

Office of the City Manager

## SUPPLEMENTAL AGENDA MATERIAL

**Meeting Date:** March 23, 2021

**Item Number:** 17

**Item Description:** Objective Standard Recommendations for Density, Design and Shadows

**Supplemental/Revision Submitted By:** Alene Pearson, Secretary, Joint Subcommittee for the Implementation of State Housing Laws (JSISHL)

**“Good of the City” Analysis:**

*The analysis below must demonstrate how accepting this supplement/revision is for the “good of the City” and outweighs the lack of time for citizen review or evaluation by the Council.*

JSISHL’s recommendation for objective design standards references a set of proposed standards for review by other City Commissions. This supplemental communication provides the matrix of proposed objective design standards, for benefit of Council and public while discussing this item.

*[from page two of the staff report]*

*To aid JSISHL in making a recommendation, staff created a matrix of design guidelines to identify design goals, introduced objective language to reflect desired design outcomes, and test-fit approved projects to double-check objective language. JSISHL recommended the **proposed objective design standards** be reviewed by the Design Review Committee and further refined by Planning Commission.*

***Consideration of supplemental or revised agenda material is subject to approval by a two-thirds roll call vote of the City Council. (BMC 2.06.070)***

A minimum of **42 copies** must be submitted to the City Clerk for distribution at the Council meeting. This completed cover page must accompany every copy.

Copies of the supplemental/revised agenda material may be delivered to the City Clerk Department by 12:00 p.m. the day of the meeting. Copies that are ready after 12:00 p.m. must be delivered directly to the City Clerk at Council Chambers prior to the start of the meeting.

Supplements or Revisions submitted pursuant to BMC § 2.06.070 may only be revisions of the original report included in the Agenda Packet.

Objective Standards for Design Guidelines				Row #
Section	Subsection	Proposed Objective Design Standards	Definitions	
1. Neighborhood Context	<p><b>Massing</b></p> <p>Goal: Promote harmony in scale and massing.</p>	<p>Differentiate the base. A base shall visually carry the weight of the building. A base <i>is defined as a plane or material change between the ground floor and the upper floors</i> and can be made by thickening the walls or a change in material and color and <i>shall extend</i> at least 75% of <i>each individual</i> building facade.</p> <p>Buildings over three stories tall shall have major massing breaks at least every 100 feet <i>along every building frontage</i> through the use of varying setbacks, building entries, and recesses, courtyards or structural bays. Major breaks shall be a minimum of 5 feet deep and 10 feet wide and shall extend at least two-thirds of the height of the building.</p>	Base - a plane or material change between the ground floor and the upper floors	1
	<p><b>Materials</b></p> <p>Goal: Provide texture and visual interest while minimizing glare.</p>	<p>At least two materials shall be used on any building face visible from the street or adjacent parcel in addition to glazing and railings. Any one material must comprise at least 20% of <i>street facing building facade</i>.</p> <p>Materials shall not cause glare on the public right of way or adjacent parcels.</p>		2
2. Building Design	<p><b>Rooflines</b></p> <p>Goal: Vertically break up building mass at the roofline.</p>	<p>Rooflines shall be <i>articulated at least every 50 feet along the street frontage, through the use of architectural elements such as cornices, clerestory windows, canopies, or varying roof height and/or form</i>.</p>	Roofline - Top termination of the massing.	3
	<p><b>Façade Design</b></p> <p>Goal: Give depth to the building façade.</p>	<p>Provide balconies or upper facade projections or recesses every 25 to 30 feet.</p> <p>Blank walls on side and rear facades shall not exceed 30 ft in length.</p>	<p>Upper façade projection or recess - Any balcony, window box, window articulation that either creates a recess in or projects out from the building face.</p> <p>Blank wall - A length of uninterrupted wall space that does not include a window, door, material change, or plane change.</p>	4
	<p><b>Windows</b></p> <p>Goal: Give depth to the building façade.</p>	<p>Windows <i>shall not exceed 75% of upper facades</i>.</p> <p>Windows set in wall surfaces shall be recessed a minimum of 2 inches <i>unless in a contiguous vertical bay, in which case the recess may be substituted with a vertical fin or projection</i>.</p>		5
3. Ground Floor Design	<p><b>Residential Lobbies</b></p> <p>Goal: Create a focal point for residents and pedestrians.</p>	<p>A primary building entrance shall be visible from the street. Direct pedestrian access shall be provided between the public sidewalk and such primary entrance.</p> <p><i>A primary building entrance</i> must have a roofed projection <i>in the form of either a canopy or the extension of a vertical bay</i>, or recess with a minimum depth of 5 feet and a minimum area of 60 sq. feet. <i>Entrances to upper floors shall be distinguished with either plane changes, material transitions, or building signage</i>.</p>		6
	<p><b>Ground Floor Height</b></p> <p>Goal: Enhance ground floor experience.</p>	<p>Ground floor <i>commercial spaces</i> shall have a minimum interior height of <i>13 feet</i>.</p>		7
	<p><b>Storefronts</b></p> <p>Goal: Enhance pedestrian experience and provide visual cues that distinguish between retail and residential entries.</p>	<p>Retail spaces shall be accessed directly from the sidewalk, rather than through lobbies or other internal spaces. Clear glass shall comprise at least 60% of the street facing façade where it is between 3 feet and 8 feet above elevation of adjacent sidewalk.</p> <p>Maintain the typical rhythm of 15-30 foot storefronts at ground level. Provide at least one of the following architectural features to protect pedestrians from inclement weather:                      A) awnings                      B) canopies                      C) recessed entries</p> <p>Except for recessed entries, a majority of storefront glazing shall be at the property line.</p>		8

Objective Standards for Design Guidelines				Row #
Section	Subsection	Proposed Objective Design Standards	Definitions	
3. Ground Floor Design	<p><b>Public Service Street Frontages</b></p> <p>Goal: Activate the public street.</p>	<p>At least one publicly-accessible street-level entrance shall be provided for every 40 feet along a streetfacing property line. Any remainder exceeding 30 feet shall also have a publicly-accessible street-level entrance. No two entrances shall be separated by more than 50 feet.</p> <p>~ <i>Downtown only</i></p> <p>*reference Figure 43: Public Serving Frontages on page 61 of the Downtown Design Guidelines for applicability.</p>		9
4. Parking Lots, Garages and Driveways	<p><b>General Guidelines</b></p> <p>Goal: Reduce visual impact of parking on the street frontage.</p>	Locate parking structures underground or behind buildings or provide either landscape or architectural elements to screen view of parking from the street.		10
	<p><b>Surface Lots</b></p> <p>Goal: Screen surface lots from view of the street while providing shade and landscaping.</p>	Perimeter landscaping shall include trees and shrubs. In addition to required screening, parking area shall have trees which achieve a canopy coverage of at least 50% within seven years.		11
	<p><b>Garage Lighting and Ventilation</b></p> <p>Goal: Reduce impact of garages on neighboring parcels.</p>	All parking garage lighting shall be shielded so that light does not shine through vents at night and headlights are not visible from the street and adjacent parcels. If forced venting is required for the garage, air shall not vent directly onto the sidewalk or podium courtyards.		12
5. Building Accessories	<p><b>Lighting</b></p> <p>Goal: Prevent glare on public right of way.</p>	All lighting shall be downcast and not cause glare on the public right of way or neighboring parcels.		13
	<p><b>Security and Fences</b></p> <p>Goal: Reduce visual impact.</p>	<p>Security devices and grillwork visible from the street shall be integrated into the overall building design.</p> <p>Perimeter fencing utilized along public street shall be constructed of decorative iron, pre-painted welded steel, or wood picket material.</p>		14
	<p><b>Trash Service, Mechanical and Utilities</b></p> <p>Goal: Reduce visual impact.</p>	Garbage receptacles, utility meters and mechanical and electrical equipment at rooftop and ground shall be screened from the view of pedestrians.		15
6. Street Trees	<p>Goal: Preserve and/or add street trees.</p>	Existing street trees shall be retained and protected <i>if determined to be healthy by the Urban Forester</i> . Work with Berkeley's Urban Forestry Department and Public Works to determine preferred locations for new street trees.		16
7. Signs and Awnings	<p>Goal: Cohesive sign program that is in keeping with the building design</p>	<p>Coordinate the design and alignment of signs and awnings on buildings with multiple storefronts in order to achieve a cohesive appearance to the base of the building.</p> <p>Signs and awnings shall not obscure architectural elements such as clerestory windows or columns.</p> <p>All front faces shall be opaque.</p>		17





Joint Subcommittee for the Implementation of State Housing Laws

ACTION CALENDAR

October 26, 2021

*(Continued from October 12, 2021)*

To: Honorable Mayor and Members of the City Council

From: Joint Subcommittee for the Implementation of State Housing Laws  
(JSISHL)

Submitted by: Igor Tregub, Chairperson

Subject: Objective Standards Recommendations for Density, Design and Shadows

RECOMMENDATION

Refer to the Planning Commission and Design Review Committee to review the recommendations from the Joint Subcommittee for the Implementation of State Housing Laws (JSISHL) for objective standards for density, design and shadows and draft Zoning Ordinance amendments for City Council consideration.

FISCAL IMPACTS OF RECOMMENDATION

This project will involve staff and consultant time that will total approximately \$200,000. Budget for the consultant time was previously allocated from the General Fund in the 2021-2022 fiscal year budget (\$115,000). Additional staff time amounting to \$100,000 would have to be covered by re-arranging staff priorities within existing resources to support the effort.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley's Zoning Ordinance and permitting process for residential and mixed use projects relies heavily on discretion and subjective development standards. State laws, such as Senate Bill (SB) 35, limit interpretation of zoning regulations and require a streamlined permit approval process for many housing projects. JSISHL was tasked with reviewing approaches to objective standards for density, design, shadows and views. Between April 2018 and July 2020 JSISHL, including representatives of the Planning Commission, Zoning Adjustments Board, and Housing Advisory Commission, met eleven times to discuss these topics and ultimately prepared the recommendations summarized below.

Objective Standards for Density (Building Intensity)

The referral specifically requested that JSISHL consider dwelling units per acre as an objective measurement of density. JSISHL also considered a form-based code method and floor area ratio (FAR) as approaches to objectively regulate lot buildout and development proportions. No unanimous agreement could be reached as to the best

path forward. In the end, a recommendation was made using FAR as the primary density standard in residential and commercial districts and form-based code<sup>1</sup>, which emphasizes standards with predictable physical outcome such as build-to lines and frontage and setback requirements, as a secondary approach. There was also an interest in a units/acre approach that assumed average unit sizes and bedroom counts; however, this approach was not adopted. See Attachment 1 (July 22, 2020 Final Minutes) for the text of these options. **JSISHL recommended developing an objective standard for density using FAR and potentially form-based code.**

### Objective Standards for Design

Berkeley's design review process relies heavily on four sets of design guidelines:

1. Design Review Guidelines (applied citywide);
2. Downtown Design Guidelines;
3. Southside Strategic Plan Design Guidelines; and
4. University Strategic Plan Design Guidelines.

This process heavily relies on the discretion of staff and the Design Review Committee; however, recent State laws require that cities develop objective standards for streamlined and ministerial approval processes for qualified projects. To aid JSISHL in making a recommendation, staff created a matrix of design guidelines to identify design goals, introduced objective language to reflect desired design outcomes, and test-fit approved projects to double-check objective language. **JSISHL recommended the proposed objective design standards be reviewed by the Design Review Committee and further refined by Planning Commission.**

### Objective Standards for Shadows

The Berkeley Municipal Code (BMC) addresses shadows as follows:

- Section 23E.36.070(C)(1)(a): Projects on the north side of University Avenue within the University Avenue Strategic Plan Overlay area must meet a Solar Rear Yard Setback (subject to override by Density Bonus waivers). Required daylight plane analysis is incorporated directly into the development standards: “...*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).*”
- Section 23B.34.070(C): Green Pathway Projects<sup>2</sup> within the Downtown Mixed-Use District (C-DMU) that are between 60 and 75 feet tall. Shadow analysis for these projects must show that:

<sup>1</sup> <https://formbasedcodes.org/standards-of-practice/>

<sup>2</sup> As defined in in Chapter 23B.34 of the municipal code, the “Green Pathway” is a streamlined permit process for buildings that exceed the Green Building requirements applicable to the C-DMU district and confer extraordinary public benefits.

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; and*
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.*

Otherwise, shading impacts are evaluated on a discretionary basis during Use Permit review and are permissible provided they are not “unreasonable” or provided they will not result in a “significant reduction in sunlight.” Although the review of shadow studies is somewhat objective – administrative guidelines establish methods for analyzing impacts by time of day and time of year on living area windows and yards - the ultimate finding is subjective. Therefore, while shadow studies provide accurate information on shading due to proposed projects, the amount of shading from new development that is deemed “reasonable” depends on the context.

JSISHL discussed many aspects of shadow impacts, including shading of solar panels and roofs, windows, yards and gardens. The recommendation is fairly detailed, including five applicability considerations and four methods of measuring shadow impacts that depend on project elements. **JSISHL recommended that the proposal for objective shadow standards be reviewed and further refined by staff and the Planning Commission.**

#### BACKGROUND

On July 17, 2017, the City Council adopted a referral to address the State Housing Accountability Act (Government Code Section 65589.5) and to preserve local land use discretion (see Attachment 2). The referral requested research into a set of objective zoning standards for new development projects in the following four topic areas:

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

In the time since the referral was adopted by City Council in 2017, the State adopted several bills to streamline the approval process for housing developments. Legislation facilitates housing production for projects that comply with a jurisdiction’s objective standards and prohibits localities from adopting standards what would reduce the number of residential units allowed (i.e. downzones a property or area). As a result of

these legislative actions, jurisdictions benefit from adopting objective planning standards that can guide the development process and reflect goals of the local community.

JSISHL's first few meetings in 2018 were focused on understanding and analyzing 2017 State housing laws and associated City Council referrals. At its fourth meeting, in January 2019, JSISHL adopted a work plan (see Attachment 3) to direct efforts towards researching approaches to objective standards for density, design, shadows and views. In March and May of 2019, JSISHL examined existing conditions at the City of Berkeley and implementation of the Zoning Ordinance and of State law (i.e. Density Bonus, SB-35, the Housing Accountability Act). Since September 2019, JSISHL has evaluated objective standards for density, design and shadows in order to develop a recommendation to City Council. At its final meeting on July 22, 2020, JSISHL recommended approaches to objective standards for design, density and shadows to City Council for consideration. JSISHL was not able to address objective standards for views.

#### ENVIRONMENTAL SUSTAINABILITY

Adoption of objective standards will streamline the permitting process for housing projects, encouraging infill development and density, creating opportunities to live and work within close proximity and reduce reliance on private vehicle use and/or vehicles miles traveled.

#### RATIONALE FOR RECOMMENDATION

State law requires that jurisdictions adopt objective standards in order to ministerially approved projects.

#### ALTERNATIVE ACTIONS CONSIDERED

The city can choose to not adopt objective standards, in which case projects will be ministerially approved without meeting certain standards.

#### CITY MANAGER

The City Manager concurs with the content and recommendations of the Commission's Report.

#### CONTACT PERSON

Alene Pearson, Subcommittee Secretary, Planning and Development Department, 510-981-7489

#### Attachments:

- 1: Meeting Minutes (July 22, 2020)
- 2: City Council Referral (July 17, 2017)
- 3: Work Plan (January 17, 2019)



Planning Commission

**DRAFT MINUTES OF THE REGULAR MEETING OF THE JSISHL  
(JOINT SUBCOMMITTEE FOR IMPLEMENTATION OF STATE HOUSING LAWS)**

**July 22, 2020**

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

**Location: N/A** (This meeting was conducted exclusively through videoconference and teleconference)

**Commissioners Present:** Teresa Clarke, Dohee Kim, Thomas Lord, Shoshana O'Keefe, Igor Tregub, Alfred Twu, Jeff Vincent, Marian Wolfe (left at 9:29), Rob Wrenn

**Commissioners Absent:** None

**Staff Present:** Alene Pearson, Nilu Karimzadegan, Anne Burns and Desiree Dougherty

**ORDER OF AGENDA:** No Change

**CONSENT CALENDAR:** N/A

**PUBLIC COMMENT:** 1 speaker

**PLANNING STAFF REPORT:** Staff announced that three supplemental communications were sent out via email prior to the meeting and are posted on the online agenda. Communications received "At the Meeting" will be posted by the end of Friday.

**COMMUNICATIONS IN PACKET:**

- Email from Cantor Lois on 10/24/19 re: BART apartments
- Email from Vicki Sommer on 10/24/19 re: Objective Standards for Sunlight Detriment
- Email from Alene Pearson on 11/15/19 to JSISHL re: JSISHL October follow up and December supplemental material request
- Letter from Toni Mester on 12/2/19 re: density and solar recommendation
- Letter from David Ushijima on 12/2/19 re: Objective Standards for Shadow and Sunlight
- Email from Commissioner Wolfe on 12/2/19 re: JSISHL October follow up and December supplemental material request

**COMMISSIONER ATTACHMENTS IN PACKET:**

- Email from Alene Pearson to JSISHL on June 26, 2020 re: JSISHL Meeting scheduled for July 22
- Email from Alene Pearson to JSISHL on May 15, 2020 re: JSISHL Meeting via Zoom



- Email from Timothy Burroughs, Planning Director on April 23, 2020 re: Update on status of board and commission meetings
- Email from Commissioner Lord on April 13, 2020 re: “The Constitution.....”
- Email from Commissioner Lord on March 30, 2020 re: Objectifying and Modernizing Study Standards
- Email from Commissioner Kim on March 30, 2020 re: Follow Up to February 26 JSISHL Meeting
- Email from Commissioner Wolfe on March 28, 2020 re: Follow Up to February 26 JSISHL Meeting
- Email from Commissioner Wright on March 12, 2020 re: Follow Up to February 26 JSISHL Meeting
- Email from Alene Pearson to JSISHL on March 6, 2020 re: Follow Up to February 26 JSISHL Meeting

**LATE COMMUNICATIONS** (Received after the Packet deadline):

- Supplemental Communication 1
- Supplemental Communication 2
- Supplemental Communication 3

**LATE COMMUNICATIONS** (Received and distributed at the meeting):

- Supplemental Communication 4

**CHAIR REPORT:** None

**COMMITTEE REPORT:** None

**7. APPROVAL OF MINUTES:**

Motion/Second/Carried (Wolfe/Clarke) to approve the JSISHL Meeting Minutes from February 26, 2020. Ayes: Clarke, Kim, Lord, Tregub, Vincent, Wolfe, Wrenn. Noes: None. Abstain: O’Keefe, Twu. Absent: None (7-0-2-0)

**8. FUTURE AGENDA ITEMS AND OTHER PLANNING-RELATED EVENTS:** None

**AGENDA ITEMS**

**9. Action: Objective Standards for Density**

**PUBLIC COMMENT:** 4 speakers

Primary Motion/Second/No Action Taken (O’Keefe/Wrenn) to recommend that the City Council refer to staff and Planning Commission development of a dwelling units per acre standard in all commercial districts and in the MULI and MUR districts with consideration of a cap on average number of bedrooms. Take into consideration size of parcel and develop an average bedroom/unit (to be determined) for multi-unit buildings. Develop Floor Area Ratios (FARs) for residentially zoned (“R” prefix) districts such as R-2, R-2A, and R-3, to help clarify and make more objective what is permitted in these districts.

Substitute Motion/Second/Carried (Kim/Clarke) to recommend using FAR as a density standard with a secondary form-based approach in Residential and Commercial districts. Ayes: Clarke, Kim, Wolfe, Twu, Vincent. Noes: Lord, O’Keefe, Tregub, Wrenn. Abstain: None  
Absent: None  
(5-4-0-0)

**10. Action: Objective Standards for Design**

**PUBLIC COMMENT:** 1 speakers

Primary Motion/Second/Carried (Wolfe/Clarke) to recommend to City Council the proposed design standards be reviewed and further developed by the Design Review Committee and Planning Commission. These standards were included in JSISHL’s July 22, 2020 packet. Ayes: Clarke, Kim, O’Keefe, Tregub, Vincent, Wolfe, Wrenn. Noes: None. Abstain: Lord, Twu. Absent: None  
(7-0-2-0)

Substitute Motion/Second/Not Carried (Twu/O’Keefe) to recommend to City Council the proposed design standards -- minus the first four design standards (massing, material, rooflines, facades) -- be reviewed and further developed by the Design Review Committee and Planning Commission. These standards were included in JSISHL’s July 22, 2020 packet. Ayes: O’Keefe, Twu. Noes: Clarke, Kim, Lord, Tregub, Vincent, Wolfe, Wrenn. Abstain: None. Absent: None  
(2-7-0-0)

**11. Action: Objective Standards for Shadows**

**PUBLIC COMMENT:** 2 speakers

Motion/Second/Not Carried (Wrenn/Tregub) to recommend to City Council the following:

In developing draft objective standards, staff should start with existing daylight plane standards, including the standards for San Pablo Avenue in El Cerrito, and with the City’s own standard in effect for University Avenue.

Shadowing standards would only apply if the proposed project was asking for a Use Permit, AUP, waiver or density bonus to exceed the “base” residential and commercial zoning district development standards that are in effect as of 7/1/20.

Where there is a lot coverage limit, adjustments to the location and orientation of the massing can be required in order to minimize shadowing impacts.

In the development of shadowing standards, impacts on light and air and existing windows and door openings of the applicable adjacent buildings will be taken into consideration.

JSISHL should recommend that the City Council direct staff to go forward with drafting of an objective standard to protect existing rooftop solar panels from shadowing by new development on adjacent and nearby parcels.

JSISHL should recommend that the City Council direct staff to go forward with drafting objective shadowing standards to limit shadowing of residential buildings by new development on adjacent or nearby parcels.

Standards should apply in residentially zoned (“R” prefix) districts and to properties in commercially zoned (“C” prefix) districts that are adjacent to residential properties, where new development could cause shadowing impacts on residential properties. Staff could present to Council a range of options with draft language for each.

JSISHL should recommend that the City Council direct staff to work on standards to protect open, currently unshadowed areas of public parks, and open currently unshadowed areas of school grounds that are used for student recreation.

Ayes: O’Keefe, Tregub, Vincent, Wrenn. Noes: Lord, Abstain: Clarke, Kim, Twu. Absent: Wolfe (4-1-3-1)

Motion/Second/Carried (Clarke/Vincent) to recommend to City Council the following proposed shadow standards be reviewed and further developed by the staff and Planning Commission.

1. Applicability of Shadow Impacts:

- a. Shadow impacts would not be considered when a proposed new building or new construction meets all base development standards.
- b. Shadow impacts on an adjacent property would only be considered when a side or rear yard setback reduction or an increase in height is requested by use permit or by state density bonus over the allowable standard. Shadow impacts for Front or Street yard setback reductions would not be included or considered.
- c. The shadow impact would only be calculated on the increase in shadow caused by the additional height or reduced setback portion of the project, not the cumulative.
- d. Adjustments would seek to limit reductions in overall building envelope and could compensate with increases in height in another portion of the building, or reduced setback in another portion of the site, or some other mutually agreed adjustment to a development standard or mitigation. Adjustments may require, if no other solution can be proposed to mitigate the impact, a reduction in the overall total building envelope proposed. However, for state density bonus projects, adjustments to a proposed new residential construction shall not require a reduction in the overall total building envelope, habitable area, or cause the number of bedrooms or units to be reduced.
- e. If the adjacent building being affected has a reduced building setback on the adjacent side or rear yard, a light and air impact would not be applicable, except in those cases where the building has a historic designation or was built prior to the implementation of the zoning code.

2. Elements of consideration for Shadow Impact:

- a. Light & Air for Building Openings of Applicable adjacent buildings: The light and air shadow impact shall consider impact to light and air access only of the existing windows and door openings of the applicable adjacent buildings. The new construction would be required to adjust its setback such that a minimum 3 foot perpendicular distance was achieved and a 6 foot width, with minimum 1 foot on either side of the window or door for 2 stories (min. 6 foot for courts with openings on both sides) and 1 foot additional setback for each additional story up to 14 stories, or a total maximum setback of 15 feet from the adjacent building. For instance if the building is 3 feet away from the property line, a 12 foot maximum from the property line for the new building.
- b. Minimum Required Open Space of Adjacent properties: An increase in shadow impact caused by the additional height or reduced setback on the minimum required open space of the adjacent impacted property shall not be more than a 50% increase in direct shade averaged over the entire year. If the affected property has more than the required open space, the calculation would be made on the open space that is least impacted by the shadow. The setback or height shall be adjusted to result in a net shadow increase of no more than 50% (or suggest alternate per staff research) as limited in Section 1 above. The shadow impact would only be calculated on the increase in shadow caused by the additional height or reduced setback portion of the project, not the cumulative.
- c. Solar Access: An increase for the additional impact only of more than 50% of direct shading on existing solar panels averaged over the entire year and over the entire area of solar array would require that an adjustment to the requested height or setback be made, or other mutually agreed adjustment to a development standard or mitigation be made. If a mitigation such as moving the solar panels or re-orienting the solar panels has been mutually agreed upon in lieu of a development standard adjustment, this mitigation should be completed prior to building permit issuance, if possible.

The shadow impact would only be calculated on the increase in shadow caused by the additional height or reduced setback portion of the project, not the cumulative.

Ayes: Clarke, Kim, O’Keefe, Twu, Vincent. Noes: Lord, Wrenn. Abstain: Tregub. Absent: Wolfe. (5-2-1-1)

**The meeting was adjourned at 11: 01 p.m.**

**Commissioners in attendance: 9 of 9**

**Members in the public in attendance: 7**

**Public Speakers: 7**

**Length of the meeting: 2 hours and 59 minutes**

**APPROVED:**

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Alene Pearson

Secretary to the JSISHL

DRAFT



RESOLUTION NO. 69,159-N.S.

EXTENSION OF THE JOINT SUBCOMMITTEE FOR THE IMPLEMENTATION OF  
STATE HOUSING LAWS

WHEREAS, the Joint Subcommittee for the Implementation of State Housing Laws (JSISHL) was established under Resolution No. 68,308-N.S. in January 2018; and

WHEREAS, the mission of JSISHL is to advise Council regarding issues around density bonuses, the Housing Accountability Act, inclusionary zoning, and permit streamlining to attain compliance with state law and take advantage of new opportunities for the development of affordable housing; and

WHEREAS, under its enabling legislation, JSISHL is tasked with completing its work by January 2020, reporting to Council by March 2020; and

WHEREAS, in order to fulfill its mission an extension is needed to provide adequate time to review recently passed State housing laws, and to provide adequate feedback on recommendations on units per acre density standards, Floor to Area Ratios (FARs) and daylight plane shadowing standards, along with anything else such as an objective definition of detriment.


NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby extends the timeline for the Joint Subcommittee for the Implementation of State Housing Laws to complete its work by July 2020, with the recommendations being brought to the City Council for consideration by the end of September 2020.

The foregoing Resolution was adopted by the Berkeley City Council on October 29, 2019 by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.

Noes: None.

Absent: None.

  
\_\_\_\_\_  
Jesse Arreguin, Mayor

Attest:   
\_\_\_\_\_  
Mark Numainville, City Clerk

RESOLUTION NO. 68,308–N.S.

ESTABLISHING A JOINT SUBCOMMITTEE FOR THE IMPLEMENTATION OF STATE HOUSING LAWS.

WHEREAS, Berkeley and California is facing an unprecedented housing affordability crisis; and

WHEREAS, rents for a two bedroom apartment in Berkeley have risen by 62.5% over the past five years; and

WHEREAS, Berkeley has so far achieved 48% of its housing allocation goals for 2014-2022 set out by the Association of Bay Area Governments, including 0% for extremely low income and moderate income; and

WHEREAS, many residential developments that have received zoning approval have yet to receive a building permit; and

WHEREAS, to address the rising crisis of housing in the State of California, 15 state bills were signed into law, with many dealing with how local municipalities respond to the development of new units; and

WHEREAS, issues around density bonuses, the Housing Accountability Act, inclusionary zoning, and permit streamlining need to be addressed by the City to be compliant with state law and to take advantage of new opportunities for the development of affordable housing; and

WHEREAS, because the Zoning Adjustments Board, Housing Advisory Commission, and Planning Commission have policy and quasi-judicial powers around housing, it would be beneficial for representatives of these commissions to meet jointly to develop policies for consideration by the Planning Commission and City Council; and

WHEREAS, community input is of vital importance in the review and implementation of these housing policies, and such input can be encouraged by regular publicly-noticed meetings of the Task Force; and

WHEREAS, the Joint Subcommittee should be comprised of nine voting members, with representatives from each commission.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley does hereby establish a Joint Subcommittee composed of members from the Zoning Adjustments Board, Housing Advisory Commission, and Planning Commission.

BE IT FURTHER RESOLVED that the Joint Subcommittee members shall be appointed from the membership of the Zoning Adjustments Board, Planning Commission or Housing Advisory Commission. Any Commissioner on any of those commissions is eligible for appointment to the Joint Subcommittee, as long as there is representation from each commission on the Joint Subcommittee.


BE IT FUTHER RESOLVED that the Joint Subcommittee shall complete its work by January 2020. Staff shall forward the Joint Subcommittee's recommendations to each parent Commission for comment, and bring the Joint Subcommittee's recommendations to the City Council for consideration by the end of March 2020, along with comments by any parent commissions.

The foregoing Resolution was adopted by the Berkeley City Council on January 23, 2018 by the following vote:

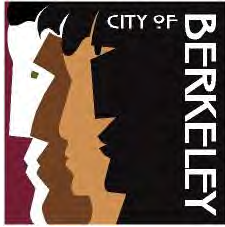
Ayes: Davila, Droste, Hahn, Harrison, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

Absent: Bartlett.

  
\_\_\_\_\_  
Jesse Arreguin, Mayor

Attest:   
\_\_\_\_\_  
Mark Numalville, City Clerk



Mayor Jesse Arreguin  
Councilmember Sophie Hahn, District 5

## **SUPPLEMENTAL AGENDA MATERIAL**

**Meeting Date:** June 13, 2017

**Item Number:** # 59

**Item Description:** Housing Accountability Act

**Submitted by:** Mayor Jesse Arreguin and Councilmember Sophie Hahn

The revision removes the idea that staff and the Planning Commission consider as one of several options downzoning and then upzoning by increasing development standards on a discretionary basis.

These ideas largely reflect those originally proposed by the City Attorney and Planning staff.



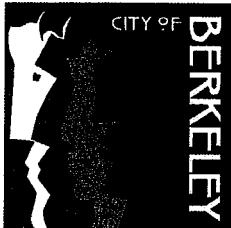
Mayor Jesse Arreguin  
Councilmember Sophie Hahn, District 5

### **Motion, Item # 59: Housing Accountability Act**

Refer to the City Manager and Planning Commission to consider the following actions, and others they may find appropriate, to address the potential impacts of the Housing Accountability Act and to preserve local land use discretion:

- Amend the General Plan and Zoning Ordinance to adopt numerical density and/or building intensity standards that can be applied on a parcel-by-parcel basis in an easy and predictable manner. These would constitute reliable and understandable “objective general plan and zoning standards” that would establish known maximum densities. This could be done across the board or for specified districts.
- Devise and adopt “objective, identified written public health or safety standards” applicable to new housing development projects.
- Adopt “design review standards that are part of ‘applicable, objective general plan and zoning standards and criteria’”.
- ~~Downzone & increase the number and amount of additional height, setback, and other elements available on a discretionary basis.~~
- Quantify and set standards for views, shadows, and other impacts that often underlie detriment findings.





Office of the Mayor

RECEIVED AT  
COUNCIL MEETING OF:

MAY 30 2017

OFFICE OF THE CITY CLERK  
CITY OF BERKELEY

**Motion, Item # 46: Housing Accountability Act**

Refer to the City Manager and Planning Commission to consider the following actions, and others they may find appropriate, to address the potential impacts of the Housing Accountability Act and to preserve local land use discretion:

- Amend the General Plan and Zoning Ordinance to adopt numerical density and/or building intensity standards that can be applied on a parcel-by-parcel basis in an easy and predictable manner. These would constitute reliable and understandable “objective general plan and zoning standards” that would establish known maximum densities. This could be done across the board or for specified districts.
- Devise and adopt “objective, identified written public health or safety standards” applicable to new housing development projects.
- Adopt “design review standards that are part of ‘applicable, objective general plan and zoning standards and criteria’”.
- Downzone & increase the number and amount of additional height, setback, and other elements available on a discretionary basis.
- Quantify and set standards for views, shadows, and other impacts that often underlie detriment findings.

Meeting Date: January 17, 2019

To: Joint Subcommittee for the Implementation of State Housing Law (JSISHL)

From: Chris Schildt, Chairperson

Subject: JSISHL background, mission, objectives, and developing 2019 Workplan

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## Background

JSISHL held three meetings last year in April, May, and July, and had two meetings cancelled in September and November. Due to the long gap since our last meeting, I thought it'd be helpful to revisit the mission and objectives of this subcommittee, as background to a discussion of our workplan for the coming year.

At our April 17, 2018 meeting, we reviewed the mission and objectives of this subcommittee (from April 17, 2018 staff presentation to JSISHL):

**Mission:** Assist the City of Berkeley to effectively implement new State housing laws and advance City Council priorities that are designed to increase affordable housing.

### Objectives:

- Learn about the new State housing law package and its implications for our community
- Assist the City to incorporate new practices designed to enable implementation of new State housing laws
- Based on City Council priorities and referrals, assist with development of new policies for consideration by parent commissions and City Council.

At our subsequent meetings, we heard information about and discussed new state housing laws and a range of related issues, including developing objective standards, streamlining affordable housing, density bonus, and inclusionary zoning.

## Developing a 2019 Workplan

While we heard information and had a lot of discussion last year, my aim for this coming year is for this body to move forward on a finite number of items that will best position the City to implement State housing laws. To that aim, I recommend we develop a workplan with agreed upon priorities that we will work on in the coming year. This would not preclude commissioners from submitting agenda items on other topics for JSISHL to consider, but would help to align our efforts and focus.

The workplan should build off of our existing work and discussion. In last year's meetings, we discussed the following areas that relate to implementation of new State housing laws:

- Developing objective standards
- Streamlining affordable housing
- Density bonus
- Inclusionary housing

**Proposal:**

Numerous state laws, including the Housing Accountability Act, SB 35, and other potential future state legislation (e.g. SB 50) have made it difficult to implement our local laws, which were developed to be flexible with local discretion. The City has recently undertaken a review of the applicable standards that can be enforced under these laws in the light of three recent projects that have applied for approval under SB 35. For an example of how the City applied objective standards for one of the projects, 1601 Oxford Street, see:

[https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_ZAB/2018-12-21\\_Attachment%20C\\_SB35\\_Objective%20Standards\\_1601%20Oxford.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_ZAB/2018-12-21_Attachment%20C_SB35_Objective%20Standards_1601%20Oxford.pdf)

One outcome of the recent reviews has been the clear identification of those areas where the City does not have objective standards, including design review and use permit findings, which are by necessity discretionary and flexible to address unique circumstances. Developing objective standards in areas such as view, sunlight, density, and detriment could help to ensure local needs and goals are included in the development review process for all projects. These objective standards would also help address some of the other topics that have come up on this commission, such as facilitating streamlined review of affordable housing projects and improving the density bonus process.

As a proposed workplan, we could decide as a commission to use each of the next several meetings to do research and discussion on a separate topic within objective standards, and develop a set of recommendations for the City Council and/or our parent commissions. For each topic, commissioners and members of the public would be encouraged to submit information and research to this commission related to the topic to inform discussion. Attached is an example of research provided by a member of public, David Ushijima, on providing objective standards for sunlight detriment.

For example, we could dedicate one of each of these topics for each upcoming meeting:

- Daylight.
- Views.
- Density standards (Note: The city has hired a consultant, Opticos Design, to develop density standards this year. They will be presenting to this commission in 2019, date TBD).
- Detriments to health, comfort, and general welfare.

We could also agendaize for a future meeting to review the City's existing objective standards table.

At the end of the year, we can compile our research and discussion and develop a set of recommendations to send to the City Council and/or our parent bodies.

**Questions for discussion:**

- Do the members of the commission agree to develop a workplan for 2019?
- If yes, what should our priorities be for 2019?



Planning Commission

1                   **DRAFT MINUTES OF THE REGULAR MEETING OF THE JSISHL**  
2                   **(JOINT SUBCOMMITTEE FOR IMPLEMENTATION OF STATE HOUSING LAWS)**

3  
4                   **January 17, 2019**

5                   The meeting was called to order at 7:05 p.m.

6                   **Location:** 2180 Milvia Street 1st Floor, Cypress Conference Room

7                   **Commissioners Present:** Thomas Lord, Shoshana O’Keefe (arrived at 7:16), Christine Schildt  
8                   Igor Tregub, Marian Wolfe, Rob Wrenn.

9                   **Commissioners Absent:** None

10                  **Staff Present:** Alene Pearson, Nilu Karimzadegan and Beth Greene

11                  **ORDER OF AGENDA:** Order of Agenda was changed to:

12                  Discussion Item 9 (Adopt 2019 JSISHL Work Plan ), Discussion Item 10 (Renewing  
13                  Democratized Planning in Berkeley), Action Item 11 (Approve 2019 JSISHL Meetings Calendar)  
14                  and Action Item 12 (Elections: Elect 2019 JSISHL Chair and Vice Chair).

15                  Motion/Second/Carried (Lord/ Tregub) to move Agenda Item 12 to Agenda Item 10 and vote  
16                  on the 2019 JSISHL Work Plan after Agenda Item 10. Ayes: Lord, O’Keefe, Schildt, Tregub,  
17                  Wolfe, Wrenn. Noes: None. Abstain: None. Absent: None (6-0-0-0)

18  
19                  **CONSENT CALENDAR:** N/A.

20                  **PUBLIC COMMENT:** 1 speaker

21                  **PLANNING STAFF REPORT:**

22                  Staff announced that 2019 meeting dates will be decided tonight with Agenda Item 11 and future  
23                  meeting location will depend upon room availability.

24                  **COMMUNICATIONS IN PACKET:**

- 25                  • White Paper on Sunlight Impacts by David Ushijima (October 15, 2018).  
26                  • 2019-01-08\_Communication\_BNC\_Support of White Paper by Dean Metzger (January 8,  
27                  2019)

28  
29                  **LATE COMMUNICATIONS** (Received after the Packet deadline): None

31 **LATE COMMUNICATIONS** (Received and distributed at the meeting): None

32 **CHAIR REPORT:** None

33 **COMMITTEE REPORT:** None

34 **7. APPROVAL OF MINUTES:**

35 Motion/Second/Carried (Tregub/Wrenn) to approve the JSISHL Meeting Minutes from July 17,  
36 2018. Ayes: Lord, O’Keefe, Schildt, Tregub, Wrenn. Noes: None. Abstain: Wolfe. Absent:  
37 None (5-0-1-0)

38  
39 **8. FUTURE AGENDA ITEMS AND OTHER PLANNING-RELATED EVENTS:** None.

40 **AGENDA ITEMS**

41 **9. Discussion:** Adopt 2019 JSISHL Work Plan:

42 The Commission discussed a work plan for 2019 and developed a proposed schedule with  
43 meeting dates and topics that focus on objective standards for the implementation of State  
44 Housing Law. Below is a summary of that discussion:

45 January 17: Work Plan Development

46 March 27: Existing Objective Standard Framework

47 May 22: Density Standards and Density Bonus

48 September 25: Daylight, shadowing, and solar access

49 October 23: Views and other objective standards

50 December 12: Report out.

51 The Commissioners and the members of the public were encouraged to submit information and  
52 research related to future meeting topics. This work plan will result in a set of recommendations  
53 to parent commissions and/or City Council.

54 **PUBLIC COMMENT:** 1 speaker

55 **10. Discussion:** Renewing Democratized Planning in Berkeley

56 Commissioner Lord explained his memo and suggested modifications to the work plan  
57 developed during discussion of Agenda Item 9. The Commission added the topic of local  
58 overlay zones to the September and October meetings.

59 **PUBLIC COMMENT:** 1 speaker

60 Motion/Second/Carried (O’Keefe/Wolfe) to adopt the proposed 2019 workplan. Ayes: O’Keefe,  
61 Schildt, Tregub, Wolfe, Wrenn. Noes: Lord. Abstain: None. Absent: None (5-1-0-0)



62  
63 **11. Action:** Approve 2019 JSISHL Meetings Calendar:

64 The Commission discussed their availability and agreed on the following 2019 calendar:

65 January 17, 2019 (Wednesday)

66 March 27, 2019 (Wednesday)

67 May 22, 2019 (Wednesday)

68 September 25, 2019 (Wednesday)

69 October 23, 2019 (Wednesday)

70 December 12, 2019 (Thursday)

71 Motion/Second/Carried (O’Keefe/Tregub) to adopt the proposed 2019 calendar. Ayes: Lord,  
72 O’Keefe, Schildt, Tregub, Wolfe, Wrenn. Noes: None. Abstain: None. Absent: None  
73 (6-0-0-0)

74  
75 **12. Elections:** Elect 2019 JSISHL Chair and Vice Chair:

76 Motion/Second/Carried (Wolfe/O’Keefe) to Elect Chris Schildt as Chair and Igor Tregub as  
77 Vice Chair for 2019 JSISHL. Ayes: Lord, O’Keefe, Schildt, Tregub, Wolfe, Wrenn. Noes: None.  
78 Abstain: None. Absent: None (6-0-0-0)

79  
80 **The meeting was adjourned at 9: 03 p.m.**

81 **Commissioners in attendance: 6 of 6**

82 **Members in the public in attendance: 2**

83 **Public Speakers: 2**

84 **Length of the meeting: 1 hour and 58 minutes**