordinances that require a percentage of projects in rental development projects to be deed restricted as affordable. This law is considered a

“fix” to the Palmer Decision, which invalidated inclusionary housing ordinances that applied to rental properties.

Berkeley Context: The City of Berkeley has an Inclusionary Ordinance that requires payment of an Affordable Housing Mitigation Fee (AHMF) for 20% of the units, but allows in lieu on-site units instead of payment of the inclusionary fee for rental properties. Separate requirements apply to ownership and condominium conversion projects. The City is reviewing the existing ordinances and may need to amend them.

Relation to Council Referrals: The following short term referral tangentially overlaps in intent and action with the goals of AB 1505:

- Conduct a development feasibility study of the effect of existing fees and development costs. (Droste: December 5, 2017)

MONITORING / ENFORCEMENT BILLS

Several bills modify State housing element requirements and annual reporting standards and mechanisms with a focus on new enforcement measures and responsibilities. These bills mandate jurisdictions to conduct more robust analysis and public review processes than previously required. Jurisdictions that are found to be out of compliance with these laws (both new and old) will be subject to steep penalties and repercussions.

AB 72: HCD Review and Oversight: Provides HCD with greater review and enforcement authority over laws that require jurisdictions to follow goals and programs identified in adopted housing elements. Though this law, HCD has the authority to review any actions-inactions that HCD believes are in conflict with a jurisdiction’s housing element and revoke certification of a non-compliant housing element.

SB 166: No Net Loss: Mandates that every jurisdiction maintain a current supply of sites in the housing element inventory to meet RHNA by income categories. If existing sites can’t accommodate unmet RHNA needs, a jurisdiction is required to rezone. This law does not apply to charter cities; however annual progress reports (APR), required by all cities, and must include related data. Note that APRs are used mid-cycle by HCD in their review of housing element compliance (see AB 72).

AB 879: Annual Reporting Requirements: Expands upon existing law that requires annual progress reports on a jurisdiction’s housing element. Analysis and reporting required by this new law is more robust and applies to general law and charter cities.

AB 1397: Residential Development Inventory: Makes numerous changes to how a jurisdiction establishes its housing element site inventory.

Berkeley Context: Planning staff and IT staff will need to collaborate in order to efficiently and accurately analyze permitting activities. As a first step, planning staff will need to develop a list of requirements to share with IT. Requirements will need to include a mechanism that tabulates various data fields in order to track compliance with RHNA and identify sites identified in the Housing Element inventory.

DENSITY BONUS

Although State Density Bonus law was not part of the 2017 Housing Package, it warrants discussion in this report because it incentivizes development of affordable housing. Density Bonus is also mentioned in the purpose of JSISHL and in multiple City Council referrals. Density Bonus has been discussed by the Planning Commission and the Planning Commission's subcommittee on Affordable Housing and Density Bonus a number of times in the context of City Council referrals. Resulting from these efforts, an updated Density Bonus Ordinance will be considered by City Council this summer (agenda date yet to be determined). See Attachment 4 (*February 21, 2018 Planning Commission Density Bonus Staff Report*) for background information on Density Bonus and status of ongoing work and future work.

Relation to Council Referrals: The following referrals overlap in intent and action with State Density Bonus law:

- Allow increased development potential in the C-T district and develop community benefit requirements, with a focus on labor practices and affordable housing. (Worthington: July 12, 2016)
- Create a pilot Density Bonus program in the C- T district that allows for payment in lieu of providing qualifying onsite affordable units. (Worthington: May 30, 2017 and Housing Action Plan Item 3)
- Revise General Plan and Zoning Ordinance to add written standards regarding 1) density by parcel; 2) health and safety detriments; 3) design review; and 4) view and shadow impacts. (Arreguin: July 11, 2017)
- Increase density in the C-T, R-SMU, R-S and R-3 districts by adding 20 feet to maximum building heights and adjusting FAR. (Worthington: October 31, 2017).
- Create specific per acre density standards, including standards for projects that include density bonus units. (Housing Action Plan Item 5)

DISCUSSION

JSISHL was created by City Council to look at issues around density bonuses, the Housing Accountability Act, inclusionary zoning, and permit streamlining to attain compliance with State law and take advantage of new opportunities for the development

of affordable housing. Preliminary analysis in the Background section of this report shows them path to achieving these goals through State law. For example, State law mandates that jurisdictions dial back discretion on eligible housing projects, accelerate the approval process for certain types of housing projects and face financial consequences for being out of compliance with State law.

As identified in the analysis above, City Council's priorities reflect and overlap with the goals of State. The next steps are twofold:

1. Identify where city of Berkeley needs to modify the Zoning Ordinance and/or current practices to be in compliance with State law.
2. Evaluate referrals in the context of State law and determine next steps of action to accomplish this work.

It is in this context, that JSISHL is asked to discuss the following questions:

Does State law go far enough to accomplish the goals set forth in City Council referrals with respect to Density Bonus, HAA, Streamlining, and Inclusionary Housing? If no, what is missing?

In some areas, State law is either too broad or too restrictive to accomplish Council's priorities. Staff recommends that the City explore the area in between by developing local, parallel programs (e.g. Local Density Bonus, Local Streamlining, Local Inclusionary), that offer alternate paths to achieve stated goals. Alternate paths could have different eligibility criteria, additional incentives and benefits, and a set of unique regulations and/or requirements. As an example, see Attachment 5 (*April 4, 2018 Palo Alto City Council Staff Report on Affordable Housing Combining District Ordinance*) which creates an overlay that provides flexible development standards for 100% affordable housing projects located on commercially-zoned sites near transit.

Should City of Berkeley begin working on a parallel program that address items identified in the question above? If yes, what would be the focus of program and what may it include in order to archive the results outlined in City Council referrals?

Staff believes there are tasks JSISHL can address in the context of State law and local referrals. Staff will return at the next meeting with analysis and options for JSISHL to consider.

ATTACHMENTS

1. City Council Referral Matrix
2. City Council Referral Table
3. SB 35 Eligibility Checklist

4. Planning Commission Staff Report on Density Bonus Ordinance Amendments (February 21, 2018)
5. Palo Alto City Council Staff Report on Affordable Housing Combining District Ordinance (April 4, 2018)

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

Introduction

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

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

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

Affordability Requirements

Pursuant to § 65915, Below Market Rate definitions:

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

Overview

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

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

² Per § 65915(c)(3), replacement units are required when the project is proposed on a "parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; subject to any other form of rent or price control through a public entity's valid exercise of its police power; or occupied by lower or very low income households."

Affordable Housing Projects that Qualify for a Density Bonus

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

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

Overview (Described in more detail below)

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

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

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

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

Step 1. Calculate the Base Project

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

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

Overview of Procedures to Identify the Base Project:

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

Concepts for the Base Project:

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

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

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

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

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

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

Step 2. Fidelity between Base Project and Proposed Project

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

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

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

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

Step 3. Apply the Density Bonus

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

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

Step 4. Accommodate the Density Bonus Units

- A. Waivers/Reductions: In order to accommodate the proposed density bonus, the City must relax development standards that would otherwise have the effect of physically precluding the bonus floor area or units. § 65915(e) provides further direction on granting waivers/reductions.

An applicant is entitled to the prescribed density increase based on the number / affordability of qualifying units the project provides; the City does not have discretion over the density increase. However, staff can work with the applicant to determine which

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

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

In general, any combination of zoning development standards may be modified to accommodate the placement of bonus units. These include but are not limited to:

- Increased lot coverage
- Reduced setbacks
- Increased floor area ratio
- Increased building height or number of stories

- B. Concessions/Incentives: After requested waivers/reductions have been granted to accommodate the density bonus units, the applicant may request concessions/incentives, or modified development standards consistent with § 65915(k).

Per § 65915(d)(1), the City shall grant a concession or incentive unless it is able to make the finding that “the concession or incentive does not result in identifiable and actual cost reductions” or “would have a specific, adverse impact... upon public health and safety or the physical environment.” Projects are entitled to 1, 2, or 3 concessions/incentives, according to the criteria outlined in § 65915(d)(2).

Typical concessions include reduced parking or open space requirements.

RESOLUTION NO. 68,304-N.S.

MORE STUDENT HOUSING NOW RESOLUTION

WHEREAS, the student housing shortage is the foremost city issue mentioned by Berkeley students; and

WHEREAS, increased density close to campus reduces air pollution and traffic congestion, and encourages pedestrian, transit and bicycle travel; and

WHEREAS, on March 10, 2016, the Berkeley City Council voted unanimously to send a thank you letter to President Napolitano, which committed the city to addressing zoning barriers and obstacles preventing creating student housing; and

WHEREAS, the scarcity of available, accessible, and affordable student housing impacts individuals and families across demographics throughout the City and the lack of production near the UC campus pushes students deeper into the City's scarce and competitive housing market, forcing them to compete with and increasing pressure on the City's lower and middle-income family and aging populations; and

WHEREAS, most market rate units that are built close to campus are lived in by students. Even though market rate units are not defined as student housing, they provide much needed units primarily for middle class students. These units also contribute to creating affordable units because the inclusionary Ordinance is a major source of affordable housing in Berkeley. It requires 20% of a market rate project to be affordable, or the owner can pay an in-lieu fee of \$37,000 per unit; and

WHEREAS, Public Private Partnerships (PPP's) are a primary alternative to get funding for student housing on university property. The City of Berkeley continue to encourage PPP's provided they include student costs comparable to residence hall rate, labor standards and retaining or expanding UC sustainability standards to ensure greener buildings. Using University land in PPP has been done with success, including the 775-unit Bancroft project currently under construction.

NOW THEREFORE, BE IT RESOLVED that the City reaffirm our support for the thank you letter on March 10, 2016 to President Napolitano.

BE IT FURTHER RESOLVED that the City Council and the Planning Commission prioritize previous referrals from the City Council including the following:

- Facilitate primarily Student Housing by a Twenty Feet Height Increase and Adjust floor Area Ratio in the R-SMU, R-S and R-3 areas only from Dwight to Bancroft & from College to Fulton (Date: 10/31/2017)
- Create a Pilot Density Bonus Program for the Telegraph Avenue Commercial District (Date: 05/30/2017)
- Create a use permit process to allow non-commercial use on the Ground Floor in C-T Telegraph Commercial District excluding Telegraph Ave

(Date: 07/11/2017. This item is based on an original item submitted by Susan Wengraf on 01/20/2015)

- Develop an Ordinance Requiring New Residential Buildings to include essential wheelchair-accessible modifications, such as Auto-door Openers & Roll-in Shower (Date: 09/15/2015 & 07/11/2017)

BE IT FURTHER RESOLVED that the City and the Planning Commission will consider:

- Allowing conversion of vacant Telegraph area commercial space to housing only from Dwight to Bancroft & from College to Fulton (excluding Telegraph Avenue itself)
- Expanding the Car-Free Housing Overlay area between College and Fulton (including R-S & R-3 parcels between Fulton and Shattuck), Bancroft and Dwight.
- Allowing at least two high-rises for student housing in Southside campus area
- Investigate sites to build micro-units, which may create housing cheaper and faster
- Permitting and encouraging the construction of modular units

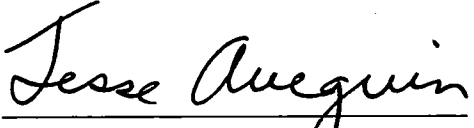
BE IT FURTHER RESOLVED that the City strongly support UC President Napolitano and Chancellor Carol Christ in their pursuit of implementation of a comprehensive plan addressing the housing needs of students across all income levels with a specific focus on extremely low income, immigrant, and disabled students. Furthermore, the City encourages a University Short Term Implementation Plan for the approximately 1,500 remaining units already approved in the current LRDP. The City of Berkeley encourages the University to seriously consider potential short term consensus sites including Fulton & Bancroft; University & Oxford, formerly designated for a hotel; Channing Ellsworth tennis courts, and Unit 3 densification if done as modular units built elsewhere during the school year and placed on site during summer. The City supports University high rise development up to 12 stories at three out of four of these sites.

The foregoing Resolution was adopted by the Berkeley City Council on January 23, 2018 by the following vote:

Ayes: Davila, Droste, Hahn, Harrison, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

Absent: Bartlett.


 Jesse Arreguin, Mayor

Attest:


 Mark Numainville, City Clerk

NOTICE OF PUBLIC HEARING BERKELEY CITY COUNCIL

ZONING ORDINANCE AMENDMENTS THAT CREATE A DENSITY BONUS ORDINANCE THAT COMPLIES WITH STATE LAW

The proposed amendments to the City's Zoning Ordinance will remove outdated references to State Density Bonus from Berkeley Municipal Code Chapter 23C.12 (Inclusionary Housing Requirements) and create a new standalone Chapter 23C.14 (Density Bonus Ordinance) that is in compliance with State law and codifies current practices.

Changes recommended by the Planning Commission include:

- Repeal Section 23C.12.050 (State of California Density Bonus Requirements)
Berkeley's Density Bonus language, currently found in Section 23C.12.050, lists outdated percentages and affordable housing requirements from State Density Bonus regulations and other provisions that do not reflect current practice, and so this section is recommended to be deleted.
- Adopt Chapter 23C.14 (Density Bonus)
Proposed Chapter 23C.14 will create a new Density Bonus Ordinance that is organized logically and will reference – not restate – State regulations. The new Ordinance will refer to Administrative Regulations documenting Berkeley's method for base project calculation, among other things, necessary to implement the law.

Citywide, in all zoning districts except Manufacturing (M) and Mixed Manufacturing (MM). The zoning map is available online:

http://www.ci.berkeley.ca.us/uploadedFiles/IT/Level_3_-_General/Zoning%20Map%2036x36%2020050120.pdf

The hearing will be held on Tuesday, January 29, 2019 at 6:00 p.m. in the BUSD Board Room, 1231 Addison Street, Berkeley.

A copy of the agenda material for this hearing will be available on the City's website at www.CityofBerkeley.info as of January 17, 2019.

For further information, please contact Alene Pearson at 510-981-7489.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, 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 981-6900 or clerk@cityofberkeley.info for further information.

Published: Friday, January 18, 2019

Noticing per California Government Code Sections 65856(a) and 65090

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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 Old Berkeley City Hall, 2134 Martin Luther King Jr. Way, as well as on the City's website, on January 17, 2019.

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Mark Numainville, City Clerk



Office of the City Manager

ACTION CALENDAR

January 29, 2019

(Continued from September 25, 2018)

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Timothy Burroughs, Director, Planning and Development  
Subject: Density Bonus Ordinance Revisions - Repeal Existing BMC Section 23C.12.050 (State of California Density Bonus Requirements) and Adopt New BMC Chapter 23C.14 (Density Bonus)

RECOMMENDATION

Adopt first reading of an Ordinance amending the Zoning Ordinance to repeal obsolete Density Bonus regulations (Berkeley Municipal Code Section 23C.12.050: State of California Density Bonus Requirements) and adopt a new, standalone Density Bonus Chapter (Berkeley Municipal Code Chapter 23C.14) that complies with California State Government Code 65915–65918: Density Bonuses and Other Incentives.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley's Density Bonus ordinance is currently embedded in the Inclusionary Housing Requirements chapter of the Zoning Ordinance (Chapter 23C.12). That Density Bonus section (State of California Density Bonus Requirements (Section 23C.12.050)) needs to be updated because it references obsolete State regulations and includes requirements that are no longer in effect. It was most recently amended in 2005. State law has continued to undergo amendments since then to mandate a clear local ordinance.

The proposed ordinance (*see Attachment 1*) also responds to City Council referrals to the City Manager that requested several modifications to Berkeley's Density Bonus. Some of these referrals specifically mention modifications to the Density Bonus program, whereas other suggest a parallel path to modifying development standards in order to allow for increased residential densities (*see Attachment 2*). The Planning Commission and its Subcommittee on Affordable Housing reviewed the referrals and developed an approach to create a more robust Density Bonus program. This multi-stage approach is underway; this proposed ordinance amendment is necessary to set a new framework within which other programs and policies can be implemented.

## BACKGROUND

State Density Bonus law (SDBL)<sup>1</sup> provides incentives for developers to include affordable housing within their projects by granting increased density and relief from local regulations. Relief is delivered through concessions related to financial feasibility of the proposed project and waivers that apply to development standards.

Density Bonuses of up to 35% are mandated by the State and are based on the percentage of affordable units provided at various income levels. All cities and counties are required to adopt an ordinance specifying how they will comply with SDBL.

On December 6, 2017 and February 7, 2018, the Planning Commission's Subcommittee on Affordable Housing provided input and direction on an approach to referrals and modifications to City of Berkeley's Density Bonus regulations. The subcommittee suggested a three-phased approach to modifying the City's Density Bonus regulations that consisted of:

1. Create a Density Bonus Ordinance that codifies existing practice.
2. Respond to Density Bonus referrals that go beyond State Density Bonus laws to provide additional incentives for developing more affordable housing.
3. Develop numeric density standards and objective standards for all zoning districts.

Staff prepared Zoning Ordinance language to support Phase 1 for Planning Commission consideration on February 21, 2018. The Commission discussed these changes, then conducted a Public Hearing on March 21, 2018 on Zoning Ordinance amendments related to Phase 1 of the Density Bonus program. The Planning Commission has begun to consider modifications related to Phase 2 and aims to make recommendations to City Council by the end of the year. Staff is currently working on an RFP to bring in additional resources to help with Phase 3. This work is anticipated to start in the fall of 2018 and will be shared with Planning Commission and the Joint Subcommittee on Implementation of State Housing Law as appropriate. Phase 3 should be completed by the end of 2019.

## ENVIRONMENTAL SUSTAINABILITY

Density Bonus is a State mandated planning and permitting tool that brings flexibility into the zoning process by providing developer incentives in exchange for affordable housing. Development projects that include affordable units encourage social interactions of diverse residents thereby building a connected, resilient community. Density Bonus projects also address Berkeley's Climate Action Plan goal to increase compact development patterns throughout the City.

## RATIONALE FOR RECOMMENDATION

Zoning Ordinance amendments in this report codify existing practice, respond to changes in State law, and provide a framework for future local programs and policies.

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<sup>1</sup> [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=65915&lawCode=GOV](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=65915&lawCode=GOV)

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Timothy Burroughs, Director, Planning and Development Department, 510-981-7400  
Steven Buckley, Land Use Planning Manager, Land Use Planning Division, 510-981-7411

Alene Pearson, Associate Planner, Land Use Planning Division, 510-981-7489

Attachments:

- 1: Ordinance
- 2: Council Referrals



ORDINANCE NO. #,###-N.S.

RESCINDING SECTION 23C.12.050 OF THE BERKELEY MUNICIPAL CODE AND ADDING CHAPTER 23C.14 TO THE BERKELEY MUNICIPAL CODE REGARDING DENSITY BONUS

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

Section 1. That Section 23C.12.050 is hereby rescinded.

Section 2. That Chapter 23C.14 is hereby added to read as follows:

**Chapter 23C.14 Density Bonus**

|                   |                                                  |
|-------------------|--------------------------------------------------|
| <b>23C.14.010</b> | <b>Purpose</b>                                   |
| <b>23C.14.020</b> | <b>Definitions</b>                               |
| <b>23C.14.030</b> | <b>Application Requirements</b>                  |
| <b>23C.14.040</b> | <b>Density Bonus Calculations and Procedures</b> |
| <b>23C.14.050</b> | <b>Incentives and Concessions</b>                |
| <b>23C.14.060</b> | <b>Waivers and Reductions</b>                    |
| <b>23C.14.070</b> | <b>Qualifying Units</b>                          |
| <b>23C.14.080</b> | <b>Special Provisions</b>                        |
| <b>23C.14.090</b> | <b>Regulatory Agreements</b>                     |

**23C.14.010 Purpose**

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

**23C.14.020 Definitions**

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

- A. "Administrative Regulations" means guidelines and procedures promulgated by the Planning Director that may be modified from time to time to effectively implement this ordinance.
- B. "Base Project" means the maximum allowable residential density (number and type of units) on a housing development site pursuant to the applicable zoning district or, where no density standard is provided, as set forth in the Administrative Regulations before applying the density bonus.

- C. "Density Bonus Units" means those residential units added to the Base Project pursuant to the provisions of Section 65915 and this Chapter.
- D. "Housing Development" has the meaning set forth in Section 65915.
- E. "Incentive and Concession" means an incentive or a concession as the terms are used in Section 65915 and in particular as defined in Section 65915(k) thereof.
- F. "Qualifying Unit" means a unit that is provided at a below market-rate rent or sales price as set forth in Section 65915 in order to receive a Density Bonus and/or Waivers and Reductions and/or Incentives and Concessions.
- G. "Section 65915" means California Government Code Section 65915, as it may be amended from time to time.
- H. "Waiver and Reduction" means a waiver or a reduction as the terms are used in Section 65915 and in particular in Section 65915(e) thereof, and means any and all changes to or exemptions from physical lot development standards that are required to avoid precluding the construction of a Housing Development with Density Bonus Units, as set forth in Section 65915(e).

### **23C.14.030 Application Requirements**

In addition to any other information required by this Title, an application for a Density Bonus must include the following information:

- A. How the proposed project will satisfy the eligibility requirements of Section 65915.
- B. For those districts without density standards, a density bonus schematic as set forth in the administrative regulations;
- C. The proposed size of the Density Bonus pursuant to Section 23C.14.040.
- D. Any Waivers and Reductions that are sought under Section 65915(e) that would be required to accommodate the Housing Development including the Density Bonus Units.
- E. Any Incentives and Concessions that are sought under Section 65915(d) accompanied by documentation of resulting cost reductions to provide for affordable housing costs.
- F. Any requested additional bonus units under Section 65915(n).
- G. Any requested parking reductions under Section 65915(p).
- H. An applicant may elect in writing to receive a Density Bonus that is less than that mandated by Section 65915, including a Density Bonus of 0 (zero). In

such cases, the applicant will retain their entitlement to Incentives and Concessions.

- I. Documentation of how project complies with regulations regarding replacement units as described in Section 65915(c)(3).

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

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

#### **23C.14.050 Incentives and Concessions**

- A. For purposes of this Chapter, the number of Incentives and Concessions are counted as follows:
  1. Any Incentive and Concession that would otherwise require discretionary approval by the Zoning Officer or Zoning Adjustments Board of any single dimensional lot development standard, such as height or setbacks, or any single quantitative lot development standard, such as parking or open space, counts as one.
  2. A proposed Incentive and Concession that would involve exceedance of a single physical lot development standard counts as one even if that exceedance would otherwise require more than one Permit (e.g., extra height may require Permits for height, FAR, and/or number of stories but would count as one Incentive and Concession for height).
  3. Where it is ambiguous as to whether a proposed Incentive and Concession involves one or more dimensional or quantitative lot development standards, the stricter interpretation shall apply, as determined by the Zoning Officer.
- B. In determining whether it can make the finding set forth in Section 65915(d)(1), the City will base its determination and any finding on a comparison of the project including the Density Bonus and requested Incentives and Concessions to the Base Project.
- C. The City is not required to deny a proposed Incentive and Concession solely because it is able to make a finding under Section 65915(d)(1).
- D. Unless denied under Section 65915, Incentives and Concessions will be exempt from discretionary review or Permits under this Title, other than design review.
- E. Incentives and Concessions must be justified based on the financial needs of the project, including reduced costs and increased revenue, to provide for the affordable housing costs of the qualifying units and for the project overall.

### **23C.14.060 Waivers and Reductions**

- A. An applicant may submit to the City a proposal for Waivers and Reductions of development standards that physically preclude construction of a development project meeting the criteria of Section 65915(b).
- B. The applicant may request, and the City shall hold, a meeting to discuss Waivers and Reductions.
- C. The City may deny Waivers and Reductions if a Waiver or Reduction would have adverse impacts and/or no mitigation for such impacts, as described in Section 65915(e)(1).

### **23C.14.070 Qualifying Units**

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

### **23C.14.080 Special Provisions**

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

- A. [RESERVED]
- B. In addition to other required findings, Special Provisions may be awarded only when the City finds that the Density Bonus project complies with the purposes of the district in which the project is located.

### **23C.14.090 Regulatory Agreements**

Prior to issuance of a Certificate of Occupancy for a Housing Development that has received a Density Bonus, the applicant must enter into a regulatory agreement in a form provided by the City that implements Section 65915 and this Chapter.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 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.



## Kriss Worthington

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

### ACTION CALENDAR

July 12, 2016

*(Continued from May 24, 2016)*

To: Honorable Mayor and Members of the City Council  
From: Councilmember Kriss Worthington

Subject: Allow Increased Development Potential in the Telegraph Commercial (C-T) District Between Dwight Avenue and Bancroft Avenue and Refer to the City Manager to Develop Community Benefit Requirements, with a Focus on Labor Practices and Affordable Housing

### RECOMMENDATION

That the Council immediately amend the Berkeley Zoning Ordinance to allow increased development potential in the Telegraph Commercial (C-T) District between Dwight Avenue and Bancroft Avenue and refer to the City Manager to develop community benefit requirements, with a focus on labor practices and affordable housing.

### BACKGROUND

The City Council sent a referral to the Planning Commission on June 30, 2015, regarding the conflict between the 5.0 FAR adopted by the Council for the C-T District and the other development regulations in the district.

On April 20, 2016, the Planning Commission considered modifying the development standards and community benefits. The Planning Commission voted to recommend the following to the Berkeley City Council:

- a) That the staff proposed Zoning Ordinance development standards for buildings adjacent to Bancroft Way be applied to the entirety of the C-T District north of Dwight Way; and
- b) That the Council develop community benefit requirements, with a focus on labor practices and affordable housing, before implementation of the proposed Zoning Ordinance language.

### FINANCIAL IMPLICATIONS:

Minimal.

ENVIRONMENTAL SUSTAINABILITY:

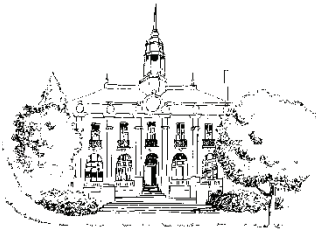
Consistent with Berkeley's Environmental Sustainability Goals and no negative impact.

CONTACT PERSON:

Councilmember Kriss Worthington      510-981-7170

Attachment:

1. April 20, 2016 Planning Commission Staff Report on "Changes to the Zoning Ordinance to Allow Development Potential Increases in the Telegraph Avenue Commercial (C-T) District"



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

CONSENT CALENDAR  
 May 30, 2017

To: Honorable Mayor and Members of the City Council  
 From: Councilmembers Kriss Worthington and Ben Bartlett, and Mayor Arreguin  
 Subject: Planning Commission Referral for a Pilot Density Bonus Program for the Telegraph Avenue Commercial District to Generate Revenue to House the Homeless and Extremely Low-Income Individuals

RECOMMENDATION

That the Berkeley City Council refer a City Density Bonus policy for the Telegraph Avenue Commercial District to the Planning Commission to generate in-lieu fees that could be used to build housing for homeless and extremely low-income residents.

BACKGROUND

Under current state law, new development projects that get a density bonus, allowing up to 35 percent more density, are required to build inclusionary housing. Inclusionary housing is typically defined as below-market rate housing for people who earn 50 percent or 80 percent of the Area Median Income (AMI).

While it's great that developers are including some affordable housing in their market-rate projects, affordable housing for the homeless and extremely low-income who don't qualify for inclusionary units can be provided if developers instead paid fees into the Housing Trust Fund. This can be achieved through the use of a City Density Bonus for the Telegraph Avenue Commercial District, an area where many residents have expressed support for housing the homeless and the extremely low-income.

The City bonus fee would be equal to the in-lieu affordable housing mitigation fee, currently set at \$34,000 per unit. Fees paid into the fund could be leveraged with other Federal, State and Regional affordable housing sources, resulting in significantly more affordable housing built through the Housing Trust Fund than currently available. The City has important policy proposals to assist the homeless and extremely low-income residents that urgently need funding.

The pilot program of a City Density Bonus in the Telegraph Avenue Commercial District could go a long way toward easing Berkeley's critical housing shortage by increasing incentives for developers to add more housing and give the city greater ability to deliver affordable housing.

FISCAL IMPACTS

This proposal will generate millions in new revenue to the Housing Trust Fund.

ENVIRONMENTAL IMPACTS

The proposed change is consistent with City Climate Action Plan goals supporting increased residential density. Additionally, new residential construction is subject to more stringent green building and energy efficiency standards and will help reduce per capita greenhouse gas emissions.

CONTACT PERSON

Councilmember Kriss Worthington 510-981-7170



**ANNOTATED AGENDA  
BERKELEY CITY COUNCIL MEETING**

**Tuesday, July 11, 2017**

**6:00 P.M.**

COUNCIL CHAMBERS - 2134 MARTIN LUTHER KING JR. WAY

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

**Preliminary Matters**

**Roll Call:** 6:03 p.m.

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

**Absent:** Harrison

Councilmember Harrison present 6:14 p.m.

**Ceremonial Matters:**

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

**City Auditor Comments:**

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

**City Manager Comments:**

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

**Public Comment on Non-Agenda Matters:** 3 speakers.

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

**Consent Calendar**

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

**Vote:** All Ayes.

## Action Calendar – Old Business

29. **Housing Accountability Act** (*Continued from June 13, 2017. Item includes supplemental materials.*)

**From: City Manager**

Contact: Zach Cowan, City Attorney, 981-6950

**Action:** 5 speakers. M/S/C (Arreguin/Davila) to refer to the City Manager, Planning Commission, Zoning Adjustments Board, and Design Review Committee to consider the following actions, and others they may find appropriate, to address the potential impacts of the Housing Accountability Act and to preserve local land use discretion:

1. Amend the General Plan and Zoning Ordinance to adopt numerical density and/or building intensity standards that can be applied on a parcel-by-parcel basis in an easy and predictable manner. These would constitute reliable and understandable “objective general plan and zoning standards” that would establish known maximum densities. This could be done across the board or for specified districts.
2. Devise and adopt “objective, identified written public health or safety standards” applicable to new housing development projects.
3. Adopt “design review standards that are part of ‘applicable, objective general plan and zoning standards and criteria’”.
4. Quantify and set objective zoning standards and criteria under the first sentence of Government Code Section 65589.5(j) for views, shadows, and other impacts that often underlie detriment findings.

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

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

Recess: 9:10 p.m. – 9:27 p.m.

30. **Amend BMC Sections 3.78.030, 040, and 050 Related to Commission Procedures** (*Continued from June 13, 2017*)

**From: Human Welfare and Community Action Commission**

**Recommendation:** Adopt a Resolution requesting that the City Manager examine the addition of language to the Berkeley Municipal Code that clarifies aspects of the management of City of Berkeley commissions and the removal and appointment of commissioners.

**Financial Implications:** See report

Contact: Wing Wong, Commission Secretary, 981-5400

**Action:** Moved to Consent Calendar. No action taken by the City Council on this item.

**Vote:** Ayes – Maio, Bartlett, Harrison, Hahn, Wengraf, Worthington, Droste, Arreguin; Noes – Davila.



## Kriss Worthington

Councilmember, City of Berkeley, District 7  
2180 Milvia Street, 5<sup>th</sup> Floor, Berkeley, CA 94704  
PHONE 510-981-7170, FAX 510-981-7177,  
EMAIL [kworthington@ci.berkeley.ca.us](mailto:kworthington@ci.berkeley.ca.us)

CONSENT CALENDAR  
10/31/2017

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Kriss Worthington and Kate Harrison, and Mayor Arreguin  
Subject: City Manager and Planning Commission Referral: Facilitate primarily Student Housing by a twenty feet height increase and adjust Floor Area Ratio in the R-SMU, R-S and R-3 areas only from Dwight to Bancroft and from College to Fulton

RECOMMENDATION: Refer to the City Manager and Planning Commission to facilitate primarily Student Housing by amending the Zoning Ordinance to add a twenty feet height increase and adjust the Floor Area Ratio in the R-SMU, R-S and R-3 areas only from Dwight to Bancroft and from College to Fulton.

BACKGROUND:

In the last few years, students have become increasingly active in proposing ways to increase student housing. Housing is urgently needed in close proximity to the UC Berkeley campus as rents increase and the University population steadily rises. Students, recent graduates, employees of the University, and local businesses contribute to the local economy, create jobs for the local community, and greatly enrich the community through their presence. Implementing this action would provide a place to live for many individuals who would otherwise have to reside far from campus. Oftentimes, the quest to find living spaces is emotionally taxing for students and can decrease academic performance or leave students without affordable and safe places to live.

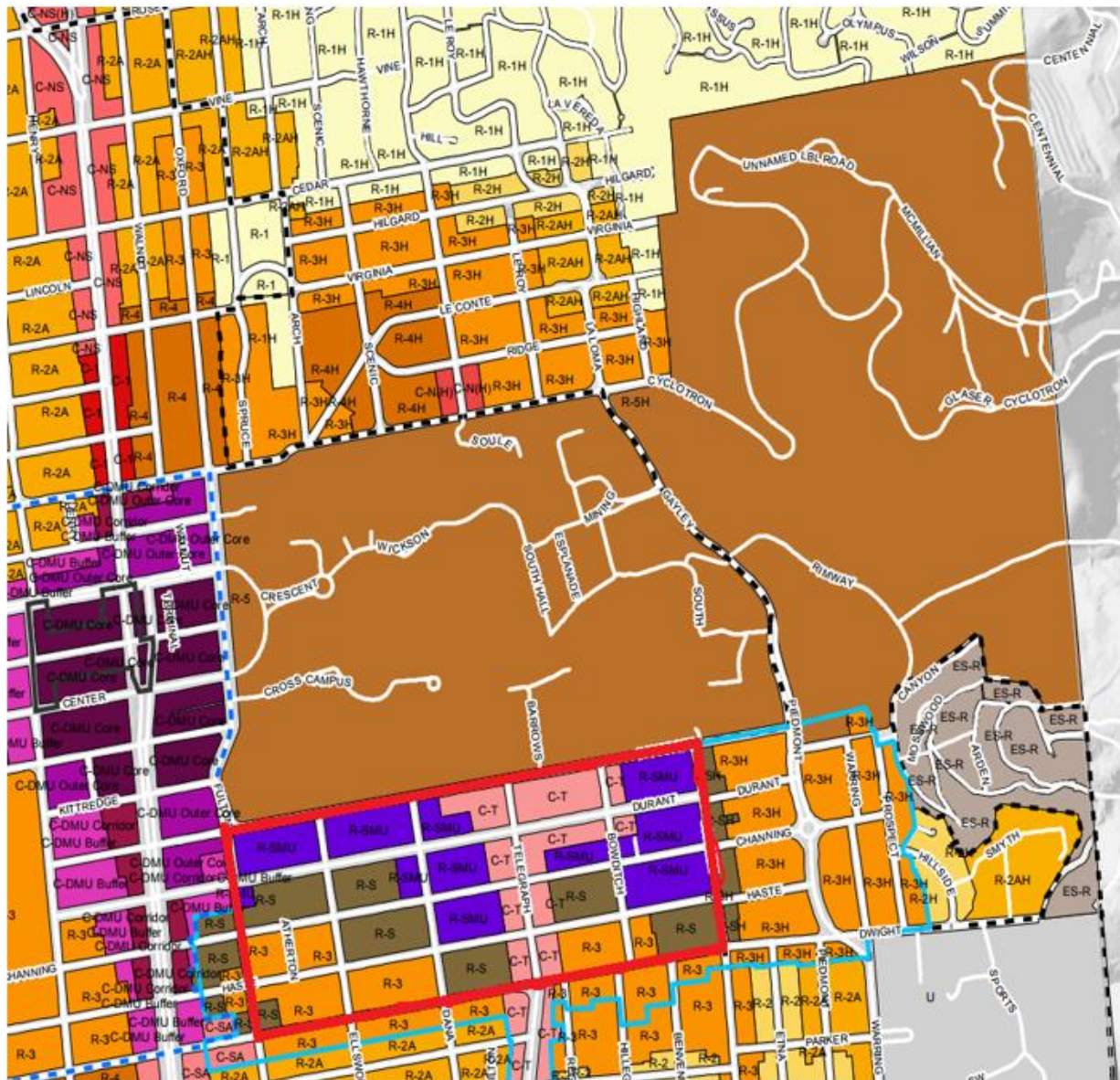
Increasing density in the area surrounding campus proves better for the environment, better for campus area businesses, and better for students. By reducing commute times, students will opt to walk or bike to class, reducing congestion on the road. A shorter commute will also increase student safety and allow students to participate in extracurricular activities that may run into the evening because students will not have to worry about how they will get home. An enhanced sense of safety in the surrounding region is beneficial for all in the community. Finally, higher density benefits campus area businesses because it brings them more customers, which supports the local economy. Previous efforts to increase south-side campus housing improved project viability specifically for the very small area of the C-T zoned blocks. Unfortunately, even blocks on Bancroft directly across from the University still have excessive restrictions.

FINANCIAL IMPLICATIONS: Minimal.

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

CONTACT PERSON: Councilmember Kriss Worthington 510-981-7170

Attachment:



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

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

**ANNOTATED AGENDA  
BERKELEY CITY COUNCIL MEETING**

**Tuesday, November 28, 2017**

**6:00 P.M.**

COUNCIL CHAMBERS - 2134 MARTIN LUTHER KING JR. WAY

JESSE ARREGUIN, MAYOR

Councilmembers:

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

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

**Preliminary Matters**

**Roll Call:** 6:04 p.m.

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

**Absent:** Maio, Wengraf

**Ceremonial Matters:**

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

**City Auditor Comments:**

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

**City Manager Comments:**

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

**Public Comment on Non-Agenda Matters:** 8 speakers.

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

## Action Calendar – Old Business

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

**From: City Manager**

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

**Financial Implications:** None

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

**Action:** On the severed portion to include density standards.

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

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

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

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

### High Priority

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

## Action Calendar – Old Business

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

### Medium Priority

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

## Action Calendar – Old Business

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

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

## Action Calendar – New Business

### 23. FY 2017 Year-End Results and FY 2018 First Quarter Budget Update

**From:** City Manager

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

**Financial Implications:** See report

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

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

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

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

**From:** Disaster and Fire Safety Commission

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

**Financial Implications:** See report

Contact: Keith May, Commission Secretary, 981-3473