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SUPPLEMENTAL AGENDA MATERIAL

For the Land Use and Economic Development Policy Committee

Meeting Date: March 1, 2021
Item Number: 1
Submitted by: Vice Mayor Lori Droste

Title: Answers to Councilmember Hahn's questions

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?

The original item said developments may be approved ministerially, provided they meet certain criteria. Ministerial approval was never a mandate but we are asking our staff and the Planning Commission to determine if there would be any circumstances where this might be appropriate.

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.

The referral actually stated that "up to four residential units" should be considered. Design, Affordability/Anti-Displacement, and Public Safety Considerations all apply.

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?

Ministerial approval was proposed as a consideration, but not a mandate. For instance, if a parent wants to alter her home in an area for her children to move into, where that currently is not allowed, that might be a case where ministerial approval is appropriate. It may not. This is what we ask the Planning Commission and staff to consider.

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? 4

Tenant protections, anti-displacement considerations, affordability incentives, and design considerations should all be considered during any zoning revision.

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.

This is a good point and why we added in the form-based codes sections into our amendments. Counting units seems to be confusing for many people.

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

See above.

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?

We don’t consider this a redo because we believe the intent of this item is smaller in scale. Furthermore, the passage of new RHNA numbers requires the city to rezone by the end of 2022. We wanted to ensure there was enough time to engage the public in this process. Every city will be undergoing Housing Element Updates and rezoning.

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?

We have engaged in discussions with urban designers and architects during this process and agree that form-based codes can help address some of the concerns around unit count, building bulk, etc. The vision is very similar to the missing middle study that Council unanimously passed.

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?

We changed the name to “Neighborhood Scale” to reflect our desire to pursue contextual design compatible with neighborhoods and could also address concerns with building scale, height, depth, and width. We felt that nuance was lost when saying “quadplex.” Ministerial approval was not a mandate, only a consideration.

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 MultiFamily), 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 5 b. Final amendments, as adopted, from annotated agenda for April 23, 2019 Missing Middle As adopted (showing all amendments that were added/accepted)

We hope that the amendments which reflect the problem statement that the resolution addressed are clearer now. Due to Brown Act considerations and the Council meeting occurring after the Land Use policy committee, we were unable to submit by the time the agenda was printed. The two items are distinct, however. The resolution states a problem and the zoning revisions are a mechanism where we begin to address this problem.

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? **Yes, we believe they are reflected in the item. Please let us know if you have any additional language suggestions.**

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 6 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 R1/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?

The concerns in #12 and #13 are addressed with the form-based code provision. We want the Planning Commission—with consultation from staff and professionals— to define the building envelope and consider appropriate scale, height, width, and depth. The item also addresses public safety concerns as well.

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, HOverlay 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.

Our original intent was to allow flexibility within the planning process.

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?

This is addressed by the form based code provision. Minneapolis Council President Lisa Bender has communicated with us about our proposal and we intend to consider ADA requirements in any zoning revisions, as required by law.

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 maximum 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?

This is addressed by the form based code provision to apply citywide with public safety and design considerations.

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?

The City Attorney would need to weigh in specifically on HAA projects but we are simply asking our Planning Commission and staff to determine whether there would ever be a time to allow for ministerial approval. This may be the case but it may not.

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?

See above. Ministerial is just a consideration, not a mandate.

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?

Since this is one of the most incremental steps a city can take, it will not address the full ~9,000 units that Berkeley is required to zone. However, we believe that it is not an either/or approach and we need to consider equitable zoning reform across the whole city.

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?

While Councilmember Hahn and Harrison's proposed amendments for the resolution requested only to pursue zoning changes in formerly non-redlined areas (mainly the hills in North and East Berkeley), we felt it was important to state that exclusionary zoning exists in parts outside of North and East Berkeley. While Council included provisions to address fire safety multiple times in the resolution, these actual zoning revisions include specific, objective language to address concerns about fire hazards. We wanted to assure both public safety and equity advocates that we are making evidence-based,

objective decisions instead of broad-brushed subjective decisions based on Council district boundaries.

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?

This question is moot-- the proposed zoning revision guidelines take into account life safety and wild urban interface hazards.

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?

This question is moot-- the proposed zoning revision guidelines take into account life safety and wild urban interface hazards.

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?

Please see our fire safety language in the proposed item. This is an important public safety issue and we agree with transportation planners who have repeatedly indicated that street management is the best way to ensure evacuation of the hills.

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?

We welcome any incentives to be considered.

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?

Since Mayor Arreguín is one of the foremost authorities in Berkeley on tenant protections and has written the tenant protections piece, we will defer to him. We wanted to be able to provide Councilmember Hahn with answers to her questions in time for this meeting.

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)?

We ask that form-based codes be considered. We are open to the development standards update but the initial idea was to maintain the development standards.

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:

We would like to explore how to create home ownership opportunities by allowing ADU full units to be separately sold. Austin, TX is creating first time home ownership by allowing ADUs to be sold. <https://maxablespace.com/accessory-dwelling-units-in-austin-texas/>