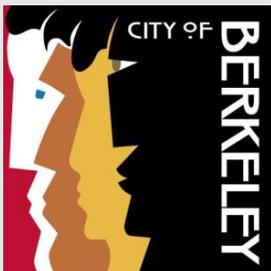




RESIDENTIAL OBJECTIVE STANDARDS

BACKGROUND MATERIALS REPORT

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I. INTRODUCTION

This report describes background information for the Objective Standards project. It summarizes relevant State housing law, City Council referrals, and other relevant planning efforts between 2015 and November 2021. The report includes footnotes and an Appendix with links to external sources that provide additional information.

The report will ensure equal access to background information related to the Objective Standards project, and will streamline public access to this information. This report will be used as a shared fact base by City staff, project consultants, City officials, and the general public throughout the course of the project. Information in this report will help to guide the preparation of new standards, and will be referenced at public meetings to provide background and context for draft project materials.

In addition to this introduction, this report is divided into the following sections:

- **State Housing Law**, including Senate Bill (SB) 35, the Housing Accountability Act, the Housing Crisis Act, SB 9, and other relevant 2022 State housing laws.
- **City Council Referrals**, including referrals related to the Housing Accountability Act, Missing Middle Housing, and efforts to eliminate exclusionary zoning practices.
- **Joint Subcommittee for the Implementation of State Housing Laws (JSISHL)**, including recommendations regarding density, shadow and design standards.
- **Parallel Planning Efforts**, including the Housing Element Update, Ashby and North Berkeley BART Station Planning, and citywide affordable housing requirements.
- **Existing Zoning Ordinance**, with a focus on Use Permit requirements, allowed residential uses in the R1 and R2 districts, the non-detriment finding, and existing regulations related to shadow impacts, density, and design.
- **Recent Development Projects**, with information on recent multi-unit residential development projects in Berkeley and an analysis of Use Permits and Administrative Use Permits (AUPs) required for these projects.

Referenced appendix materials are provided under separate cover.

II. STATE HOUSING LAW

Recent State laws relevant to the Objective Standards project include SB 35, the Housing Accountability Act, the Housing Crisis Act, SB 9, and several other 2022 State housing laws.

A. SB 35

In 2017 the California legislature adopted SB 35, which was part of a 15-bill housing package aimed at addressing the State's housing shortage and high housing costs. SB 35 requires local governments that have not met their Regional Housing Needs Allocation (RHNA) to approve by-right (without a discretionary process) qualifying multi-family and mixed-use residential projects. A qualifying project must be consistent with all objective standards, comply with affordability provisions (currently, 50% affordable units), agree to pay prevailing wages for construction work, and meet a number of other requirements in effect at the time the application was submitted.

If an applicant requests streamlined approval for a qualifying project under SB 35, the City must approve the project if it is consistent with objective standards in effect at the time the application was submitted. The City must review and act on the application through a ministerial process without a Use Permit or public hearings. SB 35 defines objective standards as "standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal."

Since 2018, four projects in Berkeley have requested streamlined approval under SB 35 (1900 Fourth Street, 2012 Berkeley Way, 1601 Oxford Street, and 2001 Ashby Avenue).

B. Housing Accountability Act

The Housing Accountability Act (HAA), Government Code Section 65589.5, limits a local government's ability to deny or reduce the density of housing development projects that are consistent with objective standards. The HAA was originally enacted in 1982 and amended in 2017, 2018, and 2019 to expand and strengthen its provisions.

The HAA applies to any development project with two or more units, including multi-family housing, mixed-use residential development and projects with two or more detached single-family homes. Under the HAA, a local government may deny or reduce the proposed density of a project only if it finds that 1) the project "would have a specific, adverse impact upon the public health or safety" and 2) "there is no feasible method to satisfactorily mitigate or avoid the adverse impact."

As discussed below, in Section V Existing Zoning Ordinance, Berkeley's Zoning Ordinance frequently establishes a baseline development standard that may be exceeded with an AUP or Use Permit. For example, in the R-4 zone, a building height of 35 feet is allowed as a baseline standard, with a height of between 35 and 65 feet allowed with a Use Permit. The City has determined that the protections afforded by the HAA apply to a housing development project up to and including the maximum development allowed with the AUP or Use Permit, not just up to the baseline (see Appendix 1).

C. Housing Crisis Act (SB 330)

SB 330, adopted in 2019, amended the HAA to establish vesting rights for projects that use a new pre-application process. SB 330 also added a new chapter to the Government Code, the “Housing Crisis Act of 2019,” which prohibits local governments from:

- Reducing the allowed intensity on a property below what was allowed under the General Plan or zoning in effect on January 1, 2018;
- Imposing a moratorium or similar restriction or limitation on housing development;
- Establishing or imposing growth control measures that control the pace of housing construction or limit the jurisdiction’s population; and
- Establishing new design standards that are not “objective.” The definition of an objective standard in SB 330 is the same as in SB 35.

D. SB 9

SB 9, effective January 1, 2022, requires cities to allow two dwelling units on one parcel in a single-family zone if the development meets certain requirements. SB 9 also requires cities to allow an “urban lot split” in a single-family zone, with two units allowed on each of the two newly created parcels (four units total). Currently, SB 9 is only applicable in the R-1 zoning district in Berkeley.

The following SB 9 provisions are most relevant to the Objective Standards project. The City may establish more permissive rules for multi-unit development in the R-1 zone if it so chooses.

Standards

- The City must allow each unit to have at least 800 square feet of floor area. The City may allow larger units if it chooses.
- For urban lot splits, the new parcels must be a minimum of 1,200 square feet unless the City allows smaller.
- The City may require setbacks for new construction of no more than 4 feet from side and rear lot lines.
- The City may require compliance with objective zoning, subdivision, and design review standards.
- The City is not required to allow an accessory dwelling unit in addition to the two units on the parcel.

Approval Process

- The City must review and act on qualifying projects ministerially without discretionary review or a public hearing.
- The City may deny an application for a qualifying project only if the Building Official determines that the project would have a specific adverse impact upon public health and safety or the physical environment.

Applicability Limitations

- The property may not be subject to certain natural resource and public safety constraints, including fire, earthquake, and flood hazards.

- The project may not demolish or alter deed-restricted affordable units, units subject to rent control, or rental units occupied by tenants within the prior three years.
- The project may not be on a site designated as a historic landmark.
- For urban lot splits, the applicant must intend to occupy one of the units as their primary residence for at least three years.

E. Other 2022 Housing Laws

The following additional new State housing laws, effective January 1, 2022, may also be relevant to the Objective Standards project:

- **SB 10:** If a city adopts an ordinance to allow up to 10 dwelling units on any parcel within a transit-rich area or urban infill site, the rezoning is exempt from review pursuant to the California Environmental Quality Act (CEQA).
- **SB 290:** Allows density bonuses for affordable student housing and other clarifications/revisions to State Density Bonus Law.
- **SB 478:** Requires a minimum floor area ratio (FAR) of 1.0 for projects with three to seven units and a minimum FAR of 1.25 for projects with eight to ten units in multi-family and mixed-use residential districts. Projects up to 10 units cannot be denied due to substandard lot size or coverage requirements.

III. CITY COUNCIL REFERRALS AND JSISHL MATERIALS

The Objective Standards project will also be guided by City Council referrals. The project will also consider prior research completed for the Joint Subcommittee for the Implementation of State Housing Laws (JSISHL).

A. City Council Referrals

The following City Council referrals are of particular relevance to the Objective Standards project:

- Housing Accountability Act (2017)
- Missing Middle Housing (2019)
- Eliminating Exclusionary Zoning (2021)

Housing Accountability Act

On July 11, 2017, the City Council adopted a referral to address the potential impacts of the State Housing Accountability Act (Government Code Section 65589.5) and to preserve local land use discretion (Appendix 2). The referral requested research into a set of objective zoning standards for new development projects in the following four areas:

- Density and/or building intensity;
- Public health and safety standards;
- Design review standards; and
- Views, shadows, and other impacts that underlie detriment findings.

Missing Middle Housing

On April 23, 2019 the City Council directed the City Manager to examine methods to provide for a broader range of housing types in areas of Berkeley with access to parks, schools, employment, transit, and other services (Appendix 3). The Council directed the City Manager to explore opportunities to allow “missing middle” housing types in the R-1, R-1A, R-2, and R-2A zoning districts. Missing middle is a term used to describe duplexes, triplexes/fourplexes, courtyard apartments and other small-scale multi-family housing types that have historically appeared in Berkeley neighborhoods primarily comprised of single-family homes.

Eliminating Exclusionary Zoning

On February 23, 2021 the City Council adopted a resolution declaring the intent of the Council to allow multi-family housing in residential neighborhoods throughout Berkeley (Appendix 4). With this resolution the City Council directed the City Manager to begin a process to revise the Zoning Ordinance to allow for small-scale multi-family development in the R-1, R-1A, R-2, and R-2A zoning districts. As part of this effort, the resolution calls for the City to also:

- Protect public safety in all neighborhoods;
- Allow for new housing that reflects the existing mix of multi-family housing types within neighborhoods;
- Provide strong anti-displacement and tenant protections;
- Accommodate families in new and rehabilitated multi-family housing developments;

- Ensure that new development does not demolish any rent-controlled or below market-rate housing;
- Explore incentives for projects to contribute to the need for affordable housing; and
- Carry out a robust community process when developing zoning changes.

B. Joint Subcommittee for the Implementation of State Housing Laws (JSISHL)

The City Council created the Joint Subcommittee for the Implementation of State Housing Laws (JSISHL) on January 23, 2018. JSISHL’s charge was to review issues around State Density Bonuses, the Housing Accountability Act, inclusionary zoning, and permit streamlining in order to comply with State law.

JSISHL met ten times between April 2018 and July 2020 to review State laws and develop an approach to objective standards for density, shadows, and design. Meeting materials can be viewed on the City’s JSISL webpage.¹

Density Standards

JSISHL received information from City staff on Berkeley’s existing density regulations, the density of recent development projects in Berkeley, and approaches to density standards in other communities. City consultants presented to JSISHL an analysis of density potential along University Avenue and San Pablo Avenue. Staff requested JSISHL feedback on three density-related questions:

- 1) What variables should be factored into developing an objective density standard?
- 2) How should objective density standards be applied?
- 3) What additional information is needed to develop a recommendation on objective density standards?

On July 22, 2020 JSISHL voted to recommend using FAR as a density standard with a secondary form-based approach in Residential and Commercial Districts (5-4-0-0 vote; see Appendix 5).

Shadow Standards

JSISHL received information on existing shadow standards in Berkeley and approaches to objective shadow standards used in other communities. To help inform a discussion of potential objective shadow standards, JSISHL members identified priority features and areas to protect from shade. Example objective shadow standards considered by JSISHL included solar access fences, daylight planes, and no-shade or minimal shade areas. To help guide the process to formulate an objective shadow standard recommendation, staff recommended that JSISHL consider: features to protect (e.g., school yards), areas of city needing shadow controls (e.g., residential districts), and the method of shadow control (e.g., daylight plane).

On July 22, 2020 JSISHL voted to recommend that: 1) the City should not consider shadow impacts when a proposed new building or new construction meets all base development standards; and 2) the City should consider shadow impacts on an adjacent property when a side or rear yard setback reduction or an increase in height is requested by a Use Permit or by State Density Bonus over the allowable standard. JSISHL also recommended criteria to measure and mitigate shadow impacts (5-2-1-1 vote; see Appendix 5).

¹https://www.cityofberkeley.info/Clerk/Commissions/Joint_Subcommittee_for_the_Implementation_of_State_Housing_Laws_Homepage.aspx

Design Standards

JSISHL reviewed an analysis of the City’s four existing sets of Design Guidelines: the citywide Design Review Guidelines, the Downtown Design Guidelines, the Southside Strategic Plan Design Guidelines, and the University Strategic Plan Design Guidelines. This analysis categorized these design standards into eleven general categories² and identified each design standard as “objective” or “subjective.” JSISHL also considered proposed new objective standards to replace existing subjective guidelines and example objective standards from other communities.

On July 22, 2020 JSISHL voted to recommend that the proposed new objective standards be reviewed and further developed by the Design Review Committee and Planning Commission (7-0-2-0 vote; see Appendix 5).

City Council Action – November 9, 2021

On November 9, 2021 the City Council considered the JSISHL work products and recommendations. The City Council also considered two supplemental agenda materials submitted by Councilmembers with alternative approaches and direction for new objective standards.

The first supplemental, from Councilmembers Sophie Hahn, Kate Harrison, Susan Wengraf and Mayor Jesse Arreguin (See Appendix 6) recommended the City:

- Adopt maximum units-per-acre density standards consistent with densities currently possible under existing regulations;
- Develop shadowing standards providing an objective, measurable method of calculating shadow impacts; and
- Develop limited building form and design standards in consultation with the design Review Committee and Zoning Adjustments Board (ZAB).

The second supplemental, from Vice Mayor Lori Droste, Councilmember Terry Taplin, and Councilmember Rashi Kesarwani (See Appendix 7), recommended the City:

- Adopt a minimum units-per-acre density standard with no maximum;
- Manage shadows exclusively through generalized height/bulk controls; and
- Focus building form regulations on fostering high-quality street level experience for pedestrians.

Councilmembers noted the similarities in the two supplementals, as well as different approaches to address shadow impacts and solar access for rooftop systems. The City Council voted to table the item.

² The 11 general categories were: Harmony; Adjacencies; Articulation; Ground Floor Design; Building Entrances; Open Space; Parking Lots; Structures and Driveways; Building Accessories; Street Trees and Sidewalk Landscaping; and Views, Signs and Awnings.

IV. PARALLEL PLANNING EFFORTS (2015-2023)

The City is currently engaged in a number of planning efforts related to the Objective Standards project, including the Housing Element Update, Ashby and North Berkeley BART Station Planning, and revisions to the Citywide Affordable Housing Requirements.

A. Housing Element Update

In June 2021 the City began the process to update its Housing Element, which is a State-mandated component of the General Plan. The Housing Element is mandated by State law to be updated every eight years and certified by California's Department of Housing and Community Development (HCD).

The Housing Element must demonstrate that the City provides sufficient sites to accommodate its fair share of housing need, referred to as the Regional Housing Needs Allocation (RHNA). Berkeley's RHNA for the 2015-2023 period was 2,959 residential units. Berkeley's RHNA for 2023-2031 planning period is 8,934 residential units. In addition, HCD recommends that cities identify a "buffer" of 15% to 30% above RHNA for lower- and moderate-income categories to ensure that the Housing Element remains compliant with No Net Loss (AB 166) throughout the eight-year planning cycle.

The Objective Standards Project will be integrated and closely coordinated with the Housing Element Update. The City will seek public input on draft objective standards at Housing Element workshops. New objective standards will be prepared as needed to allow for new residential development consistent with the updated Housing Element. For example, the City will establish new density standards for districts allowing residential development to meet RHNA and follow HCD's methodology for determining capacity for the Housing Element. The City may also revise existing or establish new standards to ensure that adequate sites are provided to accommodate new housing production consistent with the City's RHNA for the 2023-31 planning period.

Additional information and materials about the Housing Element Update, including the process and schedule, can be found on the City's Housing Element webpage³.

B. Ashby and North Berkeley BART Station Planning

The City is currently preparing new zoning regulations for the Ashby and North Berkeley BART station areas. Assembly Bill (AB) 2923 requires Berkeley to rezone BART-owned properties by July 21, 2022 to allow residential densities of at least 75 units per acre and building heights of at least seven stories.

The process to create new zoning for the BART station areas has been guided by the December 10, 2019 Memorandum of Understanding (MOU) between BART and the City (Appendix 8). On September 1, 2021 the Planning Commission considered draft Zoning Ordinance Amendments to create a new Residential-BART Mixed-Use (R-BMU) district (Appendix 9). This new district establishes allowed land uses, development standards, high-level design standards, and permit requirements for future development in the station areas. The Planning Commission also considered a draft Joint Vision and Priorities document that describes the City and BART's shared, high-level expectations for future development of both the Ashby and North Berkeley BART properties (Appendix 10).

³ <https://www.cityofberkeley.info/housingelement/>

In spring 2022 the Planning Commission will hold a public hearing on the proposed Residential BART Mixed Use (R-BMU) zoning district, CEQA analysis, and other associated documents to formulate a recommendation to the City Council. The City Council will consider these materials by summer 2022.

The City is also preparing objective design standards separate from the R-BMU zoning with detailed design requirements for new development in the station areas. These standards will address station functionality (circulation/infrastructure), public realm standards (sidewalks/street trees), building form and massing, building facade design, and open space. The City expects to adopt these standards in 2022.

C. Citywide Affordable Housing Requirements

The City is preparing a comprehensive update to its affordable housing requirements in response to six City Council referrals over the past five years. On May 5, 2021, staff presented to the Planning Commission potential changes to the existing regulations being evaluated as part of this effort. At this meeting the Planning Commission received a report prepared by the City's consultant with analysis and recommended changes (see Appendix 11). This report was also shared with the City Council at a work session on May 18, 2021. City staff expects to bring draft ordinance amendments to the Planning Commission, the Housing Advisory Commission and the City Council in 2022.

On November 9, 2021 the City Council approved a referral from Councilmembers Taplin, Bartlett, Robinson, and Hahn for the City to develop an Affordable Housing Overlay as part of the Housing Element Update (Appendix 12). This overlay would apply to 100 percent affordable projects to allow ministerial approval, increased height and density, and modified development standards for qualifying projects.

In a separate process led by the 4x4 Joint Task Force Committee on Housing, the City is also discussing changes to the City's demolition requirements. These requirements help protect existing rent-controlled housing by regulating and compensating for the elimination of units that may result from modifications to the existing housing stock (e.g. removing kitchens, combining units).

V. EXISTING ZONING ORDINANCE

Berkeley’s Zoning Ordinance is codified as Title 23 of the Municipal Code⁴. On September 28, 2021 the City Council adopted a reorganized and rewritten Zoning Ordinance, referred to as the Baseline Zoning Ordinance (BZO) and now called the “new Zoning Ordinance”, effective December 1, 2021. The new Zoning Ordinance did not make major subjective changes to existing rules and procedures. The purpose of the new Zoning Ordinance is to enhance customer service, clarify existing requirements, and lay foundation for future substantive revisions to the Zoning Ordinance.

The sections below describe existing Zoning Ordinance content most relevant to the Objective Standards project.

A. Use Permits for Residential Development

In all zoning districts, establishing any residential use (single-family, two-family, multi-family, or mixed-use residential) requires ZAB approval of a Use Permit. In addition to the Use Permit for the land use, the Zoning Ordinance may also require additional Use Permits or AUPs for various aspects of the proposed project.

Appendix 13 lists the AUP and Use Permit requirements that could apply to residential development projects, divided into four tables. Tables 1, 2, and 3 in Appendix 13 show permit requirements unique to residential, commercial, and manufacturing districts, respectively. Table 4 in Appendix 13 shows permit requirements that apply in all districts. The tables organize permit requirements into general topic categories (e.g., Topic 1: Allowed Residential Uses in Table 1). The tables also show district-specific permit requirements within each topic category.

This categorization system in Appendix 13 was created to analyze common permit triggers for recent development projects, as discussed below, in Section VI.B Permit Analysis of this report. Presenting permit triggers in this way will also help the City to identify which permit requirements to eliminate, modify, or translate into new standards as part of the Objective Standards project.

B. Non-Detriment Finding

To approve an AUP or Use Permit, the review authority must find that the proposed project:

- a. *Will not be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or working in the area or neighborhood, of the proposed use; and*
- b. *Will not be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City. (23.406.030.F & 23.406.040.E)*

The Zoning Ordinance does not define detriment or identify criteria to consider when making this detriment finding. The City’s informational handout for AUPs and Use Permits, however, defines detriment as follows:⁵

⁴ <https://www.codepublishing.com/CA/Berkeley/>

⁵ See also: https://www.cityofberkeley.info/Planning_and_Development/Land_Use_Division/Administrative_Use_Permit.aspx

In general, a project may be considered detrimental if it has the following impacts:

a) Residential areas:

- Substantial loss of direct sunlight or privacy in a dwelling or an adjacent dwelling
- Unreasonable obstruction of a neighbor’s significant view
- Construction that is incompatible with the scale and character of the neighborhood

b) Commercial areas:

- Excessive traffic, noise or odors
- Incompatibility with surrounding businesses

The review authority must make a non-detriment finding for any project that establishes a new residential use. In practice, assessing detriment for an application can be difficult. Terms such as *substantial*, *unreasonable*, and *incompatible* are vague and undefined. The subjective nature of the non-detriment determination contributes to unpredictable decision-making, neighborhood conflict, a lengthy and expensive permitting process, and inequitable outcomes for applicants and neighbors. The non-detriment finding also creates potential conflicts with the Housing Accountability Act, which limits the City’s ability to deny projects consistent with objective standards.

C. Allowed Residential Uses in the R1, R1-A, R-2 and R-2A Zoning Districts

Table 1 shows residential uses in the R-1, R1-A, R-2 and R-2A zoning districts. Establishing a new dwelling unit of any kind requires a Use Permit.

Table 1: Allowed Residential Uses in the R-1 and R-2 Districts

UP(PH) = Use Permit required NP = Not Permitted	DISTRICTS			
	R-1	R-1A	R-2	R-2A
Dwellings				
Single-Family	UP(PH)	UP(PH)	UP(PH)	UP(PH)
Two-Family	NP	UP(PH)	UP(PH)	UP(PH)
Multi-Family	NP	NP	UP(PH)	UP(PH)
Group Living Accommodation	NP	NP	NP	NP
Senior Congregate Housing	NP	NP	NP	[1]
Mixed-Use Residential [2]	NP	NP	UP(PH)	UP(PH)

[1] Zoning Certificate for change of use to accommodate six or fewer people; AUP for change of use to accommodate seven or more people; Use permit for new construction.

[2] Non-residential uses limited to uses allowed by Table 23.202-1.

The Zoning Ordinance defines these residential uses as follows:

- **Single-Family Dwelling.** A building designed for and occupied exclusively by one household.
- **Two-Family Dwelling.** A building or use of a lot designed for, or occupied exclusively by, two households.
- **Multi-Family Dwelling.** A building, group of buildings, or portion of a building used or designed as three or more dwelling units.

- **Group Living Accommodations.** A building or portion of a building designed for or accommodating a residential use by persons not living together as a household. This use includes dormitories, convents and monasteries, and other types of organizational housing, and excludes hospitals, nursing homes and tourist hotels. Group living accommodations typically provide shared living quarters without separate kitchen or bathroom facilities for each room or unit. Residential hotels and senior congregate housing are separately defined types of group living accommodations each with their own permit requirements
- **Senior Congregate Housing.** A type of group living accommodations occupied by persons 60 years or older who live in sleeping rooms without kitchen facilities, and which contains congregate bath and/or dining facilities or rooms. This use excludes community care facilities/homes and nursing homes.
- **Mixed-Use Residential.** A development project with both residential and non-residential uses which are either 1) located together in a single building; or 2) in separate buildings on a single site of one or more contiguous properties

The number of units allowed on an R-1, R-1A, R-2 or R-2A lot is also constrained by minimum lot area per dwelling unit standards:

- **R-1:** No more than one primary dwelling allowed regardless of lot size (Table 23.202-2).
- **R-1A:** Minimum 4,500 sq. ft. lot for two dwelling units (Table 23.202-3).
- **R-2:** Minimum 2,500 sq. ft. of lot area per dwelling units, with one additional dwelling unit allowed for remaining lot area between 2,000 and 2,500 square feet. (Table 23.202-5)
- **R-2A:** Minimum 1,650 sq. ft. of lot area per dwelling units, with one additional dwelling unit allowed for remaining lot area between 1,300 and 1,650 square feet. (Table 23.202-8)

State law requires the City to allow accessory dwelling units (ADUs) on lots with single-family homes, as well as on lots with multi-family dwellings in certain circumstances. Given this, an ADU is generally allowed in addition to allowed primary units described above. The City may disallow ADUs to protect the public safety, such as in hillside areas subject to fire hazards. The City Council has been considering a draft ADU ordinance to implement State law.

D. Shadow Standards

As mentioned above, the City considers shadow impacts on residences when making the non-detriment finding for all AUPs and Use Permits. In most cases, this is a subjective assessment of whether a project would create a “substantial loss of direct sunlight” for a neighboring residential use. The Zoning Ordinance also contains the following additional subjective shadow impact requirements:

- **All R Districts (excluding ES-R) and the C-W District:** To approve an AUP for a residential addition, the City must find that to find that the addition would not “unreasonably obstruct sunlight, air, or views.” (23.202.030.A.2; 23.204.030.D.2)
- **C-T District:** A shade study is specifically required for all proposed buildings exceeding three stories or 40 feet. Based on the findings of the shade study, the ZAB may require the fourth or higher story of a building to be set back to minimize shade impacts on adjacent properties or the public right-of-way. The ZAB may allow the increased height and FAR with a Use Permit upon finding that the project will not result in a significant reduction in sunlight on Telegraph Avenue sidewalks. (23.204.110.D.4.b. 23.204.110.D.5)

- **C-DMU:** The ZAB may modify the setback standards with a Use Permit upon finding that the modified setbacks will not unreasonably limit solar access or create significant increases in wind experienced on the public sidewalk. (23.204.130.E.3.b)

In addition to these subjective requirements, the Zoning Ordinance includes the following two objective shadow impact standards:

- **C-U District:** Buildings on the north side of University Avenue may not cast a shadow at noon more than 20 feet onto any lot in a residential district as calculated when the sun is at a 29-degree angle above the horizon (winter solstice).
- **C-DMU District:** Green Pathway Projects with heights between 65 and 75 feet must incorporate design features to reduce shading on public sidewalks by at least 25 percent.

Shadow analysis is a submittal requirement for most new development projects, including new main buildings, additions exceeding 14 feet in average height on sites adjacent to a residential use, or other projects as determined necessary by the project planner. See Appendix 14 for the City’s shadow study instruction. The review authority uses these studies to determine compliance with shadow impact requirements and to make the non-detriment finding.

While shadow studies provide information on proposed shading, the ultimate analysis to make the required finding is subjective as the Zoning Ordinance does not define what constitutes a substantial, unreasonable or significant impact. In practice, the amount of shading from new development that is deemed “reasonable” and “insignificant” varies. This can result in uncertainty, conflict, delays, and expense for project applicants and neighbors.

E. Density for All Districts except C-AC

The Zoning Ordinance does not specify a maximum residential density, typically expressed as maximum dwelling units per acre. Instead, residential density for development is limited by development standards such as maximum height, lot coverage, and floor area ratio (in C and M districts only).

The Adeline Corridor (C-AC) district, established in 2020, identifies a maximum residential density. As shown in Table 2, allowed density ranges from 120 du/ac to 300 du/ac depending on the percentage of deed-restricted below market rate units in the project.

Table 2: Maximum Residential Density in C-AC District

Project Land Use	Maximum Density
Tier 1: Less than 14% affordable housing	120 du/ac
Tier 2: 14% affordable housing	210 du/ac
Tier 3: 21% affordable housing	250 du/ac
Tier 4: 25% affordable housing	300 du/ac
100% affordable housing	300 du/ac
Group Living Accommodation	1 GLA per 350 sf of lot area

Several other districts also establish a minimum lot area per dwelling unit, which is a different way to express maximum allowed density. Table 3 shows districts with a minimum lot area per unit standard

and the resulting equivalent maximum density expressed as dwelling units per acre. Table 2 also shows maximum lot area per group living accommodation bedroom in districts where this use is allowed.

Table 3: Minimum Lot Area Per Dwelling or Group Living Accommodations (GLA)

Project Land Use and District	Minimum Lot Area per Dwelling Unit or GLA	Equivalent Maximum Density
Dwelling Units		
R-2	2,500 sf per unit	17 du/ac
R-2A	1,650 sf per unit	26 du ac
MU-R	1,250 sf per unit	34 du/ac
All Other Districts	No minimum	No maximum
Group Living Accommodations		
R-3, R-4, R-S	350 sf per GLA	-
R-5, R-SMU	175 sf per GLA	-
All Commercial Districts	350 sf per GLA	-

Residential density is also addressed in Berkeley’s General Plan. For each land use classification shown on the Land Use Diagram, the General Plan identifies a “range of appropriate building intensities and in some cases, population densities.” Table 4 shows these intensity/density ranges and identifies the zoning districts that correspond to each General Plan land use classification. The General Plan explains that these intensity/density ranges “are for general planning purposes” and “are not intended to be used as standards to determine the maximum allowable density on a specific parcel.” As described in Section VI of this report, the built density of recent multi-family and mixed-use development projects in Berkeley in many cases far exceeds the density ranges described in the General Plan.

Table 4: General Plan Building Intensities and Population Densities

General Plan Land Use Classification	Compatible Zoning District	Dwelling Units per Acre	Persons per Acre
Low Density Residential	R-1, ES-R	1-10	22
Low Medium Density Residential	R-1A, R-2	10-20	22-44
Medium Density Residential	R-2A, R-3	20-40	44-88
High Density Residential	R-4, R-5, R-S, R-SMU	40-100	88-220
Neighborhood Commercial	C-N, C-E C-NS C-SA C-SO	20-40 [1]	44-88
Avenue Commercial	C-C C-U C-T C-W, C-AC	20-40 [1]	44-88
Downtown	C-DMU	40-100 [1]	88-220
Mixed Use-Residential	MU-R	10-20 [1]	22-44

[1] Not explicitly stated in General Plan. Calculated by dividing identified persons per acre by 2.2 average household size.

F. Design

In all districts, a project must comply with basic development standards that affect site layout and building massing. These standards include minimum building height, minimum setbacks, maximum floor area ratio, and maximum lot coverage. Some commercial districts also include standards that address details of the exterior building design. The City also has Citywide Design Review Guidelines⁶ that apply to all projects subject to design review, and separate design review guidelines included as part of adopted area plans. Design review is required for all projects in non-residential districts and most projects with a non-residential component in the R-3, R-4, R-SMU and R-S districts. A summary matrix of Berkeley's existing design guidelines can be found Appendix 15.

The City uses the Design Review process to determine project compliance with design standards guidelines. Design review requirements and procedures are described in Zoning Ordinance Section 23.406.070 (Design Review). Design Review is conducted by land use staff, the Design Review Committee (a ZAB subcommittee), or the Landmarks Preservation Commission depending on the type of project. To approve a Design Review application the review authority must find that the proposed project conforms with the City of Berkeley Design Guidelines and any City-adopted design standards and guidelines applicable to the project.

Building design is also regulated by policies and standards in **area plans**. Adopted plans can be found on the City's website⁷. The City uses the following design guidelines to implement plans for defined geographic areas:

- Downtown Design Guidelines;⁸
- Southside Strategic Plan Design Guidelines;⁹
- University Strategic Plan Design Guidelines.¹⁰

The Zoning Ordinance also includes provisions that address details of the exterior building design. For example, in the C-U, C-AC, and C-DMU zoning districts certain projects must comply with minimum storefront transparency standards and other design standards for street-facing ground floor commercial uses.

⁶ See page 9 of this document:

https://www.cityofberkeley.info/uploadedFiles/Online_Service_Center/Planning/DR_Basic_Submittal_Packet.pdf

⁷https://www.cityofberkeley.info/Planning_and_Development/Land_Use_Division/Adopted_Plans_and_Ordinances.aspx

⁸ https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_DAP/DBDesignGuidelines2012.pdf

⁹ [https://www.cityofberkeley.info/uploadedFiles/Planning_\(new_site_map_walk-through\)/Level_3_-_General/04-11%20Southside%20Plan%20Design%20Guidelines%20-%20FINAL.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_(new_site_map_walk-through)/Level_3_-_General/04-11%20Southside%20Plan%20Design%20Guidelines%20-%20FINAL.pdf)

¹⁰ [https://www.cityofberkeley.info/uploadedFiles/Planning_\(new_site_map_walk-through\)/Level_3_-_General/N.%20Design_Guidelines.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_(new_site_map_walk-through)/Level_3_-_General/N.%20Design_Guidelines.pdf)

VI. RECENT DEVELOPMENT PROJECTS

To help guide preparation of new objective standards, land use staff compiled a list of 92 multi-unit residential projects that were entitled between 2013 and 2021 or proposed in 2021 and analyzed the permits required for these projects.

A. Project Database

The City has assembled data on recent residential development projects in Berkeley creating two or more units (Appendix 16). This data includes projects where an application was submitted, zoning entitlements approved, or building permit issued between January 1, 2016 and June 30, 2021. Appendix 16 contains information about each project, including density, height, floor area ratio, and number of units; Appendix 17 contains a map of the projects in the data set.

As shown in Table 5, 92 projects are in the data set, providing a total of 4,375 units. Over 3,000 units (70%) are in mixed-use buildings with five or more units. A total of 686 units are in multi-family projects (no commercial component) and 577 units in group living accommodations. Appendix 17 shows the location of these projects.

Table 5: Recent Development Projects (2013-2021)

Project Type	Number of Projects	Number of Units
Multi-Family		
Multi-unit detached [1]	10	31
2-4 units	9	33
5+ units	18	686
Mixed-Use		
Multi-unit detached [1]	0	0
2-4 units	5	5
5+ units	42	3,043
Group Living Accommodations		
Multi-unit detached [1]	0	0
2-4 units	0	0
5+ units	8	577
TOTAL	92	4,375

[1] Two or more detached primary units on a single parcel

For the first Housing Element workshop on Oct 27, 2021, the City shared information for a subset of 19 of these recent projects (Appendix 18). These projects were selected to showcase the range and diversity of recent multi-unit development projects in Berkeley. Workshop participants were asked to consider these projects when discussing the future of new housing in Berkeley.

B. Permit Analysis

The City analyzed recent the multi-unit residential projects in Appendix 16 to better understand the types and frequency of permits required for residential development in Berkeley. For each project, the City identified the project features that triggered a permit requirement, using the permit categorization system shown in Appendix 13 (Existing Permit Requirements). Projects subject to ministerial approval under SB 35 were excluded from this analysis as they did not require a UP or AUP.

As discussed in Section V.A, the Zoning Ordinance requires the ZAB to approve a Use Permit to establish any residential use, and typically requires multiple additional Use Permits or AUPs for various aspects of the proposed project. As shown in Table 6, the average number of permits required per project analyzed is 3.2 in residential districts, 4.9 in commercial districts, and 2.4 in manufacturing districts.

Table 6: Average Number of Permits Required Per Project

District Type	Average Number of Permits Per Project
Residential	3.2
Commercial	4.9
Manufacturing	2.4

Table 7 shows the frequency of specific Use Permit and AUP triggers in the projects analyzed. The UP/AUP identifier (e.g., “Demolition (6A)”) in the table corresponds to the permit topic category number in Appendix 13.

As shown in Table 7, the most common Use Permit trigger was eliminating or demolishing a dwelling unit or demolishing a non-residential building. Other common permit triggers are those related to establishing residential uses, constructing new floor area, constructing buildings with projections above the height limit, reducing parking, and constructing buildings above the height limitation.

Table 7: Recent Project Permit Analysis (Entitled between 2013 and 2021 or proposed in 2021)

R = Residential District C = Commercial District M= Manufacturing District AD = All Districts			
	UP/AUP Type	Total Number of Permits	Percent of Total
AD	Demolition (6A): Eliminate or demolish a dwelling unit or to demolish a non-residential building.	54	14.6%
C	Allowed Residential Uses (1A): Establish any residential use.	44	11.9%
C	New Floor Area (3A-H): Create new floor area.	39	10.5%
AD	Projections Above Height Limit (2A): Construct architectural elements to project above height limit.	34	9.2%
AD	Parking (3A-AA): Reduce, waive, or modify off-street, on-street, and bicycle parking.	25	6.7%
R	Allowed Residential Uses (1A): Establish any residential use.	24	6.5%
C	Mixed-Use Projects (11A-D): Construct or modify development standards for mixed-use projects.	22	5.9%
C	Allowed Commercial Uses (2A-E): Establish certain commercial, retail, and office uses, outdoor seating, or mixed-use development.	15	4.0%
C	Setbacks (14A-B): Modify or reduce setbacks.	15	4.0%
C	Height (12A-C): Increase building height.	13	3.5%
M	Allowed Residential Uses (1A): Establish dwelling units.	8	2.2%
AD	Nonconformities (4A-C): Changes, additions to, or enlargements of a nonconforming setback, height, or structure.	8	2.2%
R	Adding Bedrooms (4A-B): Add or create a new bedroom.	7	1.9%
AD	Use Permit Modification (8A): Modification to an approved Use Permit.	7	1.9%
R	Height of Main New Buildings (5A-I): Construct a building height greater than the height limitation.	6	1.6%
C	Live/Work (16A-D): Establish live/work units and related modifications.	6	1.6%
C	Privately-Owned Public Open Space (15A-B): Construct privately-owned public space or pay fee-in-lieu of.	5	1.3%
R	Residential Additions (3A-B): Construct major residential addition.	4	1.1%
R	Height of Residential Additions (6A-J): Construct a residential additional at a height greater than the height limitation.	4	1.1%
C	Ground Floor Commercial Uses (10A): Reduce minimum ground floor commercial floor area and street frontage.	4	1.1%
R	Building Separation (12A-B): Reduce minimum building separation.	3	0.8%
M	Allowed Commercial Uses (2A): Establish a mixed-use residential project or other neighborhood-serving uses typical in a mixed-use development.	3	0.8%
M	New Floor Area (3A): Create 5,000 square feet or more of new floor area.	3	0.8%
R	Setbacks (11A-G): Reduce minimum required setbacks.	2	0.5%
C	Ground Floor Residential Uses (8A-B): Establish ground floor residential or single use residential projects.	2	0.5%
M	Live/Work (9A-B): Conversion to or construction of live/work units.	2	0.5%

R = Residential District C = Commercial District M= Manufacturing District AD = All Districts			
	UP/AUP Type	Total Number of Permits	Percent of Total
AD	Fences (7A): Construct a fence over six feet, on lot-line, or within setbacks for main building.	2	0.5%
R	Projections Above Height Limit (7A): Construct decks, railings, trellises, pergolas, and other similar structures above the residential addition height limit.	1	0.3%
R	Lot Coverage (10A-B): Increase lot coverage.	1	0.3%
R	Accessory Buildings (13A): New accessory building and/or to deviate from development standards.	1	0.3%
C	Tenant Space Reconfiguration (4A): Convert more than 5,000 square feet of space.	1	0.3%
C	Mixed-Use Open Space Standard (6A): Modify minimum usable open space for mixed use projects.	1	0.3%
C	FAR (13A): Increase FAR from 5.0 to 6.0 North of Dwight Way.	1	0.3%
C	Unlisted Uses (17A): Establish an unlisted use.	1	0.3%
M	Protected Uses (5A-B): Change a protected use to any other non-protected use.	1	0.3%
M	Setbacks (7A): Reduce front or streetside setback to the smaller of front setbacks on an abutting lot	1	0.3%
AD	Setbacks; Lots W/ Multiple Districts (1A): Apply the setbacks in one part of a lot to a part of the lot located in another district.	1	0.3%
R	Allowed Commercial Uses (2A): Create new commercial floor area.	0	0.0%
R	Parking (8A): Expand existing parking area or create new parking.	0	0.0%
R	Density; GLA (9A): Decrease the minimum lot area per GLA room.	0	0.0%
R	Unenclosed Accessory Structures (14A): Construct an unenclosed accessory structure in a required setback.	0	0.0%
C	Residential Additions (5A): Construct major residential additions.	0	0.0%
C	Development Standards for Residential Only Projects (7A): Modify development standards for residential-only projects.	0	0.0%
C	Useable Open Space (14A): Reduce useable open space requirements.	0	0.0%
M	Residential Additions (4A): Construct major residential additions.	0	0.0%
M	Location of Residential Uses (6A): Establish a dwelling unit, group living accommodation, or live/work within 150 feet of an M or MM district; or a construction product manufacturing or primary product manufacturing use.	0	0.0%
M	Fences (8A): Allow for an alternative method to provide a buffer between the manufacturing and residential uses.	0	0.0%
AD	Building Features Abutting R District (5A): Reduce or waive building design standards for building features abutting an R district.	0	0.0%
	Total	371	100%

APPENDICES

Provided under separate cover.

1. Memorandum concerning applicability of HAA protections to development standards allowed with an AUP or Use Permit
https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Land_Use_Division/Att%201_HAA%20memo.pdf
2. City Council referral to address the potential impacts of the State Housing Accountability Act
https://www.cityofberkeley.info/Clerk/City_Council/2017/07_Jul/Documents/2017-07-11_Item_29_Housing_Accountability.aspx
3. City Council referral to explore opportunities to allow “missing middle” housing types in the R1, R1A and R2, and R2A districts
https://www.cityofberkeley.info/Clerk/City_Council/2019/04_Apr/Documents/2019-04-23_Item_32_Missing_Middle_Report.aspx
4. City Council resolution declaring the intent of the Council to allow multi-family housing in residential neighborhoods throughout Berkeley
https://www.cityofberkeley.info/Clerk/City_Council/2021/02_Feb/Documents/2021-02-23_Item_29_Resolution_to_End_Exclusionary.aspx
5. JSISHL meeting action minutes, July 22, 2020.
https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Commissions/JSISHL/2020-07-22_JSISHL_Draft_Action%20Minutes%20for%20the%20meeting%20of%202020-07-22.pdf
6. Supplemental from Councilmembers Sophie Hahn, Kate Harrison, Susan Wengraf and Mayor Jesse Arreguin concerning density, shadow, and design standards
https://www.cityofberkeley.info/Clerk/City_Council/2021/10_Oct/Documents/2021-10-26_Supp_3_Reports_Item_THIRTY-SIX_Supp_Hahn_pdf.aspx
7. Supplemental from Vice Mayor Lori Droste, Councilmember Terry Taplin, and Councilmember Rashi Kesarwani concerning density, shadow, and design standards
https://www.cityofberkeley.info/Clerk/City_Council/2021/11_Nov/Documents/2021-11-09_Supp_2_Reports_Item_20_Supp_Droste_pdf.aspx
8. Memorandum of Understanding (MOU) between BART and the City concerning the process to create new zoning for the BART station areas
https://www.cityofberkeley.info/Clerk/City_Council/2019/12_Dec/Documents/2019-12-10_Item_31_Approval_of_a_Memorandum.aspx
9. Draft Zoning Ordinance Amendments to create a new BART Mixed-Use (R-BMU) district
[https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Land_Use_Division/Appendix%20B_August%202021%20Draft%20R-BMU%20Development%20Standards%20and%20Joint%20Vision%20and%20Priorities%20Document%20\(3\).pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Land_Use_Division/Appendix%20B_August%202021%20Draft%20R-BMU%20Development%20Standards%20and%20Joint%20Vision%20and%20Priorities%20Document%20(3).pdf)

10. Draft Joint Vision and Priorities document describing the City and BART's expectations for future development of the Ashby and North Berkeley BART properties
[https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Land_Use_Division/Appendix%20B_August%202021%20Draft%20R-BMU%20Development%20Standards%20and%20Joint%20Vision%20and%20Priorities%20Document%20\(3\).pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Land_Use_Division/Appendix%20B_August%202021%20Draft%20R-BMU%20Development%20Standards%20and%20Joint%20Vision%20and%20Priorities%20Document%20(3).pdf)
11. Street Level Advisors analysis and recommendations for updating the City's affordable housing requirements
[https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2021-05-05_PC_Item%209\(1\).pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2021-05-05_PC_Item%209(1).pdf)
12. Referral from Councilmembers Taplin, Bartlett, Robinson, Hahn to develop an Affordable Housing Overlay for 100 percent affordable projects
https://www.cityofberkeley.info/Clerk/City_Council/2021/11_Nov/Documents/2021-11-09_Item_09_Affordable_Housing_Overlay.aspx
13. List of AUP and Use Permit requirements that could apply to residential development projects
https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Land_Use_Division/App%2013_Required%20AUP%20and%20UP.pdf
14. City shadow study instructions
https://www.cityofberkeley.info/uploadedFiles/Online_Service_Center/Planning/Guideline%20III.A.7%20Shadow%20Study%20Instructions.pdf
15. Summary matrix of Berkeley's existing design guidelines
https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Land_Use_Division/Att%2015_Summary%20of%20Design%20Guidelines.pdf
16. Data on recent residential development projects in Berkeley creating two or more units
https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Land_Use_Division/Append%2016_2%20or%20more%20units.pdf
17. Map of recent residential development projects in Berkeley creating two or more units
https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Land_Use_Division/Append%2017_Map.pdf
18. Information on recent residential development projects shared at the first Housing Element workshop
https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Land_Use_Division/Append%2018_recent%20info.pdf