Planning Commission

AGENDA

REGULAR MEETING OF THE PLANNING COMMISSION

Wednesday, July 6, 2022
7:00 PM

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE. Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the Planning Commission will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL https://us06web.zoom.us/j/84978109535. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the “raise hand” icon by rolling over the bottom of the screen.

To join by phone: Dial **1 669 900 6833** and enter Meeting ID: **849 7810 9535.** If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.

Please be mindful that the video conference and teleconference will be recorded. All rules of procedure and decorum that apply for in-person Planning Commission meetings apply for Planning Commission meetings conducted by teleconference or videoconference.

See “MEETING PROCEDURES” below.

All written materials identified on this agenda are available on the Planning Commission webpage:https://www.cityofberkeley.info/Clerk/Commissions/Commissions__Planning_Commission_Homepage.aspx

PRELIMINARY MATTERS

1. ***Roll Call:*** **Wiblin, Brad,** appointed by Councilmember Kesarwani, District 1
Vincent, Jeff, appointed by Councilmember Taplin, District 2
Moore III, John E. “Chip”, appointed by Councilmember Bartlett, District 3
Oatfield, Christina, appointed by Councilmember Harrison, District 4
Mikiten, Elisa, **Chair,** appointed by Councilmember Hahn, District 5
Kapla, Robb, appointed by Councilmember Wengraf, District 6

Twu, Alfred, appointed by Councilmember Robinson, District 7
Hauser, Savlan, **Vice Chair**, appointed by Councilmember Droste, District 8
Ghosh, **Barnali,** appointed by Mayor Arreguin

2. ***Order of Agenda:*** The Commission may rearrange the agenda or place items on the Consent Calendar.

3. ***Public Comment:*** Comments on subjects not included on the agenda. Speakers may comment on agenda items when the Commission hears those items. (S*ee "Public Testimony Guidelines" below):*

4. ***Planning Staff Report including Future Agenda Items:*** In addition to the items below, additional matters may be reported at the meeting.

5. ***Chairperson's Report:*** Report by Planning Commission Chair.

6. ***Committee Reports:*** Reports by Commission committees or liaisons. In addition to the items below, additional matters may be reported at the meeting.

7. ***Approval of Minutes***: Approval of Draft Minutes from the meeting on **June 1, 2022**.

8. ***Other Planning-Related Events:***

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

9.	***Action:***	***Public Hearing: Zoning Ordinance Amendments that Address Technical Edits and Corrections to Berkeley Municipal Code (BMC) Title 23 – Package #3***
	Recommendation:	*Conduct a public hearing on technical edits and corrections to the new Zoning Ordinance and make a recommendation to City Council.*
	Written Materials:	*Attached*
	Presentation:	*N/A*
10.	***Discussion:***	**Affordable Housing Overlay and Local Density Bonus Program**
	Recommendation:	*Receive report and presentation on referrals incentivizing affordable housing production and provide feedback for the development of policy options*
	Written Materials:	*Attached*
	Presentation:	*N/A*
11.	***Action:***	***Planning Commission 2022-2023 Workplan***
	Recommendation:	*Review and recommend to City Council the Planning Commission Work Plan for 2022 – 2023.*
	Written Materials:	*Attached*
	Presentation:	*N/A*

ADDITIONAL AGENDA ITEMS: In compliance with Brown Act regulations, no action may be taken on these items. However, discussion may occur at this meeting upon Commissioner request.

Information Items:

- **June 2**
  - City Council Public Hearing on the Ashby and North Berkeley BART Station Areas
- **June 28**
  - City Council second reading of Ordinance No.7,815-N.S. to amend the Berkeley Municipal Code to create the Residential-BART Mixed-Use District Residential Zone District

Communications:

- General

Late Communications: (Received after the packet deadline):

- Supplemental Packet One – received by noon two days before the meeting
- Supplemental Packet Two
- Supplemental Packet Three

ADJOURNMENT

******** ***MEETING PROCEDURES*** ********

Public Testimony Guidelines:
All persons are welcome to attend the virtual meeting and will be given an opportunity to address the Commission. Speakers are customarily allotted up to three minutes each. The Commission Chair may limit the number of speakers and the length of time allowed to each speaker to ensure adequate time for all items on the Agenda. Customarily, speakers are asked to address agenda items when the items are before the Commission rather than during the general public comment period. Speakers are encouraged to submit comments in writing. See "Procedures for Correspondence to the Commissioners" below.

Procedures for* Correspondence *to the Commissioners:
All persons are welcome to attend the virtual hearing and will be given an opportunity to address the Commission. Comments may be made verbally at the public hearing and/or in writing before the hearing. The Commission may limit the time granted to each speaker.

Written comments must be directed to the Planning Commission Clerk at the Land Use Planning Division (Attn: Planning Commission Clerk), 1947 Center Street, Second Floor, Berkeley CA 94704, or via e-mail to: **zcovello@cityofberkeley.info**. All materials will be made available via

the Planning Commission agenda page online at this address: https://www.cityofberkeley.info/PC/.

Correspondence received by **12 noon, nine days** before this public meeting, will be included as a Communication in the agenda packet. Correspondence received after this deadline will be conveyed to the Commission and the public in the following manner:

- Correspondence received by **12 noon two days** before this public meeting, will be included in a Supplemental Packet, which will be posted to the online agenda as a Late Communication and emailed to Commissioners one day before the public meeting.

- Correspondence received after the above deadline and before the meeting will be included in a second and/or third Supplemental Packet, as needed, which will be posted to the online agenda as a Late Communication and emailed to the Commissioners by 5pm on the day of the public meeting.

Note: It will not be possible to submit written comments at the meeting.

Communications are Public Records: Communications to Berkeley boards, commissions, or committees are public records and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission, or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service, or in person, to the Secretary of the relevant board, commission, or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the Secretary to the relevant board, commission, or committee for further information.

Communication Access: To request a meeting agenda in large print, Braille, or on audiocassette, or to request a sign language interpreter for the meeting, call (510) 981-7410 (voice), or 981-6903 (TDD). Notice of at least five (5) business days will ensure availability.

Meeting Access: To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services Specialist, at 981-6418 (V) or 981-6347 (TDD), at least three (3) business days before the meeting date.

I hereby certify that the agenda for this regular meeting of the Planning Commission was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on **June 29, 2022.**

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Alene Pearson
Planning Commission Secretary

Planning Commission

DRAFT MINUTES OF THE REGULAR PLANNING COMMISSION MEETING
June 1, 2022

The meeting was called to order at 7:02 p.m.

Location: Virtual meeting via Zoom

1. **ROLL CALL:**
   Commissioners Present: Barnali Ghosh, Savlan Hauser, Robb Kapla, Elisa Mikiten, Chip Moore, Christina Oatfield, Alfred Twu, Jeff Vincent, and Brad Wiblin (joined late).

   Staff Present: Secretary Alene Pearson, Clerk Zoe Covello, Grace Wu, and Justin Horner.

2. **ORDER OF AGENDA:** Chair Mikiten asked to take public comment on and vote to continue Item 10 before hearing Item 9.

3. **PUBLIC COMMENT PERIOD:** 2

4. **PLANNING STAFF REPORT:**
   - In May, the City launched a new website – we are working to get our archives back online. If members of the public would like to request a record, they must file a PRA.

   - Future agenda items:
     - <u>July 6 Planning Commission meeting:</u>
       - Workplan for Planning Commission
       - Presentation from staff on a couple of Housing Element-related referrals:
         - Affordable Housing Overlay
         - Additional density in Southside

Information Items: None.

Communications:

- General.

Late Communications: *See agenda for links.*

- Supplemental Packet One
- Supplemental Packet Two

5. **CHAIR REPORT:**

Chair Mikiten will be attending the City Council meeting on Thursday, June 2, 2022 to represent the Planning Commission and share the recommendations the Commission made

at the public hearing held on April 6, 2022 regarding the Ashby and North Berkeley BART Station Areas.

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

- Workplan Subcommittee: Chair Mikiten reported that she is currently updating the referral spreadsheet from last year and noted that a discussion about the workplan will be on the July Planning Commission meeting agenda.

7. APPROVAL OF MINUTES:

Motion/Second/Carried (Twu/Hauser) to approve the Planning Commission Meeting Minutes from May 4, 2022.

Ayes: Ghosh, Hauser, Mikiten, Oatfield, Twu, and Vincent. Noes: None. Abstain: Moore and Kapla. Absent: Wiblin. (6-0-2-1)

8. OTHER PLANNING RELATED EVENTS:

- None.

AGENDA ITEMS

9. Discussion: Objective Standards for Middle Housing

Acting Principal Planner Grace Wu and consultant Ben Noble presented on proposed residential objective standards in the R-1, R1A, R-2, R-2A, and MUR Districts in response to City Council referrals for Missing Middle Housing and to End Exclusionary Zoning. The Planning Commission asked questions, took public comment, and provided feedback.

Public Comments: 7

10. Discussion: Planning Commission 2022-2023 Workplan

Motion/Second/Carried (Vincent/Mikiten) to continue the item at 7:18 p.m.

Ayes: Ghosh, Hauser, Kapla, Mikiten, Moore, Oatfield, Twu, and Vincent. Noes: None. Abstain: None. Absent: Wiblin. (8-0-0-1)

Public Comments: 1

Motion/Second/Carried (Kapla/Vincent) to adjourn the meeting at 9:29 p.m.

Ayes: Ghosh, Hauser, Kapla, Mikiten, Moore, Oatfield, Twu, Vincent, and Wiblin. Noes: None. Abstain: None. Absent: None. (9-0-0-0)

Members in the public in attendance: 12

Public Speakers: 10

Length of the meeting: 2 hr 27 minutes

Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: July 6, 2022

TO: Members of the Planning Commission

FROM: Justin Horner, Associate Planner

SUBJECT: Public Hearing on Zoning Ordinance Amendments that Address Technical Edits and Corrections to Berkeley Municipal Code (BMC) Title 23 – Package #3

RECOMMENDATION:
Conduct a public hearing to discuss amendments to the following sections of the Berkeley Municipal Code (BMC) and make a recommendation to City Council to approve the amendments.

- BMC Section 23.204.050 (C-C Zoning District)
- BMC Section 23.204.080 (C-E Zoning District)
- BMC Section 23.204.090 (C-NS Zoning District)
- BMC Section 23.204.130 (C-DMU District)
- BMC Section 23.206.050 (Protected Uses)
- BMC Section 23.304.030 (Setbacks)
- BMC Section 23.304.090 (Usable Open Space)
- BMC Section 23.322.030 (Required Parking Spaces)
- BMC Section 23.406.070 (Design Review)

BACKGROUND
On October 12, 2021, the City Council passed Ordinance No. 7,787-NS, which repealed the then-existing Title 23 of the Berkeley Municipal Code and zoning maps ("the old Zoning Ordinance") and adopted a new Title 23 of the Berkeley Municipal Code and zoning maps ("the new Zoning Ordinance"). The new Zoning Ordinance became effective December 1, 2021.

The new Zoning Ordinance was created as a customer service improvement and was limited in scope to changes that reorganized and reformatted Title 23 to make the City's zoning code easier to understand and administer. Minor "consent changes" were approved by City Council where changes were needed to bring the Ordinance into compliance with State law or to codify prior zoning interpretations (*Attachment 2*). Other than the "consent changes", no substantive changes were intended by City Council.

As part of City Council's approval action, staff was directed to regularly return to the Planning Commission and City Council with amendments necessary to maintain the integrity of the new

Zoning Ordinance. Amendments presented under this direction should be for the purposes of clarifying the new Zoning Ordinance, fixing mistakes in transcription and correcting unintentional errors. Substantive changes in planning policy are not to be included in this set of routine amendments, but should be presented as separate Zoning Ordinance amendments, consistent with BMC Chapter 23.412 (Zoning Ordinance Amendments).

PROPOSED ZONING ORDINANCE AMENDMENTS

Since the new Zoning Ordinance came into effect on December 1, 2021, a number of clean-up amendments have been identified. The project team anticipated technical edits and corrections during the roll-out of the new Zoning Ordinance and was prepared with an efficient process and schedule for addressing these requests. This report is the product of that process and is labeled "Package #3" because it is the third set of edits to come before Planning Commission. Future reports will be numbered accordingly.

The proposed Zoning Ordinance amendments are presented in two categories. The first category includes three amendments that require an explanation or justification. These amendments are presented below with information on what was in the old Zoning Ordinance, what is in the new Zoning Ordinance, and recommended amendments including reasons why amendments are necessary. The second category includes technical edits such as spelling, punctuation or grammatical errors, or inaccurate references. These amendments are summarized in *Table 1: Text Edits and Other Routine Amendments*.

Category One Zoning Ordinance Amendments

1. BMC Section 23.204.090 (C-NS Zoning District)

Old Zoning Ordinance: Section 23E.48.070 of the old Zoning Ordinance included development standards for projects in the C-NS zoning district. Specifically, the Section set forth requirements for Usable Open Space in Mixed Use buildings that included the following:

- Each Dwelling Unit shall have Usable Open Space of at least 40 square feet (sq. ft.), with no dimension less than six feet.

New Zoning Ordinance: Table 23.204-24 C-NS Development Standards in the new Zoning Ordinance includes the development standards for projects in the C-NS district. The Table includes two errors:

- For Non-Residential and Mixed Use Projects, the Minimum Usable Open Space is noted as 200 sq. ft. per dwelling unit, when the proper development standard for these projects is 40 sq. ft. per dwelling unit; and

- Note [4], which refers to the 6-foot minimum dimension for Usable Open Space, is incorrectly associated with the Minimum Building Separation, when it should be associated with Minimum Usable Open Space.

Additionally, the Usable Open Space section of Table 23.204-24 includes reference to the Supplemental Standard 23.304.090—Usable Open Space, which requires a minimum dimension of 10 feet for Usable Open Space. The proposed amendment clarifies in note [4] that the 6-foot dimension standard is controlling for mixed-use projects in the C-NS.

Proposed Amendment: Amend Table 23.204-24 to read:

	Project Land Use		**Supplemental Standards**
	Non-Residential and Mixed Use	**Residential Only**	
Lot Area, Minimum			23.304.020
New Lots	4,000 sq. ft.	5,000 sq. ft.	
Per Group Living Accommodation Resident	350 sq. ft. [1]		
Usable Open Space, Minimum			23.304.090--Usable Open Space
Per Dwelling Unit	~~200~~ 40 sq. ft. [2]	200 sq. ft.	
Per Group Living Accommodation Resident	No minimum	90 sq. ft.	
Floor Area Ratio, Maximum	1.0	No maximum	
Main Building Height [~~2~~ 3]			
Minimum	2 stories	No minimum	
Maximum	35 ft. and 3 stories	28 ft. and 2 stories	
Lot Line Setbacks, Minimum			
Abutting/Confronting a Non-residential District	No minimum	See Table 23.204-25	23.304.030
Abutting/Confronting a Residential District	See 23.304.030.C.2		
Building Separation, Minimum	No minimum [4]	See Table 23.204-25	23.304.040
Lot Coverage, Maximum	100%	See Table 23.204-26	23.304.120

Notes:

[1] One additional resident is allowed for remaining lot area between 200 and 350 square feet.

[2] For mixed use projects, usable open space dimensions may be smaller than required in 23.304.090.B.3, but no dimension may be less than 6 feet.

~~[2]~~ [3] Basement levels devoted exclusively to parking are not counted as a story.

~~[3]~~ [4] For mixed use projects, minimum building separation shall be as required for residential-only projects. See Table 23.204-25.

2. *BMC Section 23.204.130 (C-DMU Zoning District)*

Old Zoning Ordinance: Chapter 23D.040.050.B (Usable Open Space) of the old BMC states that "no more than 50% of the total usable open space required may be satisfied by balconies." This regulation applies to all zoning districts (residential, commercial and manufacturing).

New Zoning Ordinance: Section 23.304.090.B.4 of the new Zoning Ordinance includes the above regulation regarding balconies, and is referenced as a Supplemental Standard in the development tables for all districts, except the C-DMU. Table 23.204-40: C-DMU Usable Open Space Requirements does not include a reference to this section, although it should, as the regulation in the old Zoning Ordinance refers to all districts.

Proposed Amendment: Amend Table 23.204-40: C-DMU Usable Open Space Requirements as follows:

	MINIMUM USABLE OPEN SPACE	**SUPPLEMENTAL STANDARDS**
Residential Uses	80 sq. ft./unit [1]	23.304.090—Usable Open Space
Non-Residential Uses	1 sq. ft. of privately-owned public open space per 50 sq. ft. of commercial floor area.	
Notes: [1] Each square foot of usable open space provided as privately-owned public open space is counted as two square feet of required on-site open space.		

3. *BMC Section 23.304.030 (Setbacks)*

Old Zoning Ordinance: Section 23D.20.070 of the old Zoning Ordinance included development standards in the R-1A zoning district. The Section did not include any provision for additional setback reductions for properties in the R-1A zoning district located west of San Pablo. Such a provision did exist at one time, but was removed from the R-1A zoning district regulations as part of amendments to the old Zoning Ordinance in 2018 (Ordinance No. 7,593).

New Zoning Ordinance: Table 23.304-1 Allowed Setback Reductions in Residential Districts of the new Zoning Ordinance includes a provision permitting specific setback reductions for properties in the R-1A located west of San Pablo Avenue.

Proposed Amendment: Amend Table 23.304-1 Allowed Setback Reductions in Residential Districts to strike the provision:

District Where Allowed	**When Allowed**	**Minimum Setback with Reductions**	**Required Permit**	**Required Additional Findings**
~~R-1A~~	~~West of San Pablo Avenue to construct a dwelling unit~~	~~No minimum~~	~~AUP~~	~~The unit would not cause a detrimental impact on emergency access; or on light, air or privacy for neighboring properties.~~

Category Two Zoning Ordinance Amendments

The following table includes minor text edits, along with a rationale for each edit.

Table 1: Text Edits and Other Routine Amendments

Zoning Ordinance Section	Proposed Amendment	Rationale
23.204.050.D Table 23.204-8 (C-C Development Standards Table)	Under **Non-Residential** and **Mixed Use** projects, revise reference for *Abutting/Confronting a Residential District* from 23.304.130.C.2 to 23.304.030.C.	Incorrect reference.
23.204.080.D Table 23.204-21 (C-E Development Standards Table)	Revise Note [2]: [2] Open space requirements for mixed use projects may be modified by the ZAB. See 23.204.~~060~~080.D.3	Incorrect reference.
23.206.050.A.7.d (Protected Uses in the MM and MU-LI Districts)	Revise the heading for 23.206.050.A.7.d: (d) *MU-LI Lots Under ~~Multiple~~ Common Ownerships*	Clarification that this section applies to multiple lots that are under common ownership, not single lots with multiple owners.
23.304.090.A (Usable Open Space)	Revise as follows: A. *Applicability.* The standards in this section apply to areas used to satisfy minimum usable open space requirements. ~~as shown in Chapters 23.202 – 23.202.110 (Zoning Districts).~~	The Usable Open Space standards in this section apply to all districts, not only to those listed.
23.304.030.B.7.c (Solar Energy Equipment)	Revise as follows: ~~(c) The building served by the solar energy equipment complies with the Residential Energy Conservation Ordinance (RECO).~~	The RECO no longer exists.
23.322.030.C.2 Table 23.322-4 (Required Off-Street Parking in Manufacturing Districts)	Revise **Required Parking Spaces** for Manufacturing uses in the MU-LI to 1.0 space per 1,000 sf: MU-LI District: 1.0~~5~~ per 1,000 sq. ft.	Does not reflect the correct parking rate, as stated in the old Zoning Ordinance.
23.406.070.A (Design Review—Purpose)	Revise the first sentence of the Purpose as follows: A. *Purpose.* Design Review is a discretionary process to ensure that exterior changes to ~~non-residential~~ buildings comply with the City of Berkeley Design Guidelines and other applicable City design standards and guidelines.	Design Review can apply to both non-residential and residential buildings.

NEXT STEPS

Staff recommends that the Planning Commission hold a public hearing, receive public testimony, and recommend to City Council adoption of the proposed Zoning Ordinance amendments.

ATTACHMENTS

1. Ordinance – Zoning Ordinance Amendments
2. Consent Changes Matrix
3. Public Hearing Notice

ORDINANCE NO. -N.S.

AMENDING TITLE 23 OF THE BERKELEY MUNICIPAL CODE TO CORRECT ERRORS AND MAKE NON-SUBSTANTIVE, TECHNICAL EDITS TO THE ZONING ORDINANCE

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

Section 1. That Berkeley Municipal Code Section 23.204.050.D Table 23.204-8 is amended as follows:

Table 23.204-8. C-C DEVELOPMENT STANDARDS

	PROJECT LAND USE			SUPPLEMENTAL STANDARDS
	NON-RESIDENTIAL	MIXED USE	RESIDENTIAL ONLY	
Lot Area Minimum				23.304.020
New Lots	No minimum		5,000 sq. ft	
Per Group Living Accommodation Resident	350 sq. ft. [1]			
Usable Open Space, Minimum				23.304.090
Per Dwelling Unit	200 sq. ft.	200 sq. ft. [2]	200 sq. ft.	
Per Group Living Accommodation Resident	90 sq. ft.			
Floor Area Ratio, Maximum	3.0		No maximum	
Main Building Height, Minimum	No minimum			
Main Building Height, Maximum	40 ft. and 2 stories	40 ft. and 3 stories [3] [4]	35 ft. and 3 stories	23.304.050
Lot Line Setbacks, Minimum				23.304.030--Setbacks
Abutting/Confronting a Non-residential District	No minimum		See Table 23.204-9	
Abutting/Confronting a Residential District	See 23.304.030.C			
Building Separation, Minimum	No minimum		23.304.040--Building Separation in Residential Districts	
Lot Coverage, Maximum	100%		See Table 23.204-10	23.304.120--Lot Coverage

Notes:

[1] One additional resident is allowed for remaining lot area between 200 and 350 square feet.

[2] Minimum open space for mixed use projects can be reduced with a UP(PH). See 23.204.050.D.3.

[3] In mixed use buildings, the third and higher stories must be used for residential purposes.

[4] The maximum height of a mixed use project can be increased to 50 ft and 4 stories with the issuance of a UP(PH).

Section 2. That Berkeley Municipal Code Section 23.204.080.D Table 23.204-21 is amended as follows:

Table 23.204-21. C-E DEVELOPMENT STANDARDS

	Project Land Use		Supplemental Standards
	Non-Residential and Mixed Use	Residential Only	
Lot Area, Minimum	No minimum	5,000 sq. ft.	23.304.020--Lot Requirements
New Lots	No minimum	5,000 sq. ft.	
Per Group Living Accommodation Resident	350 sq. ft. [1]		
Usable Open Space			23.304.090--Usable Open Space
Per Dwelling Unit	200 sq. ft. [2]		
Per Group Living Accommodation Resident	90 sq. ft.[2]		
Floor Area Ratio, Maximum			
Corner Lot	1.0	No maximum	
All Other Lot	0.8		
Main Building Height, Minimum	No minimum	No minimum	
Main Building Height, Maximum	28 ft. and 2 stories [3]	35 ft. and 3 stories	
Lot Line Setbacks, Minimum			23.304.030--Setbacks
Abutting/Confronting a Non-residential District	No minimum	See Table 23.204-22	
Abutting/Confronting a Residential District	See Table 23.304-3		
Building Separation, Minimum	No minimum	See Table 23.204-22	
Lot Coverage, Maximum	100%	See Table 23.204-23	23.304.120--Lot Coverage

Notes:

[1] One additional resident is allowed for remaining lot area between 200 and 350 square feet.

[2] Open space requirements for mixed use projects may be modified by the ZAB. See 23.204.080.D.3

[3] A basement level devoted exclusively to parking is not counted as a story.

Section 3. That Berkeley Municipal Code 23.204.090.D Table 23.204-24 is amended as follows:

Table 23.204-24. C-NS DEVELOPMENT STANDARDS

	Project Land Use		Supplemental Standards
	Non-Residential and Mixed Use	Residential Only	
Lot Area, Minimum			
New Lots	4,000 sq. ft.	5,000 sq. ft.	23.304.020
Per Group Living Accommodation Resident	350 sq. ft. [1]		
Usable Open Space, Minimum			
Per Dwelling Unit	40 sq. ft. [2]	200 sq. ft.	23.304.090--Usable Open Space
Per Group Living Accommodation Resident	No minimum	90 sq. ft.	
Floor Area Ratio, Maximum	1.0	No maximum	
Main Building Height [3]			
Minimum	2 stories	No minimum	
Maximum	35 ft. and 3 stories	28 ft. and 2 stories	
Lot Line Setbacks, Minimum			23.304.030
Abutting/Confronting a Non-residential District	No minimum	See Table 23.204-25	
Abutting/Confronting a Residential District	See 23.304.030.C.2		
Building Separation, Minimum	No minimum [4]	See Table 23.204-25	23.304.040
Lot Coverage, Maximum	100%	See Table 23.204-26	23.304.120

Notes:

[1] One additional resident is allowed for remaining lot area between 200 and 350 square feet.

[2] For mixed use projects, usable open space dimensions may be smaller than required in 23.304.090.B.3, but no dimension may be less than 6 feet.

[3] Basement levels devoted exclusively to parking are not counted as a story.

[4] For mixed use projects, minimum building separation shall be as required for residential-only projects. See Table 23.204-25

Section 4. That the Berkeley Municipal Code 23.204.130.E.4 Table 23.204-40 is amended as follows:

Table 23.204-40. C-DMU USABLE OPEN SPACE REQUIREMENTS

	MINIMUM USABLE OPEN SPACE	SUPPLEMENTAL STANDARDS
Residential Uses	80 sq. ft./unit [1]	23.304.090—Usable Open Space
Non-Residential Uses	1 sq. ft. of privately-owned public open space per 50 sq. ft. of commercial floor area.	
Notes: [1] Each square foot of usable open space provided as privately-owned public open space is counted as two square feet of required on-site open space.		

Section 5. That Berkeley Municipal Code 23.206.050.A.7.(d) is amended as follows:

(d) *MU-LI Lots Under Common Ownerships.* Protected industrial uses in the MU-LI district may be changed to a non-protected use if:

i. The protected industrial use is on a lot or group of abutting and confronting lots under single ownership and with more than one building; and

ii. 25 percent or less of the total gross floor area in all buildings on the lot(s) remains as a protected industrial use.

Section 6. That Berkeley Municipal Code Section 23.304.030.B Table 23.304-1 is amended as follows:

Table 23.304-1. ALLOWED SETBACK REDUCTIONS IN RESIDENTIAL DISTRICTS

DISTRICT WHERE ALLOWED	WHEN ALLOWED	MINIMUM SETBACK WITH REDUCTION	REQUIRED PERMIT	REQUIRED ADDITIONAL FINDINGS [1]
Front Setback Reductions				
ES-R	On any lot	No minimum.	UP(PH) [2]	The reduced setback is: 1) necessary to allow economic use of property due to the size, shape of the lot or the topography of the site; and 2) consistent with the ES-R district purpose.
R-S; R-SMU	On any lot	No minimum	AUP	The reduced setback is appropriate given the setbacks

				and architectural design of surrounding buildings
R-SMU	For either: 1) a main building with dwelling units or group living accommodations; or 2) any building north of Durant Avenue	No minimum	AUP	The reduced setback is appropriate given the setbacks and architectural design of surrounding buildings
Rear Setback Reductions				
ES-R [3]	On any lot	No minimum	UP(PH) [2]	The reduced setback is: 1) necessary to allow economic use of property due to the size, shape of the lot or the topography of the site; and 2) consistent with the ES-R district purpose.
R-1, R-1A	On a lot less than 100 ft. deep	20% of lot depth	ZC	None
R-1A	To construct a dwelling unit	12 ft.	AUP	The unit would not cause a detrimental impact on emergency access; or on light, air or privacy for neighboring properties.
R-2, R-2A, R-3, R-4, R-5, R-S, R-SMU	On a lot with two or more main buildings with dwelling units	No minimum	AUP	No additional findings
R-SMU	For either: 1) a main building with dwelling units or group living accommodations; or 2) any building north of Durant Avenue	No minimum	AUP	The reduction is appropriate given the setbacks and architectural design of surrounding buildings
Side Setback Reductions				
ES-R [3]	Any lot	No minimum	UP(PH) [2]	The reduced setback is: 1) necessary to allow economic use of property due to the size, shape of the lot or the topography of the site; and 2) consistent with the ES-R district purpose.
R-1, R-1A	Lot width less than 40 ft. [4]	10% of lot width or 3 ft., whichever is greater	ZC	None

R-2, R-2A	Lot width less than 40 ft.	First and second stories: 10% of lot width or 3 ft., whichever is greater; Third story: 5 ft.	ZC	None
R-SMU	For either: 1) a main building with dwelling units or group living accommodations; or 2) any building north of Durant Avenue	No minimum	AUP	The reduced setback is appropriate given the setbacks and architectural design of surrounding buildings

Notes:

[1] Findings are in addition to any AUP or Use Permit findings required in 23.406--Specific Permit Requirements.

[2] Fire Department must review and approve reduced setbacks in respect to fire safety.

[3] For lots less than 5,000 square feet, reductions are not allowed for property lines abutting a property under different ownership.

[4] Not permitted for rear main buildings in the R-1A district.

Section 7. That Berkeley Municipal Code Section 23.304.090.A is amended as follows:

A. *Applicability.* The standards in this section apply to areas used to satisfy minimum usable open space requirements.

Section 8. That Berkeley Municipal Code Section 23.304.030.B.7 is amended as follows:

7. *Solar Energy Equipment.* The Zoning Officer may approve an AUP for solar energy equipment to project into a required setback upon finding that:

(a) The projection is necessary to install the solar energy equipment;

(b) The proposed structures and equipment are installed with the primary purpose to collect, store, and use solar energy; and

Section 9. That Berkeley Municipal Code Section 23.322.030.C.2 Table 23.322-4 is amended as follows:

Table 23.322-4. REQUIRED OFF-STREET PARKING IN MANUFACTURING DISTRICTS

Land Use	Required Parking Spaces
Residential Uses	
Accessory Dwelling Unit	See Chapter 23.306
Dwellings	None required
Group Living Accommodation	None required
Non-Residential Uses	
All non-residential uses except uses listed below	2 per 1,000 sq. ft.
Art/Craft Studio	1 per 1,000 sq. ft.
Community Care Facility	1 per 2 non-resident employees
Food Service Establishment	1 per 300 sq. ft.
Library	1 per 500 sq. ft. of publicly accessible floor area
Laboratories	1 per 650 sq. ft.
Nursing Home	1 per 5 residents, plus 1 per 3 employees
Medical Practitioners	One per 300 sq. ft.
Large Vehicle Sales and Rental	MU-LI District: 1.5 per 1,000 sq. ft. All Other Districts: 1 per 1,000 sq. ft. of display floor area plus 1 per 500 sq. ft. of other floor area; 2 per service bay
Manufacturing	MU-R District: 1.0 per 1,000 sq. ft. All Other Districts: 1 per 1,000 sq. ft. for spaces less than 10,000 sq. ft.; 1 per 1,500 sq. ft. for spaces 10,000 sq. ft. or more
Storage, warehousing, and wholesale trade	1 per 1,000 sq. ft. for spaces of less than 10,000 sq. ft.; 1 per 1,500 sq. ft. for spaces 10,000 sq. ft. or more
Live/Work	MU-LI District: 1 per 1,000 sq. ft. of work area where workers/clients are permitted MU-R District: if workers/clients are permitted in work area, 1 per first 1,000 sq. ft. of work area and 1 per each additional 750 sq. ft. of work area

Notes:

[1] For multiple dwellings where the occupancy will be exclusively for persons over the age of 62, the number of required off-street parking spaces may be reduced to 25% of what would otherwise be required for multiple-family dwelling use, subject to obtaining a Use Permit.

Section 10. That Berkeley Municipal Code Section 23.406.070.A is amended as follows:

A. Purpose. Design Review is a discretionary process to ensure that exterior changes to buildings comply with the City of Berkeley Design Guidelines and other applicable City design standards and guidelines.

Section 11: Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

BASELINE ZONING ORDINANCE CONSENT CHANGES MATRIX

Topic	Description	BZO Location	Existing Location	Rationale for Change
23.102 – Introductory Provisions				
Effective Date	Statement of when the Ordinance becomes effective	23.102.020	NEW	Provide effective date
Authority	States that if state law referenced in Zoning Ordinance is amended, the Zoning Ordinance is deemed amended to reference the amended state law	23.102.030	NEW	Added for clarity
Laws of Other Agencies	Removes statement that uses and structures must comply with regulations and laws of other governmental agencies.	N/A	23B.56.040	It is unnecessary to state that uses and structures must comply with the law. Removed for clarity
Approvals Required	Describes approvals required for land uses and development	23.102.050 D	NEW	Expands on existing Section 23A.12.010 to reflect current practice
Conflict with State or Federal Regulations	Explains how to handle conflicts with State and Fed law	23.102.070	NEW	Consistent with the Supremacy Clause of the United States Constitution and Article XI, Section 5(a) of the California Constitution
Conflicts with Other City Regulations	New language: “Where the Zoning Ordinance conflicts with other ordinances, resolutions, or regulations of the City of Berkeley, the more restrictive controls.”	23.102.070.B	NEW	Clarity needed on how to handle conflicting requirements. The Zoning Ordinance does not supersede other City regulations.

Topic	Description	BZO Location	Existing Location	Rationale for Change
Conflicts with Private Agreements	Adds statement that the City is not responsible for monitoring or enforcing private agreements.	23.102.070.C	NEW	Clarifies City role in neighbor disputes involving private agreements
Pending Applications	Clarifies status of applications submitted during transition from ZO to BZO	23.102.080 C	NEW	Necessary to inform status of applications submitted during transition to BZO
Nonconformities	Defines what is considered nonconforming at the time of BZO adoption	23.102.080 E	NEW	Adds up-front reference to nonconformity chapter alongside other transitional provisions
23.104 – Interpreting the Zoning Ordinance				
Purpose	States purpose of chapter	23.104.010	NEW	BZO standard includes purpose statement for each chapter
Authority	Clarifies existing Zoning Officer authority	23.104.020	NEW see 23B.12.020	More accurately state ZO's authority
Rules of Interpretation	New rules of interpretation relating to: meaning and intent; harmonious construction; lists and examples; references to other regulations, publications, and documents; technical and non-technical terms; terms not defined; public officials and agencies; tenses and plurals. New harmonious construction language replaces existing language: "In case of conflict between any of the provisions of this Ordinance, the most restrictive shall apply."	23.104.030	23A.080.010	Provides for consistent application of rules

Topic	Description	BZO Location	Existing Location	Rationale for Change
Zoning Map	Clarifies intention to follow city limits	23.104.050 A 3	NEW	Greater clarity to resolve uncertainty in zoning district boundaries
23.106 Rules and Measurement				
Chapter Purpose	States chapter purpose	23.106.010	NEW	BZO standard includes purpose statement for each chapter
Building Separation	Defines method of building separation measurement (outer wall to outer wall)	23.106.080 A	NEW	Codifies existing practice and increases clarity
23.108 –Zoning Districts and Map				
Chapter Purpose	States chapter purpose	23.108.010	NEW	BZO standard includes purpose statement for each chapter
C-C and C-U Districts	C-1 zone split into two zones: Corridor Commercial (C-C) and University Avenue Commercial (C-U) district. C-U includes University Avenue Strategic Plan Overlay standards.	23.108.020.A	23A.16.020.A	Simplifies and clarifies C-1 rules inside and outside of University Avenue Strategic Plan area
Purpose of Overlay Zones	Explains purpose of overlay zones	23.108.020.C.1	NEW	Provide definition; explains that Overlay Zone regulations are in addition to regulations of underlying zone (not a replacement)

Topic	Description	BZO Location	Existing Location	Rationale for Change
Applicability of Overlay Zone Standards	Existing language: "the height, coverage, parking and usable open space shall comply with the provisions of the underlying district." BZO language: "If the overlay zone applies a standard to a property that conflicts with the underlying district, the overlay zone standard governs. If the overlay zone is silent on a standard in the underlying district, the underlying district standard applies."	23.108.020.C.3	23A.16.030.C	Corrects statement inconsistent with existing use of overlay zones
23.202 – Residential Districts				
Allowed Land Uses	In Residential Districts, unlisted uses are prohibited	23.202.020.B	NEW	Codifies existing practice, making explicit that if a use is not listed in the Allowed Uses Table for Residential Districts, the use is prohibited.
Open Space for ADUs in R-1 District	Removes requirement for ADUs to include usable open space. All standards for ADUs will be addressed in updated ADU chapter.	Table 23.202-2	23D.16.070.F	Codifies existing practice consistent with Gov't Code Section 65852.2
23.206 – Manufacturing Districts				
Industrial Performance Standards	Removes statements allowing City Manager to establish industrial performance standards.	23.206.040.F	23E.64.070.E 23E.72.070.E 23E.76.070.E 23E.80.D 23E.84.070.H	Language is unnecessary and implies authorization is required for other similar requirements.

Topic	Description	BZO Location	Existing Location	Rationale for Change
23.302 – Supplemental Use Regulations				
Warehouse Storage for Retail Use	Allows on-site storage of goods as an accessory use to a primary retail use in all districts where retail is permitted	23.302.070.J	NEW	Codifies existing practice of allowing retail establishments to store their goods on-site if retail is permitted.
23.304 – General Development Standards				
Setback Projections – Disabled Access	Allows projections into setbacks to accommodate the disabled with a reasonable accommodations request.	23.304.030.B.4	23D.04.030.A2	Confirm with The Americans with Disabilities Act, and the California Fair Employment and Housing Act
Building Height Projections – Public Buildings in Residential Districts	Deletes "the height limit for schools, buildings for religious assembly use, hospitals and other public buildings shall not exceed the height limit permitted for that district. This is true for all uses."	23.304.050.A	23D.04.020.A; 23E.04.020.A	Removal of extraneous language. Calling out these uses implies other uses may exceed height limit, which is not true.
Adeline Corridor Plan	States that projects in the Adeline Plan Area are subject to mitigation measures in the Adeline Plan FEIR	23.304.140.D	NEW	Adds Adeline Corridor Plan to list of existing plans

Topic	Description	BZO Location	Existing Location	Rationale for Change
23.310 – Alcohol Beverage Sales and Service				
Chapter Purpose	States purpose of chapter	23.310.010	NEW	BZO standard includes purpose statement for each chapter
23.320 – Cannabis Uses				
Chapter Purpose	States purpose of chapter	23.320.010	NEW	BZO standard includes purpose statement for each chapter
23.324 – Nonconforming Uses, Structures and Buildings				
Chapter Purpose	States purpose of chapter	23.324.010	NEW	BZO standard includes purpose statement for each chapter
23.326 – Demolition and Dwelling Unit Control				
Chapter Purpose	States purpose of chapter	23.326.010	NEW	BZO standard includes purpose statement for each chapter
23.328 – Inclusionary Housing				
Required Inclusionary Units in Avenues Plan Area	Deletes “Except as provided in this chapter” from 23C.12.080E, which conflicts with 23C.12.080B: “Within this area, the provisions of this section superseded any inconsistent provisions of this chapter.”	23.328.070.D.1	23C.12.080.E	Maintain internal consistency
23.402 – Administrative Responsibility				
Chapter Purpose	States purpose of chapter	23.402.010	NEW	BZO standard includes purpose statement for each chapter

Topic	Description	BZO Location	Existing Location	Rationale for Change
Review and Decision-Making Authority	Describes purpose of summary table	23.402.020.A	NEW	Description of table
Review and Decision-Making Authority	Defines authority roles (Recommend, Decision, Appeal)	23.402.020.B	NEW	Explains notation meaning
Planning and Development Department	Defines duties of Planning and Development Department	23.402.030	NEW	Codifies existing role and summarizes responsibilities
Landmarks Preservation Commission	Refers reader to BMC Chapter 3.24 for roles and responsibilities of Landmarks Preservation Commission	23.402.050.B	NEW	Provides clarity on LPC role
ZAB Responsibilities and Powers	Provides that City Council may assign additional responsibilities to ZAB	23.402.070.C.2	NEW	Codifies existing Council authority
City Council	Provides that City Council has authority to take actions related to the Zoning Ordinance consistent with existing law	23.402.090.C	NEW	Codifies existing Council authority
23.404 – Common Permit Requirements				
Purpose and Applicability	States purpose of chapter; clarifies that the chapter applies to all discretionary permits, not just use permits and variances	23.404.010	NEW	BZO standard includes purpose statement for each chapter. Clarifies existing practice
Multiple Permit Applications	Clarifies how applications are handled when they require more than one discretionary permit	23.402.020.F	NEW	Codifies existing practice
Review Timeline	Adds statement that City will abide by Permit Streamlining Act	23.404.030.A.3	NEW	Codifies existing practice. Recognizes

Topic	Description	BZO Location	Existing Location	Rationale for Change
				compliance with state law is required
Project Evaluation and Staff Reports	Describes role of staff in reviewing, analyzing and presenting project applications	23.404.030.D	NEW	Codifies existing practice
CEQA	Add statement that City will review projects for CEQA compliance	23.404.030.E	NEW	Codifies existing practice. Recognizes that compliance with state law is required
Timing of Notice	Permits PC or CC to extend notice periods for applications of major significance	23.404.040.C.3	NEW	Best practice in compliance with Gov't Code Section 65091
Zoning Ordinance Amendment Noticing	Adds notice requirements for Zoning Ordinance Amendments	23.404.040.C.4	NEW	Adds notice requirement for Zoning Ordinance Amendments. New requirement here is the same as for discretionary permits
Additional Notice	Adds "The Zoning Officer, Planning Commission or City Council may require additional public notice as determined necessary or desirable."	23.404.040.C.7	NEW	Codifies existing practice
Public Notice for Design Review	States that there is no requirement to mail or post notices in advance of a Design Review Committee meeting	23.404.040.D.2.b	NEW	Codifies existing practice
Public Hearings	Clarifies that hearings will be conducted consistent with procedures developed by the review authority	23.404.050.A	NEW	Codifies existing practice and recognizes that review authorities are empowered to create their own procedures.

Topic	Description	BZO Location	Existing Location	Rationale for Change
Time and Place of Hearings	Clarifies that meetings will be held at time and place for which notice was given unless there is not a quorum	23.404.050.B	NEW	Codifies legal requirement consistent with Gov't Code Section 65091
CEQA Action	Adds that action on a permit's CEQA determination must be taken before a permit is approved	23.404.050.G	NEW	Codifies CEQA Guidelines Sections 15074 and 15090
Exceptions to Protect Constitutional Rights	Allows the City Council as well as ZAB to make exceptions to protect constitutional rights and clarifies that the exception can be made when acting on any permit and is not tied to a Variance	23.404.050.I	23B.44.050	Best practice. Council needs this ability in addition to ZAB to protect City from legal challenge
Payment for Service	Adds that applicant shall pay for mediation or conflict resolution services	23.040.050.J.7	NEW	Codifies existing practice
Effective Dates	Adds effective dates of Council actions on Zoning Ordinance amendments and legislative matters, and permits, appeals and non-legislative matters. Adds effective dates of actions by the Zoning Officer, Design Review Committee or ZAB	23.404.060.A	NEW	Codifies current practice and legal requirements consistent with Gov't Code Section 65853-65857
Expiration of Permit	Adds that if a permit is not exercised after one year, it will not lapse if the applicant has made a substantial good faith effort to obtain a building permit and begin construction.	23.404.060.C.2.b	23B.56.100.C &D	Best practice
Expiration of Permit	Defines a lapsed permit as "void and of no further force and effect," and that a new permit application mist be submitted to establish a use or structure.	23.404.060.C.3	NEW	Provides explicit definition of what a lapsed permit means and makes explicit the

Topic	Description	BZO Location	Existing Location	Rationale for Change
				requirement to reapply.
Permit Revocation - City Council Hearing	Removes requirement for the City Council hearing must occur within 30 days after the ZAB issued its recommendation.	23.404.080.D.2	23B.60.050.B	CC hearing within 30 days of ZAB decision is frequently infeasible. Council can hold hearing "at its discretion."
23.406 – Specific Permit Requirements				
Variances - Eligibility	Existing Language: "The Board may grant Variances to vary or modify the strict application of any of the regulations or provisions of this Ordinance with reference to the use of property, the height of buildings, the yard setbacks of buildings, the percentage of lot coverage, the lot area requirements, or the parking space requirements of this Ordinance." BZO Language: "The ZAB may grant a Variance to allow for deviation from any provision in the Zoning Ordinance related allowed land uses, use-related standards, and development standards."	23.406.050.B.1	23B.44.010	ZAB should have authority to grant a variance to any use or development-related standard, not just uses, heights, yard setbacks, lot coverage, lot area, or parking
Variances – Not Allowed	Adds: "A Variance may not be granted to allow deviation from a requirement of the General Plan."	23.406.050.C	N/A	Codifies state law consistent with Gov't Code Section 65906.
Design Review – Changes to Approved Projects	Describes features of minor changes to approved projects that may be approved administratively: "A change that does not involve a feature of the project that was: 1) a specific consideration by the review authority in granting the approval; 2) a condition of approval; or 3) a basis for a finding in the project CEQA determination.	23.406.070.N	N/A	Codifies current practice
Reasonable Accommodations – Review Procedure	Existing Language: "If an application under this chapter is filed without any accompanying application for another approval, permit or entitlement under this title or Title 21, it shall be heard and acted upon at the same time and in the	23.406.090.E.1	23B.52.040.B	The Americans with Disabilities Act, and the California Fair

Topic	Description	BZO Location	Existing Location	Rationale for Change
	same manner, and be subject to the same procedures, as the application that would normally be required to modify the provision which is the application seeks to modify, as determined by the Zoning Officer." BZO Language: "For a Reasonable Accommodation application submitted independently from any other planning permit application, the Zoning Officer shall take action within 45 days of receiving the application."			Employment and Housing Act Existing language requires the application to be reviewed in the same manner as a Variance. This conflicts with state and federal law.
23.410 – Appeals				
Appeals – Remanded Matters	Removes option for prior review authority to reconsider application without a public hearing.	23.410.040.G	23B.32.060.D	Remanded matters require public hearing
23.412 – Zoning Ordinance Amendments				
Zoning Ordinance Amendments – Initiation	Deletes language to allow for amendments initiated without a public hearing.	23.412.020	23A.20.020.C	Existing language conflicts with Gov't Code Section 65853-65857
Zoning Ordinance Amendments – Planning Commission Hearing	Removes requirement to hold Planning Commission hearing within 30 days of initiation.	23.412.040.A	23A.20.030.A	CC hearing within 30 days of PC decision is frequently infeasible. Council can hold hearing consistent with Public Notice section.
Zoning Ordinance Amendments – Effect of Planning	Deletes language that uses or structures not yet established must conform to Planning Commission recommendation before Council approval, when amendments become effective only after Council adoption.	23.412.040.C	23A.20.050.B	New regulations can only take effect after Council adoption.

Topic	Description	BZO Location	Existing Location	Rationale for Change
Commission Recommendation				
Zoning Ordinance Amendments – City Council Hearing	Removes language requiring the Planning Commission recommendation to be forwarded to the Council within 30 days and consideration by Council within 60 days for Commission decision.	23.412.050.A	23A.20.040	CC hearing within 60 days of PC decision is frequently infeasible. Council can hold hearing consistent with Public Hearings and Decision section.
Zoning Ordinance Amendments – City Council Action	Removes option for Council to act on amendment without a public hearing.	23.412.050.A	23A.20.060.A &B	Conflicts with Gov't Code Section 65853-65857
Zoning Ordinance Amendments – Effective Date	Removes language about "more restrictive" amendments going into effective immediately upon adoption of ordinance.	23.412.050.C	23A.20.070	Conflicts with Gov't Code Section 65853-65857
Zoning Ordinance Amendments – Findings	Adds findings for Zoning Ordinance amendments	23.412.060	N/A	Best Practice.
23.502 – Glossary				
Defined Terms	Adds definitions to undefined terms in existing Zoning Ordinance	23.502	23F.04	Best practice.

PLANNING COMMISSION

Notice of Public Hearing

Wednesday, July 6, 2022

Zoning Ordinance Amendments that Address Technical Edits and Corrections to the Berkeley Municipal Code Sections 23.204.050 (C-C District); 23.204.080 (C-E District); 23.204.090 (C-NS District); 23.204.130 (C-DMU District); 23.206.050 (Protected Uses); 23.304.030 (Setbacks); 23.304.090 (Usable Open Space); 23.322.030 (Required Parking Spaces) and 23.406.070 (Design Review)

The Planning Commission of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 23.412, on **Wednesday, July 6, 2022 at 7:00 p.m**. **The hearing will be conducted via Zoom** – see the Agenda for meeting details. The agenda will be posted on the Planning Commission website (https://www.cityofberkeley.info/PC) no later than 5pm on July 1, 2022.

PUBLIC ADVISORY: This meeting will be conducted exclusively through videoconference and teleconference. Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the Planning Commission will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available

PROJECT DESCRIPTION: On October 12, 2021, the City Council passed Ordinance No. 7,787-NS, which repealed the then-existing Title 23 of the Berkeley Municipal Code and zoning maps ("the old Zoning Ordinance") and adopted a new Title 23 of the Berkeley Municipal Code and zoning maps ("the new Zoning Ordinance"). The new Zoning Ordinance became effective December 1, 2021.

As part of City Council's approval action, staff was directed to regularly return to City Council with any required amendments to the new Zoning Ordinance to aid in clarity, fix mistakes in transcription, or correct unintentional errors discovered as part of the transition from the old to the new Zoning Ordinance. The public hearing will consider a set of amendments to the new Zoning Ordinance that address these errors. No substantive changes to planning policy are included in this set of amendments.

PUBLIC COMMENT & FURTHER INFORMATION

All persons are welcome to attend the virtual hearing and will be given an opportunity to address the Commission. Comments may be made verbally at the public hearing and/or in writing before the hearing. Written comments must be directed to:

Zoe Covello
Planning Commission Clerk
Email: zcovello@CityofBerkeley.info

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

Correspondence received by **12 pm on Monday, June 27, 2022**, will be included as a Communication in the agenda packet. Correspondence received after this deadline will be conveyed to the Commission and the public in the following manner:

- Correspondence received by **12pm on Tuesday, July 5th, 2022** will be included in a Supplemental Packet, which will be posted to the online agenda as a Late Communication one day before the public hearing.
- Correspondence received by 5pm one day before this public hearing, will be included in a second Supplemental Packet, which will be posted to the online agenda as a Late Communication by 5pm on the day of the public hearing.
- Correspondence received after 5pm one day before this public hearing will be saved as part of the public record.

Note: It will not be possible to submit written comments at the meeting.

COMMUNICATION ACCESS

To request a meeting agenda in large print, Braille, or on audiocassette, or to request a sign language interpreter for the meeting, call (510) 981-7410 (voice) or 981-6903 (TDD). Notice of at least five (5) business days will ensure availability. All materials will be made available via the Planning Commission agenda page online at https://www.cityofberkeley.info/PC/.

FURTHER INFORMATION

Questions should be directed to Justin Horner, at (510) 981-7476 or jhorner@cityofberkeley.info. Current and past agendas are available on the City of Berkeley website at: https://www.cityofberkeley.info/PC/

Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: July 6, 2022

TO: Members of the Planning Commission

FROM: Justin Horner, Associate Planner

SUBJECT: Affordable Housing Overlay and Southside Local Density Bonus Program

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BACKGROUND

This report provides the Planning Commission with background and recommendations to respond to two City Council referrals:

1) In May 2017, the City Council referred to the Planning Commission a request to develop a **local density bonus program** for the C-T (Telegraph Avenue Commercial) zoning district to allow density bonuses without requiring on-site affordable units in order to generate in-lieu fees that could be used to build housing for homeless and extremely low income residents (*Attachment 2*); and

2) In November 2021, the City Council referred to the Planning Commission a request to consider an **affordable housing overlay** to permit increased height and density for housing projects comprised entirely of affordable units (*Attachment 3*).

These two referrals followed a July 2016 City Council referral to allow increased development potential in the C-T zoning district north of Dwight Avenue and to establish community benefit requirements, including affordable housing (*Attachment 1*).

Local Density Bonus Program Referral

The 2017 referral asked the Planning Commission to develop a density bonus program that would serve as a local alternative to the state Density Bonus program in the C-T District. At the time the referral was written, the State Density Bonus program allowed up to 35% more density for projects that include a certain percentage of units affordable to households who earn 50% or 80% of Area Median Income (AMI). Since then, AB

2345 (2020) has increased the maximum density bonus to 50%. Importantly, for the purposes of this referral, affordable units included in State Density Bonus projects must be provided on-site as part of the qualifying project, and are required to reach households with incomes of up to 50% AMI.

The 2017 referral proposed a local program that would grant a density bonus comparable to the State Density Bonus, but would allow a project sponsor to meet the affordable housing requirement by paying an in-lieu fee into the city's Housing Trust Fund. The funds raised by such projects would be used to fund housing for homeless and extremely low income households (30% AMI of less), who are otherwise not explicitly served by the State Density Bonus program. The referral recommends initiating a pilot program with these general parameters for projects within the C-T District.

A local density bonus program in the C-T District, or the Southside Area more broadly[1], should be considered in the context of anticipated upzoning and changes to development standards within the Southside Plan area within the next 12 to 18 months to encourage more housing. The Planning Commission will be asked to consider such changes as part of future work preparing objective development standards for higher density districts.

Affordable Housing Overlay Referral

The 2021 referral asked the Planning Commission to consider an Affordable Housing Overlay zone to permit increased height and density for projects that are fully comprised of affordable housing units[2] and to create a pathway for ministerial approval of those projects that comply with objective design or development standards. The Affordable Housing Overlay would not apply to parcels with designated landmarks, or parcels in Berkeley Fire Zones 2 and 3, which includes parcels in Very High Fire Hazard Severity Zones and generally designated H District Overlay.

Increased Height and Density
The referral calls for local height and density incentives, including waivers and modifications, for 100% affordable projects. Importantly, the referral indicates that any local standards should *exceed* standards set forth in Assembly Bill 1763 (AB 1763).

Signed by Governor Newsom in 2019, AB 1763 revises the State Density Bonus to require a city to award a developer additional density, concessions and incentives, and height increases for 100% affordable projects, as follows:

- Density: Qualifying projects under AB 1763 are eligible for an 80% density bonus. As noted above, under State Density Bonus law, the maximum density

[1] The Southside Area also comprises all parcels zoned R-SMU and R-S, and some parcels zoned R-3.
[2] According to the referral, 100% affordable projects are those "deed-restricted for extremely low (15-30% AMI), very low (30-50% AMI), low (50-80% AMI), and moderate (80-120% AMI) income households."

bonus is normally 50%. If a qualifying project is located within ½ mile of a major transit stop[3], a locality cannot impose density restrictions.[4]

- Height: Qualifying projects within ½ mile of a major transit stop are entitled to height increases of up to three stories or 33 feet.

- Incentives and Concessions, and Waivers: Projects utilizing the State Density Bonus law are typically eligible to utilize up to three incentives or concessions[5] to local policies or development standards. AB 1763 allows eligible projects to utilize a fourth incentive or concession. In addition, a qualifying density bonus project may also waive or reduce development standards which physically preclude the construction of the project at its bonus density.

- Parking: AB 1763 eliminates parking requirements for qualifying projects.

The referral includes specific recommended changes to development standards for 100% affordable projects, including waiving floor area ratio (FAR) standards, permitting up to 80% lot coverage, and amending the General Plan to avoid any inconsistencies between proposed higher-density projects and densities indicated in the General Plan for land use designations. The referral also recommends requirements for skilled and trained workforce standards for projects of 50,000 square feet or greater.

Ministerial Approval

The referral calls for creating a ministerial approval pathway for qualifying projects that comply with "objective design standards or form-based standards." These standards include "guidelines for architectural details" which incorporate consideration of neighborhood context, massing, building facades, materials, color and finishes, open space, public art, landscaping, circulation and outdoor light, and upper-story setbacks.

The referral recommends soliciting public input for these standards as part of the Housing Element process, and creating an advisory Design Review process through the Design Review Committee (DRC) to assist project sponsors in compliance. As detailed in the discussion below, the referral also includes specific timelines for review and approval of qualifying projects.

DISCUSSION

Local Density Bonus Program

[3] "Major transit stop" means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.
[4] See Gov. Code Section 65915(f)(3)(D)(ii)
[5] Gov. Code Section 65915(k) states that a "concession or incentive" means a reduction of site development standards or modification of zoning code or architectural design requirements; the approval of a mixed-use development that includes residential uses in a non-residential zone; or any other regulatory incentive proposed by a developer that results in an identifiable and actual cost reduction for the provision of affordable housing.

As noted above, a number of City Council referrals have called for intensifying housing development in the C-T District. More development in the C-T District would provide much-needed student housing in areas adjacent to the University and reduce market pressure from students seeking housing in other areas of Berkeley. The Draft Housing Element Update includes an implementation program to amend zoning in the Southside Area and permit substantially more development by right. In addition, a local density bonus in the C-T District could address these policy priorities in the following ways:

- **On-Site Units and Student Housing in the Southside**: As noted above, any affordable housing units developed pursuant to the State Density Bonus law must be provided on-site. This requirement is complicated in the Southside Area for a number of reasons. Deed-restricted affordable units are most often targeted to family households and are often supplemented by on-going service provisions and special operation requirements, particularly when serving very low-income households. These special requirements are often incompatible with proposed project types in the Southside that are targeted to meet student demand, which include, for examples, units with more bedrooms, expanded or specialized common areas, or a greater prevalence of Group Living Accommodations. The transient population also complicates monitoring and enforcement, and student households have a variety of income sources that make it difficult to confirm compliance with affordability income level restrictions.

  A local density bonus in the C-T District would not only encourage the production of more housing for students in an optimum location but would also provide a mechanism to generate additional funds for the City to provide for affordable housing in other ways and minimize compliance issues that are experienced with typical deed-restricted units.

- **Funding Sources for Extremely Low Income and Homeless Housing and Services**: While the State Density Bonus provides for the provision of housing to very-low, low- and moderate-income households, it does not expressly incentivize housing opportunities for extremely low-income households or people experiencing homelessness. Identifying sufficient funding for housing these specific groups has been a citywide challenge.

  As noted in the referral, the C-T District is an area where residents are particularly supportive of housing for the homeless and extremely low-income residents. A local density bonus could provide much-needed targeted funding to housing these specific groups of residents while increasing opportunities to provide more student housing than otherwise permitted under existing zoning.

Policy Considerations

The referral recommends the adoption of a local density bonus program that is limited to the C-T District and sets the local density bonus fee to match the in-lieu affordable housing mitigation fee. The in-lieu affordable housing mitigation fee is currently $39,746

per new market-rate unit (equivalent to almost $200,000 in compensation for each affordable unit that is not provided when applying a 20% inclusionary housing requirement). However, Council is expected to consider changes to the City's affordable housing requirements in Fall 2022 that could change the manner in which fees are calculated. Any fee discussion for these referrals should leave open the possibility of future changes to the baseline.

Beyond these basic parameters, additional policy considerations include:

- **Number of Required Affordable Units**: The State Density Bonus scales the amount of additional density a project is eligible for in proportion to the number and affordability of the included on-site units (*Attachment 4* includes a table that summarizes this relationship). For example, a project that includes 16% of its base project units affordable to low-income households (the "qualifying" units) is entitled to a 29% density bonus, while a project that includes the same percentage of *very* low-income units is entitled to a 50% density bonus. A local density bonus program will need to address the ratio of bonus units awarded compared to the assumed affordability and in-lieu fee being assessed.

- **Double-Counting**: State law requires the City to consider units that qualify a project for a density bonus as also satisfying any overlapping local inclusionary requirements, e.g. a project with 10% very-low-income units will qualify a project for a density bonus while also satisfying a portion of the City's inclusionary requirement. The City's inclusionary housing ordinance requires that 20% of all units be affordable, with those units divided evenly between very low-income and low-income households. The City ordinance allows an applicant to instead pay an in-lieu fee on a per-unit basis for the portion of the requirement that is not met on-site (i.e. if less than 10% of the total are very-low and les than 10% are low-income units).

  The law therefore requires the City to credit a project for both the density bonus qualifying units and inclusionary units rather than pay a local in-lieu fee in proportion to the rate at which it has already satisfied the local inclusionary ordinance. Furthermore, the City cannot impose in-lieu fees on the bonus units. Therefore, a local density bonus program that allows the payment of fees to obtain a bonus will have to be more attractive to developers than the existing system. In essence, the total of all the fees would need to be less than the cost and complication of providing the minimum number of units required by the State law and inclusionary ordinance, or the developer will likely opt for the existing system that already grants bonuses and fee credits.

- **Eligible Districts**: While the referral limits the local density bonus concept to a pilot program in the C-T District, there may be a policy interest in expanding the program to the entire Southside Plan Area. Other zoning districts include the R-SMU, R-S and R-3.

Attachment 5 includes a map of opportunity sites in the Southside identified in the draft Housing Element update (June 2022). Expanding the local density bonus program beyond the C-T District but still within the Southside Area would increase opportunities for more housing and increase the City's Housing Trust Fund from the program fee.

- **Concessions and Waivers**: While the referral does not specifically mention concessions or waivers as part of a local density bonus program, they are an essential part of State Density Bonus law. As mentioned above, project sponsors can request *incentives and concessions* from established development standards when such concessions result in an identifiable and actual cost reduction for the provision of affordable housing. In addition, a project sponsor may request any number of *waivers* from development standards that physically preclude the construction of a project that qualifies for a density bonus.

  The number of concessions a project can request under State Density Bonus law is related to the number of affordable units provided and the depth of affordability (see Table 1). This issue should be coordinated with discussion of the second referral, which includes some recommended modifications to development standards for affordable housing.

Table 1. Incentives/Concessions Under State Density Bonus Law[6]

Number of Incentives/Concessions	Very Low Income Percentage	Low Income Percentage	Moderate Income Percentage
1	5%	10%	10%
2	10%	17%	20%
3	15%	24%	30%
4	100% affordable (max 20% moderate income)		

- **Fee Level**: While the referral recommends utilizing a fee equal to the in-lieu affordable housing mitigation fee, a unique fee level could be established for the local density bonus program. A fee could be set lower or higher than the in-lieu affordable housing mitigation fee, while there could also be two fee options that could act as proxies for units provided to very low-income or low-income households for purposes of determining the fee level and the allowed concessions and waivers noted above. A feasibility study would be worthwhile to assist in determining the structure that would be most attractive to developers while also meeting the City's objectives for obtaining additional resources for meeting the needs of special populations.

[6] Goetz, Jon and Tom Sakai, Guide to the California Density Bonus Law (2022), pg.6. https://www.meyersnave.com/wp-content/uploads/California-Density-Bonus-Law_2022.pdf

Affordable Housing Overlay

The Affordable Housing Overlay referral provides a number of policy recommendations to facilitate the development of housing projects comprised entirely of affordable housing. Some of these recommendations have either been recently addressed by State law or are the subject of current policy formulation. This section summarizes each referral request, provides information on current policies that are relevant to each request, and suggests potential policy options.

1. **Exceed standards set in AB 1763** with additional height and density incentives, including waivers and modifications similar to State Density Bonus law.

    - **Current Efforts**: As noted above, AB 1763 allows an 80% density bonus and four incentives/concessions for 100% affordable projects. Within ½ mile of transit, AB 1763 prohibits density restrictions (i.e. maximum units per acre) and allows a height increase of up to 3 stories/33 feet. AB 1763 also includes reductions in required parking, but Berkeley already has no minimum parking requirements for most residential projects.

    - **Potential Policy Changes**: To exceed AB 1763 standards, an Affordable Housing Overlay district could include a larger density bonus (more than 80%), more incentives/concessions (more than four), or could apply the density and height provisions to additional areas outside of the transit proximity standard.

2. In the **R-1, R-1A, R-2, R-2A and MU-R districts**, provide additional density bonus, waive limits on FAR, and allow up to 80% lot coverage.

    - **Current Efforts**: Staff, the ZORP Subcommittees and the Planning Commission are currently preparing objective development standards for Middle Housing to encourage residential development in these zones. Initial recommendations for these reforms include permitting multi-unit housing by-right, reducing setbacks, and increasing allowable lot coverage. In response to ZORP Subcommittee and Planning Commission feedback, these standards do not include waiving FAR, as FAR is considered a valuable tool to control unit sizes and promote “affordability by design.”

    - **Potential Policy Changes**: Any potential policy changes for residential development in these zones would best be considered as part of the Middle Housing objective development standards process.

3. In the **R-3, R-4 and all C districts**, provide additional density bonus, waive limits on FAR, and allow up to 80% lot coverage.

    - **Current Efforts**: Objective development standards for projects that include higher density housing in the R-3, R-4, and all C districts are in the second

phase of the work being undertaken by the ZORP Subcommittees. Like Middle Housing policy, the multi-unit objective development standards process will consider changes in levels of discretion, setbacks, lot coverage and other development standards, as recommended in the referral and elsewhere.

- **Potential Policy Changes**: Any potential policy changes for residential development in these zones would best be considered as part of the multi-unit objective development standards process. This process will begin later this year, pending budget approval.

4. Create **General Plan amendments** that allow for 100% affordable projects to increase densities while avoiding inconsistencies with the General Plan.

   - **Current Efforts**: The General Plan does not include project-level density requirements or limitations, and individual projects are not evaluated for consistency with General Plan densities. Importantly, the current Housing Element is consistent with the General Plan, as will be the Housing Element Update. Therefore, the density standards of the General Plan are not an inhibiting factor for development.

   - **Potential Policy Changes**: No policy work in this area is recommended.

5. Require **skilled and trained workforce requirements** for projects with 50,000 square feet or more.

   - **Current Efforts**: 100% affordable projects are likely to utilize the streamlining provisions of SB 35, which provide ministerial approval of projects that include 50% affordable housing and meet objective development standards. SB 35 already includes a skilled and trained workforce requirement for all projects of 10 units or more. Additionally, while the Low-Income Housing Tax Credit does not yet include a prevailing wage requirement, many State sources of affordable housing funding, such as the Multifamily Housing Program, include a prevailing wage requirement.[7]

   - **Potential Policy Changes**: No policy work in this area is recommended.

6. Exempt **historic landmarks and parcels in fire zones** from any streamlining provisions.

   - **Current Efforts**: 100% affordable projects are likely to utilize the streamlining provisions of SB 35, which provide ministerial approval of projects that include affordable housing and meet objective development standards. SB 35

[7] California Department of Housing and Community Development, *Multifamily Housing Program Final Guidelines* (May 2022), p. 28. https://www.hcd.ca.gov/sites/default/files/2022-06/mhp-guidelines-ab-434-posting-6-10.pdf

already excludes parcels that include designated city, state or federal historic landmarks and parcels in fire zones.

- **Potential Policy Changes**: No policy work in this area is recommended.

7. Develop **objective design standards** for projects to be eligible for ministerial approval. These design standards should include architecture, massing, neighborhood context, open space, color, finishes, public art, and environmental sustainability.

    - **Current Efforts**: As noted above, staff, the ZORP Subcommittees and the Planning Commission are currently preparing objective development standards for Middle Housing. While these include development standards related to massing, open space and, indirectly, neighborhood context (through setbacks, for example), the effort explicitly does not include *design* standards such as architecture, color and finishes. The effort does not include any changes to existing public art requirements or environmental requirements such as electric appliances, permeable paving or landscaping types, which are covered under other regulations, such as Energy, Building and Fire Code and the State's Water Efficient Landscape Ordinance.

    - **Potential Policy Changes**: The preparation of objective design standards related to architecture, neighborhood context, color and finishes could be added to the Planning Commission's workplan. One consideration is that additional objective design standards would subject projects to added regulations, an outcome which may not necessarily be consistent with the intent to streamline development. As noted above, the objective development standards process for residential projects in the R-3, R-4, and all C districts is anticipated to begin later this year, subject to budget allocations and workplan priorities.

8. For projects with fewer than 150 units that are consistent with the objective design standards, the City shall **review and approve the development application within 90 days** of submission.

    - **Current Efforts**: 100% affordable projects are likely to utilize the streamlining provisions of SB 35, which provide ministerial approval of projects that include 50% affordable housing and meet objective development standards. SB 35 requires a local agency to determine whether a project is eligible for SB 35 streamlining within 60-90 days, and that a final decision be made within 90-180 days. All residential projects are also subject to the State's Permit Streamlining Act, which requires review and determination of application completeness within 30 days.

    - **Potential Policy Changes**: Timelines for 100% affordable projects can be established or shortened as a matter of policy, regardless of project size or

whether they are consistent with objective design standards. Berkeley has specialized application forms and guides, and has trained staff for processing expedited permits under SB35, SB330, and similar programs that require compliance with objective development standards.

NEXT STEPS

Staff are considering inclusion of a Local Density Program and Affordable Housing Overlay in the Housing Element Update, for policies to be carried out during the 2023-2031 planning period. As a requirement, the programs must provide details for implementation, including action steps and measurable timelines. The Planning Commission is requested to provide comments and recommendations regarding the following questions. If appropriate, staff will return to the Planning Commission with additional information or with appropriate Housing Element Update amendments.

Local Density Program

1. Should a local density program that includes a fee to assist extremely low income and homeless residents be created?
2. For purposes of calculating the fee, what are the thresholds / metrics for affordable units / density bonuses / fees?
3. What should be the geography of the local density bonus program, i.e. the C-T District or the Southside Plan Area?
4. Should the program include concessions and waivers similar to State Density Bonus law?

Affordable Housing Overlay

1. Should an Affordable Housing Overlay (AHO) be designed to facilitate the development of 100% affordable projects?
2. Should the AHO provide density bonus, height provision or transit-adjacent benefits in excess of those in AB 1763?
3. Should the AHO provide additional development incentives in the R-1, R-1A, R-2, R-2A and MU-R districts over and above what is being considered in the Middle Housing program?
4. Should the AHO provide additional development incentives in the R-3, R-4 and C districts in a process separate from the upcoming objective development standards process for higher density residential projects?
5. Should the AHO provide unique workforce-related requirements in excess of those provided by SB 35 and required under state affordable housing funding guidelines?
6. Should staff prepare objective design standards related to architecture, neighborhood character, color and building materials as a basis to provide ministerial approval of 100% affordable projects?
7. Should staff propose a prioritization of project types to facilitate the review of applications for 100% affordable projects?

Attachments:

1. City Council Referral – Increase Development Potential in C-T (2016)
2. City Council Referral – Local Density Bonus Pilot (2017)
3. City Council Referral – Affordable Housing Overlay (2021)
4. Density Bonus Calculation Chart (2022)
5. Draft Housing Element - Southside Sites Inventory (June 2022)

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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"

Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: April 20, 2016

TO: Members of the Planning Commission

FROM: Elizabeth Greene, Senior Planner

SUBJECT: Public Hearing: Changes to the Zoning Ordinance to Allow Development Potential Increases in the Telegraph Avenue Commercial (C-T) District

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RECOMMENDATION

Staff recommends that the Planning Commission:

- Hold a Public Hearing (continued from March 16, 2016) and take public comment; and
- Recommend the City Council modify language in Zoning Ordinance Section 23E.56.070, which would allow greater intensity of development in the C-T district only along Bancroft Way, as proposed in the staff recommendation.

See Attachment 1 for the proposed zoning amendment language.

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. The Planning Commission considered options for modifying the development standards at meetings held on November 4, 2015, and January 20, 2016.

On March 16, 2016, the Commission held a Public Hearing to consider a staff proposal to make the following changes to the Zoning Ordinance:

1. Removing limits on the number of stories throughout the C-T District;

2. Increasing the height limit in areas of the C-T District adjacent Bancroft Way; and

3. Allowing projects in the C-T District adjacent to Bancroft Way to exceed the FAR and height standards (up to 6.0 FAR and 75 feet) with a Use Permit.

For the reasoning behind this recommendation, as well as the staff reports from the previous meetings, see the March 16, 2016 Staff Report and attachments.

At this meeting, the Commission discussed the location of any changes to development standards within the C-T District. The Commission also discussed the possibility of linking increased development potential to community benefits. In particular, the Commission was interested in adding a labor component, mandating a 1:8 ratio of apprentices to journeymen working on a project. The Commission voted to continue the hearing to April 20, 2016, to allow staff to study the financial and legal feasibility of linking a labor requirement, along with other community benefits, to additional development.

DISCUSSION

The following is the staff analysis of the issues discussed at the March 16th meeting:

1. The location of the proposed development standards. The staff recommended restricting development standard changes to properties adjacent to Bancroft Way. At the March 16th meeting, the Commission discussed whether the development standards should be changed in the entire portion of the C-T District north of Dwight Way. Based on this discussion and the language in the public hearing notice, the Council could consider changes to development standards in any portion of the C-T District north of Dwight Way.

2. Linking community benefits to additional development potential. The City Council will be considering a wide range of strategies to address the City's need for housing. Among the strategies are referrals to the Planning Commission to consider a new City density bonus and modifications to development standards citywide. A recommendation to incorporate community benefits into new housing developments citywide could be included in the response to these referrals. Staff recommends reserving any neighborhood-specific recommendations for community benefits programs until after these programs have been considered as part of a city-wide study, including a financial feasibility analysis.

3. Incorporating labor practice standards into community benefits. Local regulations of labor standards or practices can be mandated by the City as long as they are not preempted by state or federal law. The City Attorney advises that this kind of regulation be treated like other community benefit proposals and adopted separately from the Zoning Ordinance. The Planning Commission could make a recommendation to Council to amend the Berkeley Municipal Code (BMC) to add labor requirements when it makes its recommendation on the C-T zoning amendments. Staff recommends tying recommendations for labor-related community benefits to any general recommendation regarding community benefits as discussed above.

4. Relationship between proposed development standards and community benefits. The Commission discussed the ramifications of approving increased density potential without a community benefits package. Staff has provided an alternative recommendation should the Commission want to defer a decision on the development standards until a BMC ordinance is developed for community benefits.

CONCLUSION

Staff recommends that the Planning Commission hold a Public Hearing, take public comment, and forward recommendation 1a and 1b to Council:

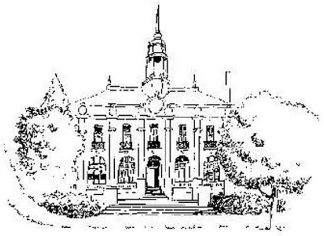
1. a) Recommend the attached proposed Zoning Ordinance amendments, with any changes identified through a vote of the Commission; and
   b) Recommend that the Council develop community benefit requirements, with a focus on labor practices.

Alternatively, the Commission could make the following recommendations to Council:

2. a) Do not recommend any changes to the Zoning Ordinance; and
   b) Recommend that the Council develop community benefit requirements, with a focus on labor practices.

Attachments:

1. Proposed ordinance language
2. Map of the C-T District
3. Public Hearing Notice (published March 4, 2016)



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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

BERKELEY CITY COUNCILMEMBER
TERRY TAPLIN
DISTRICT 2

CONSENT CALENDAR
DATE: November 9, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin (Author), Councilmember Bartlett (Co-sponsor), Councilmember Robinson (Co-sponsor) and Councilmember Hahn (Co-sponsor)

Subject: Affordable Housing Overlay

RECOMMENDATION

Council refers to the City Manager and the Planning Commission to consider an Affordable Housing Overlay for 100% affordable housing and seek to integrate it into the ongoing Housing Element process in anticipation of the 2023-2031 RHNA cycle. Staff should consider revisions to the zoning code and General Plan, permitting increased height and density for 100% affordable housing developments, including specific consideration of labor and design/form standards, to achieve the underlying goals:

1. Exceeding standards set forth in California Government Code Section 65915 (AB-1763) with additional local height and density incentives, including waivers and modifications similar to those vested in state density bonus law, with ministerial approval for qualifying 100% affordable projects deed-restricted for Low, Very Low, Extremely Low, and Moderate Income households (exclusive of manager's unit) pursuant to AB-1763, and maintaining demolition restrictions consistent with state law, specifying:
    a. In R3, R4, MU-R, and all C-prefixed zoning districts, a local density bonus (granted in addition to, but not compounding with, any State density bonus[es]) with standards reflective of whatever State density bonus a project would be entitled to under the provisions of AB 1763 (2019), waiving limits on floor area ratio, and permitting up to 80% lot coverage; and study additional incentives in these zones;
    b. In R-1, R-1A, R-2, and R-2A zones, a local bonus for qualifying projects inclusive of existing density bonuses, waiving limits on floor area ratio, and permitting up to 80% lot coverage; and study project feasibility in these zones;
    c. Create General Plan amendments that allow for 100% affordable qualifying projects to increase density while avoiding inconsistencies with General Plan densities;
    d. Skilled and trained workforce standards as defined by SB-7 (Atkins, 2021) for qualifying projects with at least 50,000 square feet of total floor area;
2. Exempting parcels with Designated City, State, and Federal Historic Landmarks;

3. Exempting parcels in Very High Fire Hazard Severity Zones (VHFHSZ) as determined by the California Department of Forestry and Fire Protection (CalFire), and in City of Berkeley Fire Zones 2 and 3;
4. Develop objective design standards or form-based standards for qualifying projects to receive ministerial approval, including guidelines for architectural details with respect to neighborhood context, massing, and building facades; materials, color, and finishes; open space, public art, and landscaping; circulation and outdoor lighting; 20' average building setback above the fourth floor (or 45') from any property line that is adjacent to a low or low-to-medium residential district; utilities; interiors; financial feasibility, and environmental sustainability, to be implemented with the following provisions:
    a. Solicit community input, including through public outreach to be conducted in the Housing Element update process, for design standards that would ensure consistency with the City of Berkeley's architectural quality;
    b. Establish an advisory Design Review process through the Design Review Committee (DRC). An applicant may elect to return for advisory comment up to two more times. For projects with fewer than 150 units, the City shall review and approve, based on consistency with objective standards, an affordable housing application within 90 days of submission. After 60 days, the City shall provide the applicant with an exhaustive list of objective standards not met by the project, and how the standards could or should be met. For projects with 150 units or more, these time frames shall be 90 and 180 days, respectively. The time under these provisions will toll between the City's issuance of a letter describing inconsistency with objective standards and the time necessary for the applicant to respond to those items.

POLICY COMMITTEE RECOMMENDATION

On October 7, 2021 the Land Use, Housing & Economic Development policy committee took the following action: M/S/C (Robinson/Hahn) Positive recommendation to approve the item as submitted in supplemental material from the Author; revising the first paragraph of the recommendation to read *"Council refers to the City Manager and the Planning Commission to consider an Affordable Housing Overlay for 100% affordable housing and seek to integrate it into the ongoing Housing Element process in anticipation of the 2023-2031 RHNA cycle. Staff should consider revisions to the zoning code and General Plan, permitting increased height and density for 100% affordable housing developments, including specific consideration of labor and design/form standards, to achieve the underlying goals:"*; and adding the words *"or form-based standards"* to bullet 4 of the recommendation.

BACKGROUND

Berkeley has made insufficient progress on meeting its state-mandated Regional Housing Need Allocation (RHNA) goals for low- and moderate-income housing in the

2014-2022 RHNA cycle. As recently as the city's 2020[1] Housing Pipeline Report, the city had only fulfilled 23% of its moderate-income RHNA goals, 21% of its RHNA goals for Very-Low Income households, and a mere 4% for Low-Income households. Berkeley's next RHNA cycle is estimated to mandate roughly 3 times as many units[2] as the previous cycle's total of 2,959 units across all income tiers. SB-330 by Sen. Nancy Skinner (D-Berkeley), passed in 2019, requires municipal general plans to zone adequately to meet residential capacity mandated by RHNA goals and state-certified Housing Elements.

Affordable housing will continue to be a high priority, but nonprofit affordable housing developers may face stiff competition for scarce land with market-rate developers, particularly during an anticipated period of economic recovery. In 2019, Governor Newsom signed AB-1763 by Assembly member David Chiu (D-SF), amending California Government Code 65915 to confer greater fiscal advantages for 100% affordable housing developments through state density bonus law. The bill prohibits minimum parking requirements (which Berkeley has recently removed) and grants an increase of up to 33' in permitted height, with a waiver on density restrictions for projects located within a half-mile of major transit stops.

When the 42-unit affordable housing project at Harpers Crossing opened in Berkeley, at a total project cost of $18 million, over 700 seniors applied. Without substantial funding and square footage for affordable housing, the City of Berkeley will be increasingly challenged to create enough subsidized housing to meet increasing demand. Increased allowable density and streamlined approvals for affordable housing will also be key to meeting Berkeley's RHNA goals for low- and moderate-income housing.

RATIONALE FOR RECOMMENDATION

As of 2019, development costs in the San Francisco Bay Area averaged $600,000 for new housing funded by 9% Low Income Housing Tax Credits.[3] At this cost, building nearly 4,000 housing units for low- and very low-income households would cost roughly $2.5 billion, several orders of magnitude larger than the City of Berkeley's General Fund and Measure O bond funding.

Additional density bonuses and ministerial approval could reduce costs for affordable housing and increase Berkeley's capacity to meet its RHNA goals for low- and moderate-income housing. Increasing height limits allows smaller sites to fit enough homes to reach the economy of scale needed for affordable housing. According to an October 2014 report on affordable housing development by several state housing

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[1] https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-28_Item_45_Annual_Housing_Pipeline_Report.aspx&sa=U&ved=2ahUKEwjc3tDIntHuAhXWu54KHdyGAtAQFjABegQICRAC&usg=AOvVaw0eXQ4oP5AAL14h0lphPdrr

[2] https://abag.ca.gov/sites/default/files/draft_rhna_allocation_presentation_to_exec_bd_jan_21.pdf

[3] Reid, C. (2020). The Costs of Affordable Housing Production: Insights from California's 9% Low-Income Housing Tax Credit Program. *UC Berkeley Terner Center for Housing Innovation. Retrieved from* https://ternercenter.berkeley.edu/wp-content/uploads/pdfs/LIHTC_Construction_Costs_March_2020.pdf

agencies, “for each 10 percent increase in the number of units, the cost per unit declines by 1.7 percent.”[4] A 2020 study by UC Berkeley’s Terner Center on affordable housing projects funded by 9% Low Income Housing Tax Credits reported: “On average, efficiencies of scale translate into a reduction of about $1,162 for every additional unit in a project.”[5]

Increased density and streamlined, predictable permitting processes through ministerial review can increase the amount of affordable housing that limited public subsidies are able to provide. By-right permitting is associated with increased housing supply and price elasticity[6] and lower “soft costs,” which is particularly beneficial to projects funded by Low Income Housing Tax Credits (LIHTC)[7], with complex financing structures that may risk loss of funding due to uncertainty and delays in the permit process.[8]

There is existing precedent in the state of California for meeting low-income RHNA goals with an Affordable Housing Overlay. In eastern Contra Costa County, the newly-incorporated city of Oakley established an Affordable Housing Overlay in 2005, which has yielded 7 affordable housing developments totaling 509 housing units combined as of 2019.[9] Despite local opposition to low-income housing, the AHO enabled the city to obtain state certification for its first 2001-2007 Housing Element, procure funding from the county, and meet its low-income RHNA goals by rezoning 16.3 acres for multifamily housing.

According to the Association of Bay Area Governments (ABAG), 28 jurisdictions in the 9-county Bay Area have some form of Housing Overlay Zone policy.[10]

According to a 2010 fact sheet by Public Advocates and East Bay Housing Organizations (EBHO), “the more valuable the developer incentives included in a Housing Overlay Zone, the more effective the HOZ will be in encouraging production of homes that people can afford. Desirable incentives both motivate developers to take

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[4] California Department of Housing and Community Development, et al. (2014). Affordable Housing Cost Study: Analysis of the Factors that Influence the Cost of Building Multi-Family Affordable Housing in California. Retrieved from https://www.treasurer.ca.gov/ctcac/affordable_housing.pdf

[5] See footnote 3.

[6] Mayer, C. J., & Somerville, C. T. (2000). Land use regulation and new construction. Regional Science and Urban Economics, 30(6), 639–662. doi:10.1016/s0166-0462(00)00055-7

[7] Hoyt, H. (2020). More is Less? An Inquiry into Design and Construction Strategies for Addressing Multifamily Housing Costs. *Joint Center for Housing Studies of Harvard University.* Retrieved from https://www.jchs.harvard.edu/sites/default/files/media/imp/harvard_jchs_gramlich_design_and_construction_strategies_multifamily_hoyt_2020_3.pdf

[8] Kendall, M. (2019, Nov. 24). Is California’s most controversial new housing production law working? *Mercury News.* Retrieved from https://www.mercurynews.com/2019/11/24/is-californias-most-controversial-new-housing-production-law-working/

[9] UC Berkeley Terner Center for Housing Innovation. (2019). Affordable Housing Overlays: Oakley. Retrieved from https://ternercenter.berkeley.edu/wp-content/uploads/2020/10/Affordable_Housing_Overlay_Zones_Oakley.pdf

[10] http://housing.abag.ca.gov/policysearch

advantage of the HOZ, and reduce development costs to allow construction of more affordable homes."[11]

The City Council of Cambridge, Massachusetts passed an Affordable Housing Overlay amendment to its zoning code in October of 2020.[12] The City Council of Somerville, MA passed a similar zoning ordinance in December of 2020. These zoning overlays permit greater height and density for ministerial approval 100% Below Market-Rate housing developments, following objective design criteria, in residential and commercial zones. The intent of these ordinances is to increase the availability of infill sites with an advantage for affordable housing development where nonprofit and public entities may otherwise be unable to compete in the private market, as well as promoting a more equitable distribution of affordable housing in cities where class and racial segregation still mirrors the historical legacy of redlining and Jim Crow-era racial covenants.

These ordinances preserve open space requirements and comport with restrictions on historic districts. The Somerville[13] and Cambridge[14] Overlays were overwhelmingly supported by nonprofit affordable housing developers and activists. The city of Boston is now considering similar proposals.[15]

Prior to the introduction of the city's Affordable Housing Overlay policy, Somerville City Councilor Ben Ewen-Campen, chair of the council's Land Use Committee, directed city staff to survey the region's affordable housing. "Overwhelmingly, we heard about two obstacles," Ewen-Campen wrote.[16]

> *First, and most obviously, is the cost of land. Today, it is nearly impossible for any non-profit housing developer to purchase property in Somerville. This is no surprise: they are competing against "market rate" developers and investors who can afford to pay far more because they'll soon be making windfall profits in our red-hot real estate market. Second, the funding agencies that support affordable housing are looking for predictability and certainty in the projects they support. This*

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[11] http://www.friendsofrpe.org/files/HOZ_Fact_Sheet_FINAL_7-27-10%282%29.pdf

[12] Sennott, A. (2020). Mayor: 'An important social justice moment.' Councilors pass Affordable Housing Overlay after more than 20 community meetings. *WickedLocal.com*. Retrieved from https://www.wickedlocal.com/story/cambridge-chronicle-tab/2020/10/06/an-important-social-justice-moment-cambridge-councilors-pass-affordable-housing-overlay/114657068/

[13] Taliesin, J. (2020). Somerville moves to facilitate local affordable housing development. *WickedLocal.com.* Retrieved from https://www.wickedlocal.com/story/somerville-journal/2020/11/23/residents-support-citys-move-ease-affordable-housing-development/6328944002/

[14] Eisner, D. (2020). The Historic Affordable Housing Overlay Is about to Pass. How Did It Overcome so Many Obstacles? *A Better Cambridge.* Retrieved from https://www.abettercambridge.org/the_historic_affordable_housing_overlay_is_about_to_pass_how_did_it_overcome_so_many_obstacles

[15] Logan, T. (2020). Boston to consider looser zoning for affordable housing. *The Boston Herald.* Retrieved from https://www.bostonglobe.com/2020/08/24/business/boston-mull-looser-zoning-affordable-housing/

[16] Ewen-Campen, B. (2020). We need a city-wide 'Affordable Housing Overlay District' in Somerville. *The Somerville Times.* Retrieved from https://www.thesomervilletimes.com/archives/103539

> *means that the uncertainty, delays, and discretionary nature of the permitting process in Somerville can be a major issue when attempting to secure funding. Together, these two obstacles mean that new affordable units in Somerville are almost always created by market rate developers through Somerville's "20% inclusionary zoning" policy, which is absolutely necessary but nowhere near sufficient to meet Somerville's goals for affordability.*

Affordable housing nonprofits in California face similar fiscal and regulatory barriers to developing much-needed low- and moderate-income housing. While Berkeley does not have an abundance of vacant and/or publicly-owned land close to transit to help meet these goals, an Affordable Housing Overlay permitting more density for residential uses on commercial corridors for 100% affordable housing can tap into a larger subset of commercial parcels with residential potential in the city. According to a study by the UC Berkeley Terner Center for Housing Innovation, mid-sized cities in the San Francisco Bay Area have an average of 32.4% of land zoned for commercial uses, and this land tends to be evenly distributed between high- and low-opportunity neighborhoods as defined by the state's Tax Credit Allocation Committee.[17]

An overlay for 100% affordable housing with density bonuses and ministerial review would be critical for ensuring that residential zoning does not exclude affordable housing for low- and moderate-income households from high-opportunity neighborhoods, a necessary precondition for the city to comply with fair housing law.

Pursuant to Assembly Bill 686 (Santiago) passed in 2018, jurisdictions are required to produce housing elements that comply with the Affirmatively Furthering Fair Housing rule published by the U.S. Department of Housing and Urban Development (HUD) on July 16, 2015. The bill defines this requirement in the context of housing elements as "taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws."[18]

Zoning standards that prohibit densities needed for more affordable housing in high-opportunity neighborhoods risk exacerbating gentrification and displacement. According to research by the UC Berkeley Urban Displacement Project, 83% of today's gentrifying areas were rated "hazardous" or "declining" by the Home Owners Loan Corporation (HOLC), in part due to their Black and Asian populations, and denied federal mortgage insurance in the agency's infamous redlining maps of the early 20th Century. "Desirable"

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[17] Romem, I. & Garcia, D. (2020). Residential Redevelopment of Commercially Zoned Land in California. *UC Berkeley Terner Center for Housing Innovation.* Retrieved from https://ternercenter.berkeley.edu/wp-content/uploads/2020/12/Residential-Redevelopment-of-Commercially-Zoned-Land-in-California-December-2020.pdf

[18] https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB686

neighborhoods with federal mortgage insurance were restricted to white homebuyers, and 75% of those neighborhoods are still measurably exclusionary today.[19]

The Urban Displacement Project has also reported that "subsidized housing is twice as effective as market-rate housing in mitigating displacement," and Cash & Zuk (2019) recommend "equitable development considerations" which include "open[ing] up high-opportunity neighborhoods to low-income households."[20] Additionally, the researchers recommend local preference or right to return policies "to stabilize neighborhoods as new developments take root," and the City of Berkeley has implemented a local preference policy as part of the Adeline Corridor Specific Plan.[21]

As the Home for All SMC Housing Overlay Zone fact sheet explains: "In locations where the zoning doesn't allow residential development, HOZs can enable housing construction while avoiding the lengthy process of amending a general plan."[22] This proposal only refers broad recommendations for general plan amendments to the Planning Commission to align intended outcomes of the Affordable Housing Overlay with general plan revisions that will result from the upcoming Housing Element update, but a robust Overlay can continue to promote 100% affordable housing development in future cycles when general plan amendments are not under consideration.

Additionally, an enhanced density bonus program with robust skilled and trained workforce requirements can incorporate consistent labor standards[23] into beneficial economies of scale.

ALTERNATIVES CONSIDERED

Due to aforementioned state laws, there is no alternative in which the City of Berkeley does not rezone certain areas to meet its upcoming RHNA goals and have a certified Housing Element. While the city could simply abide by the standards set forth in AB-1763 with no additional incentives or streamlining for 100% affordable housing, this would risk insufficiently prioritizing low- and moderate-income housing, and is inconsistent with goals already identified by the City Manager's office to reduce homelessness and housing insecurity.

The City Manager's 1000 Person Plan to End Homelessness[24] includes among its strategic recommendations:

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[19] Cash, A. (2020). Redlining in Berkeley: the Past is Present. *Berkeley Rent Stabilization Board.* Retrieved from https://www.cityofberkeley.info/uploadedFiles/Rent_Stabilization_Board/Level_3_-_General/SPECIAL_Item%206._Redlining%20in%20Berkeley%20presentation_02.20.20_FINAL(2).pdf

[20] Cash, A & Zuk, M. (2019). Investment Without Displacement: From Slogan to Strategy. *Shelterforce.* Retrieved from https://shelterforce.org/2019/06/21/investment-without-displacement-from-slogan-to-strategy/

[21] https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Land_Use_Division/Adeline%20Corridor%20Specific%20Plan%20Nov.%202020.pdf

[22] https://homeforallsmc.org/toolkits/housing-overlay-zones/

[23] https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB7

[24] https://www.cityofberkeley.info/Clerk/City_Council/2019/02_Feb/Documents/2019-02-26_Item_20_Referral_Response__1000_Person_Plan.aspx

"*Continue implementing changes to Berkeley's Land Use, Zoning, and Development Review Requirements for new housing with an eye towards alleviating homelessness.* If present economic trends continue, the pace with which new housing is currently being built in Berkeley will likely not allow for a declining annual homeless population. Berkeley should continue to streamline development approval processes and reform local policies to help increase the overall supply of housing available."

ENVIRONMENTAL IMPACTS

Research from UC Berkeley scholars and the CoolClimate Network[25] finds that urban infill offers one of the greatest potential policy levers for municipalities to reduce their greenhouse gas emissions. Incentives for affordable housing, such as density bonuses, also offer potential to reduce per capita VMT by increasing housing options in Berkeley and shortening commute times for a greater share of the local workforce. In an analysis of 252 California Cities, Durst (2021) finds that "each additional affordable housing incentive is associated with a 0.37 percentage point decrease in the share of workers who commute more than 30 minutes."[26]

An Affordable Housing Overlay coupled with the city's Local Preference policy could reduce Berkeley's transportation emissions by reducing per capita VMT pursuant to goals established in the city's Climate Action Plan.

FISCAL IMPACTS

TBD.

The City Manager's 1000 Person Plan to End Homelessness notes that the fiscal impact of land use reform "could not be quantified" at the time the report was issued.

CONTACT

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ATTACHMENTS/SUPPORTING MATERIALS

1. Berkeley AHO Infographic with art by by Alfred Twu (reflects previous draft)
2. Cambridge, MA: Ordinance No. 2020-8
3. Assembly Bill 1763 (2019)

[25] Jones, C. et al. (2017). Carbon Footprint Planning: Quantifying Local and State Mitigation Opportunities for 700 California Cities. *Urban Planning, 3*(2). doi:10.17645/up.v3i2.1218.

[26] Durst, N. J. (2021). Residential Land Use Regulation and the Spatial Mismatch between Housing and Employment Opportunities in California Cities. *Terner Center for Housing Innovation.* Retrieved from http://californialanduse.org/download/Durst%20Residential%20Land%20Use%20Regulation%202020.pdf

Berkeley Affordable Housing Overlay

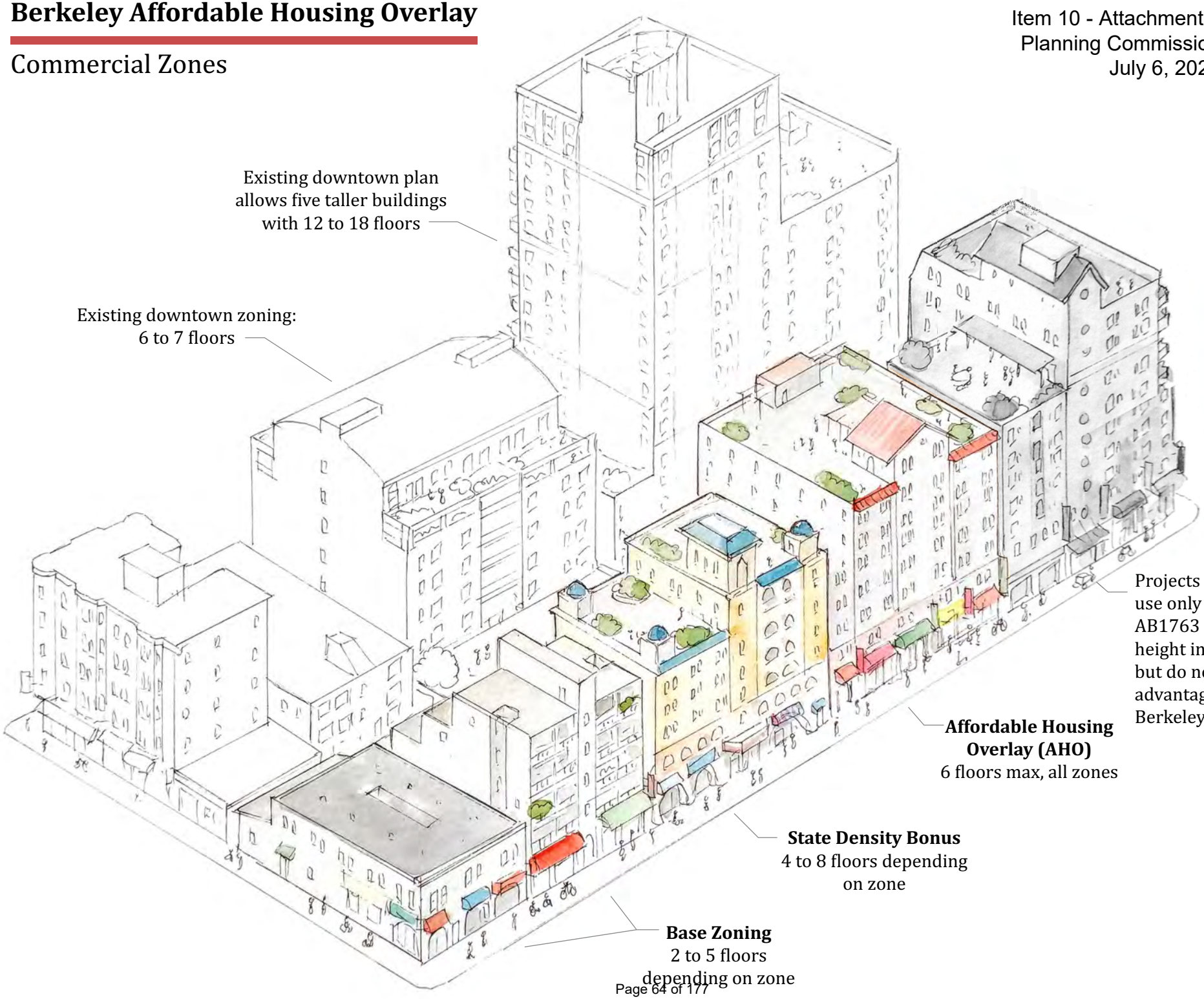
Low Density Zones (R-1, R-1A, R-2, R-2A)

Berkeley Affordable Housing Overlay

Medium Density Zones (R-3, R-4)

Berkeley Affordable Housing Overlay

Commercial Zones



ORDINANCE NO. 2020-8 – First Publication

CITY OF CAMBRIDGE

In the Year Two Thousand and Twenty

AN ORDINANCE

ORDERED: That the attached proposed zoning ordinance establishing an Affordable Housing Overlay be submitted by the City Council, and that it be referred to the Committee on Ordinances and the Planning Board for public hearings, as provided in Chapter 40A, Section 5 of the Massachusetts General Laws, to wit:

ORDERED: That the Cambridge City Council amend Section 2.000, DEFINITIONS, of the Zoning Ordinance of the City of Cambridge amended to insert the following definitions alphabetically:

Affordable Housing Overlay (AHO). A set of modified development standards set forth in Section 11.207.3 of this Zoning Ordinance intended to allow incremental increases in density, limited increases in height, and relaxation of certain other zoning limitations for residential developments in which all units are made permanently affordable to households earning up to 100% of area median income.

Affordable Housing Overlay (AHO) Dwelling Unit. A dwelling unit within an AHO Project for which occupancy is restricted to an AHO Eligible Household and whose rent or initial sale price is established by the provisions of Section 11.207.3 of this Zoning Ordinance.

Affordable Housing Overlay (AHO) Eligible Household. A household whose gross household income does not exceed the amounts set forth in Section 11.207.3 of this Zoning Ordinance.

Affordable Housing Overlay (AHO) Project. The construction of a new building or buildings and/or the modification of an existing building or buildings resulting in single-family, two-family, townhouse, or multifamily dwellings within which each dwelling unit is an AHO Dwelling Unit subject to the standards and restrictions set forth in Section 11.207 of this Zoning Ordinance.

Grade. The mean finished ground elevation of a lot measured either around the entire perimeter of the building or along any existing wall facing a public street, which ground elevation is maintained naturally without any structural support.

Ground Story or Ground Floor. The lowest Story Above Grade within a building. Story. That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above.

Story Above Grade. A Story whose highest point is more than 4 feet above the Grade.

Story Below Grade. Any Story that is lower than the Ground Story of a building.

ORDERED: That the Cambridge City Council amend of the Zoning Ordinance of the City of Cambridge, by inserting a new section 11.207, **AFFORDABLE HOUSING OVERLAY**, to read as follows:

11.207.1 Purpose and Intent

The purpose of this Section is to promote the public good by supporting the development of housing that is affordable to households earning up to 100% of area median income. The intent of this Section is to allow incremental increases in density, limited increases in height, and relaxation of certain other zoning limitations for residential developments in which all units are made permanently affordable to households earning up to 100% of area median income (referred to as "AHO Projects," as defined in Article 2.000 of this Zoning Ordinance); to incentivize the reuse of existing buildings in order to create AHO Projects that are more compatible with established neighborhood character; to promote the city's urban design objectives in Section 19.30 of this Zoning Ordinance while enabling AHO Projects to be permitted as-of-right, subject to non-binding advisory design consultation procedures that follow all design objectives set forth within this Zoning Ordinance and the results of the design review process shall be provided to the Cambridge Affordable Housing Trust; and to apply such standards throughout the City, to promote city planning goals of achieving greater socioeconomic diversity and a more equitable distribution of affordable housing citywide.

11.207.2 Applicability

(a) The provisions set forth in this Section shall apply to AHO Projects, as defined in Article 2.000 of this Zoning Ordinance, in all zoning districts except Open Space Districts.

(b) An AHO Project shall be permitted as-of-right if it meets all of the standards set forth in this Affordable Housing Overlay in place of the requirements otherwise applicable in the zoning district. Any development not meeting all of

the standards set forth in this Affordable Housing Overlay shall be subject to the requirements otherwise applicable in the zoning district, including any requirements for special permits.

11.207.3 Standards for Eligibility, Rent, and Initial Sale Price for AHO Dwelling Units

(a) All dwelling units in an AHO Project shall comply with the standards for AHO Dwelling Units as set forth in this Section.

(b) For all AHO Dwelling Units:

(i) AHO Dwelling Units shall be rented or sold only to AHO Eligible Households, with preference given to Cambridge residents, and former Cambridge residents who experienced a no-fault eviction in Cambridge in the last twelve (12) months, in accordance with standards and procedures related to selection, asset limits, and marketing established by the Community Development Department (CDD) and applicable state funding requirements.

(ii) AHO Dwelling Units shall be created and conveyed subject to recorded covenants approved by CDD guaranteeing the permanent availability of the AHO Dwelling Units for AHO Eligible Households.

(c) For rental AHO Dwelling Units:

(i) The gross household income of an AHO Eligible Household upon initial occupancy shall be no more than one-hundred percent (100%) of AMI.

(ii) At least eighty percent (80%) of AHO Dwelling Units within the project shall be occupied by AHO Eligible Households whose gross household income upon initial occupancy is no more than eighty percent (80%) of AMI.

(iii) Rent, including utilities and any other fees routinely charged to tenants and approved by CDD, shall not exceed thirty percent (30%) of the gross household income of the AHO Eligible Household occupying the AHO Dwelling Unit or other similar standard pursuant to an applicable housing subsidy program which has been approved by CDD.

(iv) After initial occupancy, the gross household income of an AHO Eligible Household shall be verified annually, or on such other basis required by an applicable housing subsidy program which has been approved by CDD, to determine continued eligibility and rent, in accordance with policies, standards, and procedures established by CDD.

(v) An AHO Eligible Household may continue to rent an AHO Dwelling Unit after initial occupancy even if the AHO Eligible Household's gross household income exceeds the eligibility limits set forth above, but may not exceed one hundred twenty percent (120%) of AMI for more than one year after that Eligible Household's gross household income has been verified to exceed such percentage, unless otherwise restricted pursuant to an applicable housing subsidy program which has been approved by CDD.

(vi) Notwithstanding the requirements set forth in (i) through (v) above, an owner may voluntarily choose to charge a lower rent than as provided herein for AHO Dwelling Units.

(d) For owner-occupied AHO Dwelling Units:

(i) The gross household income of an AHO Eligible Household upon initial occupancy shall be no more than one-hundred percent (100%) of AMI.

(ii) At least fifty percent (50%) of AHO Dwelling Units shall be sold to AHO Eligible Households whose gross household income upon initial occupancy is no more than eighty percent (80%) of AMI.

(iii) The initial sale price of an AHO Dwelling Unit shall be approved by CDD and shall be determined to ensure that the monthly housing payment (which shall include debt service at prevailing mortgage loan interest rates, utilities, condominium or related fees, insurance, real estate taxes, and parking fees, if any) shall not exceed thirty percent (30%) of the monthly income of:

1) A household earning ninety percent (90%) of AMI, in the case of an AHO Dwelling Unit to be sold to an AHO Eligible Household whose income upon initial

occupancy is no more than one-hundred percent (100%) of AMI; or

2) A household earning seventy percent (70%) of AMI, in the case of an AHO Dwelling Unit to be sold to an AHO Eligible Household whose income upon initial occupancy is no more than eighty percent (80%) of AMI

(e) An AHO Project meeting the standards set forth herein as approved by CDD shall not be required to comply with the Inclusionary Housing Requirements set forth in 11.203 of this Zoning Ordinance.

11.207.4 Use

(a) In all zoning districts, an AHO Project may contain single-family, two-family, townhouse, or multifamily dwellings as-of-right. Townhouse and Multifamily Special Permit procedures shall not apply.

(b) An AHO Project may contain active non-residential uses on the ground floor as they may be permitted as-of-right in the base zoning district or the overlay district(s) that are applicable to a lot, which for the purpose of this Section shall be limited to Institutional Uses listed in Section 4.33, Office Uses listed in Section 4.34 Paragraphs a. through e., and Retail and Consumer Service uses listed in Section 4.35 that provide services to the general public.

11.207.5 Development Standards

11.207.5.1 General Provisions

(a) For the purposes of this Section, the phrase “District Development Standards” shall refer to the development standards of the base zoning district as they may be modified by the development standards of all overlay districts (with the exception of this Affordable Housing Overlay) that are applicable to a lot.

(b) District Dimensional Standards shall include the most permissive standards allowable on a lot, whether such standards are permitted as-of-right or allowable by special permit. A District Dimensional Standard that is allowable by special permit shall include any nondiscretionary requirements or limitations that would otherwise apply.

(c) An AHO Project that conforms to the following development standards shall not be subject to other limitations that may be set forth in Article 5.000 or other Sections of this Zoning Ordinance, except as otherwise stated in this Section.

11.207.5.2 Dimensional Standards for AHO Projects

11.207.5.2.1 Building Height and Stories Above Grade. For an AHO Project, the standards set forth below shall apply in place of any building height limitations set forth in the District Development Standards.

(a) Where the District Dimensional Standards set forth a maximum residential building height of forty (40) feet or less, an AHO Project shall contain no more than four (4) Stories Above Grade and shall have a maximum height of forty-five (45) feet, as measured from existing Grade. For AHO Projects containing active non-residential uses on the ground floor, the maximum height may be increased to fifty (50) feet but the number of Stories Above Grade shall not exceed four (4) stories.

(b) Where the District Dimensional Standards set forth a maximum residential building height of more than forty (40) feet but not more than fifty (50) feet, an AHO Project shall contain no more than six (6) Stories Above Grade and shall have a maximum height of sixty-five (65) feet, as measured from existing Grade, except as further limited below. For AHO Projects containing active non-residential uses on the ground floor, the maximum height may be increased to seventy (70) feet but the number of Stories Above Grade shall not exceed six (6) stories.

(i) Except where the AHO Project abuts a non-residential use, portions of an AHO Project that are within thirty-five (35) feet of a district whose District Dimensional Standards allow a maximum residential building height of forty (40) feet or less shall be limited by the provisions of Paragraph (a) above, except that if the AHO project parcel extends into that District, then the height limitation shall only extend thirty five (35) feet from the property line.

(c) Where the District Dimensional Standards set forth a maximum residential building height of more than fifty (50) feet, an AHO Project shall contain no more than seven (7) Stories Above Grade and shall have a maximum height

of eighty (80) feet, as measured from existing Grade, except as further limited below.

(i) Except where the AHO Project abuts a non-residential use, portions of an AHO Project that are within thirty-five (35) feet of a district whose District Dimensional Standards allow a maximum residential building height of forty (40) feet or less shall be reduced to a minimum of five (5) Stories Above Grade or a maximum height of sixty (60) feet, as measured from existing Grade, except that if the AHO project parcel extends into that District, then the height limitation shall only extend thirty five (35) feet from the property line.

(d) The Height Exceptions set forth in Section 5.23 of this Zoning Ordinance shall apply when determining the building height of an AHO Project.

11.207.5.2.2 Residential Density

(a) Where the District Dimensional Standards establish a maximum floor area ratio (FAR) of less than 1.00, an AHO Project shall not exceed an FAR of 2.00. Otherwise, there shall be no maximum FAR for an AHO Project.

(b) There shall be no minimum lot area per dwelling unit for an AHO Project.

11.207.5.2.3 Yard Setbacks

(a) For the purpose of this Section, the applicable District Dimensional Standards shall not include yard setback requirements based on a formula calculation as provided in Section 5.24.4 of the Zoning Ordinance, but shall include non-derived minimum yard setback requirements set forth in Article 5.000 or other Sections of this Zoning Ordinance.

(b) Front Yards. An AHO Project shall have a minimum front yard setback of 15 feet, except where the District Dimensional Standards establish a less restrictive requirement, or may be reduced tp the average of the front yard setbacks of the four (4) nearest pre-existing principal buildings that contain at least two Stories Above Grade and directly front the same side of the street as the AHO Project, or may be reduced to a minimum of ten (10) feet in the case of an AHO Project on a corner lot. Where the District Dimensional Standards set forth different requirements for residential and non-residential uses, the

non-residential front yard setback requirement shall apply to the entire AHO Project if the Ground Story contains a non-residential use as set forth in Section 11.207.4 Paragraph (b) above; otherwise, the residential front yard setback shall apply.

(c) Side Yards. An AHO Project shall have a minimum side yard setback of seven and one-half (7.5) feet, or may be reduced to the minimum side yard setback set forth in the District Dimensional Standards for residential uses that is not derived by formula if it is less restrictive.

(d) Rear Yards. An AHO Project shall have a minimum rear yard setback of twenty (20) feet, or may be reduced to the minimum rear yard setback set forth in the District Dimensional Standards for residential uses that is not derived by formula if it is less restrictive.

(e) Projecting eaves, chimneys, bay windows, balconies, open fire escapes and like projections which do not project more than three and one-half (3.5) feet from the principal exterior wall plane, and unenclosed steps, unroofed porches and the like which do not project more than ten (10) feet beyond the line of the foundation wall and which are not over four (4) feet above Grade, may extend beyond the minimum yard setback.

(f) Bicycle parking spaces, whether short-term or long-term, and appurtenant structures such as coverings, sheds, or storage lockers may be located within a required yard setback but no closer than seven and one-half (7.5) feet to an existing principal residential structure on an abutting lot.

11.207.5.2.4 Open Space

(a) Except where the District Dimensional Standards establish a less restrictive requirement or as otherwise provided below, the minimum percentage of open space to lot area for an AHO Project shall be thirty percent (30%). However, the minimum percentage of open space to lot area may be reduced to no less than fifteen percent (15%) if the AHO Project includes the preservation and protection of an existing building included on the State Register of Historic Places.

(b) The required open space shall be considered Private Open Space but shall be subject to the limitations set forth below and shall not be subject to the dimensional and other limitations set forth in Section 5.22 of this Zoning

Ordinance. Private Open Space shall exclude parking and driveways for automobiles.

(c) All of the required open space that is located at grade shall meet the definition of Permeable Open Space as set forth in this Zoning Ordinance.

(d) The required open space shall be located at Grade or on porches and decks that are no higher than the floor elevation of the lowest Story Above Grade, except that up to twenty five percent (25%) of the required open space may be located at higher levels, such as balconies and decks, only if it is accessible to all occupants of the building.

(e) For the purpose of this Affordable Housing Overlay, area used for covered or uncovered bicycle parking spaces that are not contained within a building shall be considered Private Open Space.

11.207.5.3 Standards for Existing Buildings

A building that is in existence as of the effective date of this Ordinance and does not conform to the standards set forth in Section 11.207.5.2 above may be altered, reconstructed, extended, relocated, and/or enlarged for use as an AHO Project as-of-right in accordance with the standards set forth below. Except as otherwise stated, the required dimensional characteristics of the building and site shall be those existing at the time of the conversion to an AHO Project if they do not conform to the standards of Section 11.207.5.2. The following modifications shall be permitted as-of-right, notwithstanding the limitations set forth in Article 8.000 of this Zoning Ordinance:

(a) Construction occurring entirely within an existing structure, including the addition of Gross Floor Area within the interior of the existing building envelope that may violate or further violate FAR limitations set forth in Section 11.207.5.2, and including any increase to the number of dwelling units within the existing building, provided that the resulting number of Stories Above Grade is not more than the greater of the existing number of Stories Above Grade or the existing height of the building divided by 10 feet.

(b) The relocation, enlargement, or addition of windows, doors, skylights, or similar openings to the exterior of a building.

(c) The addition of insulation to the exterior of an existing exterior wall to improve energy efficiency, provided that the resulting exterior plane of the wall shall either conform to the yard setback standards set forth in Section 11.207.5.2 above or shall not intrude more than eight (8) inches further into the existing yard setback and provided that the lot shall either conform to the open space standards set forth in Section 11.207.5.2 or shall not decrease the existing open space by more than 5% or 100 square feet, whichever is greater.

(d) The installation of exterior features necessary for the existing structure to be adapted to meet accessibility standards for persons with disabilities, including but not limited to walkways, ramps, lifts, or elevators, which may violate or further violate of the dimensional requirements set forth in Section 11.207.5.2.

(e) The repair, reconstruction, or replacement of any preexisting nonconforming portions of a building including but not limited to porches, decks, balconies, bay windows and building additions, provided that the repair, reconstruction or replacement does not exceed the original in footprint, volume, or area.

(f) Any other alterations, additions, extensions, or enlargements to the existing building that are not further in violation of the dimensional requirements set forth in Section 11.207.5.2 above.

11.207.6 Parking and Bicycle Parking

The limitations set forth in Article 6.000 of this Zoning Ordinance shall be modified as set forth below for an AHO Project.

11.207.6.1 Required Off-Street Accessory Parking

(a) There shall be no required minimum number of off-street parking spaces for an AHO Project except to the extent necessary to conform to other applicable laws, codes, or regulations.

(b) An AHO Project of greater than 20 units, for which no off-street parking is provided shall provide or have access to either on-street or off-street facilities that can accommodate passenger pick-up and drop-off by motor vehicles and short-term loading by moving vans or small delivery trucks. The Cambridge Traffic, Parking, and Transportation Department shall certify to the Superintendent of Buildings

that the AHO Project is designed to reasonably accommodate such activity without causing significant hazard or congestion. The Cambridge Director of Traffic, Parking, and Transportation shall have the authority to promulgate regulations for the implementation of the provisions of this Paragraph.

11.207.6.2 Accessory Parking Provided Off-Site

(a) Off-street parking facilities may be shared by multiple AHO Projects, provided that the requirements of this Section are met by all AHO Dwelling Units served by the facility and the facility is within 1,000 feet of all AHO Projects that it serves.

(b) Off-street parking facilities for an AHO Project may be located within existing parking facilities located within 1,000 feet of the AHO Project and in a district where parking is permitted as a principal use or where the facility is a pre-existing nonconforming principal use parking facility, provided that the owner of the AHO Project shall provide evidence of fee ownership, a long-term lease agreement or renewable short-term lease agreement, recorded covenant, or comparable legal instrument to guarantee, to the reasonable satisfaction of the Superintendent of Buildings, that such facilities will be available to residents of the AHO Project.

11.207.6.3 Modifications to Design and Layout Standards for Off-Street Parking

(a) Notwithstanding Section 6.43.2, parking spaces may be arranged in tandem without requiring a special permit, provided that no more than two cars may be parked within any tandem parking space.

(b) Notwithstanding Section 6.43.6, owners of adjacent properties may establish common driveways under mutual easements without requiring a special permit.

(c) Notwithstanding Paragraph 6.44.1(a), on-grade open parking spaces may be located within ten (10) feet but not less than five (5) feet from the Ground Story of a building on the same lot or seven and one-half (7.5) feet from the Ground Story of a building on an adjacent lot without requiring a special permit, provided that such parking spaces are screened from buildings on abutting lots by a fence or other dense year-round visual screen.

(d) Notwithstanding Paragraph 6.44.1(b), on-grade open parking spaces and driveways may be located within five (5) feet of a side or rear property line without requiring a special permit, provided that screening is provided in the form of a fence or other dense year-round visual screen at the property line, unless such screening is waived by mutual written agreement of the owner of the lot and the owner of the abutting lot.

11.207.6.4 Modifications to Bicycle Parking Standards

(a) Notwithstanding Section 6.104, long-term or short-term bicycle parking spaces may be located anywhere on the lot for an AHO Project or on an adjacent lot in common ownership or under common control.

(b) Notwithstanding Section 6.107.5, up to 20 long-term bicycle parking spaces may be designed to meet the requirements for Short-Term Bicycle Parking Spaces, so long as they are covered from above to be protected from precipitation.

(c) The requirement for short-term bicycle parking shall be waived where only four of fewer short-term bicycle parking spaces would otherwise be required.

(d) The number of required bicycle parking spaces shall be reduced by half, up to a maximum reduction of 28 spaces, where a standard-size (19-dock) Public Bicycle Sharing Station is provided on the lot or by the developer of the AHO Project on a site within 500 feet of the lot, with the written approval of the City if located on a public street or other City property, or otherwise by legally enforceable mutual agreement with the owner of the land on which the station is located as approved by the Community Development Department. If additional Public Bicycle Sharing Station docks are provided, the number of required bicycle parking spaces may be further reduced at a rate of 0.5 bicycle parking space per additional Public Bicycle Sharing Station dock, up to a maximum reduction of half of the required number of spaces.

(e) For AHO Dwelling Units created within an existing building, bicycle parking spaces meeting the standards of this Zoning Ordinance shall not be required but are encouraged to be provided to the extent practical given the limitations of the existing structure. Bicycle parking spaces shall be provided, as required by this Zoning Ordinance, for

dwelling units in an AHO Project that are constructed fully outside the envelope of the existing structure.

11.207.6.5 Transportation Demand Management

An AHO Project not providing off-street parking at a ratio of 0.4 space per dwelling unit or more shall provide, in writing, to the Community Development Department a Transportation Demand Management program containing the following measures, at a minimum:

(a) Offering either a free annual membership in a Public Bicycle Sharing Service, at the highest available tier where applicable, or a 50% discounted MBTA combined subway and bus pass for six months or pass of equivalent value, to up to two individuals in each household upon initial occupancy of a unit.

(b) Providing transit information in the form of transit maps and schedules to each household upon initial occupancy of a unit, or providing information and a real-time transit service screen in a convenient common area of the building such as an entryway or lobby.

11.207.7 Building and Site Design Standards for New Development

11.207.7.1 General Provisions

(a) Except where otherwise stated, the Project Review requirements set forth in Article 19.000 of this Zoning Ordinance and any design standards set forth in Section 19.50 or elsewhere in the Zoning Ordinance shall be superseded by the following standards for an AHO Project.

(b) The following design standards shall apply to new construction and to additions to existing structures. Except as otherwise provided, an existing building that is altered or moved to accommodate an AHO Project shall not be subject to the following standards, provided that such alterations do not create a condition that is in greater nonconformance with such standards than the existing condition.

11.207.7.2 Site Design and Arrangement

(a) The area directly between the front lot line and the principal wall plane of the building nearest to the front lot line shall consist of any combination of landscaped area, hardscaped area accessible to pedestrians and bicyclists,

and usable spaces such as uncovered porches, patios, or balconies. Parking shall not be located within such area, except for driveway access which shall be limited to a total of thirty (30) feet of width for any individual driveway for each one hundred (100) feet of lot frontage.

(b) Pedestrian entrances to buildings shall be visible from the street, except where the building itself is not visible from the street due to its location. All pedestrian entrances shall be accessible by way of access routes that are separated from motor vehicle access drives.

(c) A building footprint exceeding two hundred and fifty (250) feet in length, measured parallel to the street, shall contain a massing recess extending back at least fifteen (15) feet in depth measured from and perpendicular to the front lot line and at least fifteen (15) feet in width measured parallel to the front lot line so that the maximum length of unbroken façade is one hundred fifty (150) feet.

11.207.7.3 Building Façades

(a) At least twenty percent (20%) of the area of building façades facing a public street or public open space shall consist of clear glass windows. For buildings located in a Business A (BA), Business A-2 (BA-2), Business B (BB) or Business C (BC) zoning district, this figure shall be increased to thirty percent (30%) for non-residential portions of the building, if any.

(b) Building façades shall incorporate architectural elements that project or recess by at least two feet from the adjacent section of the façade. Such projecting or recessed elements shall occur on an average interval of 40 linear horizontal feet or less for portions of the façade directly facing a public street, and on an average interval of 80 linear horizontal feet or less for other portions of the façade. Such projecting or recessed elements shall not be required on the lowest Story Above Grade or on the highest Story Above Grade, and shall not be required on the highest two Stories Above Grade of a building containing at least six Stories Above Grade. The intent is to incorporate elements such as bays, balconies, cornices, shading devices, or similar architectural elements that promote visual interest and residential character, and to allow variation at the ground floor and on upper floors where a different architectural treatment may be preferable.

11.207.7.4 Ground Stories and Stories Below Grade

(a) The elevation at floor level of the Ground Story shall be at the mean Grade of the abutting public sidewalk, or above such mean Grade by not more than four feet. Active non-residential uses at the Ground Story shall be accessible directly from the sidewalk without requiring use of stairs or a lift. The requirements of this paragraph shall not apply if it is determined by the City Engineer that a higher Ground Story elevation is necessary for the purpose of flood protection.

(b) Where structured parking is provided within the Ground Story of a building, the portion of the building immediately behind the front wall plane shall consist of residential units, common areas, or other populated portions of the building in order to screen the provided parking over at least seventy-five percent (75%) of the length of the façade measured parallel to the street and excluding portions of the façade used for driveway access. On a corner lot, the requirements of this Paragraph shall only apply along one street.

(c) The façade of a Ground Story facing a public street shall consist of expanses no longer than twenty-five (25) feet in length, measured parallel to the street, which contain no transparent windows or pedestrian entryways.

(d) If the Ground Story is designed to accommodate active non-residential uses, the following additional standards shall apply:

(i) the height of the Ground Story for that portion of the building containing active non-residential uses shall be at least fifteen (15) feet;

(ii) the depth of the space designed for active non-residential uses shall be at least thirty-five (35) feet on average measured from the portion of the façade that is nearest to the front lot line in a direction perpendicular to the street, and measured to at least one street in instances where the space abuts two or more streets; and

(iii) that portion of the Ground Story façade containing active non-residential uses shall consist of at least thirty percent (30%) transparent glass windows or, if the use is a retail or consumer service establishment, at least thirty percent (30%) transparent glass windows, across the combined façade on both streets in the case of a corner lot.

(e) Ground Stories shall be designed to accommodate at least one space, with a total frontage equaling at least fifty percent (50%) of the existing retail frontage, for an active non-residential use, which may include retail or consumer establishments as well as social service facilities supporting the mission of the owner of the AHO Project, on sites that are located in a Business base zoning district, and where the project site contains or has contained a retail and or consumer service use at any point within the past two years prior to application for a building permit for an AHO Project.

(f) Private living spaces within dwelling units, including bedrooms, kitchens, and bathrooms, may only be contained within Stories Above Grade. Stories Below Grade may only contain portions of dwelling units providing entries, exits, or mechanical equipment, or common facilities for residents of the building, such as lobbies, recreation rooms, laundry, storage, parking, bicycle parking, or mechanical equipment

11.207.7.5 Mechanical Equipment, Refuse Storage, and Loading Areas

(a) All mechanical equipment, refuse storage, or loading areas serving the building or its occupants that are (1) carried above the roof, (2) located at the exterior building wall or (3) located outside the building, shall meet the requirements listed below. Mechanical equipment includes, but is not limited to, ventilation equipment including exhaust fans and ducts, air conditioning equipment, elevator bulkheads, heat exchangers, transformers and any other equipment that, when in operation, potentially creates a noise detectable off the lot. The equipment and other facilities: (a) Shall not be located within any required setback. This Paragraph (a) shall not apply to electrical equipment whose location is mandated by a recognized public utility, provided that project plans submitted for review by the City identify a preferred location for such equipment.

(b) When on the ground, shall be permanently screened from view from adjacent public streets that are within 100 feet of the building, or from the view from abutting property in separate ownership at the property line. The screening shall consist of a dense year-round screen equal or greater in height at the time of installation than the equipment or facilities to be screened, or a fence of equal or greater

height that is comparable in quality to the materials used on the principal facades of the building, with no more than twenty-five (25) percent of the face of the fence open with adjacent planting.

(c) When carried above the roof, shall be set back from the principal wall plane by a dimension equal to at least the height of the equipment and permanently screened from view, from the ground, from adjacent public streets and any abutting residentially used lot or lots in a residential zoning district. The screening shall be at least seventy-five percent (75%) opaque and uniformly distributed across the screening surface, or opaque to the maximum extent permissible if other applicable laws, codes, or regulations mandate greater openness.

(d) Shall meet all city, state and federal noise regulations, as applicable, as certified by a professional acoustical engineer if the Department of Inspectional Services deems such certification necessary.

(e) That handle trash and other waste, shall be contained within the building or screened as required in this Section until properly disposed of.

11.207.7.6 Environmental Design Standards

(a) This Section shall not waive the Green Building Requirements set forth in Section 22.20 of this Zoning Ordinance that may otherwise apply to an AHO Project.

(b) Where the provisions of the Flood Plain Overlay District apply to an AHO Project, the performance standards set forth in Section 20.70 of this Zoning Ordinance shall apply; however, a special permit shall not be required.

(c) An AHO Project shall be subject to other applicable laws, regulations, codes, and ordinances pertaining to environmental standards.

(d) New outdoor light fixtures installed in an AHO Project shall be fully shielded and directed to prevent light trespass onto adjacent residential lots.

11.207.8 Advisory Design Consultation Procedure

Prior to application for a building permit, the developer of an AHO Project shall comply with the following procedure, which is intended to provide an opportunity for non-binding community and staff input into the design of the project.

(a) The intent of this non-binding review process is to advance the City's desired outcomes for the form and character of AHO Projects. To promote the City's goal of creating more affordable housing units, AHO Projects are permitted to have a greater height, scale, and density than other developments permitted by the zoning for a given district. This procedure is intended to promote design outcomes that are compatible with the existing neighborhood context or with the City's future planning objectives for the area.

(b) The City's "Design Guidelines for Affordable Housing Overlay," along with other design objectives and guidelines established for the part of the city in which the AHO Project is located, are intended to inform the design of AHO Projects and to guide the Planning Board's consultation and report as set forth below. It is intended that designers of AHO Projects, City staff, the Planning Board, and the general public will be open to creative variations from any detailed provisions set forth in such objectives and guidelines as long as the core values expressed are being served.

(c) At least two community meetings shall be scheduled at a time and location that is convenient to residents in proximity to the project site. The Community Development Department (CDD) shall be notified of the time and location of such meetings, and shall give notification to abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within three hundred feet of the property line of the lot on which the AHO Project is proposed and to any individual or organization who each year files with CDD a written request for such notification, or to any other individual or organization CDD may wish to notify.

(i) The purpose of the first community meeting shall be for the developer to share the site and street context analysis with neighborhood residents and other interested parties prior to building design, and receive feedback from community members.

(ii) The purpose of the subsequent community meeting(s) shall be to present preliminary project designs, answer questions from neighboring residents and other interested members of the public, and receive feedback on the design. The date(s), time(s), location(s), attendance, materials presented, and comments received at such

meeting(s) shall be documented and provided to CDD.

(d) Following one or more such community meeting(s), the developer shall prepare the following materials for review by the Planning Board. CDD shall review to certify that the submitted written and graphic materials provide the required information in sufficient detail. All drawings shall be drawn to scale, shall include a graphic scale and north arrow for orientation, and shall provide labeled distances and dimensions for significant building and site features.

(i) A context map indicating the location of the project and surrounding land uses, including transportation facilities.

(ii) A context analysis, discussed with CDD staff, including existing front yard setbacks, architectural character, and unique features that inform and influence the design of the AHO Project.

(iii) An existing conditions site plan depicting the boundaries of the lot, the locations of buildings, open space features, parking areas, trees, and other major site features on the lot and abutting lots, and the conditions of abutting streets.

(iv) A proposed conditions site plan depicting the same information above as modified to depict the proposed conditions, including new buildings (identifying building entrances and uses on the ground floor and possible building roof deck) and major anticipated changes in site features.

(v) A design statement on how the proposed project attempts to reinforce existing street/context qualities and mitigates the planned project's greater massing, height, density, &c.

(vi) Floor plans of all proposed new buildings and existing buildings to remain on the lot.

(vii) Elevations and cross-section drawings of all proposed new buildings and existing buildings to remain on the lot, depicting the distances to lot lines and the heights of surrounding buildings, and labeling the proposed materials on each façade elevation.

(viii) A landscape plan depicting and labeling all hardscape, permeable, and vegetated areas proposed for the site along with other structures or appurtenances on the site.

(ix) Plans of parking and bicycle parking facilities, as required by Section 6.50 of this Zoning Ordinance.

(x) Materials palettes cataloguing and depicting with photographs the proposed façade and landscape materials.

(xi) Existing conditions photographs from various vantage points on the public sidewalk, including photos of the site and of the surrounding urban context.

(xii) Proposed conditions perspective renderings from a variety of vantage points on the public sidewalk, including locations adjacent to the site as well as longer views if proposed buildings will be visible from a distance.

(xiii) A dimensional form, in a format provided by CDD, along with any supplemental materials, summarizing the general characteristics of the project and demonstrating compliance with applicable zoning requirements.

(xiv) A brief project narrative describing the project and the design approach, and indicating how the project has been designed in relation to the citywide urban design objectives set forth in Section 19.30 of the Zoning Ordinance, any design guidelines that have been established for the area, and the "Design Guidelines for Affordable Housing Overlay."

(xv) Viewshed analysis and shadow studies that show the impact on neighboring properties with existing Solar Energy Systems.

(xvi) An initial development budget that shows anticipated funding sources and uses including developer fee and overhead.

(e) Within 65 days of receipt of a complete set of materials by CDD, the Planning Board shall schedule a design consultation as a general business matter at a public meeting and shall give notification to abutters, owners of land directly opposite on any public or private street or

way, and abutters to the abutters within three hundred feet of the property line of the lot on which the AHO Project is proposed and to any individual or organization who each year files with CDD a written request for such notification, or to any other individual or organization CDD may wish to notify. The materials shall be made available to the public in advance, and the Planning Board may receive written comments prior to the meeting from City staff, abutters, and members of the public.

(f) At the scheduled design consultation, the Planning Board shall hear a presentation of the proposal from the developer and oral comments from the public. The Board may ask questions or seek additional information from the developer or from City staff.

(g) The Planning Board shall evaluate the proposal for general compliance with the requirements of this Section, for consistency with City development guidelines prepared for the proposal area and the "Design Guidelines for Affordable Housing Overlay," for appropriateness in terms of other planned or programmed public or private development activities in the vicinity, and for consistency with the Citywide Urban Design Objectives set forth in Section 19.30. The Board may also suggest specific project adjustments and alterations to further the purposes of this Ordinance. The Board shall communicate its findings in a written report provided to the developer and to CDD within 20 days of the design consultation.

(h) The developer may then make revisions to the design, in consultation with CDD staff, and shall submit a revised set of documents along with a narrative summary of the Planning Board's comments and changes made in response to those comments.

(i) The Planning Board shall review and discuss the revised documents at a second design consultation meeting, which shall proceed in accordance with Paragraphs (c) and (d) above. Following the second design consultation, the Planning Board may submit a revised report and either the revised report or if there are no revisions the initial report shall become the final report (the "Final Report"). Any additional design consultations to review further revisions may occur only at the discretion and on the request of the developer or the Cambridge Affordable Housing Trust.

(j) The Final Report from the Planning Board shall be provided to the Superintendent of Buildings to certify compliance with the procedures set forth herein.

11.207.9 Implementation of Affordable Housing Overlay

(a) The City Manager shall have the authority to promulgate regulations for the implementation of the provisions of this Section 11.207. There shall be a sixty-day review period, including a public meeting, to receive public comments on draft regulations before final promulgation.

(b) The Community Development Department may develop standards, design guidelines, and procedures appropriate to and consistent with the provisions of this Sections 11.207 and the above regulations.

11.207.10 Enforcement of Affordable Housing Overlay

The Community Development Department shall certify in writing to the Superintendent of Buildings that all applicable provisions of this Section have been met before issuance of any building permit for any AHO Project, and shall further certify in writing to the Superintendent of Buildings that all documents have been filed and all actions taken necessary to fulfill the requirements of this Section before the issuance of any certificate of occupancy for any such project.

11.207.11 Review of Affordable Housing Overlay

(a) Annual Report. CDD shall provide an annual status report to the City Council, beginning eighteen (18) months after ordination and continuing every year thereafter. The report shall contain the following information:

(i) List of sites considered for affordable housing development under the Affordable Housing Overlay, to the extent known by CDD, including site location, actions taken to initiate an AHO Project, and site status;

(ii) Description of each AHO Project underway or completed, including site location, number of units, unit types (number of bedrooms), tenure, and project status; and

(iii) Number of residents served by AHO Projects.

(b) Five-Year Progress Review. Five (5) years after ordination, CDD shall provide to the City Council, Planning Board and

the Affordable Housing Trust, for its review, a report that assesses the effectiveness of the Affordable Housing Overlay in increasing the number of affordable housing units in the city, distributing affordable housing across City neighborhoods, and serving the housing needs of residents. The report shall also assess the effectiveness of the Advisory Design Consultation Procedure in gathering meaningful input from community members and the Planning Board and shaping AHO Projects to be consistent with the stated Design Objectives. The report shall evaluate the success of the Affordable Housing Overlay in balancing the goal of increasing affordable housing with other City planning considerations such as urban form, neighborhood character, environment, and mobility. The report shall discuss citywide outcomes as well as site-specific outcomes.

Passed to a second reading as amended at the City Council meeting held on September 14, 2020 and on or after October 5, 2020 the question comes on passage to be ordained.

Attest:- Anthony I. Wilson
City Clerk

Assembly Bill No. 1763

CHAPTER 666

An act to amend Section 65915 of the Government Code, relating to housing.

[Approved by Governor October 9, 2019. Filed with Secretary of State October 9, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1763, Chiu. Planning and zoning: density bonuses: affordable housing.

Existing law, known as the Density Bonus Law, requires a city or county to provide a developer that proposes a housing development within the jurisdictional boundaries of that city or county with a density bonus and other incentives or concessions for the production of lower income housing units, or for the donation of land within the development, if the developer agrees to construct a specified percentage of units for very low income, low-income, or moderate-income households or qualifying residents and meets other requirements. Existing law provides for the calculation of the amount of density bonus for each type of housing development that qualifies under these provisions.

This bill would additionally require a density bonus to be provided to a developer who agrees to construct a housing development in which 100% of the total units, exclusive of managers' units, are for lower income households, as defined. However, the bill would provide that a housing development that qualifies for a density bonus under its provisions may include up to 20% of the total units for moderate-income households, as defined. The bill would also require that a housing development that meets these criteria receive 4 incentives or concessions under the Density Bonus Law and, if the development is located within ½ of a major transit stop, a height increase of up to 3 additional stories or 33 feet. The bill would generally require that the housing development receive a density bonus of 80%, but would exempt the housing development from any maximum controls on density if it is located within ½ mile of a major transit stop. The bill would prohibit a housing development that receives a waiver from any maximum controls on density under these provisions from receiving a waiver or reduction of development standards pursuant to existing law, other than as expressly provided in the bill. The bill would also make various nonsubstantive changes to the Density Bonus Law.

Existing law requires that an applicant for a density bonus agree to, and that the city and county ensure, the continued affordability of all very low and low-income rental units that qualified the applicant for a density bonus for at least 55 years, as provided. Existing law requires that the rent for

lower income density bonus units be set at an affordable rent, as defined in specified law.

This bill, for units, including both base density and density bonus units, in a housing development that qualifies for a density bonus under its provisions as described above, would instead require that the rent for at least 20% of the units in that development be set at an affordable rent, defined as described above, and that the rent for the remaining units be set at an amount consistent with the maximum rent levels for a housing development that receives an allocation of state or federal low-income housing tax credits from the California Tax Credit Allocation Committee.

Existing law, upon the request of the developer, prohibits a city, county, or city and county from requiring a vehicular parking ratio for a development meeting the eligibility requirements under the Density Bonus Law that exceeds specified ratios. For a development that consists solely of rental units, exclusive of a manager's unit or units, with an affordable housing cost to lower income families, as provided in specified law, and that is a special needs housing development, as defined, existing law limits that vehicular parking ratio to 0.3 spaces per unit.

This bill would instead, upon the request of the developer, prohibit a city, county, or city and county from imposing any minimum vehicular parking requirement for a development that consists solely of rental units, exclusive of a manager's unit or units, with an affordable housing cost to lower income families and is either a special needs housing development or a supportive housing development, as those terms are defined.

By adding to the duties of local planning officials with respect to the award of density bonuses, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 65915 of the Government Code, as amended by Chapter 937 of the Statutes of 2018, is amended to read:

65915. (a) (1) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall comply with this section. A city, county, or city and county shall adopt an ordinance that specifies how compliance with this section will be implemented. Failure to adopt an ordinance shall not relieve a city, county, or city and county from complying with this section.

(2) A local government shall not condition the submission, review, or approval of an application pursuant to this chapter on the preparation of an

additional report or study that is not otherwise required by state law, including this section. This subdivision does not prohibit a local government from requiring an applicant to provide reasonable documentation to establish eligibility for a requested density bonus, incentives or concessions, as described in subdivision (d), waivers or reductions of development standards, as described in subdivision (e), and parking ratios, as described in subdivision (p).

(3) In order to provide for the expeditious processing of a density bonus application, the local government shall do all of the following:

(A) Adopt procedures and timelines for processing a density bonus application.

(B) Provide a list of all documents and information required to be submitted with the density bonus application in order for the density bonus application to be deemed complete. This list shall be consistent with this chapter.

(C) Notify the applicant for a density bonus whether the application is complete in a manner consistent with the timelines specified in Section 65943.

(D) (i) If the local government notifies the applicant that the application is deemed complete pursuant to subparagraph (C), provide the applicant with a determination as to the following matters:

(I) The amount of density bonus, calculated pursuant to subdivision (f), for which the applicant is eligible.

(II) If the applicant requests a parking ratio pursuant to subdivision (p), the parking ratio for which the applicant is eligible.

(III) If the applicant requests incentives or concessions pursuant to subdivision (d) or waivers or reductions of development standards pursuant to subdivision (e), whether the applicant has provided adequate information for the local government to make a determination as to those incentives, concessions, or waivers or reductions of development standards.

(ii) Any determination required by this subparagraph shall be based on the development project at the time the application is deemed complete. The local government shall adjust the amount of density bonus and parking ratios awarded pursuant to this section based on any changes to the project during the course of development.

(b) (1) A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (f), and, if requested by the applicant and consistent with the applicable requirements of this section, incentives or concessions, as described in subdivision (d), waivers or reductions of development standards, as described in subdivision (e), and parking ratios, as described in subdivision (p), when an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section, that will contain at least any one of the following:

(A) Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(B) Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(C) A senior citizen housing development, as defined in Sections 51.3 and 51.12 of the Civil Code, or a mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.

(D) Ten percent of the total dwelling units in a common interest development, as defined in Section 4100 of the Civil Code, for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.

(E) Ten percent of the total units of a housing development for transitional foster youth, as defined in Section 66025.9 of the Education Code, disabled veterans, as defined in Section 18541, or homeless persons, as defined in the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.). The units described in this subparagraph shall be subject to a recorded affordability restriction of 55 years and shall be provided at the same affordability level as very low income units.

(F) (i) Twenty percent of the total units for lower income students in a student housing development that meets the following requirements:

(I) All units in the student housing development will be used exclusively for undergraduate, graduate, or professional students enrolled full time at an institution of higher education accredited by the Western Association of Schools and Colleges or the Accrediting Commission for Community and Junior Colleges. In order to be eligible under this subclause, the developer shall, as a condition of receiving a certificate of occupancy, provide evidence to the city, county, or city and county that the developer has entered into an operating agreement or master lease with one or more institutions of higher education for the institution or institutions to occupy all units of the student housing development with students from that institution or institutions. An operating agreement or master lease entered into pursuant to this subclause is not violated or breached if, in any subsequent year, there are not sufficient students enrolled in an institution of higher education to fill all units in the student housing development.

(II) The applicable 20-percent units will be used for lower income students. For purposes of this clause, “lower income students” means students who have a household income and asset level that does not exceed the level for Cal Grant A or Cal Grant B award recipients as set forth in paragraph (1) of subdivision (k) of Section 69432.7 of the Education Code. The eligibility of a student under this clause shall be verified by an affidavit, award letter, or letter of eligibility provided by the institution of higher education that the student is enrolled in, as described in subclause (I), or by the California Student Aid Commission that the student receives or is eligible for financial aid, including an institutional grant or fee waiver, from the college or university, the California Student Aid Commission, or the federal government shall be sufficient to satisfy this subclause.

(III) The rent provided in the applicable units of the development for lower income students shall be calculated at 30 percent of 65 percent of the area median income for a single-room occupancy unit type.

(IV) The development will provide priority for the applicable affordable units for lower income students experiencing homelessness. A homeless service provider, as defined in paragraph (3) of subdivision (d) of Section 103577 of the Health and Safety Code, or institution of higher education that has knowledge of a person's homeless status may verify a person's status as homeless for purposes of this subclause.

(ii) For purposes of calculating a density bonus granted pursuant to this subparagraph, the term "unit" as used in this section means one rental bed and its pro rata share of associated common area facilities. The units described in this subparagraph shall be subject to a recorded affordability restriction of 55 years.

(G) One hundred percent of the total units, exclusive of a manager's unit or units, are for lower income households, as defined by Section 50079.5 of the Health and Safety Code, except that up to 20 percent of the total units in the development may be for moderate-income households, as defined in Section 50053 of the Health and Safety Code.

(2) For purposes of calculating the amount of the density bonus pursuant to subdivision (f), an applicant who requests a density bonus pursuant to this subdivision shall elect whether the bonus shall be awarded on the basis of subparagraph (A), (B), (C), (D), (E), (F), or (G) of paragraph (1).

(3) For the purposes of this section, "total units," "total dwelling units," or "total rental beds" does not include units added by a density bonus awarded pursuant to this section or any local law granting a greater density bonus.

(c) (1) (A) An applicant shall agree to, and the city, county, or city and county shall ensure, the continued affordability of all very low and low-income rental units that qualified the applicant for the award of the density bonus for 55 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.

(B) (i) Except as otherwise provided in clause (ii), rents for the lower income density bonus units shall be set at an affordable rent, as defined in Section 50053 of the Health and Safety Code.

(ii) For housing developments meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b), rents for all units in the development, including both base density and density bonus units, shall be as follows:

(I) The rent for at least 20 percent of the units in the development shall be set at an affordable rent, as defined in Section 50053 of the Health and Safety Code.

(II) The rent for the remaining units in the development shall be set at an amount consistent with the maximum rent levels for a housing development that receives an allocation of state or federal low-income housing tax credits from the California Tax Credit Allocation Committee.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of all for-sale units that qualified the applicant for the award of the density bonus are persons and families of very low, low, or moderate income, as required, and that the units are offered at an affordable housing cost, as that cost is defined in Section 50052.5 of the Health and Safety Code. The local government shall enforce an equity sharing agreement, unless it is in conflict with the requirements of another public funding source or law. The following apply to the equity sharing agreement:

(A) Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation. The local government shall recapture any initial subsidy, as defined in subparagraph (B), and its proportionate share of appreciation, as defined in subparagraph (C), which amount shall be used within five years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote home ownership.

(B) For purposes of this subdivision, the local government's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any downpayment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.

(C) For purposes of this subdivision, the local government's proportionate share of appreciation shall be equal to the ratio of the local government's initial subsidy to the fair market value of the home at the time of initial sale.

(3) (A) An applicant shall be ineligible for a density bonus or any other incentives or concessions under this section if the housing development is proposed on any property that includes 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, unless the proposed housing development replaces those units, and either of the following applies:

(i) The proposed housing development, inclusive of the units replaced pursuant to this paragraph, contains affordable units at the percentages set forth in subdivision (b).

(ii) Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a lower or very low income household.

(B) For the purposes of this paragraph, "replace" shall mean either of the following:

(i) If any dwelling units described in subparagraph (A) are occupied on the date of application, the proposed housing development shall provide at least the same number of units of equivalent size to be made available at

affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy. If the income category of the household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. For unoccupied dwelling units described in subparagraph (A) in a development with occupied units, the proposed housing development shall provide units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as the last household in occupancy. If the income category of the last household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(ii) If all dwelling units described in subparagraph (A) have been vacated or demolished within the five-year period preceding the application, the proposed housing development shall provide at least the same number of units of equivalent size as existed at the highpoint of those units in the five-year period preceding the application to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those persons and families in occupancy at that time, if known. If the incomes of the persons and families in occupancy at the highpoint is not known, it shall be rebuttably presumed that low-income and very low income renter households occupied these units in the same proportion of low-income and very low income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(C) Notwithstanding subparagraph (B), for any dwelling unit described in subparagraph (A) that is or was, within the five-year period preceding the application, subject to a form of rent or price control through a local government's valid exercise of its police power and that is or was occupied

by persons or families above lower income, the city, county, or city and county may do either of the following:

(i) Require that the replacement units be made available at affordable rent or affordable housing cost to, and occupied by, low-income persons or families. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(ii) Require that the units be replaced in compliance with the jurisdiction's rent or price control ordinance, provided that each unit described in subparagraph (A) is replaced. Unless otherwise required by the jurisdiction's rent or price control ordinance, these units shall not be subject to a recorded affordability restriction.

(D) For purposes of this paragraph, "equivalent size" means that the replacement units contain at least the same total number of bedrooms as the units being replaced.

(E) Subparagraph (A) does not apply to an applicant seeking a density bonus for a proposed housing development if the applicant's application was submitted to, or processed by, a city, county, or city and county before January 1, 2015.

(d) (1) An applicant for a density bonus pursuant to subdivision (b) may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of any of the following:

(A) The concession or incentive does not result in identifiable and actual cost reductions, consistent with subdivision (k), to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(B) The concession or incentive would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households.

(C) The concession or incentive would be contrary to state or federal law.

(2) The applicant shall receive the following number of incentives or concessions:

(A) One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a common interest development.

(B) Two incentives or concessions for projects that include at least 20 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a common interest development.

(C) Three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a common interest development.

(D) Four incentives or concessions for projects meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b). If the project is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, the applicant shall also receive a height increase of up to three additional stories, or 33 feet.

(3) The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section that shall include legislative body approval of the means of compliance with this section.

(4) The city, county, or city and county shall bear the burden of proof for the denial of a requested concession or incentive.

(e) (1) In no case may a city, county, or city and county apply any development standard that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. Subject to paragraph (3), an applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted under this section, and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical

environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.

(2) A proposal for the waiver or reduction of development standards pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(3) A housing development that receives a waiver from any maximum controls on density pursuant to clause (ii) of subparagraph (D) of paragraph (3) of subdivision (f) shall not be eligible for, and shall not receive, a waiver or reduction of development standards pursuant to this subdivision, other than as expressly provided in subparagraph (D) of paragraph (2) of subdivision (d) and clause (ii) of subparagraph (D) of paragraph (3) of subdivision (f).

(f) For the purposes of this chapter, "density bonus" means a density increase over the otherwise maximum allowable gross residential density as of the date of application by the applicant to the city, county, or city and county, or, if elected by the applicant, a lesser percentage of density increase, including, but not limited to, no increase in density. The amount of density increase to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).

(1) For housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
17	30.5
18	32
19	33.5
20	35

(2) For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Very Low Income Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

(3) (A) For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of senior housing units.

(B) For housing developments meeting the criteria of subparagraph (E) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of the type of units giving rise to a density bonus under that subparagraph.

(C) For housing developments meeting the criteria of subparagraph (F) of paragraph (1) of subdivision (b), the density bonus shall be 35 percent of the student housing units.

(D) For housing developments meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b), the following shall apply:

(i) Except as otherwise provided in clause (ii), the density bonus shall be 80 percent of the number of units for lower income households.

(ii) If the housing development is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, the city, county, or city and county shall not impose any maximum controls on density.

(4) For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Moderate-Income Units	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19

25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35

(5) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not require, or be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.

(g) (1) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county in accordance with this subdivision, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density for the entire development, as follows:

Percentage Very Low Income	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26
22	27
23	28
24	29
25	30
26	31
27	32

(2) This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks an increase pursuant to both this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this subdivision if all of the following conditions are met:

(A) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

(B) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.

(C) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned with appropriate development standards for development at the density described in paragraph (3) of subdivision (c) of Section 65583.2, and is or will be served by adequate public facilities and infrastructure.

(D) The transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, not later than the date of approval of the final subdivision map, parcel map, or residential development application, except that the local government may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 if the design is not reviewed by the local government before the time of transfer.

(E) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c), which shall be recorded on the property at the time of the transfer.

(F) The land is transferred to the local agency or to a housing developer approved by the local agency. The local agency may require the applicant to identify and transfer the land to the developer.

(G) The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.

(H) A proposed source of funding for the very low income units shall be identified not later than the date of approval of the final subdivision map, parcel map, or residential development application.

(h) (1) When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a childcare facility that will be located on the premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:

(A) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the childcare facility.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the childcare facility.

(2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:

(A) The childcare facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to subdivision (c).

(B) Of the children who attend the childcare facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to subdivision (b).

(3) Notwithstanding any requirement of this subdivision, a city, county, or city and county shall not be required to provide a density bonus or concession for a childcare facility if it finds, based upon substantial evidence, that the community has adequate childcare facilities.

(4) "Childcare facility," as used in this section, means a child daycare facility other than a family daycare home, including, but not limited to, infant centers, preschools, extended daycare facilities, and schoolage childcare centers.

(i) "Housing development," as used in this section, means a development project for five or more residential units, including mixed-use developments. For the purposes of this section, "housing development" also includes a subdivision or common interest development, as defined in Section 4100 of the Civil Code, approved by a city, county, or city and county and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units shall be on contiguous sites that are the subject of one development application, but do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(j) (1) The granting of a concession or incentive shall not require or be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, study, or other discretionary approval. For purposes of this subdivision, "study" does not include reasonable documentation to establish eligibility for the concession or incentive or to demonstrate that the incentive or concession meets the definition set forth in subdivision (k). This provision is declaratory of existing law.

(2) Except as provided in subdivisions (d) and (e), the granting of a density bonus shall not require or be interpreted to require the waiver of a local ordinance or provisions of a local ordinance unrelated to development standards.

(k) For the purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable and actual cost reductions, to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(2) Approval of mixed-use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable and actual cost reductions to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(*l*) Subdivision (k) does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(m) This section does not supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). Any density bonus, concessions, incentives, waivers or reductions of development standards, and parking ratios to which the applicant is entitled under this section shall be permitted in a manner that is consistent with this section and Division 20 (commencing with Section 30000) of the Public Resources Code.

(n) If permitted by local ordinance, nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

(o) For purposes of this section, the following definitions shall apply:

(1) "Development standard" includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.

(2) "Maximum allowable residential density" means the density allowed under the zoning ordinance and land use element of the general plan, or, if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. If the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.

(p) (1) Except as provided in paragraphs (2), (3), and (4), upon the request of the developer, a city, county, or city and county shall not require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivisions (b) and (c), that exceeds the following ratios:

(A) Zero to one bedroom: one onsite parking space.

(B) Two to three bedrooms: two onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

(2) Notwithstanding paragraph (1), if a development includes the maximum percentage of low-income or very low income units provided for in paragraphs (1) and (2) of subdivision (f) and is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, and there is unobstructed access to the major transit stop from the development, then, upon the request of the developer, a city, county, or city and county shall not impose a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds 0.5 spaces per bedroom. For purposes of this subdivision, a development shall have unobstructed access to a major transit stop if a resident is able to access the major transit stop without encountering natural or constructed impediments.

(3) Notwithstanding paragraph (1), if a development consists solely of rental units, exclusive of a manager's unit or units, with an affordable housing cost to lower income families, as provided in Section 50052.5 of the Health and Safety Code, then, upon the request of the developer, a city, county, or city and county shall not impose a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds the following ratios:

(A) If the development is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, and there is unobstructed access to the major transit stop from the development, the ratio shall not exceed 0.5 spaces per unit.

(B) If the development is a for-rent housing development for individuals who are 62 years of age or older that complies with Sections 51.2 and 51.3 of the Civil Code, the ratio shall not exceed 0.5 spaces per unit. The development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

(4) Notwithstanding paragraphs (1) and (8), if a development consists solely of rental units, exclusive of a manager's unit or units, with an affordable housing cost to lower income families, as provided in Section 50052.5 of the Health and Safety Code, and the development is either a special needs housing development, as defined in Section 51312 of the Health and Safety Code, or a supportive housing development, as defined in Section 50675.14 of the Health and Safety Code, then, upon the request of the developer, a city, county, or city and county shall not impose any minimum vehicular parking requirement. A development that is a special needs housing development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

(5) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide onsite parking through tandem parking or uncovered parking, but not through onstreet parking.

(6) This subdivision shall apply to a development that meets the requirements of subdivisions (b) and (c), but only at the request of the applicant. An applicant may request parking incentives or concessions beyond those provided in this subdivision pursuant to subdivision (d).

(7) This subdivision does not preclude a city, county, or city and county from reducing or eliminating a parking requirement for development projects of any type in any location.

(8) Notwithstanding paragraphs (2) and (3), if a city, county, city and county, or an independent consultant has conducted an areawide or jurisdictionwide parking study in the last seven years, then the city, county, or city and county may impose a higher vehicular parking ratio not to exceed the ratio described in paragraph (1), based upon substantial evidence found in the parking study, that includes, but is not limited to, an analysis of parking availability, differing levels of transit access, walkability access to transit services, the potential for shared parking, the effect of parking requirements on the cost of market-rate and subsidized developments, and the lower rates of car ownership for low-income and very low income individuals, including seniors and special needs individuals. The city, county, or city and county shall pay the costs of any new study. The city, county, or city and county

shall make findings, based on a parking study completed in conformity with this paragraph, supporting the need for the higher parking ratio.

(9) A request pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(q) Each component of any density calculation, including base density and bonus density, resulting in fractional units shall be separately rounded up to the next whole number. The Legislature finds and declares that this provision is declaratory of existing law.

(r) This chapter shall be interpreted liberally in favor of producing the maximum number of total housing units.

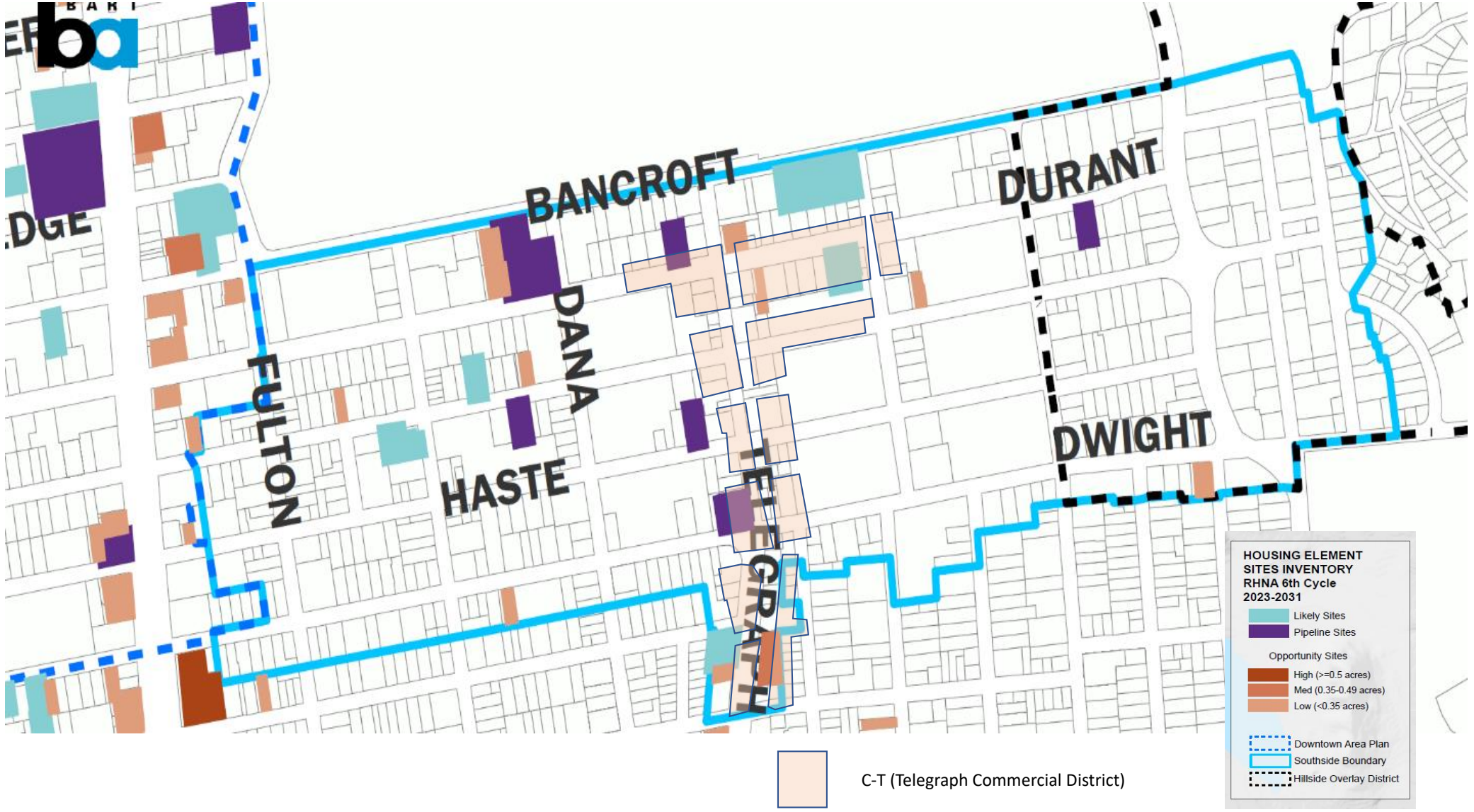
SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

DENSITY BONUS CHART*

AFFORDABLE UNIT PERCENTAGE**	VERY LOW INCOME DENSITY BONUS	LOW INCOME DENSITY BONUS	MODERATE INCOME DENSITY BONUS***	LAND DONATION DENSITY BONUS	SENIOR****	FOSTER YOUTH/ DISABLED VETS/ HOMELESS	COLLEGE STUDENTS
5%	20%	-	-	-	20%	-	-
6%	22.5%	-	-	-	20%	-	-
7%	25%	-	-	-	20%	-	-
8%	27.5%	-	-	-	20%	-	-
9%	30%	-	-	-	20%	-	-
10%	32.5%	20%	5%	15%	20%	20%	-
11%	35%	21.5%	6%	16%	20%	20%	-
12%	38.75%	23%	7%	17%	20%	20%	-
13%	42.5%	24.5%	8%	18%	20%	20%	-
14%	46.25%	26%	9%	19%	20%	20%	-
15%	50%	27.5%	10%	20%	20%	20%	-
16%	50%	29%	11%	21%	20%	20%	-
17%	50%	30.5%	12%	22%	20%	20%	-
18%	50%	32%	13%	23%	20%	20%	-
19%	50%	33.5%	14%	24%	20%	20%	-
20%	50%	35%	15%	25%	20%	20%	35%
21%	50%	38.75%	16%	26%	20%	20%	35%
22%	50%	42.5%	17%	27%	20%	20%	35%
23%	50%	46.25%	18%	28%	20%	20%	35%
24%	50%	50%	19%	29%	20%	20%	35%
25%	50%	50%	20%	30%	20%	20%	35%
26%	50%	50%	21%	31%	20%	20%	35%
27%	50%	50%	22%	32%	20%	20%	35%
28%	50%	50%	23%	33%	20%	20%	35%
29%	50%	50%	24%	34%	20%	20%	35%
30%	50%	50%	25%	35%	20%	20%	35%
31%	50%	50%	26%	35%	20%	20%	35%
32%	50%	50%	27%	35%	20%	20%	35%
33%	50%	50%	28%	35%	20%	20%	35%
34%	50%	50%	29%	35%	20%	20%	35%
35%	50%	50%	30%	35%	20%	20%	35%
36%	50%	50%	31%	35%	20%	20%	35%
37%	50%	50%	32%	35%	20%	20%	35%
38%	50%	50%	33%	35%	20%	20%	35%
39%	50%	50%	34%	35%	20%	20%	35%
40%	50%	50%	35%	35%	20%	20%	35%
41%	50%	50%	38.75%	35%	20%	20%	35%
42%	50%	50%	42.5%	35%	20%	20%	35%
43%	50%	50%	46.25%	35%	20%	20%	35%
44%	50%	50%	50%	35%	20%	20%	35%
100%*****	80%	80%	80%	35%	20%	20%	35%

*All density bonus calculations resulting in fractions are rounded up to the next whole number.
**Affordable unit percentage is calculated excluding units added by a density bonus.
***Moderate income density bonus applies to for sale units, not to rental units.
****No affordable units are required for senior units.
***** Applies when 100% of the total units (other than manager's units) are restricted to very low, lower and moderate income (maximum 20% moderate).

Attachment 5: Southside Plan Area and Housing Element Update Opportunity Sites



INFORMATION CALENDAR
July XX, 2022

To: Honorable Mayor and Members of the City Council

From: Planning Commission

Submitted by: Elisa Mikiten, Chairperson, Jeff Vincent, Bernali Ghosh, Albert Twu, Workplan Subcommittee of the Planning Commission

Subject: Planning Commission Fiscal Year 2022-23 Work Plan

INTRODUCTION

The City of Berkeley Planning Commission (PC) hereby submits a work plan for Fiscal Year 2022-23.

GOALS

The Planning Commission will focus mainly on issues of housing supply and affordability as dictated by City Council referrals, changes to State law, and planning requirements from the State Department of Housing and Community Development (HCD). Large projects include Objective Standards and Missing Middle Housing (Council referrals), and the update of the Housing Element (HCD requirement).

The attached spreadsheet identifies several other projects that have been assigned staff, such as a Bird Safe Glass regulations, various fee and nexus studies, and development guidance for San Pablo Avenue.

RESOURCES

Significant staff time is required to conduct research, prepare reports, and draft zoning language. In some cases, consultants assist staff. Currently, there are only three staff members on the long-range planning team, which makes their productivity level around BART, Objective Standards, the Housing Element, and the Zoning Ordinance Revision Project (ZORP) all the more remarkable.

The Land Use Planning Department has begun recruitment for the two open positions in the Long-Range Policy Group (Principal Planner and Associate Planner), and there are several requests for staff positions and consultant services in the proposed budget which will be adopted by July 1, 2022.

Calendar constraints are often imposed by State law and deadlines. BART zoning and the Housing Element Update are just two examples.

COUNCIL REFERRALS

The Planning Department and PC have approximately 54 referrals from Council. The PC's work is almost exclusively dictated by these ranked referrals. Thus, the PC has less latitude than other City commissions in establishing and prioritizing its workload.

The Commission's Work Plan Subcommittee discussed recommending some referrals for deletion. Council has accepted deletions in the past, although a few have come around again. Nevertheless, here are our recommended deletions with explanation:

1. Lower Discretion for Internal Remodeling: The Housing Element work proposes to lower discretionary permitting generally, which will address this issue.
2. Deny Permits to Code Violators: This referral is from 2014, and would be complicated by property rights issues.
3. Not allowing Cannabis uses in Live Work Unit: Cannabis is highly regulated by the State and the City of Berkeley. Currently, there are no Storefront Retail permits available, and cultivation is restricted to the Manufacturing District. Processing is considered a Light Manufacturing use, and is regulated as such. Test Labs are regulated as any other lab, and Distribution is regulated as Wholesale Trade.
4. Flex Conversion to Mini Dorms: Housing Element work is looking at expanding housing options. Given the controversy of mini dorms, this idea is not likely to float to the top of housing strategies.
5. Arcades in the Elmwood: Business interest in this concept is not apparent to Staff or the PC.

PC ADDITIONS

This year, the PC, at the recommendation of the Chair, has added two items to the Work Plan:

1. Conduct a Zoning Adjustments Board (ZAB) Listening Session. The PC Chair will attend a ZAB meeting to hear from ZAB members what is working, what regulations need clarification, and what regulations, if any, does ZAB recommend that the PC revisit. If appropriate, the PC will discuss the items, and make recommendations to Council for future referrals. The goal is to close the loop between the policy and permit bodies. This will not become a Staff work item without a Council referral.
2. Review MUR regulations to identify any barriers to converting space to artists' use. The Chair will undertake this work herself, and submit a memorandum to the PC for consideration. The goal is to better enable the district to satisfy its purpose in the arts. This will not become a Staff work item without a Council referral.

STRATEGIC OUTCOME AREAS

Products will include:

1. Recommendation to City Council on Objective Standards.

2. Recommendation to City Council on the Housing Element.
3. Two memos from the Chair to the PC. (See PC Additions.)

Policy objectives include:
1. *Increased housing options and improved affordability.* Allowing greater density and lower levels of discretionary review in residential districts should have substantial cumulative impacts over the coming decade. The Planning Commission can review the volume of completed projects and the average approval period for applications within two years of revised regulations.
2. *Promote healthy, livable communities.* This includes ensuring Berkeley residents live in safe, healthy, and accessible communities with parks, schools, local businesses, and cultural institutions, and promoting healthy mobility options for all resident.
3. *Support community economic development and commercial vitality.* This includes preserving and enhancing Berkeley's neighborhood commercial areas, and ensuring a vibrant downtown.

BACKGROUND
The mission of the PC, as outlined in the City Charter, reads:

> *"The Commission recommends modifications to the City of Berkeley General Plan and related policy documents. All Zoning Ordinance amendments are developed through this Commission and recommended to the City Council. Other purviews include subdivision map consideration and review and comments on substantial projects from surrounding jurisdictions."*

At its meeting of July 6, 2022, the PC voted to adopt this Work Plan (Vote: #,#,#,#; Ayes: names, Noes: None. Abstain: None. Absent: None. Motion/Second: name/name.)

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS
The PC's work plan advances the City's sustainability and greenhouse gas reduction goals by focusing on creating housing and business opportunities in areas of high resources and frequent transit.

POSSIBLE FUTURE ACTION
Based on recommendations received from PC, City Council may refer additional work to the City Manager.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION
Additional referrals to the City Manager will require staff support.

CONTACT PERSON
Alene Pearson, Secretary to the Planning Commission, Planning and Development Department, 510-981-7489

Attachments:
1: Planning Commission Work Plan Table 2022-2023

DRAFT

WORKING DOCUMENT -- Planning Commission & Policy Group Work Matrix --- WORKING DOCUMENT

Grouping Description (Approach/Status/Sequencing)		Referral	Referral Look Up	Rank RRV (2022)	HAP	Staff Lead	2022 J	J	A	S	O	N	D	2023 J	F	M	A	M	J	J	A	S	O	N	D
a	**Housing Element Update** **Southside Zoning Amendments** **Objective Standards**	C-T: Community Benefits (focus on Labor Practice and AH)	Referral from 7/12/16	started	3	GW/JH																			
		Increase 20' height and FAR in SS	Referral from 10/31/17	started		GW/JH																			
		Convert Groundfloor Com to Res in SS	Referral from 4/4/17 & 1/20/15	started		GW/JH																			
		C-T: Pilot Density Bonus (DB Phase 2)	Referral from 5/30/17	started		GW/JH																			
		More Student Housing Now & SB1227	Referral from 11/27/18	started	4	GW/JH																			
		Housing Element (HE) Update	*state mandated work*	started		Grace Wu																			
		1. Density by parcel; 2.Healthy/safety detriments; 3.Design review; 4. View-shadow impacts (DB Phase 3/JSISHL)	HAP	started	5	Grace Wu																			
		Implement State Law HAA & SB-35	*state mandated work*	started		Grace																			
		ZORP Phase 2 - Objective Standards	Direction from Council per staff request 1/26/16	started		Grace Wu																			
		ZORP Phase 2 - Substantive Changes	Direction from Council per staff request 1/26/16	started		Justin Horner																			
		Refer to City Manager and PlanComm to include specific concepts to end exclusionary zoning within next Housing Element update	Referral from 3/25/21 Special mtg Item #1; see Supp 3	started		Grace Wu																			
		Missing Middle	Referral from 4/23/19; see annotated agenda for full direction.																						
		Direct City Manager to include Participatory Planning concepts within work to update next Housing Element	Referral from 3/25/21 Special mtg Item #1; see Supp 2	started		Grace Wu																			
		Non-commercial groundfloor uses	Referral from 5/1/18; see also annotated agenda	started	18	Grace Wu																			
		Refer to City Mgr and PlanComm to consider Affordable Housing overlay, to allow increased height/density for 100% affordable projects, to be integrated within current H.E. update cycle	Referral from 11/9/21	started		Grace Wu																			
b	**Long Range or Mandated Projects**	Adeline Implementation	*Plan Implementation*	started		Alisa Shen																			
		BART Zoning // AB 2923	*state mandated work*	started		Alisa Shen																			
		Guide Development on San Pablo	*COB committment for designated PDA*	started		Alisa Shen																			
		2022 Annual Progress Report	*state mandated work*	state mandate		Zoe Covello																			
		2022 DOF Unit Tracking	*state mandated work*	state mandate		Zoe Covello																			
		Housing Pipeline Report	*council request*	CC request		Zoe Covello																			
		Parking Reform: TDM/RPP Implementation	*Ordinance Implementation*	CC request		Justin Horner																			
c	**Fees and Nexus Studies**	Reform AHMF (fees per unit vs gfa)	Referral from 4/23/19	started		Alisa Shen																			
		Decrease AHMF (Affordable Housing Mitigation Fee) for TIC (Tenancy-in-Common) conversions	Referral from 11/27/18. See also annotated agenda	started		Alisa Shen																			
		Inclusionary Units for Live Work	Referral from 9/13/18	started		Alisa Shen																			
		Analyze feasability of onsite affordable units vs payment of AHMF	Referral from 9/10/19	started		Alisa Shen																			
		Demolition Ordinance	HAP	started	16	SB																			
d	**Business-Related Referrals**	Sign Ordinance (ZOA Part 1)	Referral from 10/15/19	started		TBD																			
		~~Arcades in the Elmwood~~	Referral from 6/25/19	started		TBD																			
		Beer and Wine in the M-District	Referral from 12/4/18 within action (see annotated agenda)	15																					
		Refer to PlanComm to consider Zoning Ord modifications to streamline review processes for the benefit of new and existing small businesses (ZOA Part 2)	Referral from 10/15/19	17																					
e	**Other Long Range // Special Projects**	Pacific Steel Visioning	Referral from 4/20/21	1																					
		WB Service Center	Referral from 5/28/19.	5																					
		STR Ord Updates	Referral from 7/28/20; see Item 42 on annotated agenda																						
		Alta Bates Zoning	*dormant*																						

WORKING DOCUMENT -- Planning Commission & Policy Group Work Matrix --- WORKING DOCUMENT

Grouping Description (Approach/Status/Sequencing)		Referral	Referral Look Up	Rank		Staff Lead	2022							2023										
				RRV (2022)	HAP		J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D
e	~~Other Long Range // Special Projects~~	UC Berkeley LRDP (City Attorney lead)	*interdepartment coordination*																					
		Berkeley Marina Master Plan (PRW lead)	*interdepartment coordination*																					
		TIF / TSF Nexus Fee (Transportation lead)	Special Council 7/7/16.																					
		Berkeley Transfer Station (PW lead)	*interdepartment coordination*																					
f	**Miscellaneous**	Bird Safe Construction	Referral from 11/12/19; see also annotated agenda	started		Zoe Covello																		
		Refer to City Manager to streamline ADU process, inclu Universal checklist and webpage, pre-approved designs, and an "ADU Ally" staff position	from 12/14/21.	8																				
		Refer to City Mgr and PlanComm to streamline remediation of toxic sites in manufacturing districts with a single application for Land Use and Toxics, and for PC to reconsider related previous 2012 referral.	Referral from 2/22/22	12																				
		~~Flex Conversion to Mini Dorms~~	Referral from 9/13/18; also see supplemental memo.	20																				
		Refer to CM including environmental mitigations within enhanced Use Permit review process in Manufacturing Zone, e.g. Air Quality monitoring	Referral from 9/28/21	26																				
		Refer to CMO, PlannComm and HAC: Civic Arts Comm ideas to promote artists housing, including use of ground floor retail space, and to include it in the Housing Element update process	Referral from 1/25/22	27																				
		100% Sustainable Trips by 2040	Referral from 9/15/20	29																				
		~~Refer to PlannComm allowing certain internal remodeling activities with an AUP, rather than a UP, when existing non-conforming max lot coverage would not be increased (part 2 re: ZO)~~	Referral from 2/27/18.	31																				
		~~Not allowing Cannabis as a Live/Work Use~~	Referral from 4/2/19, under larger cannabis item; see annotated agenda	36																				
		Air Pollution Performance Standards	Referral from 7/11/17	39																				
		~~Deny permits to code violators~~	Referral from 9/9/14	41																				
		Gentrification/Displacement Study	Referral from 4/30/19. Duplicate referral also sent to HHCS	43		HAC/PC																		
		~~Lower discretion for internal remodeling~~	Referral from 2/27/18.																					
g	**PC Additions**	ZAB Listening Session	PC Recommendation																					
		MUR's Ability to Support Conversion to Artists' Use	PC Recommendation																					

ABBREVIATIONS

AHMF = Affordable Housing Mitigation Fee
cc = City Council
EIR = Environmental Impact Report
GF = groundfloor
HAA = Housing Accountability Act
HAP = Housing Action Plan
HTF = Housing Trust Fund
IHO = Inclusionary Housing Ordinance
LLA = Lot-line adjustment
MSHN = More Student Housing Now
NR = not ranked
pc = Planning Commission
pw = public workshop
PDA = Priority Development Area
ph = public hearing
RFP = Request for Proposals
RRV = Reweighted Range Voting
sc = Subcommittee of the Planning Commission

ANNOTATED AGENDA
SPECIAL MEETING OF THE BERKELEY CITY COUNCIL

Thursday, June 2, 2022
6:00 PM

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – TERRY TAPLIN
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – KATE HARRISON
DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – RIGEL ROBINSON
DISTRICT 8 – LORI DROSTE

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED IN A HYBRID MODEL WITH BOTH IN-PERSON ATTENDANCE AND VIRTUAL PARTICIPATION

Proof of up-to-date COVID-19 vaccination or verified negative COVID-19 test is required for in-person attendance. In-person attendees are required to wear a mask that covers their nose and mouth for the duration of the meeting. If you are feeling sick, please do not attend in-person.

Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at http://berkeley.granicus.com/MediaPlayer.php?publish_id=1244.

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL https://us02web.zoom.us/j/86518584336. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.

*To join by phone: Dial **1-669-900-9128 or 1-877-853-5257 (Toll Free)** and enter Meeting ID: **865 1858 4336**. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

Please be mindful that the meeting will be recorded and all rules of procedure and decorum apply for in-person attendees and those participating by teleconference or videoconference.

To submit a written communication for the City Council's consideration and inclusion in the public record, email council@cityofberkeley.info.

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900. The City Council may take action related to any subject listed on the Agenda. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.

Preliminary Matters

Roll Call: 6:02 p.m.

Present: Kesarwani, Taplin, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin

Absent: Bartlett

Councilmember Bartlett present at 6:05 p.m.

Action Calendar – Public Hearing

1. **Ashby and North Berkeley BART Station Areas: Proposed Zoning and General Plan Amendments, City and BART Joint Vision and Priorities, Associated Environmental Review Documents and City and BART Memorandum of Agreement**
   From: City Manager
   Recommendation: Conduct a public hearing and upon conclusion:
   1. Adopt a Resolution (a) certifying the Final Environmental Impact Report (EIR), adopting the California Environmental Quality Act (CEQA) Findings and Statement of Overriding Considerations, adopting mitigation measures, and adopting a Mitigation Monitoring and Reporting Program (MMRP) for the proposed zoning and General Plan, Municipal Code, and Map amendments; (b) amending the General Plan to include the Ashby and North Berkeley BART Mixed Use Transit Oriented Development General Plan Land Use Classification text and map amendments; and (c) adopting the City and BART Joint Vision and Priorities (JVP) for Transit Oriented Development at the Ashby and North Berkeley BART Stations (Attachment 1 to the report, Exhibits A - F); and
   2. Adopt first reading of an Ordinance to amend the Berkeley Municipal Code to create the Residential-BART Mixed-Use District Residential Zone District (Chapter 23.202.150) and additional conforming amendments to other sections of the Municipal Code in order to ensure that the provisions are comprehensively and consistently incorporated into the Berkeley Zoning Ordinance (Attachment 2 to the report); and
   3. Adopt a Resolution adopting the Memorandum of Agreement (MOA) regarding North Berkeley and Ashby Transit-Oriented Developments (Attachment 3 to the report).
   Financial Implications: See report
   Contact: Paul Buddenhagen, City Manager's Office, (510) 981-7000

   Action: M/S/C (Arreguin/Harrison) to accept:
   1. Supplemental material on Item 1 from Councilmember Hahn regarding proposed revisions to the BART Zoning.
   2. Revised material on Item 1 from Mayor Arreguin regarding revisions to the City and BART Joint Vision and Priorities document.
   3. Revised material on Item 1 from the Planning and Development Department to separate the resolution referenced in the first part of the recommendation into two distinct resolutions.
   Vote: All Ayes.

Public Testimony: The Mayor opened the public hearing. 133 speakers.
M/S/C (Arreguin/Kesarwani) to close the public hearing.
Vote: All Ayes.

Recess 8:10 p.m. – 8:20 p.m.

Action: M/S/C (Arreguin/Robinson) to suspend the rules and extend the meeting to 12:30 a.m.
Vote: All Ayes.

Recess 10:44 p.m. – 10:49 p.m.

Action: M/S/C (Arreguin/Kesarwani) to adopt Resolution No. 70,400–N.S. as revised in the materials from the City Manager in Supplemental Communications Packet #3, (a) certifying the Environmental Impact Report for the Ashby and North Berkeley BART Stations Transit-Oriented Development Zoning Project (SCH# 2020110320) ("EIR"), Adopting California Environmental Quality Act (CEQA) Findings and a Statement of Overriding Considerations, Mitigation Measures, and a Mitigation Monitoring and Reporting Program; (b) Adopting General Plan Amendments for the Ashby and North Berkeley Bart Station Areas. Mitigation Measure GHG-1 of the CEQA Findings Statement of Overriding Considerations (Exhibit D to the Resolution) is amended to read as follows:

Mitigation Measure GHG-1: GHG Reduction Program. Applicants for future development allowed under the proposed project shall prepare and implement a Greenhouse Gas Reduction Program (GGRP) that includes on-site GHG reduction measures to reduce the project's total remaining GHG emissions to 1.1 MT of CO2e per service person per year or less (a total of approximately 1,355 MT of CO2e per year). Potential options include, but would not be limited to:

- *Supply 100 percent of electricity from renewable energy resources. Current options include opting into EBCE's Renewable 100, PG&E's Solar Choice, or PG&E's Regional Renewable Choice.*
- *Install additional electric vehicle charging stations beyond those required under BMC Chapter 19.37 within proposed parking areas.*
- *Implement a transportation demand program that includes measures beyond those required by the City of Berkeley Transportation Demand Management (TDM) requirements. Program measures may include priority parking spaces for carpools, electric rideshare vehicles for residents and employees, and a bicycle sharing program.*
- ~~*Prohibit installation of natural gas fireplaces.*~~ *Comply with BMC Chapter 12.80 prohibiting the installation of natural gas infrastructure in newly constructed buildings.*
- *Use electric-powered construction equipment.*
- *Use electric-powered landscape equipment.*

Staff is authorized to make clarifying changes to the language to conform to Council's action.
Vote: All Ayes.

Action: M/S/C (Arreguin/Hahn) to adopt Resolution No. 70,401–N.S. adopting the Memorandum of Agreement (MOA) between the City of Berkeley and the Bay Area Rapid Transit District regarding the North Berkeley and Ashby Transit-Oriented Developments including Exhibit A in the supplemental material from the City Manager in Supplemental Communications Packet #1.
Vote: All Ayes.

Action: M/S/C (Arreguin/Kesarwani) to adopt Resolution No. 70,402–N.S. adopting the City and BART Joint Vision and Priorities document for Transit Oriented Development and the implementation of Assembly Bill 2932 at the Ashby and North Berkeley BART Stations areas as submitted in the supplemental material from the City Manager in Supplemental Communications Packet #3, including revisions to the Joint Vision and Priorities document as reflected in the revised material from the Mayor in Supplemental Communications Packet #3, with further amendments to the Public and Civic Space section of the Joint Vision and Priorities document to revise Shared Priorities sub-section A to read as follows:
A. Maintenance Costs. New civic space should be maintained by the developer and/or lessee to minimize the ongoing cost of operations and maintenance to BART and the City.
Vote: All Ayes.

Action: M/S/C (Arreguin/Kesarwani) to suspend the rules and extend the meeting to 12:40 a.m.
Vote: Vote: Ayes – Kesarwani, Taplin, Bartlett, Harrison, Hahn, Robinson, Droste, Arreguin; Noes – Wengraf; Abstain – None; Absent – None.

Action: M/S/Failed (Hahn/Wengraf) to adopt first reading of Ordinance No. 7,815–N.S as revised in the supplemental materials from the City Manager in Supplemental Communications Packet #2 (including a Floor Area Ratio Maximum of 4.2, a Main Building Height Maximum of 80 feet and 7 Stories, and a Residential Density Minimum of 75 dwelling units per acre), and further amended by the revised material from Councilmember Hahn in Supplemental Communications Packet #3, amending the Berkeley Municipal Code to create the Residential-BART Mixed-Use District Residential Zone District (Chapter 23.202.150) and additional conforming amendments to other sections of the Municipal Code in order to ensure that the provisions are comprehensively and consistently incorporated into the Berkeley Zoning Ordinance, with the following additional amendments:

1. Revising the fourth entry of Table 23.202-27 to read as follows:

Frontage Locations	Permitted Street-Facing Ground Floor Uses
Along ~~Sacramento, along~~ the Ohlone Greenway, or within 50 feet of any street corner~~, except at the corner of Acton and Virginia.~~	Residential or Non-Residential Uses

2. Referring to the City Manager to consider varied heights as part of the Objective Design Standards Process.

3. Authorizing the City Manager and the City Attorney to make any necessary non-substantive amendments in line with Council's action.

Vote: Ayes – Hahn; Noes – Kesarwani, Taplin, Bartlett, Harrison, Robinson, Droste, Arreguin; Abstain – Wengraf; Absent – None.

Action: M/S/Carried (Arreguin/Harrison) to adopt first reading of Ordinance No. 7,815–N.S as revised in the supplemental materials from the City Manager in Supplemental Communications Packet #2 (including a Floor Area Ratio Maximum of 4.2, a Main Building Height Maximum of 80 feet and 7 Stories, and a Residential Density Minimum of 75 dwelling units per acre), and further amended by the revised material from Councilmember Hahn in Supplemental Communications Packet #3 and as clarified in the Mayor's revisions that were verbally added by reference, amending the Berkeley Municipal Code to create the Residential-BART Mixed-Use District Residential Zone District (Chapter 23.202.150) and additional conforming amendments to other sections of the Municipal Code in order to ensure that the provisions are comprehensively and consistently incorporated into the Berkeley Zoning Ordinance, with the following additional amendments:

1. Revising the fourth and fifth entries of Table 23.202-27 to read as follows:

Frontage Locations	**Permitted Street-Facing Ground Floor Uses**
Along Sacramento, along the Ohlone Greenway, or within 50 feet of any street corner~~, except at the corner of Acton and Virginia.~~	Residential or Non-Residential Uses
Along Delaware, Acton, or Virginia	Residential Uses

2. Excluding the following elements from the amendments submitted by Councilmember Hahn in Supplemental Communications Packet #3, and instead referring them to the City Manager for consideration as part of the BART Community Objective Design Standards Process:

   Private Usable Open Space*: Consider standards for private usable open space. For example:*

   "70% of Private Usable Open Space may be provided as any combination of personal and common private space. 30% must be provided as personal private space."

   Rooftop Open Space*: Consider rooftop open space standards that are more stringent than those adopted by the zoning ordinance. For example: "Rooftops may be utilized as Private Usable Open Space or, if within 35 vertical feet of ground level and easily accessible from ground level Public Open Space, as Public Open Space meeting the requirements of 23.202.150.A.3 (Additional Open Space Requirements – Definitions). No more than 15% of Public Open Space requirements can be met with Rooftop Open Space."*

***Front Setbacks**: Consider a landscaped buffer. For example:*
"A landscaped buffer and street trees, as well as sidewalks wide enough for peak pedestrian circulation, are required along all perimeter public rights-of-way. If necessary, these may be achieved through setbacks or a dedication of land to the right-of-way."

***Transparency – Required Openings**: Consider a lower limit for the amount of space without a window, door, or other similar building opening. For example:*
"Required Openings. Ground-level exterior walls facing and within 20 feet of a front lot line or publicly accessible pathway or Public Open Space shall run in a continuous plane for no more than 25 feet without a window, door, or other similar building opening."

***Illumination**. Consider standards for illumination that are appropriate for each station.*

***Parking Design and Access – Drop-Off and Delivery.** Consider standards for placement of commercial and passenger pick-up and drop-off zones. For example:*
*"Drop-Off and Delivery**.** All commercial and passenger pick-up and drop-off shall be provided for on site, adjacent to public or private streets."*

***Off-Street Parking**: Consider off-street parking space standards to accommodate accessible parking. For example:*
"R-BMU District: None required, except that accessible parking spaces shall be provided in a Title 24 ratio calculated as if one parking space were required per unit, and at least 50% of accessible spaces shall be van-accessible."

3. Referring to the City Manager to consider varied heights as part of the Objective Design Standards Process.

4. Authorizing the City Manager and the City Attorney to make any necessary non-substantive amendments in line with the direction of Council.

Second reading of the ordinance is scheduled for June 28, 2022.
Vote: All Ayes.

Adjournment

Action: M/S/C (Arreguin/Robinson) to adjourn the meeting.
Vote: All Ayes.

Adjourned at 12:25 a.m.

Item #1: Ashby and North Berkeley BART Station Areas: Proposed Zoning and General Plan Amendments, City and BART Joint Vision and Priorities, Associated Environmental Review Documents and City and BART Memorandum of Agreement

1. Ethan Byxbe
2. Tom Reilly
3. Linda Rosen
4. Larry Orman
5. Sue Martin
6. Rose Ann Cochran
7. Adam Davis and Oana Cogan
8. Nina Torcoletti
9. North Berkeley Neighborhood Alliance
10. Ian Petrich
11. Cece Littlepage
12. Becki and Peretz Wolf-Prusan
13. Anne Boersma (2)
14. Laura Garcia Moreno
15. Carolyn McNiven
16. Stephanie Manning
17. Rachel Bradley
18. Sabina McMurtry
19. Cherie Hearne
20. Diana Bohn
21. Sue Martin
22. Ernie Mansfield
23. Phil Allen
24. David Brandon
25. Michelle Pasternack
26. Aimee Baldwin
27. Emily Klion
28. Steve Sperber
29. Richard Links
30. Doris Nassiry
31. Vicki Sommer
32. Roberta Silverstein
33. Barbara Rydlander
34. Valerie Dow
35. Laura Magnani
36. Kathleen Davis
37. Zelda Bronstein
38. Julieta Pisani McCarthy (2)
39. Toni Casal
40. Todd Jailer
41. Verna Uchida
42. Herbert Dang
43. Mary Louise Zernicke
44. Margaret Tormey

45. Councilmember Harrison
46. Sean Martin-Hamburger
47. Kerna Trottier
48. Leni Siegel
49. Dan Sibley
50. Ivan and Sarah Diamond
51. Josh Gutwill
52. Sue Jones
53. Inette Dishler
54. Elisa Mikiten
55. James Babcock
56. Susan DeMersseman
57. Scott Selmanoff
58. Barbara Shayesteh
59. Kris Muller
60. Leslie Dickersin
61. Eleni Sotos
62. David Ushijima
63. Emily McAfee
64. Karen Jacobs
65. Milo Trauss
66. Berkeley Neighborhood Council
67. Donna Mickleson
68. Jack Sawyer
69. Walter Wood
70. Ida Kuluk
71. Jackson Lester
72. Meryl Siegal
73. Larry Orman
74. Campbell B
75. Stephen Most
76. Rick Marcus
77. Kathleen Carroll
78. Jenifer Steele
79. Robert Dering and Gay Gale
80. Mark Ally
81. Maris Arnold
82. Justin Baldwin
83. Margot Smith
84. Stephen Wood
85. Leni Siegel
86. Judith Brown and Shannon Brown
87. Louise Rosenkrantz
88. Tobey Wiebe
89. Jonathan Lipschutz
90. Linda Wood
91. Phyllis Oyama
92. Leslie Stone

93. Sally Hughes
94. Seth Kimball
95. Rob Wren
96. Michele Arreola-Burl
97. Todd Darling
98. Roberta Silverstein
99. Stephen Sperber
100. Janel Coleman and Berne Reuben
101. Nancy Graham
102. Priscilla Hine
103. Chris McKee
104. Kenneth Gross
105. Ednah Beth Friedman
106. Janice Schroeder
107. Cecile Leneman
108. Jeannette MacMillan
109. Joan Hamilton
110. Catherine Ronneberg
111. Linda Rosen
112. Cressida Simpson
113. Jordan Harrison
114. Charlene Harrington
115. Margaret Pritt
116. Ben Domingue
117. Toni Mester
118. Summer Brenner
119. Lynn Cooper
120. Tobey Wiebe
121. Phyllis Rothman
122. John Carroll
123. Lee Bishop
124. Louise Specht
125. Phyllis Orrick
126. Megan Wachpress
127. Jeannette MacMillan
128. Stephen Woodrow
129. Alfred Twu
130. Michael Barglow
131. Chris and Libby Lee-Egan
132. James Mattson
133. 44 similarly-worded form letters (JVP 1-4)
134. 17 similarly-worded form letters (7 stories max)

Supplemental Communications and Reports 1

Item #1: Ashby and North Berkeley BART Station Areas: Proposed Zoning and General Plan Amendments, City and BART Joint Vision and Priorities, Associated Environmental Review Documents and City and BART Memorandum of Agreement

135. Supplemental material, submitted by the City Manager's Office
136. Negeene Mosaed
137. Laura Klein
138. Lisa Bruce
139. Virginia Warheit
140. Kris Eggen
141. Maria and Rick Faszholz
142. Linda Helman
143. Paola Laverde, on behalf of the Berkeley Tenants Union
144. Sally Bean
145. Elana Auerbach
146. Elizabeth Wilson
147. David Simpson
148. Vicki Sommer
149. Marice Ashe
150. Phil Allen
151. William Bombria
152. Ann May
153. Mary Lai
154. Alden Mudge and Mari Loria
155. Julieta Pisani McCarthy
156. Roberta Hopkins
157. Jane McKinne
158. Richard Whittow
159. Jennifer Willmann
160. Jane Kitchel
161. Martha Geering
162. S. Entwistle
163. David and Koho Baker
164. David Levine
165. Lina Urbain
166. Constance Rivemale
167. Linda Franklin
168. Leslie Valas
169. Anne-Lise Francois
170. Sheila Himmel
171. Carla Woodworth
172. Marianne Sluis
173. Friends of Adeline
174. Stephanie and Ali Alladin
175. Tony Corman
176. Robert Schonberger
177. Patricia and Kazu Iwasaki
178. Joanna Baker
179. Gabriela Kipnis
180. Janice Schroeder
181. Michelle Pasternack
182. Eileen Joyce

183. Colette Meunier
184. Ronald Berman
185. Karl Goldstein
186. Jeanne Schuman
187. Wei-Bing Chen
188. Eva Herzer
189. Edward Opton
190. Margot Smith
191. Melanie Lawrence and John Smail
192. Tom Anthanasiou
193. Judy Kellman
194. Shmuel
195. Donna Anderson
196. Haynes Sheppard
197. Ellen Kramer
198. Wendy Alfsen
199. Miriam Shipp
200. Fran Sheppard
201. Andrea Meghrouni-Brown
202. Joanne Bowsman
203. Jeff and Cathy Brown
204. Roxanne Fiscella
205. Diana Bohn
206. Sara Antunovich
207. Joan Bradus
208. David Lerman
209. Albert Buizade Farre
210. Carolyn Weil
211. Rebecca Lidow
212. Heather Kostrzewa
213. Diana Rowan
214. Mari Kalishock
215. Charlene Woodcock
216. Berkeley Citizens Action Steering Committee
217. Leni Siegel
218. Mel Weitsman
219. Tom Graly
220. Harald Leventhal
221. Davoud Kermaninejad
222. DM P
223. Afy Downey
224. Adam Fuchs
225. Norman McKnight
226. Dewayne Cecil
227. Emilie Strauss
228. Lynn Van Housen
229. Derek and Deirdre Popplewell
230. Barryett Enge

231. Marla and Rick Faszholz
232. Julie Searle
233. Andy Kivel
234. Susan Mathews
235. Laurie MacDougall
236. Mary Lee Noonan
237. Gerda Korner
238. Janie Hall
239. Judith Barish
240. Michael Frantz
241. Ednah Beth Friedman
242. George Hull
243. Sandy Emerson
244. Jennifer Jacobs
245. Vincent Casalaina
246. Christopher Kroll
247. Margaret Goodman
248. Richard Kalman
249. Laura Fujii
250. Jackie
251. Jacqueline Beth
252. Stephen Wood
253. Seth Kimball
254. Marvin Snow
255. Eileen Hughes
256. Friends of Adeline Petitions
257. Laura Goodman
258. Deborah Roosevelt
259. Karen Chernoff
260. Million Skoda
261. Donna Dediemar
262. Tom Hertenstein
263. Elsa Tranter
264. Bronya Feldman
265. Steve Meyers
266. Yuko Fukami
267. Georg Killingsworth
268. Judith Tabb
269. Susan Brand
270. Richard Boyden
271. Ernest Isaacs
272. Stan Goldberg
273. Andrea Cassidy
274. Judith Barish
275. Robert Warden
276. Kenneth Sisson
277. Danial Shariat
278. 48 similarly-worded form letters

Supplemental Communications and Reports 2

Item #1: Ashby and North Berkeley BART Station Areas: Proposed Zoning and General Plan Amendments, City and BART Joint Vision and Priorities, Associated Environmental Review Documents and City and BART Memorandum of Agreement

279. Supplemental material, submitted by the City Manager's Office
280. Becca Freed
281. Christine Reed
282. Chris McKee
283. Bob Flasher
284. Jennifer Kennedy
285. Kevin James
286. Mark Mueller
287. Naomi Pearce
288. Susan Brand
289. Skylar Hope Davis
290. Les Guliasi
291. Michael Brodheim
292. Mickey Butts
293. Ellen Greenblatt
294. Tom Ferris
295. Ken Powelson
296. Elizabeth Snowden
297. Francine Ostrem
298. Priscilla Myrick and Tom Cutillo
299. David Mendelsohn
300. Thea Davison
301. Travis Close
302. Derek Popplewell
303. Yoel Kahn
304. Bhima Sheridan
305. Lynn Barrow
306. John Rice
307. Chris Lee-Egan
308. Abbie Turiansky
309. Marsha Weintraub
310. Ben Domingue
311. Zachary Ferguson
312. Jack Kurzweil
313. Pablo Diaz-Gutierrez
314. Mary Behm-Steinberg
315. Stephanie Allan
316. Benjamin Kadish
317. Eric Dodds
318. Nancy Lewin
319. Richard Laden
320. Leonard Mudrock
321. Tobey Wiebe

322. Richard Bunce
323. Shawn Drost
324. Tony Corman
325. Seth Kimball
326. Mary Law
327. Beth Goldstein
328. Bob Chlebowski
329. Cheryl Davila
330. Jean Peters
331. Dan Feinberg
332. Eliot Jordan
333. Kori Kody and Steve Jackson
334. Danny Snyder
335. Jane McKinne
336. Kate Kirkhuff
337. Sue Chan
338. Sheri Tharp
339. Elaine Magree
340. Judy Bebelaar
341. Marg Hall
342. Dawn Thomas
343. Susie Zukor
344. Diana Bohn
345. Ludovic Blain
346. Christina Tworek
347. Dough0918@
348. Kirsten Rose
349. Carrie Evans
350. Judy Turley and Duane Anderson
351. Jeffrey Kaplan
352. Abderzak Mehdhkour
353. Carol Cohen
354. Shirely Kirsten
355. Elizabeth MCarthy
356. Sheila Goldmacher
357. Eileen Hughes
358. Liz Ruhland
359. Nicole Henley
360. Kay Schwartz
361. Bruce Alexander
362. Peggy Scott
363. Mori Achen
364. Sara Wolf
365. Claudia Valas
366. Peggy Scott
367. Edward Opton
368. Ryan Max Steinberg
369. Ariana Thompson-Lastad

370. Barbara Fisher
371. Bonnie Gold
372. Zachary Ferguson
373. Kathleen Tuttle
374. Margaret Pritt
375. Felicia Brandon
376. Heidi Nelson
377. Albert Buixade Farre
378. Bobbi Sloan
379. Adrien
380. Jenifer Steele
381. Mrs. The-Ah Cao
382. Katherine Baylor
383. Laura Peterson
384. Shana Rocklin
385. Brendan Irvine-Broque
386. Phyllis Orrick
387. Vicki Sommer
388. Jia Yang
389. Mayling Yang
390. Alicia Klein
391. Shua Chai
392. Todd Andrew
393. Victor Gaspar
394. Libby Lee-Egan
395. Ben Gerhardstein
396. Jim Offel
397. Evan Kerr
398. Justin McAdams
399. Cynthia Johnson
400. Andrew Chen
401. Sue Martin
402. Mariam Barrere
403. Doyle Irvin
404. Larry Orman
405. Johan Busch
406. Karen Benioff Friedman
407. Richard Wallace
408. Councilmember Hahn
409. Gloria Elissha
410. D. Resek
411. Felicia Fields
412. Claire Woodrow
413. Gregory Magofna
414. John Daniel
415. Julie Lamont and Phil Price
416. Ludene Murphree
417. Don Grether

418. Solon Stewart
419. Alvin Warwas
420. Carolyn Shoulders
421. Bernard Marszalek
422. Michelle Mebine
423. David Lerman
424. Bill Springer
425. Pamela Webster
426. Stephen Alpert
427. Carole Meyers
428. Jonathan
429. Sharon Wheat
430. Michelle Pasternack
431. Daniel Jurnove
432. Keri Ferencz
433. Mary Parks
434. Margot Smtih
435. Milo Trauss
436. Jenn Guitart
437. Teresa Clarke
438. Joey Feldman
439. Stephen Vonder Haar
440. Bhima Sheridan
441. Jack Kurzweil
442. Alex Newkirk
443. Kurt Worthington
444. David Soffa
445. Tom and Mary Breiner
446. Elizabeth Givens
447. Elliot Warren
448. Andrew Fox
449. Christine Meuris
450. Gregory Kalkanis
451. Daren Fields
452. Tatiana Libman
453. Daniel Killian
454. Chris Harrelson
455. Margot Smth
456. Nate Kane
457. Nanette Cowardin-Lee
458. Dorothy Gray
459. Vishal Ganesan
460. Sandra Blair
461. Dora Zhang
462. Anne Boersma
463. Alan Tobey
464. Grayson Peters
465. Bobby Lutzker

466. Ronan Potage
467. Nico Calavita
468. Shirley Dean
469. Olga Louchakova-Schwartz
470. Josh Cohen
471. Mara and Richard Carman
472. Timothy Nelson
473. Janis Pearson
474. Jeffrey Wescott
475. Ariella Granett
476. Jane Scantlebury
477. Andrea Altschuler
478. Duncan MacRae
479. Gloria Schild
480. Trudy Obi
481. Jeff
482. Sara Kershnar
483. Mancy Steele
484. Mary Dorst
485. Vicki Sommer
486. Edward Opton
487. Jeanne Miller
488. Eileen Hughes
489. Dmitriy Shirchenko
490. Friends of Adeline
491. Chuck Siegel
492. Jason Pinost
493. Pamela Webste
494. James Angus
495. Jan Stock
496. Alan Baer
497. Sophia DeWitt
498. Thomas Lord
499. Julie Tell
500. Frances Cave
501. Rebecca Goodin
502. Zack Subin
503. Rory Aptekar
504. Gamma Zon
505. Sarah Boudreau
506. Negeene Mosaed
507. Adam Rogers
508. Raul Maldonado
509. Chris Gilbert
510. Ranjit Bharvirkar
511. S. Entwistle
512. Kathleen Curran
513. Fernando Olmedo

514. Liz Lisle
515. Tony Warwick
516. Mary Lawrence Hicks
517. Thomas Luce
518. Sarah Bell
519. Dan Kammen
520. Audre Newman
521. Deborah Kropp
522. Chimey Lee (2)

Supplemental Communications and Reports 3

523. Presentation, submitted by the Planning and Development
524. Revised material, submitted by Planning and Development
525. Revised material, submitted by Mayor Arreguin
526. Revised material (1), submitted by Councilmember Hahn
527. Revised material (2), submitted by Councilmember Hahn
528. Claire Broome
529. Thea Bellos
530. Robert Gable
531. Eric-Michael Wilson II
532. Dina Roumiantseva
533. Lizabeth Klein
534. Theo Gordon
535. Kelly Burkett
536. Liza Lutzker
537. Ned Resnikoff
538. Christa Burgoyne
539. Michael Scott
540. Phyllis Kamrin
541. Christopher Kroll
542. Tanja Schlosser
543. Gary Glickman
544. Dale Smith
545. Dan Gluesenkamp
546. Marjorie Winter
547. Leslie Valas
548. Craig Koester
549. Lynda Caesara
550. Kristin Leimkuhler
551. Charlene Woodcock
552. Vincent Casalaina
553. Nikki Sachs
554. Bianca Walser
555. Barney Greinke
556. Jennifer Wright
557. Olalere Williams

558. Pamela Smith
559. Pallop Wilairat
560. Vicki Sommer
561. Elisabeth Lamoureaux
562. Mary Wrenn
563. Karen Street
564. David Landon
565. John Givens
566. Bob Baldwin
567. Russel Bates
568. Jennie McDonald
569. Koji Fujioka
570. Geoffrey Holton
571. Catherine Rice
572. Paul Robins
573. Alex Stec
574. Elizabeth Ditmars
575. Katharine Bierce
576. Alexandra Yurkovsky
577. Nancy Kates
578. Susan Rawlins (2)
579. Marcia DuBois
580. Maggie Parks
581. Art Goldberg
582. Claire Fitzgerald
583. Andrea Voinot
584. Joanna Picciotto
585. Becca Schonberg
586. Christine and David Goldin
587. Sue Jones
588. Jack Sawyer
589. Clifford Fred
590. Jeanne Clinton
591. Karen Fiene
592. Noel and Penny Nellis
593. E. Anne Griffiths
594. Jonathan Singh
595. Susan Johnson
596. Chris Hamilton
597. Alicia Klein
598. Steve Akana
599. Melissa Pauna
600. Nayer and Gary Gatterman
601. Kathleen and Russell Lopes
602. Adriana Valencia
603. Jon Wehry
604. Belinda Lyons-Newman
605. Genesee Herzberg

606. Jennifer Millar
607. Lauren Carroll
608. Xanthippe Phillips
609. Rachel Gold
610. Lisa Camasi
611. Garret Dellwo
612. Vika Teicher
613. Julia Zuckerman
614. Sophie Green
615. Gabriela de la Rosa
616. Russ Greene
617. Stephen Dalton
618. Leslie Valas
619. Margaret Tormey
620. Cora Johnson-Grau
621. Ross Bernet
622. Mary Lai
623. Michael Several
624. Susan Palo
625. Nelly Coplan
626. Donna Evans
627. Michael Hyatt
628. Rainbow Rubin
629. Jane Scherr
630. Melissa Riley
631. Michael Caplan
632. Isabelle Gaston and Steve Robey
633. David Coy
634. Joseph Feldman
635. Andrea Horbinski
636. Chimey Lee
637. Hannah Bruegmann
638. Naor Deleanu
639. Ellen Kramer
640. Micahel Goldberg
641. Elizabeth Davids
642. Ben Gould
643. Maria Sakovich
644. Meryl Siegal
645. Marilyn Simons
646. Sarah Jones
647. Fred Krieger
648. Sabina McMurtry
649. Harald Leventhal
650. Daniel Keller
651. Ariel Zucker
652. Johanna Eigen
653. Lily Bernheime

654. Leslie Retallick
655. Robert Abiad
656. Naomi Janowitz
657. Lori Hines
658. Preston Mui
659. Sean Gibson
660. Fiona Baker
661. Vicki Sommer
662. Alisa Foster
663. Adam Berman
664. Tamara Crane
665. Michael O'Heaney
666. Joaquin Carbonell
667. Scott McGlashan
668. Tony Wilkinson
669. Donna Mickleson
670. Linda Franklin
671. Mark Rhoades (2)
672. Ellen Hahn
673. Neal Donnelly
674. Colin DuRant
675. Jeffrey Carter
676. Barbara Rydlander
677. Enid Camps
678. Dan Newman
679. Aileen Paterson
680. Irene Chan
681. George Porter
682. Deena Aranoff
683. Kelley Kahn
684. Fran Segal
685. Tony Chapelle
686. Erik Wiener
687. David Cobb
688. Moni Law
689. Margot Smith
690. Adam Weisberg
691. Teresa Clarke
692. Paul Lee
693. Councilmember Harrison
694. Mark Mueller
695. Julieta Pisani McCarthy
696. Basak Altan
697. Margot Smith
698. Theo Posselt
699. Andrea Altschuler
700. March Schirmer
701. Desmid Lyon

702. David Lerman
703. Mary Louise Zernicke
704. Dawn Thomas
705. Charlene Woodcock

ORDINANCE NO. 7,815-N.S.

AMENDING TITLE 23 OF THE BERKELEY MUNICIPAL CODE TO ESTABLISH THE RESIDENTIAL—BART MIXED USE (R-BMU) ZONING DISTRICT

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

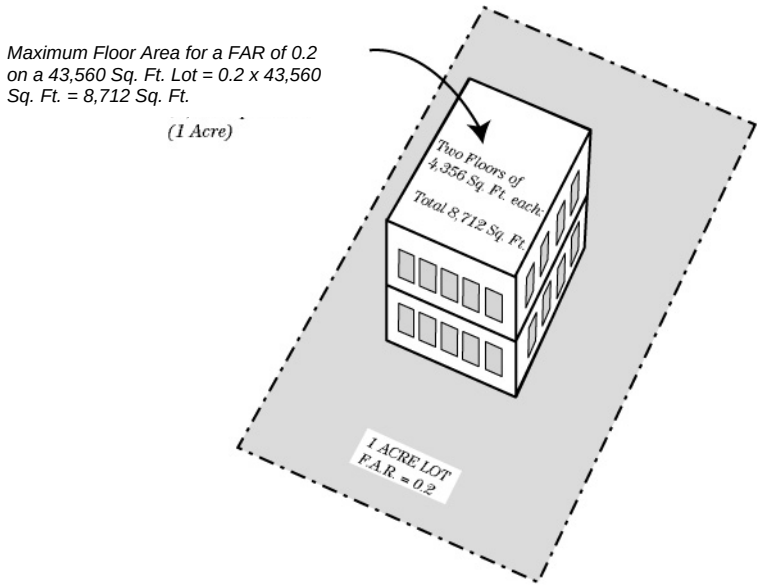
Section 1. That Berkeley Municipal Code Section 23.106.050 is amended to read as follows:

23.106.050 Floor Area Ratio.

A. Floor Area Ratio Defined. Floor area ratio (FAR) means the quotient resulting from division of the gross floor area of all buildings on a lot by the area of the lot. See Figure 23.106-1: Floor Area Ratio.

1. Floor Area Ratio Defined in R-BMU: In the R-BMU district, FAR means the quotient resulting from division of the Gross Floor Area of all buildings on a lot by the Lot Area. In a single integrated development on contiguous lots, the permitted Floor Area Ratio shall be computed upon the basis of the total area of all such lots.

FIGURE 23.106-1: FLOOR AREA RATIO



B. Development on Contiguous Lots. In a single integrated development on contiguous lots, the permitted floor area ratio is calculated using the total combined area of all such lots.

Section 2. That Berkeley Municipal Code Section 23.108.020 is amended to read as follows:

23.108.020 Zoning Districts

A. Districts. Berkeley is divided into districts as shown in Table 23.108-1: Zoning Districts. Unique regulations apply within each district as established in Chapters 23.202 – 23.208 (Zoning Districts).

TABLE 23.108-1: ZONING DISTRICTS

DISTRICT SYMBOL	NAME OF DISTRICT
Residential Districts	
R-1	Single-Family Residential
R-1A	Limited Two-family Residential
ES-R	Environmental Safety Residential
R-2	Restricted Two-family Residential
R-2A	Restricted Multiple-family Residential
R-3	Multiple-family Residential
R-4	Multi-family Residential
R-5	High Density Residential
R-S	Residential Southside
R-SMU	Residential Southside Mixed Use
R-BMU	Residential BART Mixed Use
Commercial Districts	
C-C	Corridor Commercial
C-U	University Avenue Commercial
C-N	Neighborhood Commercial
C-E	Elmwood Commercial
C-NS	North Shattuck Commercial
C-SA	South Area Commercial
C-T	Telegraph Avenue Commercial
C-SO	Solano Avenue Commercial
C-DMU	Downtown Mixed-Use
C-W	West Berkeley Commercial
C-AC	Adeline Corridor Commercial
Manufacturing Districts	

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DISTRICT SYMBOL	NAME OF DISTRICT
M	Manufacturing
MM	Mixed Manufacturing
MU-LI	Mixed Use-Light Industrial
MU-R	Mixed Use-Residential
Special Districts	
S	Specific Plan
U	Unclassified

Section 3. That Berkeley Municipal Code Section 23.202.020 is amended to read as follows:

23.202.020 Allowed Land Uses

A. Allowed Land Uses. Table 23.202-1: Allowed Land Uses in Residential Districts identifies allowed land uses and required permits in the Residential Districts. All land uses are defined in Chapter 23.502—Glossary. Permit requirements are described in Chapter 23.406—Specific Permit Requirements.

B. Unlisted Land Uses. Any land use not listed in Table 23.202-1: Allowed Land Uses in Residential Districts is not permitted in the Residential District.

ZC = Zoning Certificate **AUP = ADMINISTRATIVE USE PERMIT** UP(PH) = Use Permit NP = Not Permitted * Use-Specific Regulations Apply ** - Required permits for specific uses are set forth in the R-BMU Master Development Permit (MDP). See 23.202.150.A and 23.202.150.D	**RESIDENTIAL DISTRICTS**											**USE-SPECIFIC REGULATIONS** APPLIES TO USES WITH AN ASTERISK FOLLOWING THE PERMIT REQUIREMENT (E.G., ZC*)
	R-1	**R-1A**	**ES-R**	**R-2**	**R-2A**	**R-3**	**R-4**	**R-5**	**R-S**	**R-SMU**	**R-BMU***	
Residential Uses												
Accessory Dwelling Unit	See 23.306—Accessory Dwelling Units		NP	See 23.306—Accessory Dwelling Units								
Dwellings												
Single-Family	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	NP	
Two-Family	NP	UP(PH)	NP	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	NP	
Multi-Family	NP	NP	NP	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Group Living Accommodation	NP	NP	NP	NP	NP	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Senior Congregate Housing	NP	NP	NP	NP	See 23.302.070.H– Use-Specific Regulations							
Mixed-Use Residential	NP	NP	NP	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Public and Quasi-Public Uses												
Child Care Center	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Club/Lodge	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Columbaria	AUP*	AUP*	NP	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	NP	23.302.070.C– Use-Specific Regulations
Community Care Facility	See 23.202.040.A– Use-Specific Regulations											
Community Center	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Emergency Shelter	NP	NP	NP	NP	NP	NP	See 23.308					
Family Day Care Home, Large	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	
Family Day Care Home, Small	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	
Hospital	NP	NP	NP	NP	NP	UP(PH)	UP(PH)	UP(PH)	NP	UP(PH)	NP	
Library	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Nursing Home	NP	NP	NP	–	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	NP	
Park/Playground	ZC	ZC	UP	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	
Public Safety and Emergency Service	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	

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ZC = Zoning Certificate **AUP = ADMINISTRATIVE USE PERMIT** UP(PH) = Use Permit NP = Not Permitted * Use-Specific Regulations Apply ** - Required permits for specific uses are set forth in the R-BMU Master Development Permit (MDP). See 23.202.150.A and 23.202.150.D	**RESIDENTIAL DISTRICTS**											**USE-SPECIFIC REGULATIONS** **APPLIES TO USES WITH AN ASTERISK FOLLOWING THE PERMIT REQUIREMENT (E.G., ZC*)**
	R-1	**R-1A**	**ES-R**	**R-2**	**R-2A**	**R-3**	**R-4**	**R-5**	**R-S**	**R-SMU**	**R-BMU***	
Public Utility Substation/Tank	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Religious Assembly	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
School	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Commercial Uses												
Alcoholic Beverage Service	NP	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH)*	UP(PH)*	23.310—Alcoholic Beverage Sales and Service
Food Products Store	NP	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH)*	UP(PH)*	23.202.140.B.3– R-SMU Residential Southside District
Food Service Establishment	NP	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH)*	UP(PH)*	23.302.070.E– Use-Specific Regulations
Group Class Instruction	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH)*	23.202.150.C – R-BMU Residential BART Mixed Use District
Gym/Health Club	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH)*	23.202.150.C – R-BMU Residential BART Mixed Use District
Hotel, Tourist	NP	NP	NP	NP	NP	NP	UP(PH)	UP(PH)	UP(PH)	UP(PH)	NP	
Laundromat and Cleaner	NP	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH)	UP(PH)	
Office	NP	NP	NP	NP	NP	NP	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)*	23.202.150.C – R-BMU Residential BART Mixed Use District
Parking Lot/Structure	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	23.302.070.G– Unenclosed Accessory Structures in Residential Districts 23.322.100– On-site Loading Spaces
Personal and Household Service, General	NP	NP	NP	NP	NP	NP	NP	NP	NP	ZC*	ZC*	23.202.140.B.2– R-SMU Residential Southside District
Retail, General	NP	NP	NP	NP	NP	NP	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	23.202.040.B– Use-Specific Regulations

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ZC = Zoning Certificate **AUP = ADMINISTRATIVE USE PERMIT** UP(PH) = Use Permit NP = Not Permitted * Use-Specific Regulations Apply ** - Required permits for specific uses are set forth in the R-BMU Master Development Permit (MDP). See 23.202.150.A and 23.202.150.D	**RESIDENTIAL DISTRICTS**											**USE-SPECIFIC REGULATIONS** **APPLIES TO USES WITH AN ASTERISK FOLLOWING THE PERMIT REQUIREMENT (E.G., ZC*)**
	R-1	**R-1A**	**ES-R**	**R-2**	**R-2A**	**R-3**	**R-4**	**R-5**	**R-S**	**R-SMU**	**R-BMU***	
Veterinary Clinic	NP	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH)	UP(PH)	
Theater	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH)	
Video Tape/Disk Rental	NP	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH)	NP	
Industrial and Heavy Commercial Uses												
Commercial Excavation	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Other Uses												
Accessory Uses	See 23.302.020.A– General Use Regulations											
Art/Craft Studio	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	ZC	
ATM: Exterior and Attached to Bank or Interior or Exterior and Not With Bank	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	AUP	
Home Occupations	See 23.302.040– Home Occupations											
Live/Work	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH)*	23.312-Live/Work
Public Market, Open Air	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	AUP	
Public Market, Enclosed	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	AUP	
Short-Term Rental	ZC*	ZC*	NP	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	23.314—Short-Term Rentals
Temporary Uses	See 23.302.030– Temporary Uses and Structures											
Urban Agriculture, Low-Impact	ZC*	ZC*	NP	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	23.318—Urban Agriculture
Urban Agriculture, High-Impact	AUP*	AUP*	NP	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	23.318—Urban Agriculture
Wireless Telecommunication Facility	See 23.332—Wireless Communication Facilities											

Section 4. That Berkeley Municipal Code Section 23.202.040.B is amended to read as follows:

B. *General Retail*.

1. In the R-4, R-5, R-S, and R-SMU districts, general retail uses must be:

(a) Accessory to another use;

(b) Contained within a building with no street access; and

(c) Without displays of merchandise visible from the street.

2. In the R-BMU district, General Retail is:

(a) Permitted with a Use Permit at the North Berkeley BART station;

(b) Permitted with a Zoning Certificate at the Ashby BART station.

Section 5. That Berkeley Municipal Code Section 23.202.150 is hereby added to read as follows:

23.202.150: R-BMU Residential BART Mixed Use District

A. **District Purpose.** The purpose of the BART Mixed-Use (R-BMU) district is to create vibrant, well-designed, and welcoming neighborhoods that address City of Berkeley priorities such as affordable housing, civic and public space, multi-modal transportation and site access, high-quality building and site design and architecture, and a mix of land uses that contributes positively to the community, and to establish zoning standards in compliance with AB 2923.

B. **Definitions.** For the purpose of this Section (23.202.150), the following definitions apply:

1. Dwelling Units per Acre. The quotient resulting from the total number of dwelling units on a site by the Lot Area.

C. **Allowed Land Uses.**

1. **General.** See Section 23.202.020 (Allowed Land Uses), which indicates identifies allowed land uses and which are prohibited.

a. The initial establishment of a land use in a new building will follow the R-BMU Master Development Plan process outlined in Section 23.202.150D. below.

b. The change of use of an existing building or portion of a

building will require the permits indicated in Section 23.202.020 and Table 23.202-1 for the R-BMU District.

c. Any use not listed in Table 23.202-1 for the R-BMU District can be approved through the Master Development Plan process outlined in Section 23.202.150D below for the initial establishment of a land use in a new building.

d. Uses subject to supplemental regulations are shown in in Table 23.202-1 with an asterisk (*) following the permit requirement (e.g., ZC*). The Use-Specific Regulations column in Table 23.204-1 identifies the location of these regulations in the Zoning Ordinance.

2. **Group Class Instruction and Gym/Health Clubs**. Group class instruction and gym/health club uses are permitted at the Ashby BART station with a Zoning Certificate. Group class instruction and gym/health club uses are permitted at the North Berkeley BART station with a Use Permit.

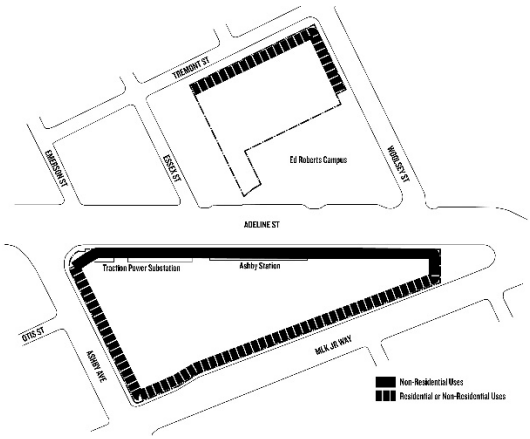
3. **Office**. At the Ashby BART station, office uses above the ground floor are permitted with a ZC. All other office uses in the R-BMU require a Use Permit.

D. **Ground-floor Uses.** See Table 23.202-27.

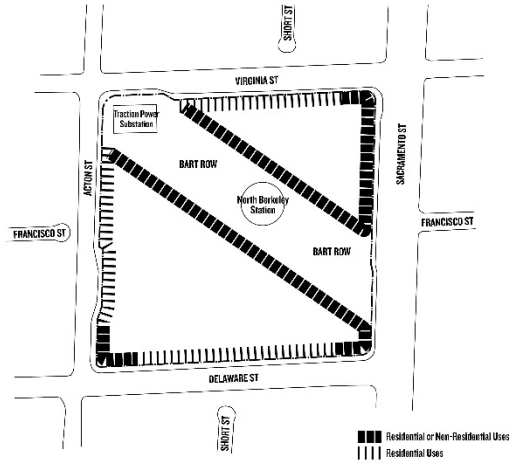
TABLE 23.202-27: PERMITTED STREET-FACING GROUND FLOOR USES

Frontage Locations	Permitted Street-Facing Ground Floor Uses
Along Ashby and MLK	Non-Residential Uses or non-residential accessory spaces to residential buildings, such as community rooms. At least 50% of the combined frontage of MLK and Ashby must include active ground -floor uses.[1] Active uses at corner locations are encouraged.
Along Adeline	Non-Residential Uses or non-residential accessory spaces to residential buildings, such as community rooms
Along Woolsey, Tremont [2], or fronting interior public spaces	Residential or Non-Residential Uses
Along Sacramento, along the Ohlone Greenway, or within 50 feet of any street corner	Residential or Non-Residential Uses
Along Delaware, Acton, or Virginia	Residential Uses
[1] Active uses are commercial uses which generate regular and frequent foot traffic; such uses include businesses in the following use categories: Retail; Personal and Household Services; Food and Alcohol Service, and Entertainment. [2] Public entrances for non-residential uses fronting Tremont Street must be located on Woolsey Street.	

FIGURE 23.202-3 PERMITTED STREET-FACING GROUND FLOOR USES



a. Ashby BART Station Site



b. North Berkeley BART Station Site

E. **Additional Permit Requirements.** See Section 23.202.030 (Additional Permit Requirements).

F. Development Standards.

1. **Basic Standards.** See Table 23.202-28.
2. **Supplemental Standards.** Supplemental standards that apply in the R-BMU district are noted in Table 23.202-28.

TABLE 23.202-28: R-BMU DEVELOPMENT STANDARDS

		Supplemental Standards
Lot Area, Minimum	No minimum	23.304.020
Private Usable Open Space, Minimum [1][2]		23.302.090
Per Dwelling Unit	40 sf/DU	23.302.090
Per Group Living Accommodation Resident	15 sf/resident	23.302.090
Public Open Space, Minimum		
Per Dwelling Unit	35 sf/unit	
Per Group Living Accommodation Resident	18 sf/resident	

Floor Area Ratio (FAR), Maximum	4.2	
Main Building Height, Maximum [3]	80 feet and 7 stories	23.304.050
Residential Density, Minimum	75 dwelling units per acre	
[1] Private Usable Open Space may be provided as any combination of personal and common private space. [2] 50% of the Private Usable Open Space requirement may be fulfilled through the provision of an equal amount of additional Public Open Space. [3] Building Height Measurement: In the case of a roof with a parapet wall, building height shall be measured to the top of the roof and parapets may exceed the height limits by up to five feet by right.		

3. Additional Open Space Requirements**.**

a. Definitions

i. Private Usable Open Space: Outdoor space, including natural and landscaped ground areas, playgrounds, pools, patios, decks and balconies designed for active or passive recreational use and which are accessible to the occupants of a building on the same development. See also 23.304.090 (Usable Open Space) for standards.

ii. Public Open Space: Outdoor space, including natural and landscaped ground areas, playgrounds, pools, fountains, patios, decks designed for active or passive recreational use and which are accessible to the general public. Minimum dimensions for Public Open Spaces shall be 20’ in any direction and 400 square feet minimum.

b. Public Space Design.

i. Land area made available for public access to and through the station, and on-site public amenities, may be offered as dedication to the City or may be owned and maintained by another party with dedication of a public access easement. Public Open Space must be accessible to the public during daylight hours and include signage indicating public access.

ii. Public spaces shall include site furnishings and design elements to encourage active or passive use.

iii. Public spaces shall have a direct, accessible connection to the public circulation network.

iv. Adjacent publicly owned space may contribute to the minimum public space requirement for the project, if it is designed, integrated and maintained as part of the project and complies with all other requirements for public space design identified in

this section (23.202.150(D)3(b)).

c. Rooftop Open Space. Rooftops may be utilized as Private Usable Open Space or Public Open Space meeting the requirements of 23.202.150.A.3 (Additional Open Space Requirements – Definitions). Rooftop space designated Public Open Space must also meet the requirements of 23.202.150.A.3.B (Public Space Design). No more than 25% of Public Open Space requirements can be met with Rooftop Open Space, and such Public Open Space must be independently accessible from the public circulation network.

4. **Front Setbacks.**

   a. Setbacks are not required at Martin Luther King Jr. Way, Adeline Street, Sacramento Street.

   b. Setbacks along all other frontages along public rights-of-way and internal publicly accessible pathways shall range from 5 feet (minimum) to 15 feet (maximum) for at least 50 percent of any building's linear street frontage, including all frontages within 50 lineal feet of an intersecting corner.

5. **Front Upper-Story Step-backs.** Any street-facing building frontage above four stories in height that is not within 100 linear feet of Sacramento Street, Adeline Street, Ashby Avenue, or Martin Luther King Jr. Way, shall step back from the property line for portions of the building above four stories.

6. **Ground-floor Residential Frontage.** For ground-floor residential uses, outward facing building entrances may include any of the following: stoops, front doors, courtyard and forecourt entrances, ramped or at-grade universally accessible entries, outward-facing and visually permeable lobby entrances, or other outward-facing residential entrance, with transition spaces from private frontages to public spaces.

7. **Ground-floor Non-Residential Frontage.** For ground-floor non-residential uses, outward- facing building entrances and activation strategies may include outdoor seating, dining, display spaces, performance spaces, public art, architectural detailing, and extensions of the public sidewalk.

8. **Frontage Improvements.** Any area between a building and the front property line, or any area between a building and on-site public space or the public circulation network, shall be improved as part of a wider sidewalk, outdoor seating area, outdoor dining area, yard area, landscaping, or other usable open space.

9. **On-site Pedestrian Access.** Pedestrian accessways shall be provided for all new construction and for additions of 10,000 square

feet or more of gross floor area in accordance with the following standards:

a. **Internal Connections.** A system of publicly accessible pedestrian walkways (e.g. public sidewalks) shall connect all buildings on a site to each other, to on-site bicycle and automobile parking and drop-off areas, to any on-site open space areas or pedestrian amenities, and to the publicly accessible pedestrian circulation network.

b. **To the Public Circulation Network.** A publicly accessible on-site walkway shall connect the building lobby entry or entries on each street or on-site pathway frontage to the public pedestrian circulation network. Connections to publicly accessible on-site walkways provided at least every 300 feet along portions of the development site perimeter that are adjacent to public rights-of-way.

c. **To Neighbors.** Publicly accessible pedestrian access shall be provided from residential and commercial building entrances and public space to adjoining residential and commercial areas.

d. **To Transit.** Publicly accessible pedestrian connections from the public circulation network shall be provided to all transit stops and entrances including elevators outside the station.

e. **Illumination.** All publicly accessible pedestrian connections shall include nighttime illumination pursuant to Ordinance N.S.-7424.

10. Transparency.

a. **Required Openings.** Ground-level exterior walls facing and within 20 feet of a front lot line or publicly accessible pathway or Public Open Space shall run in a continuous plane for no more than 30 feet without a window, door, or other similar building opening.

b. **Non-Residential Transparency.** For non-residential ground-floor uses facing a front lot line, publicly accessible pathway or Public Open Space, a minimum of 50% of the building wall area located between three and seven feet above ground level shall be transparent with a visible light transmittance of not less than 80%.

11. Building Entrances.

a. **Minimum Number of Entrances Required.** There shall be a minimum of at least one building entrance at an average distance of 50 linear feet of ground-floor non-residential building frontage, and at least one building lobby entrance for every 200 feet of ground-floor residential building frontage.

b. **Ground Floor Residential Entries.** All ground floor residential units shall provide entries to the street in the form of stoops or other exterior entries, or balcony or patio without entrance to the street, with a minimum area of 20 square feet.

c. **Separate Entrances Required.** Buildings containing a mix of residential and non- residential uses shall provide separate building entrances for each major use category. Amenity areas such as exercise rooms do not require separate building entrances from the primary use.

d. **Entrance Orientation.** Principal building entrances shall face a public street, publicly accessible pathway, or Public Open Space.

e. **Illumination.** Building entries and addresses shall be illuminated to provide nighttime visibility from adjacent streets, public accessways, and common areas.

12. **Ground-Floor Non-Residential Space Dimensions.** The minimum ground floor height for non-residential uses is 15 feet, as measured from the ground level floor to the first floor above.

13. **Parking Design and Access.**

a. **Unbundled Parking Required.** All parking spaces shall be leased separately from the residential unit or commercial space except where prohibited by affordable housing financing sources.

b. **Structured Parking Required.** All new off-street parking shall be located within an enclosed structure, with the exception of curb-side pickup and drop-off, curb-side metered parking, ADA parking, or small-scale surface parking for security and station operations and maintenance purposes only.

c. **Structured Parking Design.** Parking garages shall be located underground or located behind conditioned building space at any adjacent street, sidewalk, or other publicly accessible accessway or open space. Conditioned building space is not required along shared interior lot lines of abutting parcels.

d. **Vehicular Entry.** Parking garage vehicular entrances facing the street shall be no more than 20 feet wide.

e. **Pedestrian Entry.** Parking garage pedestrian entrances shall be provided at-grade, connecting directly to the public pedestrian circulation network, on each street-facing frontage.

f. **Light Screening.** Parking garages shall be designed such that interior lighting is fully shielded and automobile headlamps are not visible from

adjacent buildings, parcels, streets, public parks, publicly accessible outdoor space or designated open space area.

14. **Mitigation Measures**. Projects under this section are subject to applicable measures identified in the adopted Mitigation Monitoring and Reporting Program of the Ashby and North Berkeley BART Stations Transit-Oriented Development Zoning Project Final EIR.

G. BART Mixed Use District Master Development Permit (MDP)

1. Purpose of the R-BMU District Master Development Permit (MDP) process. The purpose of these provisions is to prescribe the procedure for the review of initial development on parcels in the R-BMU District, in order to allow for the predictable buildout of the sites over time and achieve a high standard of affordability, site and building design that fulfills the City and BART Joint Vision and Priorities for the Ashby and North Berkeley BART Station Areas relating to:

    - Affordable Housing
    - Public and Civic Space
    - Land Use
    - Building Form and;
    - Station Access.

2. Applicability of the Ashby and North Berkeley BART Master Development Permit (MDP). These provisions shall apply to all land within the R-BART Mixed Use District.

3. Preliminary Development Plan. The preliminary development plan shall include, at a minimum, the following:

    a. A plan of the entire development, defined as either the North Berkeley BART Station Area or Ashby BART Station Area, showing the items listed below. Such development plan shall include maps and information on the surrounding area within one hundred (100) feet of the development. All elements listed in this paragraph shall be characterized as existing or proposed, and sufficiently detailed to indicate intent and impact.

        - Streets, driveways, sidewalks and pedestrian ways, and off-street parking and loading areas;
        - Location and approximate dimensions of structures;
        - Utilization of structures, including activities and the number of living units;

- Estimated population;
- Reservations for public uses, including schools, parks, playgrounds, and other open spaces;
- Placement of above-ground utilities such as electrical transformers, vents, and other mechanical equipment;
- Major landscaping features;
- Relevant operational data; and
- Drawings and elevations clearly establishing the scale, character, and relationship of buildings, streets, and open spaces.

b. A table demonstrating that the plan meets the development standards set forth in Section 23.202.150.F and the other requirements of this Chapter, including compliance with any Objective Development Standards.

c. A development phasing plan describing the order in which various portions of the development will be built, along with a proposed schedule for such phases.

4. Notice of Application and Public Hearing for Preliminary Development Plan.

a. Preliminary Development Plans shall be reviewed by the Zoning Adjustments Board, the decisions of which are appealable to the City Council.

b. The public notice and hearing process for a Master Development Permit shall be the same as for Use Permits as defined in BMC Section 23.404, except that notice shall be mailed or delivered to all businesses, residents and owners of property located within five hundred (500) feet of the subject property.

c. The Board shall determine whether the proposal conforms to the permit criteria set forth in Section 23.202.150.D8, and may approve or disapprove the application and the accompanying Preliminary Development Plan or require such changes therein or impose such reasonable conditions of approval as are in its judgment necessary to ensure conformity to said criteria and regulations. In so doing, the Board may, in its discretion, authorize submission of the Final Development Plan in stages corresponding to different units or elements of the development. It may do so only upon evidence assuring completion of the entire development in accordance with the Preliminary Development Plan and staged development schedule.

5. Final Development Plan

   The applicant shall file with the Planning and Development Department a Final Development Plan for one or more of the phases identified in the Preliminary Development Plan.

   a. The Final Development Plan shall conform in all major respects with the approved Preliminary Development Plan and shall include the following additional information:

   - Location of water, sewerage, and drainage facilities;
   - Detailed building and landscaping plans and elevations;
   - A maintenance plan for Open Space;
   - Character and location of signs;
   - Plans for street improvements; and
   - Grading or earth-moving plans.

   The Final Development Plan shall be sufficiently detailed to indicate the ultimate operation and appearance of the development, including compliance with the Objective Development Standards. Final Development Plans shall be reviewed by the Zoning Adjustments Board.

   b. The public notice and hearing process for a Final Development Plan shall be the same as for Use Permits as defined in BMC Section 23B.32, except that notice shall be mailed or delivered to all businesses, residents and owners of property located within five hundred (500) feet of the subject property.

6. City Engineer's Report

   Within thirty (30) days after the filing of the Final Development Plan, the Zoning Officer shall forward it to the City Engineer for review of public improvements, including streets, sewers, and drainage. The Zoning Adjustments Board shall not act on a Final Development Plan until it has first received a report from the City Engineer or until more than thirty (30) days have elapsed since the plan and application were sent to the City Engineer, whichever is the shorter period.

7. Appeal to Council

   The process for appeal to Council for a Master Development Permit, Preliminary Development Plan and/or Final Development Plan shall be the

same as for Use Permits as defined in BMC Section 23B.32.

8. Findings

   a. That the location, design, size, and uses are consistent with the General Plan and with any other applicable plan, development control map, design guidelines, or ordinance adopted by the City Council;

   b. That the location, design, and size are consistent with the City of Berkeley and San Francisco Bay Area Rapid Transit District (BART) Joint Vision and Priorities document for the Ashby and North Berkeley BART Station Areas adopted by the City Council and the BART Board of Directors.

9. Adherence to the Approved Plan and Modification.

   Variations of up to ten percent (10%) from any numerical or non-numerical standard set forth on the Master Development Permit may be authorized by the Zoning Officer through an Administrative Use Permit. Variations of more than ten (10%) percent may be authorized by a Master Development Plan permit modification by the Zoning Adjustments Board.

10. Revocation of Permits

    If a Final Development Plan for an initial portion of a site has not been submitted within 10 years after approval of the applicable Master Development Plan for all or a majority portion of the site, the City Council may revoke the approval of the remainder of the Master Development Permit. If Final Development Plans for the entirety of a site have not been submitted within 20 years after approval of the applicable Master Development Permit, the City Council may revoke the remainder of the Master Development Permit.

Section 6. That Berkeley Municipal Code Section 23.302.070.E.2 is amended to read as follows:

2. **Permits Required in Commercial Districts and in the R-BMU.** Table 23.302-7 shows permits required for food service establishments in the commercial districts and in the R-BMU.

TABLE 23.302-7: PERMIT REQUIREMENTS FOR FOOD SERVICE ESTABLISHMENTS

DISTRICT/USE SIZE	PERMIT REQUIRED
C-C, C-U, C-T, C-W	
Under 1,500 sq. ft	ZC
1,500 sq. ft. or more	AUP
C-N, C-NS, C-SA, C-SO	
Under 1,000 sq. ft	ZC
1,000 sq. ft. or more	AUP
R-BMU, Ashby BART Station C-AC, South Shattuck and North Adeline Subareas	
3,000 sq ft or less	ZC
Over 3,000 sq ft	AUP
C-AC, South Adeline Subarea	
1,500 sq ft or less	ZC
Over 1,500 sq ft	AUP
R-BMU, North Berkeley BART Station	UP(PH)
C-E	AUP [1]
C-DMU	
Under 3,000 sq. ft outside the Arts District Overlay	ZC
3,000 sq. ft. or more	AUP
Any size within the Arts District Overlay	AUP [2]

Notes:
[1] All food service uses in the C-E district require an AUP and may not be considered as an incidental use except when accessory to a food product store.
[2] See 23.204.130.D.3 for required findings.

Section 7. That Berkeley Municipal Code Section 23.302.070.G.2 is amended to read as follows:

2. Table 23.302-9 shows required permits for the exclusive or primary use of a lot for off-street parking spaces.

TABLE 23.302-9: PERMIT REQUIREMENTS FOR PARKING LOTS/STRUCTURES

DISTRICT	PERMIT REQUIRED
Residential Districts	
R-3	Use Permit for all parking lots and structures. [1]
R-S, R-SMU, R-BMU	Use Permit for parking structures only. Parking lots are not permitted, except on lots between Acton Street and Virginia Gardens and between Peralta Avenue and Northside Avenue in the R-BMU.
All other residential districts	Use Permit for all parking lots and structures.
Commercial Districts	
C-C, C-U	Zoning Certificate for parking lots and structures with 5 spaces or fewer. Use Permit for more than 5 spaces.
C-SO	AUP for parking lots and structures with 5 spaces or fewer. Use Permit for more than 5 spaces.
C-DMU	AUP for parking lots with 8 spaces or fewer. Use Permit for all parking structures. Lots with more than 8 spaces not permitted.
C-N, C-E, C-NS, C-SA	Use Permit for all parking lots and structures.
C-T	Use Permit for all parking structures. All parking lots not permitted.
C-W	AUP for parking lots and structures with 10 spaces or fewer. Use Permit for parking lots and structures with more than 10 spaces.
Manufacturing Districts	
M, MM	AUP for parking lots and structures with 10 or fewer spaces exclusively for uses in the district. Use Permit for parking lots and structures with any number of spaces not exclusively for uses in the district.
MU-LI	Zoning Certificate for parking lots and structures with 10 or fewer spaces exclusively for uses in the district. AUP for parking lots and structures with 11 spaces or more exclusively for uses in the district. Use Permit for parking lots and structures with any number of spaces not exclusively for uses in the district.
MU-R	Zoning Certificate for parking lots and structures exclusively for uses in the district. Use Permit for parking lots and structures not exclusively for uses in the district.
Notes: [1] Parking lots and structures in the R-3 district are not permitted within the Southside Plan area	

Ordinance No. 7,815-N.S.

Section 8. That Berkeley Municipal Code Section 23.304.140 is amended to read as follows:

23.304.140 Area Plans.

A. *Downtown Area Plan.* Projects in the Downtown Area Plan boundaries are subject to the applicable mitigation measure in the adopted Mitigation Monitoring Program of the Downtown Area Plan Final EIR.

B. *Southside Plan.*

1. *Mitigation Measures.* Projects in the Southside Plan boundaries are subject to the applicable mitigation measures in the adopted Mitigation Monitoring Program of the Southside Plan Final EIR.

2. *Permit Findings.* To approve an AUP or Use Permit for a project in the Southside Plan boundaries, the review authority must find that the project complies with the Southside Plan's adopted Mitigation Monitoring Program (MMP).

C. *West Berkeley Plan.* Projects in the West Berkeley Plan boundaries are subject to the applicable mitigation measure in the adopted Mitigation Monitoring Program of the West Berkeley Plan Final EIR.

D. *Adeline Corridor Plan.* Projects in the Adeline Corridor Plan boundaries are subject to the applicable mitigation measure in the adopted Mitigation Monitoring Program of the Adeline Corridor Plan Final EIR.

E. *Ashby and North Berkeley BART Stations Transit-Oriented Development Zoning Project*. Projects in the Ashby and North Berkeley BART Stations Transit-Oriented Development Zoning Project boundaries are required to implement all the applicable mitigation measures in the adopted Mitigation Monitoring Program of the Ashby and North Berkeley BART Stations Transit-Oriented Development Zoning Project EIR.

Section 9. That Berkeley Municipal Code Section 23.308.020.C is amended to read as follows:

C**. Required Permits**. Table 23.308-1 shows permits required for emergency shelters.

TABLE 23.308-1: PERMIT REQUIREMENTS FOR EMERGENCY SHELTERS

DISTRICTS	PERMIT REQUIRED [1]
Residential Districts	
R-1, R-1A, ES-R, R-2, R-2A, R-3	Not Permitted
R-4, R-5, R-S, R-SMU, and R-BMU	
15 beds or fewer [1]	ZC
More than 15 beds	UP(PH)
Commercial Districts	
C-C, C-U, C-N, C-E, C-NS, C-SA, C-T, C-SO, C-W, C-AC	
25 beds or fewer	ZC
More than 25 beds	UP(PH)
C-DMU	
60 beds or fewer	ZC
More than 60 beds	UP(PH)
Manufacturing Districts	
M, MM, MU-LI, MU-R	Not Permitted
Notes: [1] See also permit requirements based on floor area of use in Table 23.308.040-2	

Section 10. That Berkeley Municipal Code Section 23.310.030.A is amended to read as follows:

A. Permits Required. Table 23.310-1 shows permits required for alcoholic beverage service when incidental to a food service establishment.

TABLE 23.310-1: PERMITS REQUIRED FOR ALCOHOLIC BEVERAGE SERVICE

	Permit Required Based on Type of Beverages Served When Incidental to Food Service	
District	**Beer and Wine**	**Distilled Spirits**
R-SMU	UP(PH)	UP(PH)
All Commercial Districts, except C-AC, and the R-BMU District	ZC	UP(PH)
C-AC	ZC	AUP

District	Permit Required Based on Type of Beverages Served When Incidental to Food Service	
	Beer and Wine	Distilled Spirits
MU-LI, MU-R	UP(PH)	UP(PH)

Section 11. That Berkeley Municipal Code Section 23.310.030.B.3 is amended to read as follows:

B. Use Limitations.

3. C-NS and R-BMU Districts. In the C-NS district, distilled spirit service is allowed only for full-service restaurants. Distilled spirit service is not allowed for carry out food stores and quick-service restaurants.

Section 12. That Berkeley Municipal Code Section 23.312.030.B is amended to read as follows:

B. Residential Districts.

1. **All Residential Districts Except R-BMU**. Live/work units are not permitted.
2. **R-BMU District:** A Use Permit is required for live/work units.

Section 13. That Berkeley Municipal Code Section 32.322.030.A.1 is amended to read as follows:

A. Residential Districts.

1. Spaces Required. Table 23.322-1 shows minimum required off-street parking spaces in the Residential Districts.

TABLE 23.322-1: REQUIRED OFF-STREET PARKING IN RESIDENTIAL DISTRICTS

Land Use	Number of Required Off-street Parking Spaces
Residential Uses	
Accessory Dwelling Unit	See Chapter 23.306
Dwellings, including Group Living Accommodations	R-3, R-4, and R-5 Districts (1-9 units): If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per unit. R-3, R-4, and R-5 District (10 or more units): If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per 1,000 sq ft of gross floor area. All Other Districts: If located on a roadway less than 26 feet in

Land Use	Number of Required Off-street Parking Spaces
	width in the Hillside Overlay: 1 per unit All Other Locations: None required
Dormitories, Fraternity and Sorority Houses, Rooming & Boarding Houses, Senior Congregate Housing	If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per each 5 residents, plus 1 for manager. All Other Locations: None required.
Rental of Rooms	If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per each two roomers All Other Locations: None required
Non-Residential Uses	
All non-residential uses except uses listed below	R-SMU District: 1 per 1,000 sq. ft. R-BMU District: None required; no more than 1.5 spaces per 1,000 sq. ft. All Other Residential Districts: See 23.322.030.A.2
Community Care Facility	R-BMU District: None required; no more than 1.5 spaces per 1,000 sq. ft. All Other Residential Districts: One per two non-resident employees
Food Service Establishment	R-BMU District: None required; no more than 1.5 spaces per 1,000 sq. ft. All Other Residential Districts: 1 per 300 sq. ft.
Hospital	R-SMU District: 1 per 1,000 sq. ft. R-BMU District: None required; no more than 1.5 spaces per 1,000 sq. ft. All Other Residential Districts: 1 per each 4 beds plus 1 per each 3 employees
Library	R-BMU District: None required; no more than 1.5 spaces per 1,000 sq. ft. All Other Residential Districts: 1 per 500 sq. ft. of publicly accessible floor area
Nursing Home	1 per 3 employees
Medical Practitioners	R-BMU District: None required; no more than 1.5 spaces per 1,000 sq. ft. All Other Residential Districts: 1 per 300 sq. ft.
Non-Medical Offices	R-SMU District: 1 per 1,000 sq. ft. R-BMU District: None required; no more than 1.5 spaces per

Land Use	Number of Required Off-street Parking Spaces
	1,000 sq. ft. All Other Residential Districts: 1 per 400 sq. ft.
Hotels, Tourist	1 per 3 guest/sleeping rooms or suites plus 1 per 3 employees
[1] Excludes community care facilities which under state law must be treated in the same manner as a single-family residence	

Section 14: That Berkeley Municipal Code Section 23.322.090 is amended to read as follows:

23.322.090 – Bicycle Parking

A. Parking Spaces Required.

1. **Non-Residential Bicycle Parking**. Table 23.322-10 shows districts where bicycle parking is required, land uses requiring bicycle parking, and the number of required spaces. Bicycle parking is required for new construction and for expansions to existing buildings that add new floor area.

TABLE 23.322-10: REQUIRED NON-RESIDENTIAL BICYCLE PARKING

District	When Required	Required Spaces
R-BMU	New commercial space	1 per 1,000 sq. ft.
R-S, R-SMU	New commercial space	1 per 2,000 sq. ft.
All Commercial Districts except for C-E and C-T	New floor area or for expansions of existing industrial, commercial, and other non-residential buildings	1 per 2,000 sq. ft.
All Manufacturing Districts except for C-E and C-T	New floor area or for expansions of existing industrial, commercial, and other non-residential buildings	1 per 2,000 sq. ft.
C-E, C-T	None required	N/A

a. In the C-DMU district, the Zoning Officer, in consultation with the City Traffic Engineer, may approve an AUP to modify the bicycle parking requirement in Table 23.322-10 for Tourist Hotels.

2. **Residential Parking**. Table 23.322-11 shows the types of residential projects, including the residential portion of mixed-use projects, for which bicycle parking is required.

TABLE 23.322-11: REQUIRED RESIDENTIAL BICYCLE PARKING

Use	Long-Term Parking Requirement [1]	Short-Term Parking Requirement [1]
Dwelling Units (1 to 4 units)	R-BMU: 1 space per unit All other districts: None required	None required
Dwelling Units (5 units or more)	R-BMU: 1 space per unit All other districts: 1 space per 3 bedrooms	2, or 1 space per 40 bedrooms, whichever is greater
Group Living Accommodations, Dormitories, Fraternity and Sorority Houses, Rooming and Boarding Houses, Transitional Housing	2, or 1 space per 2.5 bedrooms, whichever is greater	2, or 1 space per 20 bedrooms, whichever is greater
[1] Long-Term Parking and Short-Term Parking shall meet the design standards included in Appendix F of the 2017 *Berkeley Bicycle Plan*, or as subsequently amended by the Transportation Division.		

B. Bicycle Parking Standards. The following standards apply to required bicycle parking spaces in a non-residential district:

1. Bicycle parking spaces shall be located in either a locker, or in a rack suitable for secure locks, and shall require location approval by the City Traffic Engineer and Zoning Officer.
2. Bicycle parking shall be located in accordance to the Design Review Guidelines and other design specifications promulgated by the Transportation Division.

Section 15: That Berkeley Municipal Code Section 23.502.020.L.14-20 are amended to read as follows:

14. Lot Area. The total horizontal area within a lot's boundary lines.

a. Lot Area in R-BMU Only: The total horizontal area within a lot's boundary lines, minus the square footage of the footprints of any buildings, facilities or equipment that are, or shall be, under the control of the San Francisco Bay Area Rapid Transit District (BART).

15. Lot Coverage. See 23.106.020 (Lot Coverage).

16. **Lot Depth.** The average distance from the front lot line to the rear lot line measured in the general direction of the side lines.
17. **Lot Frontage.** That dimension of a lot's front lot line abutting on a street.
18. **Lot Lines.** The boundaries between a lot and other property or the public right-of-way**.**
19. **Lot Line, Front.** The shorter of the two intersecting lot lines along the rights-of-way of a corner lot shall be deemed to be the front of the lot for purposes of determining the lot frontage and for yard requirements. In the case of a lot having equal frontage, or in the case of an irregularly shaped lot, the Zoning Officer shall determine the front in such a manner as to best promote the orderly development of the immediate area.
20. **Lot Width.** The average distance between the side lot lines measured at right angles to the lot depth.

Section 16. Objective design standards, including, but not limited to, BART station functionality, public realm, building form and massing (e.g. vertical and horizontal articulation) building facade design, and open space shall be presented to the Council for adoption pursuant to the Memorandum of Agreement between the City and the San Francisco Bay Area Rapid Transit District (“BART”) approved by City Council and the BART Board, respectively, in June 2022.

Section 17. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a special meeting of the Council of the City of Berkeley held on June 2, 2022, this Ordinance was passed to print and ordered published by posting by the following vote:

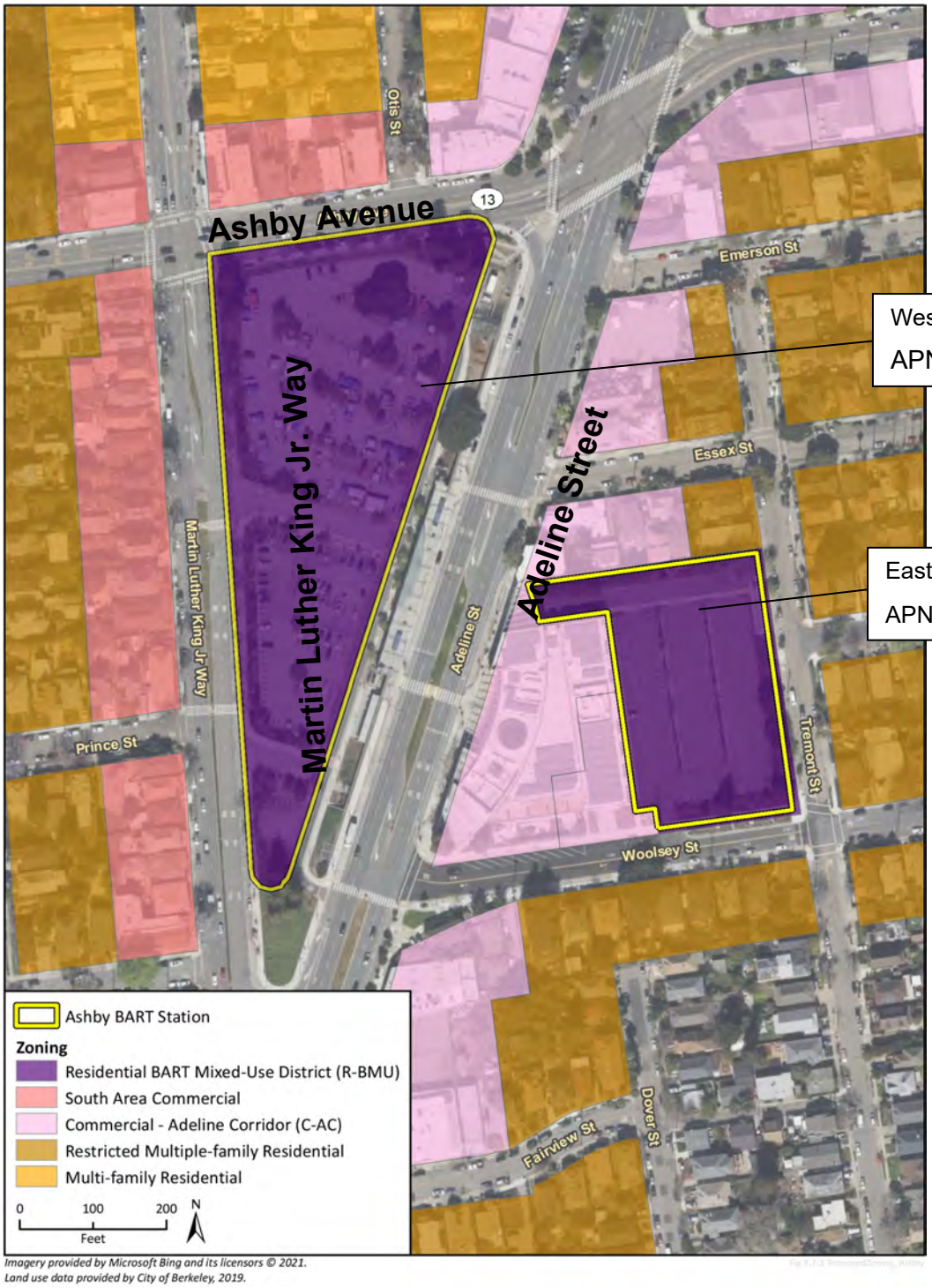
Ayes: Bartlett, Droste, Hahn, Harrison, Kesarwani, Robinson, Taplin, Wengraf, and Arreguin.

Noes: None.

Absent: None.

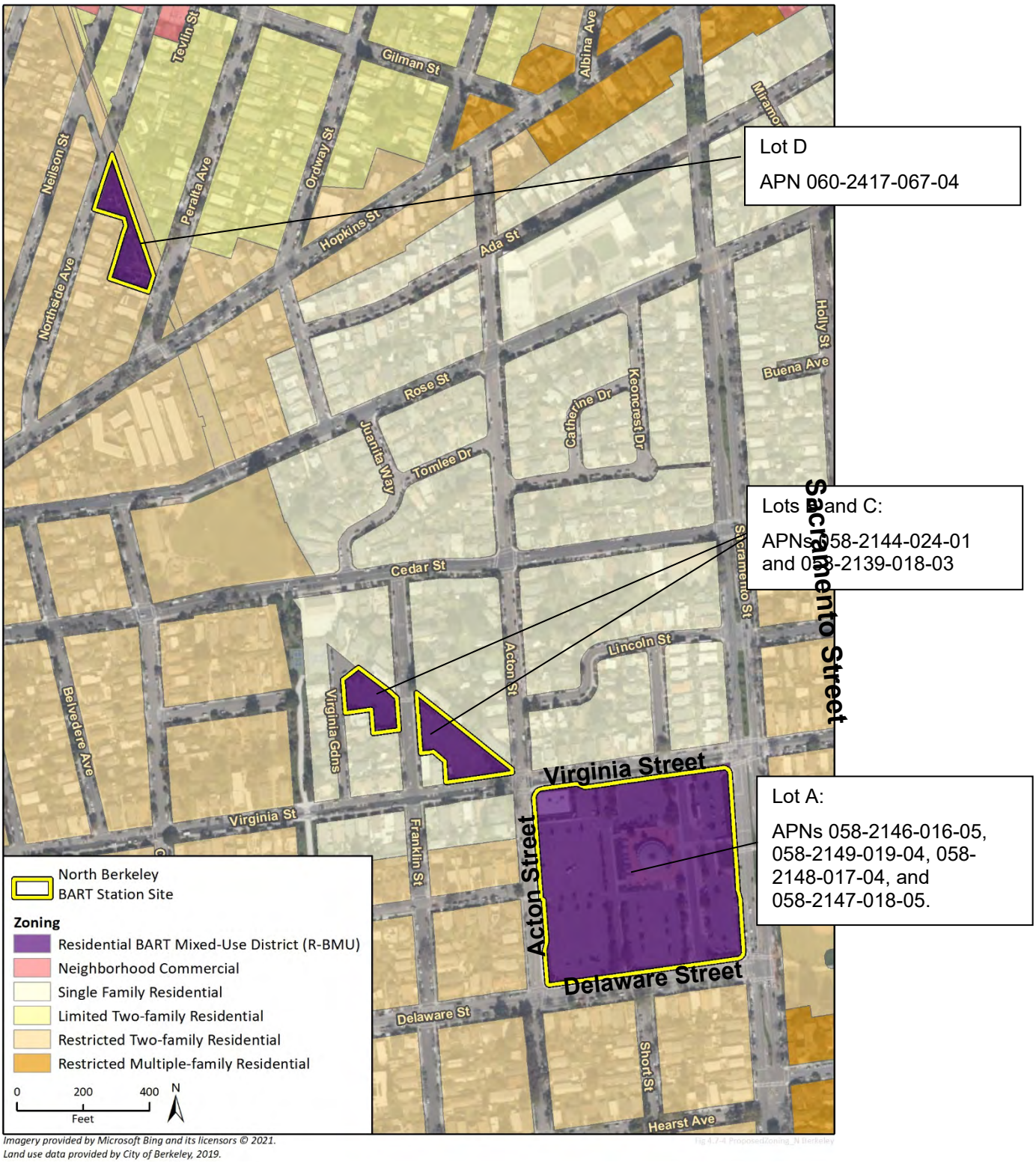
Exhibit A: Proposed Zoning Maps

1. Ashby BART Site: Residential – BART Mixed Use



Ordinance No. 7,815-N.S.

2. North Berkeley BART Site: Residential – BART Mixed Use



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Land use data provided by City of Berkeley, 2019.

Ordinance No. 7,815-N.S.

Communications

From: Mark Rhoades <mark@rhoadesplanninggroup.com>
Sent: Friday, June 3, 2022 9:42 PM
To: Wu, Grace <GWu@cityofberkeley.info>; Covello, Zoe <ZCovello@cityofberkeley.info>
Cc: Pearson, Alene <apearson@cityofberkeley.info>
Subject: Housing Sites Inventory Comment Letter

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

Grace,

Thank you for all of the hard work that you are doing with respect to the housing policy development the department is currently engaged in. The housing presentation that was done at Council a couple of months ago was outstanding.

Attached is our comment letter relevant to the draft Housing Sites Inventory that has been presented to the community so far. This letter is a collaborative letter prepared by my office including Mia Perkins, Geneva Hesner, and Jean Eisberg. We believe that the City must rethink the approach to the sites inventory, or HCD will reject the Housing Element. Housing Elements from all over Southern California are currently being rejected – and including in part for the reasons stated in our letter.

We would be happy to discuss this with you at your request.

Best Regards,

Mark Rhoades, AICP
Rhoades Planning Group

RhoadesPlanningGroup

June 3, 2022

Grace Wu, Senior Planner
Planning and Development Department
City of Berkeley
1947 Center Street, Second Floor
Berkeley, CA 94704

Subject: *The City of Berkeley Housing Element will be rejected by California's Department of Housing and Community Development because the Housing Sites Inventory fails to acknowledge the Affirmatively Furthering Fair Housing component of California Housing Element law, which will require an equity lens be placed on portions of the City underserved by the list of sites – such as the Elmwood, North Shattuck, and Upper Solano.*

Dear Ms. Pearson,

This letter responds to the Draft Sites Inventory for the 6th Cycle Berkeley Housing Element, presented to the Planning Commission on May 4, 2022. We at Rhoades Planning Group have evaluated the methodology and the result of the Housing Sites Inventory and have determined it to be deeply flawed.

The Housing Sites Inventory is a fundamentally important and required component of the Housing Element. The Housing Sites Inventory demonstrates how a city may meet its housing production goals based on the methodology that is being used – which is a choice. In addition, if a site is on the Housing Sites Inventory for more than one cycle, and development is proposed in a subsequent cycle, that housing development project must receive ministerial application processing. So, the sites list is also important from a process perspective.

The presentation of the Housing Sites Inventory to the Planning Commission has made it clear that Berkeley has neither chosen to use an equity lens in the preparation of the Housing Sites Inventory, nor has it considered the Affirmatively Furthering Fair Housing (AFFH) component of the new Housing Element requirements. If the AFFH is used, a zoning equity lens will have to be considered (such as the standards for the C-1 or the C-W zoning districts as the bases of development) to identify potential housing sites in these very high resourced areas. Many additional sites in the Elmwood, North Shattuck, and Upper Solano will be identified. The staff's choice in using a ratio between site improvement and land valuation is a dated methodology that only exacerbates the institutionalized racism that still has a heavy presence ant throughout the City's zoning development standards. The ratio of land and building valuation is not a required methodology for Housing Elements.

The draft Housing Sites Inventory perpetuates Berkeley's still-too prevalent inequitable land use policies by using a methodology that weights data to produce sites that appear primarily in central, south, or west Berkeley. Very few sites exist in the City's northern or southeastern areas. And they won't show up in those locations without thorough adherence to the AFFH principles and a zoning equity lens. The Upper Solano, North Shattuck, and College/Elmwood commercial districts have high quality transit access and surrounded by the highest resources in the City. There are no valid reasons why these neighborhoods should continue to be shielded from otherwise feasible development.

Draft Sites Inventory Does Not Meet Fair Housing Requirements

State Housing Element Law has changed since the 5th Cycle Housing Element was prepared, but the draft sites inventory does not reflect or respond to these changes. Specifically, the draft sites inventory does not meet State statutory requirements with respect to AFFH. As a result, the Department of Housing & Community Development will reject the inventory and will not certify the Element without substantial changes.

Pursuant to AB 686, for the City's 6th Cycle Housing Element 1, 2021, sites must be identified throughout the community in a manner that affirmatively furthers fair housing opportunities (**emphasis** added):

> "Affirmatively furthering fair housing" means **taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities** free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, **address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity**, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a public agency's activities and programs relating to housing and community development." [1]

HCD requires that sites identified to accommodate the lower income RHNA must be distributed throughout the community in a manner that affirmatively furthers fair housing.[2] HCD's recommended methods to do this are detailed below.

Sites Inventory Methodology is Insufficient.

The methodology that the City has chosen to determine potential opportunity sites does not follow HCD's guidelines. The City's methods are based on existing physical conditions, such as minimum density, age of structure, and assessed value/land value. However, HCD now requires that jurisdictions look locational advantages, quality of schools, job, and transit access, and metrics for "high opportunity neighborhoods." Below is an excerpt from HCD's guidance for building a sites inventory (**emphasis** added):

> "Other characteristics to consider when evaluating the appropriateness of sites include **physical features** (e.g., size and shape of the site, improvements currently on the site, slope instability or erosion, or environmental and pollution considerations), **location** (e.g., proximity to and access to infrastructure, transit, job centers, and public or community services), **competitiveness for**

[1] Government Code 8899.50(a)(1)

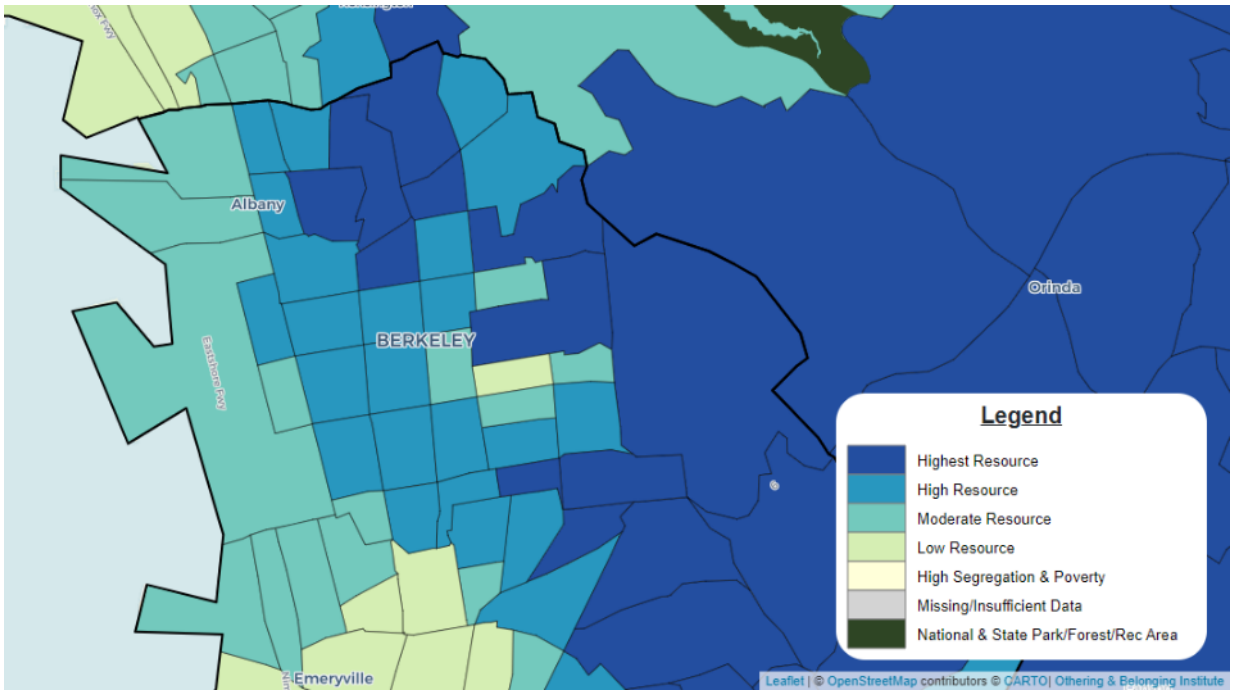
[2] It is not just Berkeley that is struggling with these new requirements. The Association of Bay Area Governments has issued a summary of lessons learned from Southern California and Sacramento County, which are ahead of the Bay Area in the 6th Cycle updates. 94% of submittal Housing Elements (33 comment letters/jurisdictions) were insufficient with respect to AFFH, including failing to connect findings from the AFFH analysis with specific site inventory strategies. (Association of Bay Area Governments, "Summary of Housing Element Review Letters" April 26, 2022. https://citiesassociation.org/documents/summary-of-housing-element-review-letters/)

affordable housing funding (e.g., Low Income Housing Tax Credit scoring criteria), and **likelihood or interest in development due to access to opportunities such as jobs and high performing schools**. When determining sites to include in the inventory to meet the lower income housing need, HCD recommends that a local government **first identify development potential in high opportunity neighborhoods**. This will assist the local government in meeting its requirements to affirmatively further fair housing and ensure developments are more competitive for development financing." [3]

HCD references the following source to determine high resource opportunity areas, as shown in Figure 1. In Berkeley, the lowest resource area is on the Southside, primarily occupied by students with lower incomes. Moderate resource areas are clustered in West Berkeley, Downtown and around UC Berkeley campus. High resource areas compose much of central Berkeley. This mapping shows the highest resource areas in the northern portion of the City, in the hills to the east, and in the Claremont neighborhood. These are areas that SHOULD be looked to for housing opportunity sites.

Importantly, the draft Sites Inventory map appears inverse to this High Resource map. The Sites Inventory clusters around San Pablo Ave., University Ave., and Shattuck Ave., extending primarily through Moderate to High Resource areas. It lacks a significant number of sites within the Highest Resource areas that have access to high quality transit, jobs, and services, such as Solano Ave., North Shattuck, Telegraph Ave., and College Ave.

Figure 1: High Opportunity Map

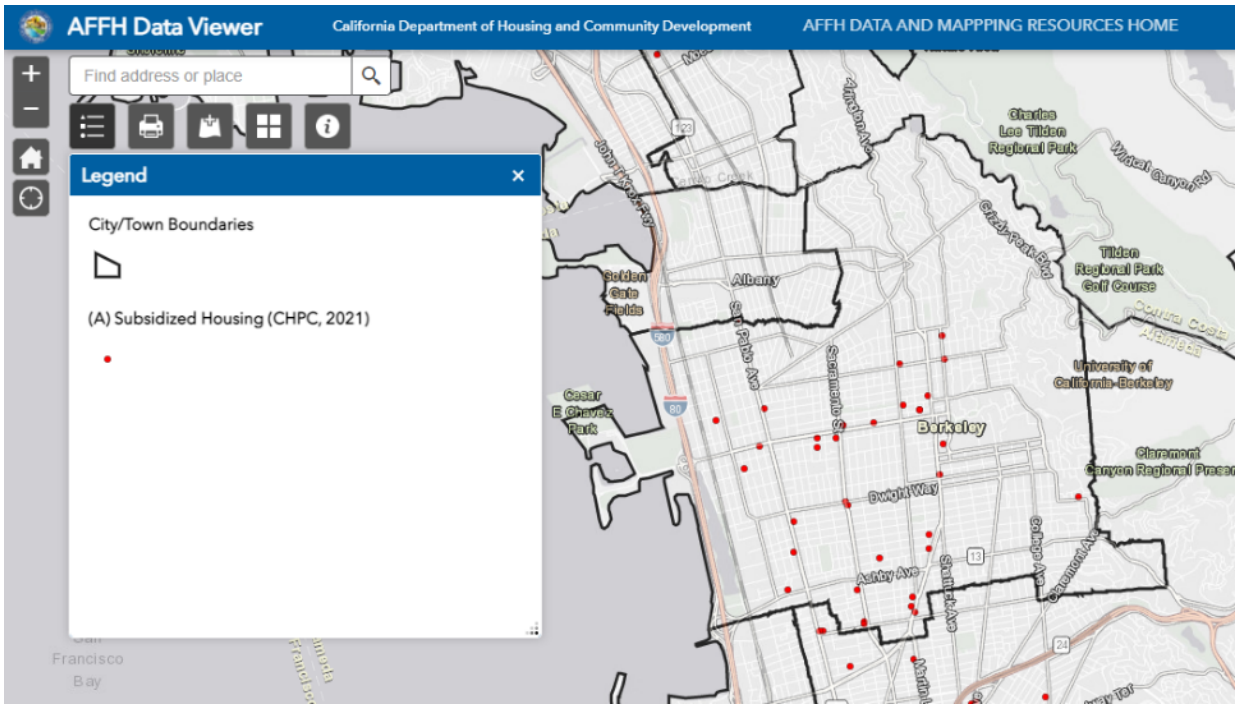


[3] Department of Housing & Community Development (HCD). "Memorandum to Planning Directors and Interested Parties. Housing Element Site Inventory Guidebook" June 10, 2020: 3. https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/sites_inventory_memo_final06102020.pdf

Source: 2022 TCAC/HCD Opportunity Map of High Resource Places
https://www.treasurer.ca.gov/ctcac/opportunity.asp

Similarly, HCD provides other useful data sources to help jurisdictions identify inequities and analyze ways to further fair housing. For example, Figure 2 shows the locations of subsidized housing in Berkeley, which cluster in central and south Berkeley and are significantly fewer or lacking in North Berkeley.

Figure 2: AFFH Data Viewer & Subsidized Housing Map

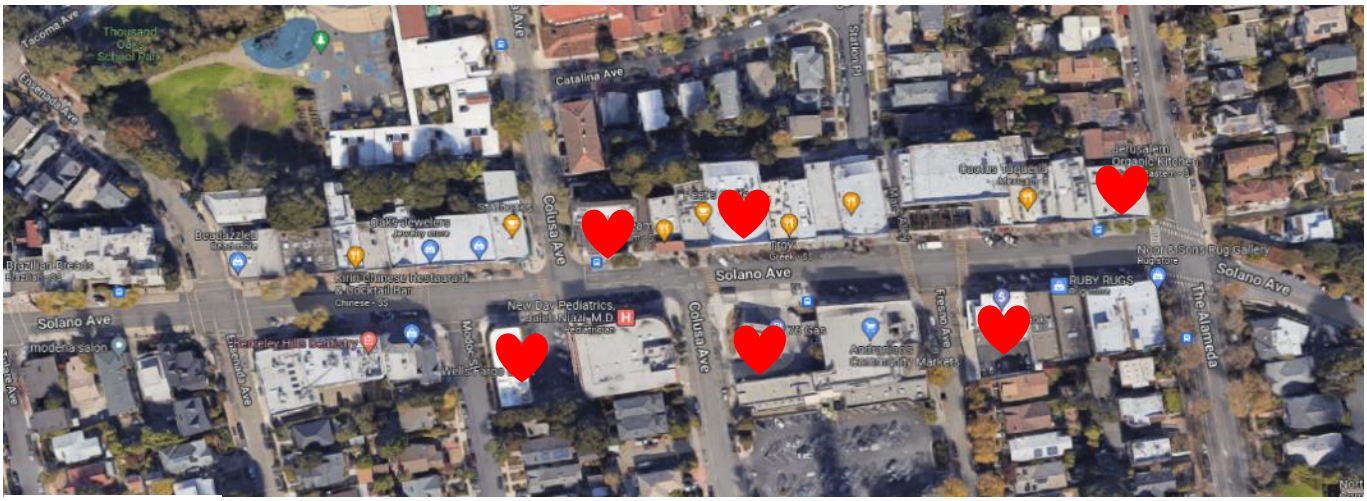


Source: California Department of Housing and Community Development, Affirmatively Furthering Fair Housing Data Viewer
https://affh-data-resources-cahcd.hub.arcgis.com/

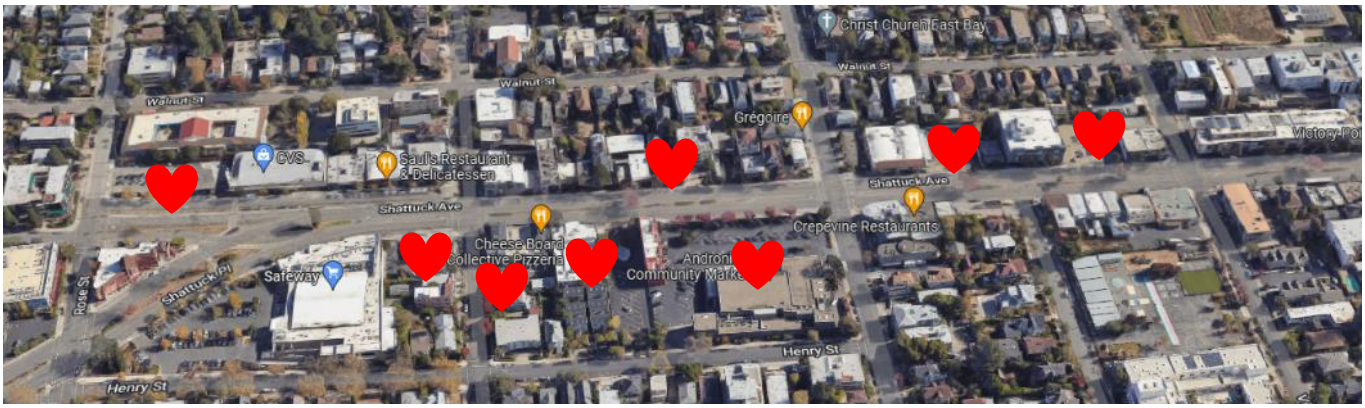
HCD Guidelines highlight best practices for selecting sites to accommodate the lower income RHNA. These factors include access to transit, amenities, such as parks, services, health care, and grocery stores.[4] Solano Ave., North Shattuck, Telegraph Ave., and College Ave. enjoy these elements, yet they are not reflected on the Sites Inventory. In some cases, the current zoning densities (i.e., on Solano Ave.) are insufficient to support development of lower income housing. Based on AFFH requirements, rezoning of sites to higher densities may be required. Figure 3 highlights some sites (shown as red hearts) that could be easily considered as opportunity sites were an equity lens applied that included development assumptions as they exist for the City's other commercial/mixed use zones.

[4] HCD, 2020: 9.

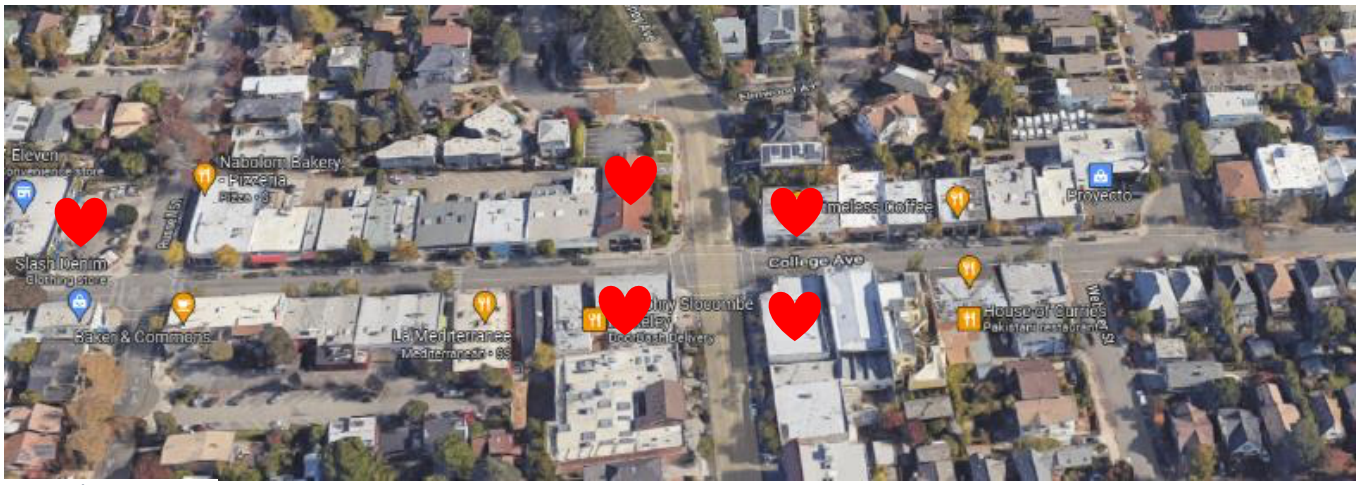
Figure 3: Opportunity Sites, for Consideration – Upper Solano, North Shattuck, Elmwood



Upper Solano



North Shattuck



College/Elmwood

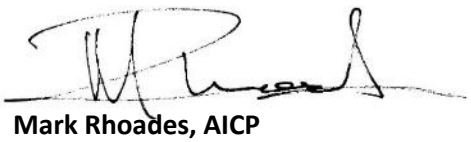
Sites on the Inventory May be More Likely to Develop

A Housing Element is not just an exercise to get through. It is a required element of a City's General Plan and represents a road map for housing policy and programs, as well as anticipated locations for new housing development at all income levels. Since the 5th Cycle Housing Element was prepared, the State legislature has layered more requirements and incentives into Housing Element law to ensure that sites listed in the inventory are truly developable sites, at the income levels stated.

A notable example is that new in this 6th Cycle, if a site was listed in the prior Housing Element Sites Inventory, the City is obligated to rezone the site to allow residential use by right (i.e., ministerially) at specific densities if at least 20% of the units are affordable to lower income households. This is a substantial advantage for a project sponsor to reduce the risk inherent in a discretionary public review process, and may provide a real incentive for a property owner to develop. However, if the City continues to identify sites within only a portion of the city, development may continue to be concentrated in these locations, accordingly.

Thank you for your consideration of this critically important issue. It is an important step in Berkeley's efforts to address the City's institutionalized racism as it continues to be expressed in Berkeley's zoning and General Plan policies. This letter also is not exhaustive of the various aspects of the AFFH process the staff must conduct for the Housing Element. It is in all of our interests to draft a Housing Element that will be approved by California HCD. If you have any questions, please do not hesitate to contact us at 510.545.4341, or at mark@rhoadesplanninggroup.com.

Sincerely,



Mark Rhoades, AICP
President/CEO, Rhoades Planning Group
Housing Policy Project Co-Chair, California Planning Roundtable

CC:

Planning Commission

Alene Pearson, Deputy Director of Planning and Development

City of Berkeley Planning Commission

Communications

From: Sean Golden <spgolden@gmail.com>
Sent: Tuesday, June 7, 2022 4:12 PM
To: Pearson, Alene <apearson@cityofberkeley.info>
Subject: Housing Element Inventory Review

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

Alene:

I'm writing to you as a citizen of Berkeley living near Ashby and Claremont Ave in regards to the work the Planning Commission is doing on the Housing Element review.

In my neighborhood, there are two underutilized gas stations at 3009 Ashby Ave, Berkeley, CA 94705 and 2935 Claremont Ave, Berkeley, CA 94705. These would be excellent sites for dense multi-family housing. Instead of maintaining barren parking lots that only worsen the effects of climate change, we should zone this area for more vibrant multi-family homes near bus thoroughfares and mixed-use commercial areas.

I would appreciate it if you could share these comments with the other commissioners.

Thank you for your service and I look forward to a denser and more environmentally friendly Berkeley.

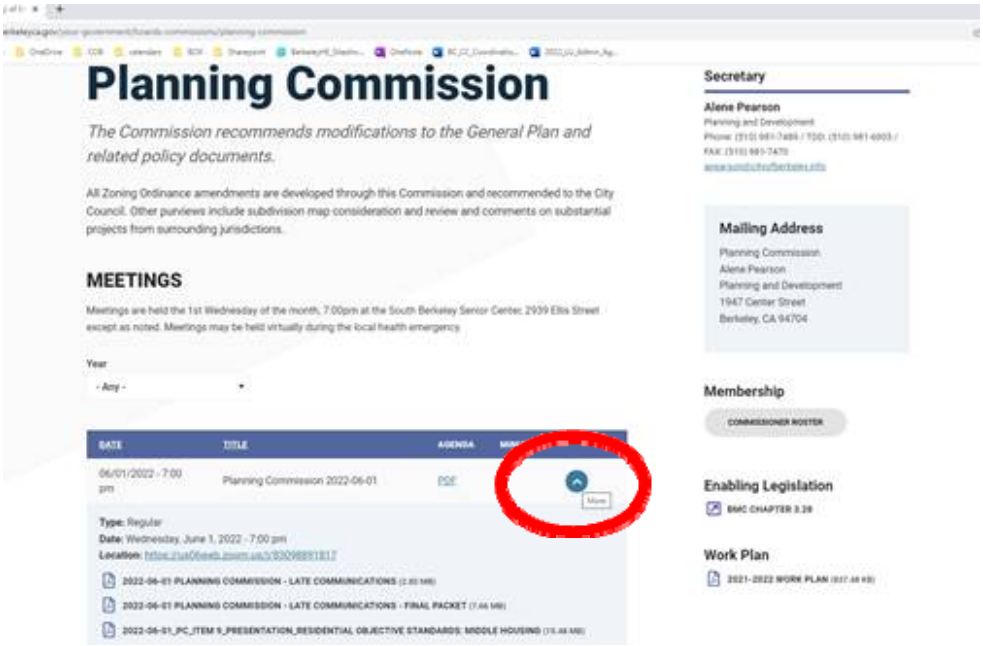
Sean Golden

Communications

From: Pearson, Alene
Sent: Wednesday, June 8, 2022 9:03 AM
To: Covello, Zoe
Cc: Wu, Grace
Subject: Follow-up to June 1 PC Meeting

Dear Commissioners.
Thanks for your discussion of and valuable feedback on Residential Objective Standards for middle housing at the June 1 Planning Commission meeting.
As Chair Mikiten stated at the meeting, staff would appreciate any additional comments you have in writing while the material is fresh in your minds!
Please send comments to Grace Wu (gwu@cityofberkeley.info). All emails will be added to the public record as Communications in the July 6th Planning Commission packet.
If you would like to review the zoom recording of the meeting, you can access it here:
https://cityofberkeley.box.com/v/20220601-PC-ObjStandards
The staff report and a PDF of the presentation can be found on the Planning Commission webpage:
https://berkeleyca.gov/your-government/boards-commissions/planning-commission

On the new website, you need to click the down/up arrow to expand/compress the selection of meeting files:



Thanks again!
Alene

Communications

From: Pearson, Alene
Sent: Tuesday, June 14, 2022 4:03 PM
To: Covello, Zoe
Subject: City of Berkeley Draft Housing Element Update

Dear Planning Commissioners,
The public draft of Berkeley's Housing Element Update was released today! See the announcement below. The comment period will be open for 30 days. Please review, comment and share with your networks!
Thanks,
Alene

Alene Pearson, AICP
Secretary to the Planning Commission
Deputy Director, Planning and Development Department
City of Berkeley
apearson@cityofberkeley.info
510-981-7489

June 13, 2022

View this message as a webpage

Finding Solutions to Berkeley Housing Choices

Housing Element Update

Provide comments on the City of Berkeley's draft Housing Element!

The draft Housing Element Update, sites inventory map, and appendices are now available at https://cityofberkeley.info/HousingElement for review.

Berkeley Housing Element 2023-2031

To provide specific feedback or download a PDF copy, please use the drop down menu to select each section and click anywhere in the document to add a comment.

- Berkeley Housing Element Public Draft
- Sites Inventory Map
- Appendix A. Publicly Assisted Housing
- Appendix B. Development Standards
- Appendix C. Sites Inventory
- Appendix D. Review of 5th Cycle
- Appendix E. Affirmatively Furthering Fair Housing (AFFH)
- Appendix F. Outreach and Engagement

For general feedback on the Housing Element Update: https://bit.ly/HEUGeneralFeedback.

The Housing Element Update will serve as the City of Berkeley's housing plan for the next 8 years (2023-2031). It is an important opportunity for Berkeley's residents and stakeholders to come together on assessing

housing needs, identifying policy and resource priorities, and finding solutions to implement a wide range of housing choices.

Save the Date! Public Workshop #3

On **Wednesday, June 29, from 6-8pm** the City will be hosting the third public workshop for the Housing Element, which will be an opportunity to provide feedback on the public draft of the Housing Element Update. Please join us!

- **Zoom registration link:** https://bit.ly/HEUWorkshop3

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Communications

From: Alex Sharenko <alexsharenko@gmail.com>
Sent: Tuesday, June 21, 2022 8:00 AM
To: Pearson, Alene <apearson@cityofberkeley.info>
Subject: missing middle zoning changes

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

Dear Staff and Commissioners,

I wanted to thank you all for the thoughtful work you've done on the missing middle zoning changes. I believe these are important changes that will make Berkeley a better city, and I believe you've gotten most of the important decisions correct.

I am, however, very concerned about the proposed front and rear setbacks. As I understand it, proposed rear setbacks will be a minuscule 4 feet and most front setbacks will be an expansive 20 ft (with denser zones reduced to 15 feet). I think this prioritization of creating front yard space while not explicitly carving out backyard space for privacy and building separation is the exact opposite approach we should be taking.

Front yard space is very underutilized and provides no privacy or separation from neighboring buildings. It is essentially wasted space. Such large front setbacks are also out of character with much of my neighborhood in West Berkeley where front setbacks of less than 10 feet are extremely common.

4 feet rear setbacks, however, are much too small as this will result in the elimination of backyard outdoor space and importantly result in legitimate light and privacy conflicts between neighbors that count on backyard space as a buffer between dwelling units in our neighborhoods. I believe 4 ft rear setbacks were chosen to harmonize Berkeley zoning with SB 9, but this is a somewhat arbitrary goal. SB 9 projects should be special cases and hopefully this option will not be used often given the proposed missing middle zoning changes you have crafted will likely be more desirable than SB 9 in many cases. Zoning should be written with the goal of maximizing housing production and quality of life, but as written the front/rear setbacks prioritize the creation of large front yards and harmonization with an obscure state law instead of prioritizing building separation (between buildings on neighboring lots), private outdoor space and access to light.

I implore you to reduce the front setbacks to 10 ft to reduce the amount of mandated wasted space built into the zoning code and to increase rear setbacks to at least 15 feet in all cases. I think these changes are necessary to ensure these zoning changes 1) produce the new housing our city needs and 2) maintain the privacy and access to light and air that residents in our neighborhoods expect. I firmly believe these are compatible goals, with careful zoning decisions we can absolutely create new housing while maintaining appreciable privacy and access to light. And in this case, the way to do this is to reduce front setbacks to 10 ft and increase rear setbacks to 15 feet.

Thank you,
Alex