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SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 3

Meeting Date: October 26, 2021

Item Number: 33

Item Description: Objective Standards Recommendations for Density, Design and Shadows

Submitted by: Councilmembers Sophie Hahn, Susan Wengraf, Kate Harrison, and Mayor Jesse Arreguin

Several amendments are introduced to the Supplemental 1 submission from the above Councilmembers and Mayor including:

1. The first paragraph of the “Background” section (and associated footnotes) was inadvertently deleted from the Supplemental 1 submission, and is restored here.
2. Emphasis throughout to clarify that all objective standards shall conform with State law and shall not reduce development capacity.

ACTION CALENDAR

October 26, 2021

(Continued from September 28, 2021)

To: Members of the City Council

From: Councilmembers Sophie Hahn, Kate Harrison, Susan Wengraf and Mayor Jesse Arreguin

Subject: Supplemental Recommendations on Objective Standards

RECOMMENDATION:

Refer to the City Manager, for review by the Planning Commission and City Attorney and approval by the City Council, recommendations the concepts presented below for regarding codification of objective standards for Commercial Districts and the MU-R for elements of Berkeley's zoning code traditionally addressed through the use permit process. Objective Standards for each District should reflect current patterns and practices of the Zoning Adjustments Board and Zoning Officer, including special consideration for impacts where Commercial and MU-R Districts border each other, or Residential. Objective Standard recommendations should be brought back to the City Council for final action.

Specific recommendations are described more fully below and include:

- Adopting units-per-acre density standards. To conform with State Law, density standards must not reduce the capacity for residential development below what is currently in effect in the General Plan and what can otherwise be built under existing City standards.
- Using a "Daylight Plane" method for shadowing standards. Develop shadowing standards providing an objective, measurable method of calculating shadow impacts, such as a Daylight Plane, that does not reduce a site's residential development capacity. If shadowing standards would reduce building area, other standards should be relaxed to ensure that there is no net loss in residential capacity.
- Developing limited standards regarding building form and elements

The City Manager is requested to prioritize recommendations most urgently needed to address project types subject to state-mandated ministerial review and to support implementation of any rezoning related to the 2023 Housing Element Update. Additional recommendations, if any, should be brought forward as quickly as possible.

All of the recommendations herein and any variations or alternatives which may be proposed by the City Manager, Planning Commission, or City Attorney shall conform and not conflict with State laws.

Funds needed, if any, for additional consulting services to complete objective standards codification should be referred by the City Manager to the budget process.

BACKGROUND:

Berkeley's Zoning Ordinance is made up almost entirely of base objective standards, often coupled with an allowance to exceed those standards with a Use Permit (UP) or Administrative Use Permit (AUP).¹ Every element of the code that provides for allowable height, setbacks, number of units, building separation, lot coverage, open space, and similar is an objective standard. For many elements, a base standard is provided with an allowance to exceed the standard if the Zoning Officer/Staff, who issue AUPs, or the Zoning Adjustments Board (ZAB), that issues UPs, determines that the impact of exceeding the standard is not detrimental.²

AUPs and UPs to exceed base standards are routinely granted. In some cases, on review by Staff or the ZAB, impacts of diverging from an objective standard are found to be excessive, and the applicant is asked to revise their plans to reduce impacts. The back-and-forth between Staff or ZAB and the applicant in almost all cases results in a project that is approved, with impacts on adjacent properties and/or the neighborhood and community having been taken into account.

There are a few areas of Berkeley's Zoning Ordinance where no (or very limited) standards exist, and the evaluation of impacts to adjacent properties, the neighborhood and the community is undertaken by Staff (officially, the Zoning Officer) or ZAB, who apply their judgement with reference, in general, to (1) the circumstances which exist at the time the permit is being issued, (2) the general purposes of the zone/district in which the project is found, and (3) definitions and standards that appear elsewhere in the

¹ Applicants may also seek a Variance to diverge from objective standards, but these are only for extreme divergence, and the bar to receive a Variance is very high. For these reasons, variances are rarely sought or granted in Berkeley.

² The standards for approval of an AUP and UP are the same; the difference is that AUPs are approved by the Zoning Officer/Staff and UPs are approved by the Zoning Board.

code. Because Staff and ZAB routinely make these evaluations, there is significant consistency across applications; while there may be no “objective” standards or binding precedents there are patterns and practices.

While the overwhelming majority of projects in Berkeley that require AUPs or UPs are approved by Staff or ZAB and are not appealed, a small number are appealed, protracting the permitting process. In most cases, the decisions of Staff or ZAB are not overturned on appeal, resulting in permits being upheld, sometimes with modifications. In just a few cases, decisions of Staff or ZAB are overturned by the appeals decision-making body.³

With the advent of State laws that seek to reduce time involved in permitting processes and increase certainty for applicants/developers, mandating “by right” or “ministerial” permitting for projects that conform with base standards, *Berkeley needs to codify standards for elements that have traditionally been left in part or whole to Staff or ZAB’s review.*

Codifying standards for these elements means existing patterns and practices will be quantified and written down (and can be adjusted); *it does not mean new elements are introduced.* Conversely, because State law requires application of written, objective standards, *failure to document standards for these elements - to be “silent” where staff and community standards have long been applied - would represent an affirmative choice to allow unlimited impacts where impacts have long been considered.*

In a by-right/ministerial approvals scenario, base standards, which vary across Districts, are best thought of as *standards that are so unlikely to present unacceptable impacts that automatic approval of applications meeting those standards is warranted across a variety of circumstances.*⁴ Base standards *do not operate as a bar to approval of a zoning application*; applications that exceed base standards in Berkeley can be - and already are - routinely considered and approved.

Base objective standards under a by-right or ministerial review process are thus the standards for *automatic* approvals. Projects with elements and impacts that exceed those standards are still approved through the existing AUP/UP process.⁵ Staff or ZAB take a second look and determine whether exceeding those base standards would be

³ Zoning Officer/Staff decisions are reviewed by ZAB, and ZAB decisions are reviewed by the City Council.

⁴ ‘Circumstances’ might include lot size, shape, topography, proximity to other Districts, overlays, etc.

⁵ See footnote 1

detrimental to adjacent properties, the neighborhood or the community.⁶ The overwhelming outcome of Staff or ZAB review is that projects are approved as originally presented, or as refined via a back-and-forth with the applicant.

The areas of Berkeley's Zoning Ordinance that have limited, if any, base standards in place are density, light/sunlight/shadows, privacy, views, and to some extent, building form and elements. All of these have traditionally been left in part or full to the consideration of Staff or ZAB in the AUP/UP and related Design Review processes.

Berkeley's Zoning Code is unusual in not including specific density limits (units or people per parcel or acre) for all Districts. In Berkeley's C- and MU-R Districts, building height, setbacks, lot coverage, Floor Area Ratio (FAR)⁷ and other elements shape building size and placement, but do not prescribe density of units or individuals. This complicates certain circumstances where State and local laws interact. Providing specific density standards for these Districts will facilitate application of State laws.

Berkeley's relative lack of explicit standards in these areas is not unique; many jurisdictions' zoning codes and practices also address some or all elements of building form, sunlight/shadows, privacy, and views through discretionary/community processes. At the same time, some jurisdictions do have more prescriptive, "objective" standards already in place. Differences among jurisdictions are largely a matter of style; some codes were written in a more prescriptive manner, while others, like Berkeley's, were written with more flexibility.

DISCUSSION & RECOMMENDATIONS:

The recommendations herein provide a structure and some guidelines for Staff and the Consulting team to use in proposing codification of objective standards, for Commercial and MU-R districts, for elements traditionally left to Staff or ZAB review, or where Berkeley's code is currently silent. Where appropriate, standards proposed should include allowances to exceed base standards (with or without caps), as is common throughout Berkeley's Zoning Code.

As with all objective standards, it is likely that standards may differ from District to District, in overlay areas, and where one District, Zone or overlay area borders another. Staff and the consulting team are asked to undertake a segmented review of each

⁶ "Detriment," the crux of the standard by which applications to exceed base objective standards is reviewed, is a much higher standard than a finding of negative impact. Many projects with negative impacts are approved because their impacts, while negative, are found not to rise to the level of detriment.

⁷ **Floor area ratio (FAR)** is the ratio of a building's total floor area (gross floor area) to the size of the piece of land upon which it is built.

meaningfully different circumstance,⁸ consider current patterns and practices of Staff and ZAB, review zoning codes of similar sized or situated jurisdictions, and propose standards for Berkeley to codify.

DENSITY

DISCUSSION:

Berkeley's current zoning code uses a variety of methods to regulate the intensity of development on a single parcel. Not every zone uses all of the methods, but all use one or more.

- Prescribed number of units per parcel or parcel of a certain size (R-zones)
- Height, Setbacks, Building separations and Lot Coverage/Open Space requirements
- Floor Area Ratio (FAR)

Most of these approaches don't directly equate with density of units or residents. A building with allowed FAR, setbacks, and height, for example, could include only a few large units or a much larger number of small units. Because some elements of State law that interact with Berkeley's Zoning Code assume the presence of explicit density requirements, adopting clear density standards for C- and MU-R Districts will facilitate application of State requirements.

Berkeley's General Plan does provide some guidance on density, but the General Plan is not formally incorporated into the City's Zoning Ordinance, as is typical in other jurisdictions. The General Plan provides the following in the Land Use Element under Land Use Classifications:

Neighborhood & Avenue Commercial: *Population density will generally range from 44 to 88 persons per acre.*

Downtown: *Population density will generally range from 88 to 220 persons per net acre.*

Mixed Use Residential: *Population density will generally range from 22 to 44 persons per acre, where housing is allowed.*

⁸ A chart is provided in Attachment A to illustrate one method of organizing these recommendations.

Area plans may also address density in C- and MU-R Districts; staff and the consultants are requested to review applicable plans for potential guidance.

JSISHL⁹ considered dwelling units per acre as well as form-based code and floor area ratio (FAR) as approaches to regulate lot buildout and development proportions. There was also interest in a units-per-acre approach that assumed average unit sizes and bedroom counts. No strong agreement could be reached as to the best path forward.

In the end, a recommendation was made using FAR as the primary standard in residential and commercial districts and form-based code, which emphasizes standards with predictable physical outcomes such as build-to lines and frontage and setback requirements, as a secondary approach. *These approaches, however, are already in use - Berkeley's Zoning Code is primarily "form-based,"* and Residential Districts already have unit-per-parcel or parcel-size limits in place.

The missing density element in Berkeley's code is a unit- or person- per acre (or parcel) number for Commercial and MU-R Districts. This recommendation seeks explicit density standards for the C- and MU-R Districts, where the Zoning Code is currently silent.

RECOMMENDATION:

Refer to the City Manager, Planning Commission, and City Attorney, the codification of units-per-acre standards for C- and MU-R Districts, as originally recommended by the City Council on July 17, 2017. The City's General Plan, Area Plans and the Purposes Section of each District provide guidance. Rezoning to increase density beyond what is already contemplated in existing plans and purposes will be considered in the context of the Housing Element Update.

To ensure density standards conform to State Law, any standards proposed must not reduce the capacity for residential development below what is currently in effect. Density limits articulated in the Zoning Ordinance must not be lower than what is permitted in the General Plan and can otherwise be built under existing City standards. Staff should consider upzoning parcels along with adoption of objective standards.

⁹ Council established JSISHL, the Joint Subcommittee for the Implementation of State Housing Laws, which included representatives of the Planning Commission, Zoning Adjustments Board, and Housing Advisory Commission, to review approaches to and make recommendations about objective standards for density, design, shadows and views.

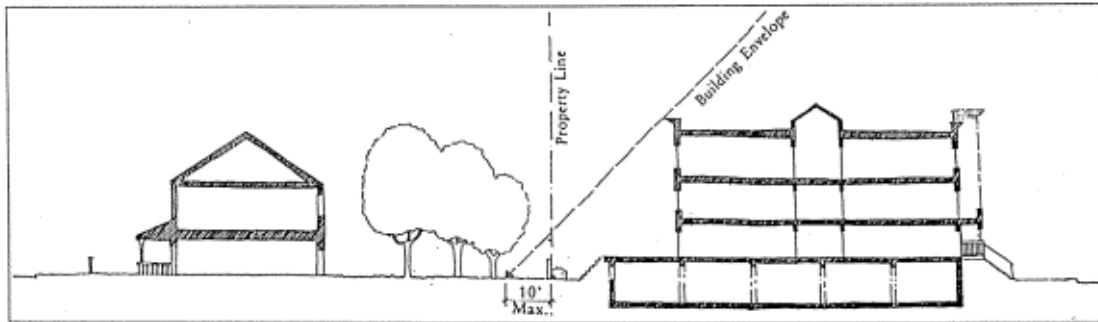
SUNLIGHT/SHADOWS

DISCUSSION:

~~One option for creating objective shadowing standards is the It is recommended that a “Daylight Plane” method which be used as a basis to propose maximum shadowing for by right/ministerial approvals, with extra allowances, as appropriate. The Daylight Plane approach~~ is already reflected in the [University Avenue Strategic Plan](#) and was used by El Cerrito for San Pablo Avenue ~~and by Los Angeles, San Francisco, and many other California cities. These cities’ Many other zoning codes use this method and~~ can serve as examples. In addition, other objective shadowing standards should be considered, to best ensure goals are achieved while conforming in full with State housing laws.

Shadowing of residential properties, especially those in neighboring R-Districts, and of parks, schoolyards, and other public outdoor spaces should be considered.

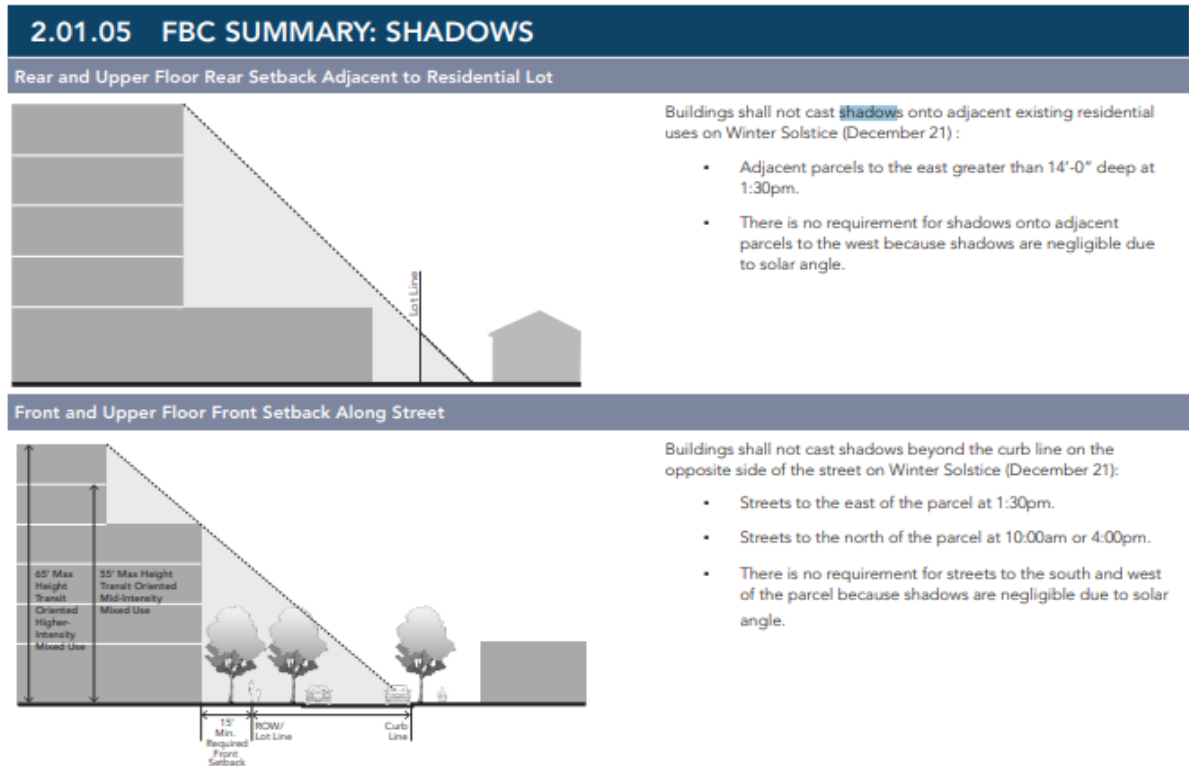
Example from the City of Berkeley’s University Avenue Strategic Plan:



down as it approaches the rear property line, so as not to obstruct direct sunlight to adjacent

A building may not cast a shadow greater than 10' on an adjacent rear yard when the southern sun is at a 45 degree angle.

Example from [El Cerrito's Avenue Specific Plan for San Pablo](#):



02-4 - San Pablo Avenue Specific Plan - August, 2014 - Corrected

Shadows can also impact solar arrays. Berkeley needs to meet its climate action clean energy goals *and* build new housing, placing two important values in tension. This tension is not unique to Berkeley; all progressive communities that value both housing creation and the reduction of GHG emissions must find ways to ensure both can go forward in a robust manner.

It is therefore recommended that solar access regulations in other communities (and countries) be reviewed and solutions proposed that best support the maximization of *both goals*. In addition, Berkeley's Zoning Code has provisions for [private solar access easements](#) that include definitions and impact considerations that can be incorporated into objective standards.

RECOMMENDATION:

Develop shadowing standards providing an objective, measurable method of calculating shadow impacts on properties. Staff and consultants should take into consideration alternate proposals considered by JSISHL and any other objective shadowing standards in use in other California cities. Objective standards developed through this process should not reduce a site's residential development capacity. If shadowing standards would reduce building area, other standards should be relaxed to ensure that there is no net loss in residential capacity (for example, reduced setbacks and lot coverage or increased height could offset reductions that the objective shadow standard would otherwise create). Staff should also consider any upzoning necessary to balance impacts of proposed objective standards.

~~Using a Daylight Plane method, standards for shadowing and solar impacts should be proposed for all C- and the MU-R Districts.~~ Proposed standards for all C- and MU-R Districts should include both base and, where appropriate, extra allowances and ~~/or programs and~~ consider the following:

- Consideration for public parks, gardens, schools and recreation and gathering areas
- Protections for solar panels and/or compensation for loss of solar panel access
- Standards for transitions where Commercial/MU-R and Residential Districts meet, to limit impacts
- If possible, allowance for adjustments ~~(through the use permit process)~~ as necessary to the location, orientation and massing of structures to minimize shadowing and/or solar access impacts, including allowances to reduce setbacks or lot coverage requirements.

BUILDING FORM & BASIC DESIGN ELEMENTS

The term “Design Standards” encompasses a wide variety of concepts, many of which make no sense for the City of Berkeley, where a wide variety of styles, from traditional to eclectic, co-exist (mostly) in harmony. In addition, overly complicated and prescriptive design standards can hamper development and in some cases add costs, none of which the City of Berkeley should endorse. Especially in private townhouse and subdivision-type developments, standards sometimes require an excessive level of uniformity, limiting allowable paint, fence types, trims, roof colors, and even the varieties of grass that can be grown. Berkeley should not enact these types of Design Standards.

Berkeley does, however, have some established standards relating to building form and other key building elements, and also conducts Design Review of buildings in Commercial areas. Some area plans and zoning, for the Downtown and University Avenue, for example, include objective standards such as articulated rather than flat facades, inset entries, step-backs at high elevations or where taller buildings meet lower-rise adjacent areas, and other basic building form requirements that are easy to quantify objectively. Many other jurisdictions that value housing production have similar standards in place.

As with other elements of the Zoning Ordinance that have traditionally been left partially or wholly to discretionary review, Berkeley must now codify a set of key base standards related to building form, step downs and set-backs, facades, and street-level elements (entries, commercial spaces, drop off and bike access zones, etc.) that are *so fundamental to good architecture and a positive pedestrian and community experience that buildings meeting those standards rightly can be approved through a ministerial process*. Again, as with other objective elements, appropriate base standards may vary across Districts, Zones, Overlays and at borders.

In addition to providing base standards, Berkeley can and should allow buildings that diverge from those standards to be reviewed and considered for approval on a case-by-case basis through the use permit process. In addition, in the long run (not through this process), Berkeley may wish to create more detailed Design Guidelines that would be advisory, as is the practice in many cities across the Bay Area and the State.

Thus, a two-tiered system (base standards appropriate for ministerially approved buildings and extra-allowance standards for structures that wish to go beyond base standards) can co-exist with a set of non-binding Guidelines that help architects and designers anticipate elements that would enhance their projects.

As Berkeley is increasingly required by State law to approve projects through a ministerial process, some standards that are already being applied by Staff, ZAB and Design Review, in particular those relating to building form, setbacks, and step-downs/setbacks and to basic elements that improve the street-level and retail experience for pedestrians and bicyclists, should be codified. As with other areas traditionally left to Staff or ZAB review, failure to codify basic elements of building form and articulation would represent *an affirmative decision to leave a void where community standards have long been successfully applied*.

All buildings built over the last 50 years in Berkeley’s commercial districts were subject to design review; the fact that few would fail to meet the kinds of base form and design standards that Staff has proposed is proof that the existing design review process has yielded the desired results. Abandonment of these standards in the ministerial/by-right context, by choosing not to codify them, would likely result in at least some buildings whose form and elements would not be up to current standards.

RECOMMENDATION:

Staff on March 23, 2021 filed [a supplemental proposing draft objective standards](#).¹⁰ They cover in very basic terms a few key elements:

1. Building Form and Design
(including massing, number of materials, rooflines, facades, and windows)
2. Ground Floors
(including awnings, entries, storefronts, street trees, and signage)
3. Screening
(for parking lots, garbage areas, lighting, fences and mechanical equipment)

Staff and the consulting team should continue refining these proposed base standards, including consultation with the Design Review Committee and ZAB and review of standards adopted or proposed in other similar California jurisdictions, and consider special standards (step-downs, for example) where C- and MU-R Districts meet each other or meet overlays or Residential areas.

In particular on Berkeley’s commercial “spines” and at the edges of the Downtown, step-downs avoid unnecessarily abrupt transitions and ensure buildings meet adjacent neighborhoods respectfully. They also help mitigate shadowing, view, and privacy impacts, thus serving many neighborly functions. Staff should also clarify that base standards for form and other building elements, applied to buildings seeking ministerial approvals, in no way present a bar to what can be approved. Proposals that do not conform with these standards should still be able to receive permits on a case by case basis.

Recent case law should also be reviewed to ensure compliance with quickly evolving legal standards for objective elements.

¹⁰ https://www.cityofberkeley.info/Clerk/City_Council/2021/03_Mar/Documents/2021-03-23_Supp_3_Reports_Item_17_Supp_Planning_pdf.aspx

VIEWS

DISCUSSION:

Views are currently considered in Berkeley's land use decision-making processes, and are defined and addressed in several places in the Zoning Code. Evaluation of view impacts has traditionally been left to discretionary process; thousands - likely tens-of-thousands - of projects with view impacts have been approved over decades of land use decisions by the Zoning Officer, ZAB and the City Council - primarily in Residential Districts. Consideration of views is therefore a deeply embedded concept in Berkeley, and has not been a barrier to project approvals. Moreover, staff has developed administrative standards to guide its evaluation of impacts on protected views. However, this staff level guidance is not codified in the Municipal Code or any formal Administrative Regulation and is not considered an "objective standard".

As with sunlight and shadowing, many jurisdictions already have more objective standards for view impacts in place; Berkeley's lack of codified standards is a result of our Zoning Code and General Plan's more community-centered style and does not reflect a lack of concern for impacts. With a broadening of project types subject to ministerial approvals, including projects with potential view impacts that traditionally have been evaluated through Berkeley's use permit process, some view impact standards will need to be more fully codified. As with other elements typically left to discretionary review, failure to codify basic current practices would mean that an area of longstanding concern and application of standards would now be subject to no standards at all.

RECOMMENDATION:

Because Commercial and MU-R Districts are in flat areas of the City, view impacts are generally less prevalent. Most developments in these Districts present few, if any, significant view impacts to smaller neighboring residences, and developers building larger multi-family buildings know that their buildings' views, if any, are vulnerable to the addition of other tall buildings in the same area.

Step-downs and other features to mitigate shadowing, privacy and other concerns are already recommended. These mechanisms also mitigate view impacts which may exist at the interface/edges of C-/MU-R Districts and Residential areas. For the density that will be required in C- and MU-R Districts to meet our RHNA requirements, some views will inevitably be impacted by developments in these areas, mitigated somewhat by attention to step-downs and set-backs at borders.

PRIVACY

DISCUSSION:

Like “light,” “air,” and views, “privacy” is a longstanding element of consideration in zoning, but primarily for residential areas. In fact, every R-Zone in the Ordinance mentions consideration of privacy in its Purposes. The concept, however, isn’t defined or addressed with more precision anywhere in the Zoning Ordinance,¹¹ and is rarely, if ever, addressed in the context of Commercial Districts. One exception is in Section 23E.04, which addresses C-Lots abutting residential zones:

23E.04.050 Special Yard Requirements for C- Lots Abutting Residential Zones

E. The Board may approve a Use Permit authorizing yards smaller than those required above if it finds that such smaller yard would provide *greater privacy* or improved amenity to a lot in the residential District. [emphasis added]

RECOMMENDATION:

Because privacy is a greater concern in residential areas, and because step-downs, setbacks and other similar requirements, especially where C- and MU-R Districts meet, serve the purpose of preserving privacy as well as mitigating shadowing and view impacts, no special recommendations regarding privacy are offered for these Districts.

Attachments:

A - Suggested format for conceptualizing, segmenting and proposing base and extra-allowance standards

B - Excerpts from Berkeley’s Zoning Ordinance

Key Links:

- JSISHL report to Council 3/23/21, Objective Standards Recommendations for Density, Design and Shadows
https://www.cityofberkeley.info/Clerk/City_Council/2021/03_Mar/Documents/2021-03-23_Item_17_Objective_Standards.aspx
- Staff Supplemental 3/23/21, Objective Standards
https://www.cityofberkeley.info/Clerk/City_Council/2021/03_Mar/Documents/2021-03-23_Supp_3_Reports_Item_17_Supp_Planning_pdf.aspx
- JSISHL, Working Draft Recommendation Report Excerpt: OBJECTIVE STANDARDS FOR DESIGN, Jul 22, 2020
https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Commissions/JSISHL/2020-07-22_JSISHL_Item%2010.pdf

¹¹ See Attachment B

ATTACHMENT A

This chart is suggestive of how to conceptualize, segment, and present proposed objective standards for codification. Not all Elements listed below will require new standards in every Zone/District/Area. As is already the practice in Berkeley’s Zoning Code, extra-allowance standards may in some cases be appropriate, and, where recommended, may be finite or open-ended.

ZONE/DISTRICT/AREA

Element	Base Standards	Extra Allowance Standards
Density	•	•
Sunlight/ Shadowing - on property within a District	•	•
Sunlight/Shadowi ng on neighboring R-Districts		
Sunlight/ Shadowing - on solar panels	•	•
Form and Separation - general		
Form & Separation - Where Districts/ Zones meet		
Etc.		

ATTACHMENT B

Excerpts from Berkeley's Zoning Ordinance

The following is cut and paste of Berkeley General Plan and Zoning Ordinance references to elements being further codified through the Object Standards process. These are not comprehensive but provide examples of how our Zoning Code already considers some of these elements.

Sunlight/Shadows

Light, Sunlight, and Shadows are NOT defined in the zoning code

23F - Definitions

Privately-Owned Public Open Space: Area on a lot that is designed for active or passive recreational use and that is accessible to the general public without a requirement for payment or purchase of goods. Such areas may include mid-block passageways and other amenities intended to improve pedestrian access. Such areas may be indoor or enclosed, **but shall include natural light in the form of windows, skylights, entryways, or other openings.**

21.36.040 Solar access easements.

For any division of land for which a tentative map is required pursuant to Section 66426 of the Subdivision Map Act, the Planning Commission may require, as a condition of approval of the tentative map, the dedication of easements for the purpose of assuring that each parcel or unit in the subdivision for which approval is sought **shall have the right to receive sunlight across adjacent parcels or units in the subdivision for which approval is sought for any solar energy system,** provided that such easements meet the following requirements:

- A. The standards for determining the exact dimensions of locations of such easements shall be:
 - 1. The principal axis of the easement shall be true east-west, and the principal directions of the easement shall be in the direction of the principal axis, both east and west from the boundaries of the parcel or unit for which the solar access easement is provided.
 - 2. The width of the easement, at right angles horizontally to the principal axis, shall be equal to one-half of the length of the longest distance that can be measured in a true north-south direction horizontally between the boundaries of the parcel or unit for which the easement is being provided.
 - 3. A vertical plane, running in the direction of and containing the principal axis, shall pass through the centroid of volume of the enclosed living space as shown on the tentative map, or if living space is not shown, through the geometric center of a plane horizontal projection of the boundaries of the parcel or unit for which the easement is being provided, as determined within an accuracy of one foot. The easement shall lie entirely between two vertical planes parallel to the plane containing the principal axis, lying equidistant on either side. Said parallel easement boundary planes shall be separated by a distance equal to the width of the easement.

4. A vertically projected boundary point is defined as any point lying on the horizontal boundary, within the width of the easement, of the parcel or unit for which the easement is being provided, projected vertically eight feet above the ground surface at said boundary point or to a vertically projected point lying in a horizontal plane which is three feet above a parallel horizontal plane containing the minimum point of elevation of the living space (if shown) of the parcel or unit, whichever is higher.

5. The easement shall exist above every line projected in either principal direction outward from any and all vertically projected boundary line points, at a direction of thirty degrees above the horizontal, to a distance of five hundred feet as measured horizontally from said point, or to a lesser distance such that the easement lies wholly within the vertically projected boundaries of the subdivision for which the tentative map is sought.

B. At the request of the subdivider, the Planning Commission may specify an easement of equal width for which:

1. The parallel easement boundary planes defined in subsection A,3. above and the principal directions are both rotated by not more than ten degrees in either direction and remain parallel to each other, about a vertical line through the centroid of volume or geometric center as defined in subsection A,3. above.

2. The parallel easement boundary planes defined in subsection A,3. above are both translated at right angles to the vertical plane of the principal axis by a distance equal to not more than one third of the width of the easement.

C. In requiring the dedication of a solar access easement as a condition of approval of a tentative map, the Planning Commission may specify an easement of lesser volume or dimensions, provided said easement lies wholly within the boundaries specified in subsections A or B, above.

D. No buildings or other objects with a dimension greater than one foot as measured in a projection at right angles to the principal axis of the easement, shall block such easement.

E. No trees or vegetation shall obstruct the passage of more than thirty percent of the incident sunlight which would otherwise reach the parcel through the path specifically blocked by said trees or vegetation.

F. The solar access easement, after being recorded as part of the final map, may not be terminated or revised except by the Planning Commission, on the showing of overriding public purpose, and with the consent of the owner of said unit or parcel and upon payment to said owner of just compensation for termination. Notice of the termination or revision shall be filed for record with the Alameda County Recorder in the same manner that other easements are recorded.

G. In establishing solar access easements, the Planning Commission shall give consideration to feasibility, contour, configuration of the parcel to be divided, and cost. Such easements shall not result in reducing allowable densities or the percentage of a lot which may be occupied by a building or a structure under other applicable planning and zoning regulations in force at the time the tentative map is filed.

This section is not applicable to condominium projects which consist of the subdivision of airspace in an existing building where no new structures are added.

Solar access easements shall meet the requirements specified in Section 66475.3 of the Subdivision Map Act. (Ord. 5793-NS § 2 (part), 1987)

Chapter 12.45 - SOLAR ACCESS AND VIEWS

12.45.010 Purpose and objectives.

A. The purpose of this chapter is to:

1. Set forth a procedure for the resolution of disputes between private property owners relating to the resolution of sunlight or views lost due to tree growth.

B. The objectives of this chapter are:

3. To encourage the use of solar energy for heat and light;
4. To encourage food production in private gardens;
5. To restore access to light and views from the surrounding locale;

12.45.020 Definitions.

A. For the purposes of this chapter, the meaning and construction of words and phrases hereinafter set forth shall apply:

1. "Solar access" means the availability of sunlight to a property.
4. "Complaining party" means any property owner (or legal occupant without objection of property owner) who wishes to alter or remove a tree(s) on the property of another which creates an obstruction to their access to sunlight or view whether such access is gained from an original dwelling or any addition thereto used as a dwelling.
6. "Obstruction" means any substantial blocking or diminishment of a view from a structure lawfully used as a dwelling or access to sunlight to the real property which is attributable to the growth, maintenance or location of tree(s).

12.45.030 Procedures.

A. The procedures described in this section shall be followed in the resolution of tree disputes between private parties.

1. Initial reconciliation:

A complaining party who believes in good faith that the growth, maintenance or location of tree(s) on the private property of another (hereinafter referred to as tree owner) diminishes the beneficial use of economic value of their property because such tree(s) interfere with the access to sunlight or views which existed prior to such growth, maintenance or location of

the tree(s) on the property during the time the complaining party has occupied the property, shall notify the tree owner in writing of such concerns.

5. Litigation: In those cases where initial reconciliation fails and binding arbitration is not elected, civil action may be pursued by the complaining party for resolution of the sunlight access or view tree claim under the provisions of this chapter. The litigant must state in the lawsuit that arbitration was offered and not accepted, and that a copy of the lawsuit was filed with the City Clerk.

12.45.040 Standards for resolution of disputes.

A. In resolving the tree dispute, the tree mediator, tree arbitrator or court shall consider the benefits and burdens derived from the alleged obstruction within the framework of the objectives of this chapter as set forth in Section [12.45.010](#) in determining what restorative actions, if any, are appropriate.

Burdens:

- b. The extent to which the trees diminish the amount of sunlight available to the garden or home of the complaining party.
- c. The extent to which the trees interfere with efficient operations of a complaining party's pre-existing solar energy system.
- e. The extent to which the alleged obstruction interferes with sunlight or view. The degree of obstruction shall be determined by means of a measuring instrument or photography.
- f. The extent to which solar access or the view is diminished by factors other than trees.

3. Restorative actions:

The tree mediator shall recommend or the tree arbitrator or court shall order restorative action or no action according to Section [12.45.040](#) (Standards)

- e. The extent of solar access or view available and documentable as present at any time during the tenure of the present owner or legal occupant is the limit of restorative action which may be required. If the complaining party is seeking a view or sunlight from an addition, the complaining party has no right to a view or solar access greater than that which existed at the time the construction of the addition was completed

Chapter 23E.68 - C-DMU Downtown Mixed Use District Provisions

23E.68.090 Findings

F. In order to approve a Use Permit for modification of the setback requirements of [23E.68.070.C](#), the Board must find that the modified setbacks will not unreasonably limit solar access or create significant increases in wind experienced on the public sidewalk.

Chapter 23E.36 - C-1 General Commercial District Provisions

C. No yards for Main Buildings, Accessory Buildings or Accessory Structures shall be required, except that:

- a. **Solar Rear Yard Setback:** Buildings on the north side of University Avenue shall not cast a shadow at noon more than 20 feet onto any lot in a residential zone as calculated when the sun is at a 29 degree angle above the horizon (winter solstice).

23B.34.070 Development Standards for All Green Pathway Projects

Green Pathway projects shall comply with the applicable development standards in Section [23E.68.070](#) and the following additional requirements:

- C. **Shadow** Analysis Required for Buildings With Heights Between 60 and 75 Feet: Applications shall include diagrams showing:

1. The extent of **shading on public sidewalks and open spaces** within a radius of 75 feet of the closest building wall that would be cast at two (2) hours after sunrise, 12 p.m., and two (2) hours before sunset, on March 21, June 21, December 21, and September 21, by a building 60 feet in height that complies with all applicable setback requirements;
2. Features incorporated into the building design, including, but not limited to, additional upper floor setbacks that will **reduce the extent of shadowing** of the proposed building to no more than 75 percent of the shadowing projected in paragraph 1 above.

VIEWS

23F.04 Definitions

View Corridor: A significant view of the Berkeley Hills, San Francisco Bay, Mt. Tamalpais, or a significant landmark such as the Campanile, Golden Gate Bridge, and Alcatraz Island or any other significant vista that substantially enhances the value and enjoyment of real property.

23D.17.070 - Wireless Telecommunication Facilities

- C. **No readily visible antenna shall be placed at a location where it would impair a significant or sensitive view corridor** except as provided in subsection 1, below.
 1. Roof-mounted antennas shall be located in an area of the roof where the visual impact is minimized. Roof-mounted and ground-mounted antennas **shall not be placed in direct line of sight of significant or sensitive view corridors or where they adversely affect scenic vistas** unless the Zoning Officer or the Zoning Adjustments Board finds that the facility incorporates appropriate, creative stealth techniques to camouflage, disguise, and/or blend into the surrounding environment to the extent possible

Section 23D.08.010 Accessory Buildings & Structures May Exceed Limit with Use Permit

- A. An Accessory Building or Accessory Structure that satisfies the requirements of this Ordinance is permitted, except in the ES-R District.
- B. The Zoning Officer may issue an AUP for an accessory structure or accessory building which does not comply with the height limits, minimum setback distances, site location and/or maximum length requirements of this chapter, except for the height limit in Section 23D.08.020.C, **subject to a finding that**

the proposed accessory building or enclosed accessory structure will not be detrimental to the light, air, privacy and view of adjacent properties. (Ord. 7522-NS § 2, 2017; Ord. 6854-NS § 2 (part), 2005; Ord. 6478-NS § 4 (part), 1999)

Section 23D.16.090 Findings (R-1)

B. To deny a Use Permit for a major residential addition or residential addition subject to 23D.16.070 the Zoning Officer or Board must find that although the proposed residential addition satisfies all other standards of this Ordinance, the addition would unreasonably obstruct sunlight, air or views. (Ord. 7426-NS § 8, 2015; Ord. 6980-NS § 1 (part), 2007; Ord. 6763-NS § 7 (part), 2003; Ord. 6478-NS § 4 (part), 1999)

Section 23D.20.090 Findings (R-1A)

B. To deny a Use Permit for a major residential addition or residential addition subject to 23D.20.070, the Zoning Officer or Board must find that although the proposed residential addition satisfies all other standards of this Ordinance, the addition would unreasonably obstruct sunlight, air or views.

Section 23D.24.020 Purposes (ES-R)

H. Give reasonable protection to views and privacy, yet allow appropriate development of all property as long as public services and access are adequate to ensure protection of the health and safety of residents in this vulnerable area;

Section 23D.28.090 Findings (R-2)

B. To deny a Use Permit for a major residential addition or residential addition subject to 23D.28.070 the Zoning Officer or Board must find that although the proposed residential addition satisfies all other standards of this Ordinance, the addition would unreasonably obstruct sunlight, air or views.

For all other residential districts - R-2A, R-3, R-4 and R-5, the same findings must be made to deny a use permit for a residential addition

CHAPTER 12.45 SOLAR ACCESS AND VIEWS (LOSS OF, DUE TO TREE GROWTH)

12.45.010 Purpose and objectives.

A. The purpose of this chapter is to:

1. Set forth a procedure for the resolution of disputes between private property owners relating to the resolution of sunlight or views lost due to tree growth.
5. To restore access to light and views from the surrounding locale;

Section 12.45.020 Definitions

2. "Views" mean a distant vista or panoramic range of sight of Berkeley, neighboring areas or the San Francisco Bay. Views include but are not limited to skylines, bridges, distant cities, geologic features, hillside terrains and wooded canyons or ridges.

4. "Complaining party" means any property owner (or legal occupant without objection of property owner) who wishes to alter or remove a tree(s) on the property of another which creates an obstruction to their access to sunlight or view whether such access is gained from an original dwelling or any addition thereto used as a dwelling.

6. "Obstruction" means any substantial blocking or diminishment of a view from a structure lawfully used as a dwelling or access to sunlight to the real property which is attributable to the growth, maintenance or location of tree(s).

Section 12.45.030 Procedures.

A. The procedures described in this section shall be followed in the resolution of tree disputes between private parties.

1. Initial reconciliation: A complaining party who believes in good faith that the growth, maintenance or location of tree(s) on the private property of another (hereinafter referred to as tree owner) diminishes the beneficial use of economic value of their property because such tree(s) interfere with the access to sunlight or views which existed prior to such growth, maintenance or location of the tree(s) on the property during the time the complaining party has occupied the property, shall notify the tree owner in writing of such concerns. The notification should, if possible, be accomplished by personal discussions to enable the complaining party and tree owner to attempt to reach a mutually agreeable solution.

5. Litigation: In those cases where initial reconciliation fails and binding arbitration is not elected, civil action may be pursued by the complaining party for resolution of the sunlight access or view tree claim under the provisions of this chapter

Section 12.45.040 Standards for resolution of disputes

A. In resolving the tree dispute, the tree mediator, tree arbitrator or court shall consider the benefits and burdens derived from the alleged obstruction within the framework of the objectives of this chapter as set forth in Section 12.45.010 in determining what restorative actions, if any, are appropriate.

2. Burdens:

d. The existence of landmarks, vistas or other unique features which cannot be seen because of growth of trees since the acquisition of the property.

e. The extent to which the alleged obstruction interferes with sunlight or view. The degree of obstruction shall be determined by means of a measuring instrument or photography.

f. The extent to which solar access or the view is diminished by factors other than trees.

3. Restorative Actions

e. The extent of solar access or view available and documentable as present at any time during the tenure of the present owner or legal occupant is the limit of restorative action which may be required. If the complaining party is seeking a view or sunlight from an addition, the complaining party has no right to a view or solar access greater than that which existed at the time the construction of the addition was completed

23B.34.070 Development Standards for All Green Pathway Projects

Green Pathway projects shall comply with the applicable development standards in Section [23E.68.070](#) and the following additional requirements:

A. **Building Setbacks Within View Corridors:** To minimize interference with significant views, buildings that are 75 feet in height or less that are located on a corner lot at any intersection with University Avenue, Center Street, or Shattuck Avenue **must include upper story setbacks as follows:** any portion of a building between 45 feet and 75 feet must be set back from property lines abutting the street by at least one (1) foot for every one (1) foot by which the height exceeds 45 feet.

“AIR”

(To be expressed through Privacy and Building Form/Separation Requirements)

Section 23A.04.030 Purpose of [Zoning] Ordinance and Relationship to Plans

D. **Provide for adequate light and air** by limiting the height, bulk and size of buildings and requiring building yard setbacks from property lines as well as separations between buildings.

Section 23D.52.090 Findings

To deny a Use Permit for a major residential addition or residential addition subject to Section 23D.52.070, the Zoning Officer or Board **must find that the addition would unreasonably obstruct sunlight, air or views.**

Section 23D.16.020 Purposes (R-1)

The purposes of the Single Family Residential (R-1) Districts are to:

C. **Protect adjacent properties from unreasonable obstruction of light and air;** and

Section 23D.16.090 - Findings (R-1)

B. To deny a Use Permit for a major residential addition or residential addition subject to 23D.16.070 the Zoning Officer or Board must find that although the proposed residential addition satisfies all other standards of this Ordinance, **the addition would unreasonably obstruct sunlight, air or views.**

Section 23D.20.020 Purposes (R-1A)

The purposes of the Limited Two-family Residential Districts (R-1A) are to:

B. **Protect adjacent properties from unreasonable obstruction of light and air;**

Section 23D.20.090 Findings (R-1A)

B. To deny a Use Permit for a major residential addition or residential addition subject to 23D.20.070, the Zoning Officer or Board must find that although the proposed residential addition satisfies all other standards of this Ordinance, **the addition would unreasonably obstruct sunlight, air or views.**

C. To approve an application for reduction of a required Rear Yard, or a reduction in building separation, the

Zoning Officer or the Board must find that the unit would not cause a detrimental impact on emergency access; or on light, air or privacy for neighboring properties

Identical or very similar provisions exist for PURPOSES and FINDINGS for R-2, R-2A, R-3, R-4

Section 23D.44.020 Purposes (R-5)

The purposes of the High Density Residential (R-5) Districts are to:

- B. Make available housing for persons who desire both convenience of location, but who require relatively small amounts of Usable Open Space; yet assure adequate light, air, privacy and Usable Open Space to promote and protect their physical and mental health;
- C. Protect adjacent properties from unreasonable obstruction of light and air;

Section 23D.44.090 Findings (R-5)

- B. To deny a Use Permit for a major residential addition or residential addition subject to 23D.44.070 the Zoning Officer or Board must find that although the proposed residential addition satisfies all other standards of this Ordinance, the addition would unreasonably obstruct sunlight, air or views.

Identical or very similar provisions for air exist in R-S and R-SMU

PRIVACY

Privacy is NOT defined anywhere in the Zoning Code

References to Privacy in the Zoning Code:

C-1 General Commercial District Provisions

Privacy Rear Yard Setback: Buildings on lots abutting a residentially zoned lot along the south side of University Avenue shall be set back from the rear property line an average of 20 feet, i.e., a rear yard shall be maintained with a minimum area equal to the width of the lot (in feet) multiplied by 20 feet. The minimum depth of any rear yard shall be ten feet, or 10% of the depth of the lot, whichever is greater, as provided in Section [23E.04.050.C](#). The ZAB may approve a Use Permit to reduce the 20 foot average and ten foot minimum setback provisions to a minimum of six feet on the first floor provided that the square footage added on the first floor by this reduction in setback is utilized to increase the average 20 foot setback on higher floors to facilitate the privacy of abutting residentially zoned lots.

- d. Front Yard Setback for Residential-Only Projects: For all floors, buildings shall provide an average two-foot setback. A maximum setback of ten feet is permitted provided that this space is used to accommodate landscaping that enhances the streetscape and provides a sense of privacy for residential units on the first floor.

23D.48.020 Purposes (R-S Residential Southside District)

23D.48.020 Purposes

B. Make housing available for persons who desire a convenient location with relatively small amounts of Usable Open Space, yet assure adequate light, air, privacy and Usable Open Space to promote and protect their physical and mental health;

23D.52.020 Purposes (R-SMU Southside Mixed Use Residential)

The purposes of the Southside Mixed Use Residential (R-SMU) Districts are to:

A. Implement General Plan and Southside Plan policy by encouraging high density, multi-story residential development close to major shopping, transportation and employment centers;

B. Make housing available for persons who desire a convenient location, but who require relatively small amounts of Usable Open Space; yet assure adequate light, air, privacy and Usable Open Space to promote and protect their physical and mental health;

23D.20.090 Findings (R-1A)

A. In order to approve any Permit under this chapter, the Zoning Officer or Board must make the finding required by Section [23B.32.040](#). The Zoning Officer or Board must also make the findings required by the following paragraphs of this section to the extent applicable:

C. To approve an application for reduction of a required Rear Yard, or a reduction in building separation, the Zoning Officer or the Board must find that the unit would not cause a detrimental impact on emergency access; or on light, air or privacy for neighboring properties.

23D.44.020 Purposes (R-5)

The purposes of the High Density Residential (R-5) Districts are to:

B. Make available housing for persons who desire both convenience of location, but who require relatively small amounts of Usable Open Space; yet assure adequate light, air, privacy and Usable Open Space to promote and protect their physical and mental health;

12.45.040 Standards for resolution of disputes.

A. In resolving the tree dispute, the tree mediator, tree arbitrator or court shall consider the benefits and burdens derived from the alleged obstruction within the framework of the objectives of this chapter as set forth in Section [12.45.010](#) in determining what restorative actions, if any, are appropriate.

d. Visual, auditory and wind screening provided by the tree(s) to the tree owner and to neighbors. Existing privacy provided by the tree(s) to the tree owner's home shall be given particular weight.

Chapter 23D.04 - Lot and Development Standards

23D.04.010 Lot Requirements

E. The Zoning Officer shall designate the front, side and rear yards for main buildings for flag lots and irregular lots, **in a manner to best protect light, air and privacy.** The yard dimensions shall be as set forth in each District's provisions.

23D.08.010 Accessory Buildings & Structures May Exceed Limit with Use Permit

B. The Zoning Officer may issue an AUP for an accessory structure or accessory building which does not comply with the height limits, minimum setback distances, site location and/or maximum length requirements of this chapter, except for the height limit in Section **23D.08.020.C, subject to a finding that the proposed accessory building or enclosed accessory structure will not be detrimental to the light, air, privacy and view of adjacent properties.** (Ord. 7522-NS § 2, 2017; Ord. 6854-NS § 2 (part), 2005; Ord. 6478-NS § 4 (part), 1999)

23D.24.020 - ES-R - Purposes

H. Give reasonable protection to views and **privacy**, yet allow appropriate development of all property as long as public services and access are adequate to ensure protection of the health and safety of residents in this vulnerable area;

23E.04.050 Special Yard Requirements for C- Lots Abutting Residential Zones

E. The Board may approve a Use Permit authorizing yards smaller than those required above if it finds that such smaller yard would provide greater **privacy** or improved amenity to a lot in the residential District.