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## **SUPPLEMENTAL AGENDA MATERIAL**

Comments and Questions for the 3/1/2021 Special Meeting of the Berkeley City Council's Land Use, Housing and Economic Development Committee:  
Quadplex/Inclusive Neighborhood Scale Zoning proposal

Meeting Date: March 1, 2021  
Item Number: 2  
Submitted By: Councilmember Sophie Hahn

Preliminary comments and questions on the Quadplex Housing/Neighborhood Scale Item



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March 1, 2021

To: Members of the Land Use, Housing and Economic Development Committee  
From: Councilmember Sophie Hahn  
Subject: Comments and Questions for the 3/1/2021 Special Meeting of the Berkeley City Council's Land Use, Housing and Economic Development Committee: Quadplex/Inclusive Neighborhood Scale Zoning proposal

By way of introduction to this submittal of questions to the Land Use, Housing and Economic Development Committee, the following excerpts from my public comments at the 2/23/2021 Council Meeting and from the 2/18/2021 meeting of this Committee, are offered again:

*From the 2/23 Council meeting:*

*I am past the question of whether we should be bringing additional housing into all our neighborhoods, and ready to focus on the more complicated question of how we do that, in terms of both process and substance. As with the Mayor's working group on fair and impartial policing, identifying the goal is the easy part; figuring out how to capture those broad goals in good policy is a much more complex undertaking.*

*On the process side of this initiative, I am committed to sharing information and to meaningful and robust opportunities for public input. I welcome the diverse experiences and opinions of our community, and look forward to gathering their ideas and input, and to answering questions and concerns - with a goal of bringing us together as a City and as a City Council.*

*Our work needs to be shaped - and understood - by people with different backgrounds, life experiences, ages, lifestages, and histories. That's what our own General Plan calls for when we undertake major change, and what other cities like Minneapolis, Portland and Sacramento have done as well. It is, simply, the right thing to do.*

*At the same time, I understand that we have pressure to do this work in time to meet our RHNA planning deadline of January 2023. Making funds available to study this and the Missing Middle concept - and other means to achieve our housing goals - is an important priority for me, and I welcome the opportunity to work with my colleagues to make that happen - quickly.*

*I am also mindful that many of the people who championed the Neighborhood Preservation Ordinance and subsequent General Plans were part of the most progressive generation of leaders our City has ever had. In hindsight, we know their response to the housing crisis of their own time was too blunt of an instrument, with very*

*serious unintended consequences - constraining production of housing and, contrary to their own heartfelt goals, reinforcing de facto segregation in many neighborhoods.*

*As we move forward with our work on items that are already in the pipeline, there are a number of topics I'd like to focus on -- both in substantive policy as well as creating and funding good processes.*

*From the 2/18 Land Use Committee Meeting:*

*Berkeley was the first city in the country to adopt single-family zoning, and it was coupled with laws excluding people of color. The vestiges of that original coupling remain today, enforced not by explicit discriminatory laws but through economic exclusion, which is strongly correlated with race - to much the same effect. Looking at how to bring up to fourplex "Missing Middle" housing into all neighborhoods in Berkeley is one way to undo at least some part of this.*

*One of the things I like best about [the whole Missing Middle concept](#) - and I want to shout out to Berkeley's own Karen and Daniel Parolek of Opticos for their extensive work to articulate and develop this concept - is that the addition of Missing Middle housing to existing residential neighborhoods is likely to avoid the kind of backlash that we saw in Berkeley in the 1970s, when buildings out of scale with existing residential neighborhoods were slotted in, and provoked a reaction that clearly went too far.*

*I wish the Paroleks had been there to offer their concept as an alternative, because I think Missing Middle strikes an excellent balance; providing greater density while still retaining and respecting the feel of a residential neighborhood, which many people of all economic levels and backgrounds value.*

*The Paroleks have added material [to their websites](#) to emphasize this point, stating that the central idea of Missing Middle is housing "compatible in form and scale with detached, single-family houses. . . Low-rise buildings, with front porches or stoops, front or rear or shared yards, and generally more light, air and open space." And I agree. That's why I was enthusiastic about the vision when they first shared it with me several years ago, and why I continue to support bringing the Missing Middle vision to all Berkeley neighborhoods - something the whole Council endorsed when we voted yes on the Missing Middle item before us in 2019.*

*I'm a little confused about how this [Quad/Neighborhood Scale] item fits in with our previous referrals on Missing Middle, and have a number of other questions I would like to ask. I was not involved with the item's creation, so appreciate your patience as I try to better understand. In addition to a number of questions for the authors and for planning staff, I have comments and suggestions that I hope will help move the process forward.*

*I want to be very clear that I am well beyond the question of whether Missing Middle is a good idea - it is, and I am in full support of bringing it forward to the community. But we're here to get the details right of an actual policy, and that's always more complicated than grasping and supporting a general concept. I hope we can take the time to do this thoughtfully and with transparency.*

With my personal frame on these related items in mind, this set of preliminary questions on the Quadplex Housing/Neighborhood Scale Item is being submitted on behalf of both myself and

the many community members who have reached out to me over the past weeks with questions and concerns.

They reflect my own initial review of the originally submitted item, amendments offered by the Author on Thursday afternoon (2/25/2021), the Resolution passed at the Tuesday, February 23, 2021 Council meeting, and the April 23, 2019 Missing Middle Item, as well as many (many) questions received from stakeholders and constituents (combined/consolidated/restated).

Additional questions may be generated, and comments/suggestions will be offered at our Committee meetings, in light of responses. Because of significant questions and confusion about the Quad/Neighborhood Scale item, it is hoped that running through these will provide answers and clarity that the community is looking for, and a better basis from which to make decisions about elements of the proposed item.

**Questions regarding the substance of the Quad/Neighborhood Scale Item:**

1. The original item was *to allow By Right approvals* of all projects of 1, 2, 3 or 4 units citywide, wherever located, but did not include any element to expand the areas where 2, 3 or 4 units might be allowed. The criteria listed were thus criteria for getting a By-Right permit, not for expanding the zones/areas where “up to four units” would be allowed.
  - a. The item has now been amended to include a second and distinct concept - to extend the zones in Berkeley where up to a total of 4 units are allowed - upzoning R1, R1A, H-Overlay and possibly R2 (not clarified in the amendments-clarification would be helpful). Given how different these two concepts are, might it not provide more clarity for the second element to be brought forward as a stand-alone item?
  - b. Alternatively, could the item be reorganized to clarify what concepts relate to the question of projects that would be eligible for ministerial approval vs. concepts that relate to the expansion of up to 4 units into additional/R1/R1A/H Overlay zones?
2. The first paragraph of the item now appears to be a stand-alone referral to allow quads in all zones. It also states that it is “subject to the requirements below,” but it’s not clear which of the “below” concepts are referred to.
3. The next paragraph is about By Right/ministerial approval of all projects in the City at 1, 2, 3 and 4 units. It says the By Right approval would be limited to a proposed housing development that meets certain criteria - and then includes 4 bullet points, which go primarily to rent control/protection of renters, as well as historic resources. Are these the only considerations being proposed for exemption from By Right approvals processes citywide? Projects with no affordability elements, that exceed objective building standards, etc. would all be permitted By Right?
4. The next section of the item has a lead-in sentence about “Additional anti-displacement, affordability and design considerations.”
  - a. Are these additional considerations to be applied to the exemption from By Right approvals, or are they considerations for the discussion of expanding up-to-fourplexes into additional neighborhoods - or do these additional considerations refer back to both concepts?

5. It would be very helpful to clarify for the discussion how units are being counted for purposes of each element of the item - by right approvals and expansion of up-to fourplexes in all zones. Currently, there are no parcels in Berkeley (and all of California) that are zoned for only one residential unit, because all single-family-zoned parcels can add up to 2 ADUs (=3). This creates some confusion in the discussion.
  
6. Is it the intent of this item to count ADUs as “units” within a Quad (if we were to go up to Quads in zones that currently do not allow for more than 1 main unit + 2 ADUs, or for purposes of ministerial approval) or for the Quad concept to be *in addition* to the two ADUs currently allowed? And what if more than two ADUs are allowed on a parcel by action of the State or City - how are the authors proposing will we “count to four” - or are we counting “higher”? How would “bonus” units work? See below for a few ways the “Quad” concept might play out.
  - a. Option 1 - ADUs count as units towards the Quad concept:
    - 2 Regular Units (duplex) + 2 ADUs = 4 Units/Quad
    - 3 Regular Units (triplex) + 1 ADU = 4 Units/Quad
    - [Etc.]
    - Any “bonus” units would likely bring things to *5-6 units total*, of all kinds
  - b. Option 2 - ADUs do NOT count as units towards the Quad concept:
    - 4 Regular Units + 2 ADUs = 6 Units
    - Any “bonus” units would bring the total to *7-8 units*, of all kinds
  
7. The element of exploring expanding zones where up-to fourplexes might be allowed is covered by the Missing Middle item, unanimously passed in March of 2019. Why does this item, based on the most recent amendments, propose to largely “redo” the Missing Middle item? Would the authors consider simply prioritizing the Missing Middle item’s study for funding?
  
8. The 2019 “Missing Middle” item referred to the Opticos Missing Middle concept. This item, originally titled “Quadplex Zoning,” and now called “Inclusive Neighborhood Scale Zoning,” seems less tied to the Opticos model. Is the model being put forward at this time the same Opticos-centered model, or something different? If it’s the same, could we make that more explicit in the Neighborhood Scale item? If not, in what ways is this vision different?
  
9. Is the change in title from “Quad” to “Neighborhood Scale” because *more* than 4 units are being proposed/considered for ministerial approval and for expansion into additional areas/zones?
  
10. The Missing Middle item included a number of provisions (14, with sub-elements), not all of which are addressed in the Neighborhood Scale item. What is the plan for how these two items will fit together (plus the recently passed Resolution Declaring Intent to Allow Multi-Family), given that all cover very similar concepts, but they don’t bring forward the same considerations and/or bring them in the same manner? Clarification on this point would be helpful, given that it’s likely the same staff and/or consultants will be asked to address the referrals simultaneously, and the public is also confused. Or is the intent for the Neighborhood Scale item to supersede the Missing Middle referral?
  - a. **From Supplemental #3 April 23, 2019**  
[Missing Middle Supp 3 as presented to Council](#)

b. **Final amendments, as adopted, from annotated agenda for April 23,2019**  
[Missing Middle As adopted \(showing all amendments that were added/accepted\)](#)

11. The Resolution passed by Council last Tuesday also refers to a number of concepts that are not reflected/not fully articulated in the Neighborhood Scale item. What is the intended relationship between the Resolution and the Neighborhood Scale item? Representations were made that the Resolution was a broad statement of intent, and details would be worked out in the context of the companion Quad/Neighborhood Scale item. Could the concepts of the Resolution be incorporated into the Neighborhood-Scale item?
- a. Tenant controls are reflected in the current item, but may need some strengthening to match the Resolution.
  - b. Allowing for a “greater mix of . . . income levels in more Berkeley Neighborhoods” and reducing “real housing cost-burdens for low- and middle-income households” are mentioned in the Resolution, but other than exploring traditional affordability requirements, these concepts are not addressed in the current item. Could these concepts be more fully articulated?
  - c. Demolition being disfavored for environmental reasons, in addition to rent control considerations, is addressed in the Resolution. The Resolution also provides that “methods such as division, contextual addition, and adaptive reuse” be considered “over demolition.” Can these important concepts - of addressing the environmental costs of embodied energy in buildings, which is part of the referred Berkeley [Deep Green Building Initiative](#), passed by Council in March of 2017, and disfavoring of demolition in favor of division, contextual addition and adaptive reuse - be articulated in this item?
  - d. With respect to historic resources, the Resolution refers to “federal, state and local standards.” The current item refers to a more limited set of historic resources (does not include federally recognized districts or sites, for example). Can the current proposal be amended to track the Resolution?
  - e. Public safety, “in particular in the face of earthquakes, fires, and sea level rise” is noted as being of critical importance in the Resolution, and the City Council resolves to “take into account the public safety in all parts of Berkeley.” Could public safety be more fully incorporated into the current item?
  - f. The concept of guarding against predatory and speculative purchasing practices and incorporating anti-displacement measures are included in the Resolution. Can these be more fully incorporated into the current item?
12. At what number of units does CA’s density bonus come into effect, assuming the correct number/percent of units at the appropriate affordability levels are included in the project? Are ADUs and JADUs counted as “units”? If the State density bonus applies to a small scale project, and bonus units are granted, how many additional units might be allowed for projects with two-to-eight (regular “plus” or “not+” accessory) “base” units ? Could development standards such as height be exceeded?
13. The original version of this item only addressed the question of whether up-to-Quads, *in locations where they are already allowed*, would be allowed “By Right” via “ministerial” approvals. The item was subsequently amended to also expand up-to-Quads to Zones where they currently are not allowed, and to also allow those By Right. This brings up a new

set of questions.

- a. Contrary to common mis-understanding, Berkeley's Zones - R1, R1A, R2, R3, R4, R5, etc. do not correspond with the number of UNITS allowed in each zone, but rather were just a numbering system for the zones. Can the zones in which upzoning is being considered be clarified in the item? Which Berkeley zones do the authors consider to not allow "up to" Quads at this time?
    - R1 currently allows three units - 1 main unit + 2 ADUs = 1 or 3? See 23D.16
    - R1A currently allows four units - 2 main units + 2 ADUs = 2 or 4? See 23D.20
    - R2 currently allows for "Single-family, Duplex, or Multi-family, subject to R-2 Standards." Is this zone contemplated for upzoning as well?
    - Areas of zones that are within the H overlay (23E.96) have special considerations in the zoning code because of steep terrain. How does the Neighborhood Scale item provide for consideration of the challenges presented by parcels/developments in the H-overlay?
  - b. What kinds of development standards are being contemplated for up-to-Quads in R-1/R-1A and H-Overlay? Minneapolis and other cities appear to be keeping the existing or similar development standards - lot size, lot coverage, height, setbacks, etc., which reinforce the "residential" vs. fully-urbanized vision of the Missing Middle concept. Is the proposal for Berkeley's low-density zones to keep their current development standards, or for them to be rezoned to R2 standards - or something else?
14. Regarding the expansion of "up to" four units in traditional low density zones - in Minneapolis, "up to" Quads were studied, but ultimately what was adopted only allows up-to-Triplexes. Does this Neighborhood Scale referral assume that quads will be allowed everywhere, or is the referral to "look at" whether to allow 2, 3 or 4 units in various R1, H-Overlay and R1A areas (and/or others), with flexibility for the planning process to determine whether 2, 3 or 4 Units will ultimately be allowed in one or another zone/overlay? This also dovetails with the question about how units will be counted.
15. Apparently in Minneapolis triplexes may have been preferred over quads because of considerations related to ADA requirements. Is there any information available on this question, and can the question (if the triplex/ADA nexus is in fact a consideration) be addressed by any study that will likely accompany zoning changes contemplated by this item?
16. Other cities have brought in/considered a variety of standards for their upzoning of traditional Single Family zones. For example, only applying the new unit maximum to undeveloped parcels, or having different unit maximums for conversions/additions on already-developed parcels vs. undeveloped parcels, corner vs. mid-block parcels, smaller vs. larger parcels, etc. Are those concepts on the table for the R1/R1A and H-Overlay upzoning being proposed, or does this referral assume/require the planning process to allow actual Quads (however that is defined) on all parcels?
17. Is the By-Right concept only intended for projects that are also Housing Accountability Act compliant, or also for projects that would not be eligible for approval under the HAA?

18. What is the reason By-Right approvals are being proposed for projects up to quads? Is the idea that all projects, 1, 2, 3 and 4 units, would be granted by-right approvals citywide, and only larger projects would follow current permitting processes, or is it just conversions to higher densities that would get by-right approvals?
19. With regard to this item's potential to help support achieving new RHNA goals, how many new units are projected to be produced through the Upzoning elements of the item? How many new units are the By-Right zoning provisions expected to produce/facilitate, beyond what could be permitted via the current permitting process?
20. The H overlay area, which is about building on slopes/steep slopes, corresponds with Berkeley fire zones 2 and 3 ([Map of Berkeley Fire Zones](#)) which require adhering to enhanced building code requirements ([COB webpage on Fire Zones](#)), among other fire, evacuation and other public safety considerations. These zones largely correspond with the Cal Fire high fire wildfire danger areas (not an exact match - zone 2 is a little larger than Cal Fire's borders).
  - a. Why does the latest version of this proposal remove all consideration of fire zone 2, both with respect to consideration of expanding areas where up-to-fourplexes might be considered, and with respect to areas where By Right would be allowed for projects with 1, 2, 3 and 4 units?
  - b. Why was the Cal Fire designation chosen for inclusion in the initial version, rather than Berkeley's own fire zone designations, and why has all reference to fire safety now been removed, except for in relation to the ES-R/Fire Zone 3?
21. For Staff: In general, what considerations is the City required to take into account, either based on State, County or local mandates, when planning for housing within various high risk wildfire areas?
22. For the City Attorney: What liability might the City have if it doesn't adequately plan for or take into account the risks of putting higher densities in areas that are at great risk of wildfire? Have cities faced lawsuits related to this after the 1991 Firestorm or other fires?
23. Studies have demonstrated that increasing density slows evacuations. Other than exempting the ES-R/Fire Zone 3 area, how does the Quad/Neighborhood Scale Zoning item propose taking these challenges into account?
24. Affordability is referred to in fairly limited terms; anticipating traditional market-rate affordability mechanisms such as inclusionary housing and/or AH fees. Can the item consider an expanded understanding of how affordability can be brought forward, in the form of cooperative ownership models, potential financing under the City's Small Sites program, incentives to take Section 8 tenants, and other creative ideas for financing and promoting affordability?
25. Under "Additional . . . considerations," notice is required for tenants *except if the project is ministerially approved*. What is the reason for this carve-out, and how does the notice element interact with other proposed elements around preserving rent controlled, or potentially rent controlled, properties?
26. Currently, Berkeley R1 and R1-A do not have FAR requirements. The item refers to Portland "scaling up FAR" as a means to "lightly modify" older structures being divided and suggests



Berkeley look at the same. How would that be applied in Berkeley? Is the idea that changes would be made in other zones that include an FAR development standard? Or that FAR would be introduced in areas where multi-unit is being expanded (R1/R1A/H)?

27. What is the relationship between housing type (attached, detached, etc.) and home ownership, referred to at the last bullet point of the proposal?

**Questions that go to the process envisioned:**

For Staff:

1. What is the process required by State and Berkeley law/ordinances to
  - a. Allow “by right” approvals for projects/project elements that currently require Use Permits/AUPs
  - b. Expand the number of units allowed on parcels in R1, R1-A and H overlay?
2. Are EIRs required for any of these proposed changes? If so, at what stage in the planning process are these studies undertaken?
3. For which of these changes would a General Plan amendment (or other General Plan update) be required, and what is the process for amending/updating the General Plan?
4. Does the City already have a plan and resources set aside to plan for the January 2023 RHNA deadline? What planning processes were anticipated/put in motion that this proposal could be incorporated into? What resources already identified are planned to be used for the RHNA/Housing Element process and deadlines? If none have been identified, what is the plan for obtaining resources?
5. This item suggests regional and state funding might be available to explore the By-Right and expansion of up-to-quads concepts. What funding sources exist, and would they also be appropriate for a broader RHNA/Housing Element planning process? Would applying for funds for one piece of a broader planning process potentially help or hinder other applications the City might wish to make for regional and state planning funds? (In other words, would it be better to apply for funds to cover a broader planning process, or is it better to apply for funds for just the ideas presented in this item, and for other potential proposals, on a one-by-one basis?)
6. Is voter approval required for any changes that might be proposed/anticipated in this proposal, and other proposals related to RHNA that might come forward (for example, if something impacted the voter-approved downtown plan), and if so, would the voters need to act in 2022, moving the deadlines up to early summer 2022 to be able to appear on the November 2022 ballot - or does the RHNA process allow for a question to the voters, if any, to be posed after the Jan 2023 deadline?
7. Can the Missing Middle and Neighborhood-Scale processes be combined?
  - a. The Missing Middle item passed in 2019 requires the following process: Refer to the City Manager to prepare a report to the Council of examining methods, including potential revisions to the zoning code, that may foster a broader range housing types across Berkeley, particularly missing middle housing types (duplexes, triplexes/fourplexes, courtyard apartments, bungalow courts,

townhouses, etc.), in areas with access to essential components of livability like parks, schools, employment, transit, and other services. Given the range of requests included in this referral, it is expected that responding to the referral will require a combination of field research, consultation with design professionals and other cities and agencies, and community outreach and engagement. Council requests that staff initiate this work as soon as possible.

b. The Neighborhood Scale item proposes the following process:

Council directs that staff initiate this work immediately and the Planning Commission incorporate zoning reform into its 2021 and 2022 work plan to institute these changes in anticipation of the Housing Element update. Staff and the commission should examine how other cities have prepared for and implemented missing middle housing in Minneapolis, Portland, and Sacramento and conduct extensive community outreach during the course of this update. In addition, Planning staff is encouraged to seek regional and state funding to support this work.

8. What items on the Planning Commission workplan does this referral anticipate displacing? Currently, the Planning Commission is in the process of creating a new 2021 workplan. The documents related to that work are [here](#) and [here](#).