

Supplemental Communications (1)

(The following are communications received after packet was published on **November 12**, by noon, **November 16**.)

Correction: Item 10 Attachment 1
See pages 5-14 for redlines.

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**BMC Chapter 23C.08
Demolition and Dwelling Unit Controls**

Sections:

- [23C.08.010](#) Demolition or Elimination of Residential Units
- [23C.08.020](#) Demolition of Accessory Buildings and Buildings Used for Commercial, Manufacturing, Community, Institutional or Other Non-Residential Uses
- [23C.08.030](#) Building Relocations
- [23C.08.040](#) Imminent Hazards

23C.08.010 Demolition or Elimination of Residential Units

A. No residential unit may be eliminated or demolished except as authorized by the provisions of the chapter and State law, including but not limited to Government Code section 66300 *et seq.* For purposes of this Chapter, “residential unit” includes any Dwelling Unit, bedroom or sleeping quarters in a Group Living Accommodation, Live/Work Unit, or Residential Hotel Room.

B. A Use Permit for the demolition of one or more residential units in connection with a housing development project shall be issued only if the project complies with the requirements of Government Code section 66300(d), as applicable. In addition, the Board may in its discretion choose from one of the following requirements:

- 1. That the replacement units comply with Chapter 22.20 and/or Chapter 23C.12 and/or Section 23E.20.080; and/or
- 2. That the demolition and replacement units comply with the requirements of the Rent Stabilization Ordinance, Chapter 13.76 *et seq.*

C. A Use Permit for the demolition of one or more residential units that is not subject to Section 23C.08.010.B shall issue if the Board makes the findings required by Section 23B.32.040.A, and:

- 29 1. The building containing the unit(s) is hazardous or unusable and is
30 infeasible to repair as determined by the Chief Building Official and Zoning
31 Officer;
- 32 2. The demolition will result in no net loss in protected units, as defined in
33 Government Code section 66300(d)(2)(E)(ii);
- 34 3. The demolition would not be materially detrimental to the public interest of
35 the affected neighborhood and the City, taking into the account the housing
36 needs of the neighborhood, the City, and the region; or
- 37 4. Denial of the demolition permit would conflict with state law applicable to
38 the City of Berkeley, as a charter city, including but not limited to the Ellis Act
39 (Government Code section 7060 *et seq.*).
- 40 D A Use Permit issued pursuant to this Section must comply with Chapter 3.24,
41 except where enforcement of that Chapter would conflict with state law.
- 42 E. A Use Permit issued pursuant to this Section shall require the applicant to comply
43 with the following conditions:
- 44 1. The applicant shall provide all tenants with notice of the application to
45 demolish the building no later than the date it is submitted to the City, including
46 notice of their rights under Chapter [13.76](#). Any existing residents must be allowed
47 to occupy their units until six months before the start of construction activities.
- 48 2. The applicant shall provide assistance with moving and relocation
49 assistance equivalent to the requirements set forth in Chapter [13.84](#) or
50 Government Code section 66300(d)(2)(D)(i), whichever requires greater
51 relocation assistance to displaced households; provided, however, that any
52 project that is carried out or funded by the state or federal government shall be
53 subject to applicable provisions of the California Relocation Act (Government
54 Code section 7260 *et seq.*) and/or the Uniform Relocation Assistance and Real
55 Property Acquisition Policies Act of 1970, as amended (42 U.S.C. sections 4601-
56 4655).
- 57 3. Any tenant of a protected unit that is demolished shall have the right of
58 first refusal to rent any new protected units designated to replace the units that
59 were demolished, consistent with the requirements of Government Code section
60 66300(d)(2)(D)(ii), if applicable, and subject to any applicable eligibility
61 requirements for affordable units.

62 **23C.08.020 Demolition of Accessory Buildings and Buildings Used for**
63 **Commercial, Manufacturing, Community, Institutional, or Other Non-Residential**
64 **Uses**

65 A. Notwithstanding any other provision of Title 23, a Main Building used for non-
66 residential purposes containing less than 5,000 square feet of floor area may be
67 demolished subject to issuance of an AUP; a Main Building containing 5,000 square
68 feet or more of floor area may be demolished subject to issuance of Use Permit.

69 B. A demolition of an Accessory Building other than an Accessory Dwelling Unit
70 containing less than 300 square feet of floor area is permitted subject to the issuance of
71 a Zoning Certificate; an Accessory Building other than an Accessory Dwelling Unit
72 containing 300 square feet or more of floor area may be demolished subject to the
73 issuance of an AUP.

74 C. Any application for a Use Permit or AUP to demolish a non-residential building or
75 structure which is 40 or more years old shall be forwarded to the Landmarks
76 Preservation Commission (LPC) for review prior to consideration of the Use Permit or
77 AUP. The LPC may initiate a landmark or structure-of-merit designation or may choose
78 solely to forward to the Board or Zoning Officer its comments on the application. The
79 Board or Zoning Officer shall consider the recommendations of the LPC in considering
80 its action on the application.

81 D. A Use Permit or an AUP for demolition of an Accessory Building other than an
82 Accessory Dwelling Unit or for the demolition of a non-residential building or structure
83 shall issue if the Board or Zoning Officer if the application complies with the
84 requirements of Chapter 3.24, and one of the following findings is made:

85 1. The demolition is required to allow the construction of a new building or other
86 new Use approved by the Board or Zoning Officer;

87 2. The demolition will remove a building that is unusable for activities
88 compatible with the purposes of the District in which it is located or that is
89 infeasible to modify for such uses;

90 3. The demolition will remove a structure which represents an unabatable
91 nuisance; or

92 4. The demolition is required for the furtherance of specific plans or projects
93 sponsored by the City or other local district or authority. In such cases, it shall be
94 demonstrated that it is infeasible to obtain prior or concurrent approval for the

95 new construction or new use which is contemplated by such specific plans or
96 projects and that adhering to such a requirement would threaten the viability of
97 the plan or project.

98 **23C.08.030 Building Relocations**

99 A. The relocation of a building from a lot is considered a demolition for purposes of
100 this Ordinance.

101 B. The relocation of a building to a lot is considered new construction and shall be
102 subject to all requirements applicable to new construction.

103 C. When a building is relocated to a different lot within the City, the lot from which the
104 building is being removed shall be known as the source lot and the lot on which the
105 building is to be sited shall be known as the receiving lot.

106 D. The removal of a building from the source lot shall require be approved if it meets
107 the requirements for issuance of demolition permit under this Chapter.

108 E. The relocation of a building onto the receiving lot shall be approved if it meets the
109 requirements for construction of a new structure on the receiving lot.

110 **23C.08.040 Imminent Hazards**

111 Notwithstanding anything to the contrary, if a building or structure is unsafe, presents a
112 public hazard and is not securable and/or is in imminent danger of collapse so as to
113 endanger persons or property, as determined the City's Building Official, it may be
114 demolished without a Use Permit. The Building Official's determination in this matter
115 shall be governed by the standards and criteria set forth in the most recent edition of the
116 [California Building Code](#) that is in effect in the City.

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Red-Lined Version

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BMC Chapter 23C.08

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Demolition and Dwelling Unit Controls

123 Sections:

124

23C.08.010 Demolition or Elimination of ~~Dwelling Residential~~ Units

125

~~--General Requirement~~

126

~~23C.08.020~~ Elimination of Dwelling Units through Demolition

127

~~23C.08.030~~ Elimination of Dwelling Units and Accessory Dwelling Units
through Conversion and Change of Use

128

129

~~23C.08.035~~ Private Right of Action

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~~23C.08.040~~ Elimination of Residential Hotel Rooms

131

~~23C.08.050~~ ~~23C.08.020~~ Demolitions of Accessory Buildings and Buildings

132

Used for Commercial, Manufacturing, ~~or~~ Community, Institutional

133

or Other Non-residential Residential Uses

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~~23C.08.060~~ ~~23C.08.030~~ Building Relocations

135

~~23C.08.070~~ ~~23C.08.040~~ Limitations Imminent Hazards

136

23C.08.010 Demolition or Elimination of Dwelling Residential Units--~~General~~

137

~~Requirement~~

138

~~A. A.~~ A.—No Dwelling Unit or units ~~residential unit~~ may be eliminated or demolished

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except as authorized by the provisions of the chapter and State law, including but not

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limited to Government Code section 66300 et seq. For purposes of this Chapter,

141

“residential unit” includes any Dwelling Unit, bedroom or sleeping quarters in a Group

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Living Accommodation, Live/Work Unit, or Residential Hotel Room.

143

~~B. The Board may approve a Use Permit for the elimination or demolition of dwelling~~

144

~~units only if, in addition to any other findings required by this Ordinance, it finds that the~~

145

~~elimination of the dwelling units would not be materially detrimental to the housing~~

146 ~~needs and public interest of the affected neighborhood and the City.~~ A Use Permit for
147 the demolition of one or more residential units in connection with a housing
148 development project shall be issued only if the project complies with the requirements of
149 Government Code section 66300(d), as applicable. In addition, the Board may in its
150 discretion choose from one of the following requirements:

151 1. That the replacement units comply with Chapter 22.20 and/or Chapter
152 23C.12 and/or Section 23E.20.080; and/or

153 2. That the demolition and replacement units comply with the requirements
154 of the Rent Stabilization Ordinance, Chapter 13.76 et seq.

155 C. A Use Permit for the demolition of one or more residential units that is not subject
156 to Section 23C.08.010.B shall issue if the Board makes the findings required by Section
157 23B.32.040.A, and:

158 ~~C.—Demolition of buildings containing a single dwelling unit and buildings constructed~~
159 ~~after June 1980 shall not be subject to the findings set forth in Section 23C.08.020.A but~~
160 ~~shall be subject to subdivisions B, C, and D of Section 23C.08.020. (Ord. 7458-NS § 1,~~
161 ~~2016)~~

162 ~~23C.08.020 Elimination of Dwelling Units through Demolition~~

163 ~~A.—The Board may approve a Use Permit to demolish a building constructed prior to~~
164 ~~June 1980 on a property containing two or more dwelling units if it makes the findings~~
165 ~~required by the foregoing section, and either:~~

166 1. The building containing the unit(s) is hazardous or unusable and is
167 infeasible to repair as determined by the Chief Building Official and Zoning
168 Officer; or

170 2. The building containing the unit(s) will be moved to a different location
171 within the City of Berkeley with no net loss of units and no change in the
172 affordability levels of the units. The demolition will result in no net loss in protected
173 units, as defined in Government Code section 66300(d)(2)(E)(ii);

174 3. The demolition would not be materially detrimental to the public interest of
175 the affected neighborhood and the City, taking into the account the housing
176 needs of the neighborhood, the City, and the region; or

177 4. Denial of the demolition permit would conflict with state law applicable to
178 the City of Berkeley, as a charter city, including but not limited to the Ellis Act
179 (Government Code section 7060 *et seq.*); or

180 ~~3. The demolition is necessary to permit construction of special housing needs~~
181 ~~facilities such as, but not limited to, childcare centers and affordable housing~~
182 ~~developments that serve the greater good of the entire community; or~~

183 ~~4. The demolition is necessary to permit construction approved pursuant to this~~
184 ~~Chapter of at least the same number of dwelling units. No such demolition shall~~
185 ~~occur prior to the issuance of a building permit for the replacement units.~~

186 D A Use Permit issued pursuant to this Section must comply with Chapter 3.24,
187 except where enforcement of that Chapter would conflict with state law.

188 ~~—When a project is approved under this paragraph, the project applicant shall be~~
189 ~~required to pay a fee for each unit demolished to mitigate the impact of the loss of~~
190 ~~affordable housing in the City of Berkeley. The amount of the fee shall be set by~~
191 ~~resolution of the City Council.~~

192 ~~—In the case of a unit with a tenant at the time of demolition, the provisions of Section~~
193 ~~23C.08.020.C apply and the impact fee is due when that tenant vacates the unit.~~

194 ~~—In lieu of paying the impact fee, the project applicant may provide a designated unit in~~
195 ~~the new project at a below market rate to a qualifying household in perpetuity. The~~
196 ~~affordability level of the below market rent and the income level of the qualifying~~
197 ~~household shall be set by resolution of the City Council. The project applicant shall~~
198 ~~enter a regulatory agreement with the City of Berkeley to provide for the provision of any~~
199 ~~such in lieu units.~~

200 ~~B. Notwithstanding Subdivision (A), demolition will not be allowed if the~~
201 ~~building was removed from the rental market under the Ellis Act during the~~
202 ~~preceding five (5) years or there have been verified cases of harassment or~~
203 ~~threatened or actual illegal eviction during the immediately preceding three years.~~

204 ~~—Where allegations of harassment or threatened or actual illegal eviction are in~~
205 ~~dispute, either party may request a hearing before a Rent Board Hearing Examiner, who~~
206 ~~will provide an assessment of the evidence and all available documentation to the~~
207 ~~Zoning Adjustments Board, which shall determine whether harassment or threatened or~~
208 ~~actual illegal eviction occurred.~~

209 ~~GE.~~ If the units in a building to be demolished under subdivision (A) are occupied, the
210 following requirements shall apply. A -Use Permit issued pursuant to this Section shall
211 require the applicant to comply with the following conditions:

212 1. ~~Except as set forth in paragraph (2) below:~~ 1. _____

213 a. The applicant shall provide all ~~sitting~~ tenants with notice of the application to
214 demolish the building no later than the date it is submitted to the City, including
215 notice of their rights under Chapter 13.76. Any existing residents must be allowed
216 to occupy their units until six months before the start of construction activities.

217
218 2. ~~b.~~ The applicant shall provide assistance with moving ~~expenses and~~
219 relocation assistance equivalent to ~~those the requirements~~ set forth in Chapter
220 13.84 or Government Code section 66300(d)(2)(D)(i), whichever requires
221 greater relocation assistance to displaced households; provided, however, that
222 any project that is carried out or funded by the state or federal government shall
223 be subject to applicable provisions of the California Relocation Act (Government
224 Code section 7260 et seq.) and/or the Uniform Relocation Assistance and Real
225 Property Acquisition Policies Act of 1970, as amended (42 U.S.C. sections 4601-
226 4655).

227 c. ~~The applicant shall subsidize the rent differential for a comparable replacement unit,~~
228 ~~in the same neighborhood if feasible, until new units are ready for occupancy. Funding~~
229 ~~for the rent differential shall be guaranteed in a manner approved by the City.~~

230 2. ~~An applicant under this Chapter who proposes to construct a 100% affordable~~
231 ~~housing project shall provide relocation benefits that conform to the Uniform Relocation~~
232 ~~Assistance and Real Property Acquisition Policies Act of 1970, as amended and the~~
233 ~~California Relocation Act (Government Code sections 7260 et seq.).~~

234
235 3. ~~Except as set forth in paragraph (4) below, sitting tenants who are~~
236 ~~displaced as a result of demolition shall be provided the right of refusal to move~~
237 ~~into the new building; Any and tenants of a protected units that are is demolished~~
238 ~~shall have the right of first refusal to rent any new below-market rate protected~~
239 ~~units designated to replace the units that were demolished, at the rent that would~~
240 ~~have applied if they had remained in place, as long as their tenancy continues.~~
241 ~~Income restrictions shall not apply to displaced tenants, consistent with the~~

242 requirements of Government Code section 66300(d)(2)(D)(ii), if applicable, and
243 subject to any applicable eligibility requirements for affordable units.

244

245 ~~4.—In cases where an applicant under this Chapter has constructed a 100% affordable~~
246 ~~housing project, sitting tenants who are displaced as a result of demolition and who~~
247 ~~desire to return to the newly constructed building will be granted a right of first refusal~~
248 ~~subject to their ability to meet income qualifications and other applicable eligibility~~
249 ~~requirements when the new units are ready for occupancy.~~

250 ~~5.—The provisions of this section shall not apply to tenants who move in after the~~
251 ~~application for demolition is submitted to the City provided that the owner informs each~~
252 ~~prospective tenant about the proposed demolition and that demolition constitutes good~~
253 ~~cause for eviction.~~

254 ~~D.—Notwithstanding anything in Title 23 to the contrary, but subject to any applicable~~
255 ~~requirements of the Landmarks Preservation Ordinance (BMC Chapter 3.24), accessory~~
256 ~~buildings of any size, including, but not limited to, garages, carports and sheds, but not~~
257 ~~including any structure containing a lawfully established dwelling unit, which serves and~~
258 ~~is located on the same lot as a lawful residential use, may be demolished by right. (Ord.~~
259 ~~7458-NS § 2, 2016)~~

260 **~~23C.08.030 Elimination of Dwelling Units and Accessory Dwelling Units through~~**
261 **~~Conversion and Change of Use~~**

262 ~~A.—The Board may approve a Use Permit for the elimination of a dwelling unit through~~
263 ~~combination with another dwelling unit for purposes of occupancy by a single household~~
264 ~~if it finds that:~~

265 ~~1.—The existing number of dwelling units exceeds the number permitted by the~~
266 ~~maximum residential density applicable to the District where the subject building is~~
267 ~~located; and~~

268 ~~2.—One of the affected dwelling units has been occupied by the applicant's household~~
269 ~~as its principal place of residence for no less than two years prior to the date of the~~
270 ~~application and none of the affected units is currently occupied by a tenant, or all~~
271 ~~dwelling units that would be affected by the elimination are being sold by an estate and~~
272 ~~the decedent occupied the units as their principal residence for no less than two years~~
273 ~~prior to the date of their death.~~

274 ~~B.— Notwithstanding Subdivision (A), demolition will not be allowed if the building was~~
275 ~~removed from the rental market under the Ellis Act during the preceding five (5) years or~~
276 ~~there have been verified cases of harassment or threatened or actual illegal eviction~~
277 ~~during the immediately preceding three years. Where allegations of harassment or~~
278 ~~threatened or actual illegal eviction are in dispute, either party may request a hearing~~
279 ~~before a Rent Board Hearing Examiner, who will provide an assessment of the evidence~~
280 ~~and all available documentation to the Zoning Officer or Zoning Adjustments Board,~~
281 ~~which shall determine whether harassment or threatened or actual illegal eviction~~
282 ~~occurred.~~

283 ~~C.— In the event a unit eliminated pursuant to subdivision (A) is not occupied by the~~
284 ~~applicant's household for at least two consecutive years from the date of elimination, the~~
285 ~~affected unit must be restored to separate status. This requirement shall be~~
286 ~~implemented by a condition of approval and a notice of limitation on the property,~~
287 ~~acceptable to the City, which provides that if the owner's household does not occupy~~
288 ~~the unit for at least two years from the date of elimination the affected units must either~~
289 ~~be restored as separate dwelling units and the vacant unit(s) offered for rent within six~~
290 ~~months or the owner must pay a fee of \$75,000 in 2013 dollars, adjusted in May of each~~
291 ~~year according to the Consumer Price Index for the San Francisco Bay Area, which~~
292 ~~shall be deposited into the City's Housing Trust Fund. The City may exempt an~~
293 ~~applicant from the two-year residency requirement in the event of an unforeseeable life~~
294 ~~change that requires relocation.~~

295 ~~D.— In cases where elimination of a dwelling unit reduces the number of units in a~~
296 ~~building to four (4), the applicant shall record a notice of limitation against the subject~~
297 ~~property that the limitation on eviction of tenants under Section 13.76.130.A.9.i(iii) shall~~
298 ~~continue to apply until such time as the building is demolished or sufficient units are~~
299 ~~added or restored such that the building contains at least five (5) units.~~

300 ~~E.— Alternatively, the Zoning Officer may issue an AUP for a conversion which~~
301 ~~eliminates a dwelling unit if they find that the conversion of the building will restore or~~
302 ~~brings the building closer to the original number of dwelling units that was present at the~~
303 ~~time it was first constructed, provided the conversion meets the requirements of A.2., B.,~~
304 ~~C. and D. of this section.~~

305 ~~F.— The Board may approve a Use Permit for a change of use to a community care or a~~
306 ~~child care facility which eliminates a dwelling unit if it finds that such use is in~~
307 ~~conformance with the regulations of the District in which it is located.~~

308 ~~G.—The Board may approve a Use Permit for the elimination of a dwelling unit through~~
309 ~~combination with another dwelling unit for the purpose of providing private bathrooms,~~
310 ~~kitchenettes, accessibility upgrades, and/or seismic safety upgrades to Single-~~
311 ~~Residential Occupancy (SRO) Rooms in residential developments undergoing a~~
312 ~~publicly-funded rehabilitation.~~

313 ~~H.—Notwithstanding the general Use Permit requirement under 23C.08.010, a~~
314 ~~lawfully established accessory dwelling unit that is not a controlled rental unit~~
315 ~~may be eliminated subject to the issuance of a Zoning Certificate when the re-~~
316 ~~conversion restores the original single family use of the main building or lot,~~
317 ~~provided that no tenant is evicted. (Ord. 7458-NS § 3, 2016)~~

318 ~~23C.08.035 Private Right of Action~~

319 ~~Any affected tenant may bring a private action for injunctive and/or compensatory relief~~
320 ~~against any applicant and/or owner to prevent or remedy a violation of Sections~~
321 ~~23C.08.020 or 23C.08.030. In any such action a prevailing plaintiff may recover~~
322 ~~reasonable attorney's fees. (Ord. 7458-NS § 4, 2016)~~

323 ~~23C.08.040 Elimination of Residential Hotel Rooms~~

324 ~~A.—The Board may approve a Use Permit to remove a Residential Hotel Room if it~~
325 ~~finds that, prior to the removal of any Residential Hotel Rooms, the Residential Hotel~~
326 ~~owner will provide or cause to be provided standard housing of at least comparable size~~
327 ~~and quality, at comparable rents and total monthly or weekly charges to each affected~~
328 ~~tenant; and~~

329 ~~1.—The Residential Hotel Rooms being removed are replaced by a~~
330 ~~common use facility, including, but not limited to, a shared kitchen, lounge~~
331 ~~or recreation room, that will be available to and primarily of benefit to the~~
332 ~~existing residents of the Residential Hotel and that a majority of existing~~
333 ~~residents give their consent to the removal of the rooms;~~

334 ~~2.—Prior to the date on which the Residential Hotel Rooms are removed,~~
335 ~~one-for-one replacement of each room to be removed is made, with a~~
336 ~~comparable room, in one of the methods set forth in this section; or~~

337 ~~3.—Residential Hotel Rooms being removed because of building alterations~~
338 ~~related to seismic upgrade to the building or to improve access to meet the~~
339 ~~requirements of the American Disabilities Act (ADA).~~

340 ~~B.— For purposes of this section, replacement rooms must be substantially comparable~~
341 ~~in size, location, quality and amenities, and available at comparable rents and total~~
342 ~~monthly or weekly charges to those being removed. The replacement rooms must also~~
343 ~~be subject to rent and eviction controls substantially equivalent to those provided by the~~
344 ~~Rent Stabilization Ordinance or those that applied to the original rooms which are being~~
345 ~~replaced. Comparable rooms may be provided by:~~

346 1.— ~~Offering the existing tenants of the affected rooms the right of first-~~
347 ~~refusal to occupy the replacement rooms;~~

348 2.— ~~Making available comparable rooms, which are not already classified~~
349 ~~as Residential Hotel Rooms to replace each of the rooms to be removed; or~~

350 3.— ~~Paying to the City's Housing Trust Fund an amount sufficient to provide~~
351 ~~replacement rooms. The amount to be paid to the City shall be the~~
352 ~~difference between the replacement cost, including land cost, for the rooms~~
353 ~~and the amount which the City can obtain by getting a mortgage on the~~
354 ~~anticipated rents from the newly constructed rooms. The calculations shall~~
355 ~~assume that rents in the newly constructed rooms shall not exceed the~~
356 ~~greater of either a level comparable to the weekly or monthly charges for~~
357 ~~the replaced rooms or the level which would be charged if no current tenant~~
358 ~~paid more than 30% of such tenant's gross income for rent.~~

359 ~~C.— In a Residential Hotel owned and operated by a non-profit organization,~~
360 ~~recognized as tax exempt by either the Franchise Tax Board and/or the~~
361 ~~Internal Revenue Service, Residential Hotel Rooms may be changed to~~
362 ~~non-residential hotel room uses providing that the average number of~~
363 ~~Residential Hotel Rooms per day in each calendar year is at least 95% of~~
364 ~~Residential Hotel Rooms established for that particular Residential Hotel.~~
365 ~~(Ord. 6478-NS § 4 (part), 1999)~~

366 **23C.08.050-020 Demolitions of Accessory Buildings and Buildings Used for**
367 **Commercial, Manufacturing, or Community, Institutional, or Other Non-**
368 **Residential Uses**

369 A. Notwithstanding any other provision of Title 23, A main Bbuilding used for non-
370 residential purposes containing less than 5,000 square feet of floor area may be

371 demolished subject to issuance of an AUP
372 Use Permit; a main Bbuilding containing 5,000 square feet or more of floor area may be
373 demolished subject to issuance of Use Permit.

374 B. A demolition of an ~~accessory~~ Accessory Building other than an Accessory
375 Dwelling Unit containing less than 300 square feet of floor area is permitted ~~as of right~~
376 ~~subject to the issuance of a Zoning Certificate~~; an ~~A~~ Accessory Building other than an
377 Accessory Dwelling Unit containing 300 square feet or more of floor area may be
378 demolished subject to the issuance of an AUP.

379 C. Any application for a Use Permit or AUP to demolish a non-residential building or
380 structure which is 40 or more years old shall be forwarded to the Landmarks
381 Preservation Commission (LPC) for review prior to consideration of the Use Permit or
382 AUP. The LPC may initiate a landmark or structure-of-merit designation or may choose
383 solely to forward to the Board or Zoning Officer its comments on the application. The
384 Board or Zoning Officer shall consider the recommendations of the LPC in considering
385 its action on the application.

386 D. A Use Permit or an AUP for demolition of an Accessory Building other than an
387 Accessory Dwelling Unit or for the demolition of a non-residential building or structure
388 ~~may be approved only shall issue~~ if the Board or Zoning Officer ~~finds that the demolition~~
389 ~~will not be materially detrimental to the commercial needs and public interest of any~~
390 ~~affected neighborhood or the City, and one of the following findings that the demolition if~~
391 ~~the application complies with the requirements of Chapter 3.24, and one of the following~~
392 ~~findings is made:~~

- 393 1. ~~Is The demolition is~~ required to allow ~~a proposed the construction of a~~ new
394 building or other ~~proposed~~ new Use approved by the Board or Zoning Officer; or
- 395 2. The demolition will ~~Will~~ remove a building ~~which that~~ is unusable for activities
396 ~~which are~~ compatible with the purposes of the District in which it is located or
397 ~~which that~~ is infeasible to modify for such uses; or
- 398 3. ~~Will~~ The demolition will remove a structure which represents an unabatable
399 ~~attractive~~ nuisance ~~to the public~~; or
- 400 4. ~~Is The demolition is~~ required for the furtherance of specific plans or projects
401 sponsored by the City or other local district or authority. In such cases, it shall be
402 demonstrated that it is infeasible to obtain prior or concurrent approval for the
403 new construction or new use which is contemplated by such specific plans or
404 projects and that adhering to such a requirement would threaten the viability of
405 the plan or project. ~~(Ord. 6478-NS § 4 (part), 1999)~~

406 **23C.08.060-030 Building Relocations**

407 A. The relocation of a building from a lot is considered a demolition for purposes of
408 this Ordinance.

409 B. The relocation of a building to a lot is considered new construction and shall be
410 subject to all requirements applicable to new construction.

411 C. When a building is relocated to a different lot within the City, the lot from which the
412 building is being removed shall be known as the source lot and the lot on which the
413 building is to be sited shall be known as the receiving lot. ~~In such cases all notification~~
414 ~~requirements apply to both the source and receiving lots.~~

415 D. The removal of a building from the source lot shall require be approved if it meets
416 the requirements for issuance of demolition permit under this Chapter.

417 E. The relocation of a building onto the receiving lot shall be approved if it meets the
418 requirements for construction of a new structure on the receiving lot.

419 ~~The Board may approve a Use Permit for relocation to a lot if it finds that the building at~~
420 ~~proposed to be relocated is not in conflict with the architectural character, or the building~~
421 ~~scale of the neighborhood or area in which such building is to be located, and the~~
422 ~~receiving lot provides adequate separation of buildings, privacy, yards and Usable Open~~
423 ~~Space. (Ord. 6478-NS § 4 (part), 1999)~~

424 **23C.08.070-040 Limitations Imminent Hazards**

425 A.—Notwithstanding anything to the contrary, if a building or structure is unsafe,
426 presents a public hazard and is not securable and/or is in imminent danger of collapse
427 so as to endanger persons or property, as determined the City's Building Official, it may
428 be demolished without a Use Permit. The Building Official's determination in this matter
429 shall be governed by the standards and criteria set forth in the most recent edition of the
430 [California Building Code](#) that is in effect in the City.

431 ~~B.—This chapter shall be applied only to the extent permitted by state law as to~~
432 ~~buildings which have been entirely withdrawn from the rental market pursuant to the~~
433 ~~state statute known as the Ellis Act. (Ord. 6478-NS § 4 (part), 1999)~~

Berkeley Planning Commission
City of Berkeley
2180 Milvia Street
Berkeley, California 94704

To the Commission Members,

I am writing as a developmental biologist, a member of my own University's Biosafety Committee, and someone with a long relationship with and affection for Berkeley (both of my daughters received their Ph.D.s at UCB). It is my understanding that an application for approval of a new commercial biotechnology laboratory is up for discussion by the Planning Commission. Whether or not the community ultimately decides that such a facility is a good fit for Berkeley, which I anticipate will involve deliberations on both safety and broader cultural impacts, I urge you to consider the following points.

Of all the matters currently occupying the imaginations of scientists such as myself, and biotechnologists, two stand out, one regarding the present, the other the future. The most urgent one concerns the origin of SARS-Cov2, the virus wreaking havoc with the world's health and economies. How did it come about – was it incubated in animals consumed by humans, picked up from the leavings of wild animals by miners, or brought with specimens into a research laboratory where it was passaged in cultures and genetically manipulated in order to explore its pathogenicity? We don't know the answer, but the "gain-of-function" scenario, whereby a virus is altered to make it more infective or damaging, is extremely troubling, since it suggests that what some consider a legitimate medical science program could, with inadvertent escape, have unleashed our modern plague.

The future matter, the prospect of genetically engineering our offspring, is potentially even more worrying. It would not disrupt our society in a temporary fashion, as the coronavirus is doing, but transform our civilization in a permanent fashion. This would occur if we start thinking of people as perfectible products of technology. Even if we begin with the objective of preventing serious genetically related conditions in planned offspring, we would wind up with attempts to introduce optional modifications that, given our market system, will be offered and sought by prospective parents to advantage their future children. Part of this can only be expected to be spurred by racist and eugenicist ideologies which have pervaded and corrupted our country from its inception.

It's important to recognize that even while some scientists and bioethicists are proposing a "wait-and-see" attitude toward heritable modifications of children, pending improvements in the accuracy of CRISPR and related genetic modification techniques, specialists in developmental biology, such as myself and my colleagues, know well that embryos are not constructed like machines with replaceable parts. Humans at early stages of development are not engineerable, raising the real prospect that CRISPR-modification of children will do more harm than good.

This brings me to the reason for this statement. I urge you to consider the following points: Both gain-of-function research and human embryo modification are legal in the United States if conducted under private auspices. Both are associated with powerful and useful research and technology programs – virology and vaccine development, gene modification of cells and tissues of existing ill human patients, animal developmental biology – that will plausibly occur in any new laboratories proposed for Berkeley. While the proprietors may disavow undertaking gain-of-function and human embryo gene modification

research programs in their initial application, as a scientist, I strongly urge that the City of Berkeley make prohibition of these activities part of the permanent charter of any approved facilities.

Berkeley and its resident educational and research institutions have long been icons of scientific thought and progressive values. For the sake of the new chance we now may be afforded to learn from the past and improve our country's and the world's prospects, let's move ahead unburdened by what are likely destructive technologies.

Stuart A. Newman, Ph.D.
Professor of Cell Biology and Anatomy
New York Medical College
Valhalla, New York 10595
stuart_newman@nymc.edu



Alliance for Humane Biotechnology

www.humanebiotech.org

155 Twenty-first Avenue, San Francisco, California 94121-1205 (415) 483-9410

November 16, 2020

Berkeley Planning Commission
City of Berkeley
2180 Milvia Street
Berkeley, California 94704

Dear Berkeley Planning Commission:

I am writing as the director of a national non-profit dedicated to raising public awareness about the ethics and social implications of biotechnologies, as a graduate of UC Berkeley and as a Berkeley resident. As the City of Berkeley considers permitting laboratory construction in civic areas, hopefully city administrators will consider it important to require companies, in this case Bayer, to present information on what biosafety level labs the company intends to site, provide information on how the labs will comply with federal regulations, and take an interest in what kind of research it will be possible to conduct in their labs. The City of Berkeley has a unique opportunity and responsibility to explicitly reject “techno-eugenic” research, that is, human germline genetic engineering, from being undertaken in labs for which it approves siting.

Pursuing gene or cell therapy research to find cures for existing diseases is laudable. An explicit understanding must be expressed and a clear line drawn, however, between research conducted on somatic (body) cells and genetically manipulating germline cells (eggs, sperm, or embryos). While the one is noncontroversial and to be encouraged, the other is socially divisive and medically dangerous. The term techno-eugenics underscores how genetically altering the human germline opens the possibilities and increases the probability of creating designer children or indeed, creating human entities designed for specific purposes.

Insisting that this border not be breached cannot be left to the self-regulation of bio-researchers. There is an unmistakable increase in the number of bioentrepreneurial scientists seeking to normalize human germline manipulations. When in 2018 the scientist He Jiankui announced that he had genetically modified twin infants, he was met with broad censure nationally and internationally. Since then, however, the tone of professional discussion has moved steadily toward acceptance of germline genetic manipulations. Rather than calling for decisive prohibition, science organizations have asked merely for “more discussion,” mildly cautioning that further implementation must await increased skill. This is not the case with civil

institutions, however. Around the globe, out of 106 countries recently surveyed, 75 explicitly prohibit heritable human genome editing.

<https://www.geneticsandsociety.org/biopolitical-times/assessing-global-policy-landscape-human-germline-and-heritable-genome-editing>

As a city in the state of California, Berkeley has a special responsibility to call for prohibition of human germline genetic engineering in laboratories it approves. The state has acknowledged the baleful role it played in 20th century eugenics and has undertaken to make amends for it. In March 2003, Governor Gray Davis apologized to all those affected by California's eugenics movement.

<https://www.latimes.com/archives/la-xpm-2003-mar-12-me-sterile12-story.html>

And in June 2003, the California Senate passed Senate Resolution SR 20

http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=200320040SR20

which acknowledged that: "The goal of the eugenics movement of the twentieth century was racial betterment through the elimination of hereditary disorders or genetic defects by means of sterilization, selective breeding, and social engineering." It urged all citizens to become familiar with the history of the eugenics movement, and resolved that: "this resolution addresses past bigotry and intolerance against the persons with disabilities and others who were viewed as "genetically unfit" by the eugenics movement..." More recently, there has been sustained effort to compensate the victims of state sponsored

eugenics. https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB3052

Finally, Berkeley's history includes the recent discovery of the Genealogical Eugenics Institute Fund originally dedicated to studying eugenics and housed in the University of California's School of Public Health. In 2018 the funds were frozen and in 2020 the payout now has been repurposed. The resources will be used to educate the campus community and the public about eugenics' cruel history.

<https://news.berkeley.edu/2020/10/26/berkeley-public-health-announces-plans-to-rename-repurpose-former-eugenics-fund/> This positive development is one that the City of Berkeley's rejection of techno-eugenics in the contemporary context will reinforce.

By prohibiting the conduct of techno-eugenics in facilities now being planned, the City of Berkeley will aptly assume leadership and responsibility in implementing the State's mandate for public awareness of past abuses of science for anti-social purposes as well as support a global effort to avoid future abuses.

Sincerely,

Tina Stevens, PhD
Berkeley Resident
Director, Alliance for Humane Biotechnology

Lapira, Katrina

From: Soula Culver <soculver@gmail.com>
Sent: Monday, November 16, 2020 10:55 AM
To: Pearson, Alene; ToxicsMailbox; Building and Safety; Planning Dept. Mailbox
Subject: City of Berkeley Planning Commission – November 18, 2020 Commission Meeting
Agenda Item #9

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re November 18, 2020 Commission Meeting Agenda Item #9

Dear Planning Commission

You know that people in Berkeley will be very concerned with the idea of expanding the Bayer development. You had best be very cautious about allowing this development plan to go forward or you will have a public-relations fiasco on your hands.

Bayer and the city of Berkeley have done a poor job in informing the residents of Berkeley of Bayer's planned new "Development Agreement."

Clearly, the planning process should be frozen until the residents of the City of Berkeley are fully brought up to date about exactly what is in the draft "Bayer Development Agreement."

This pending agreement should be treated as a new project with a new and Full Environmental Impact Report (EIR).

The Cumulative Impact analysis in the EIR should consider the likely closure of Alta Bates Hospital and its emergency room – the last emergency room in Berkeley, and the additional time it will take to get to an emergency room in Oakland.

All the new apartments and dormitories now being constructed and that are now awaiting approval in Berkeley will be increasing the City's population by over 15,000 people. And the population of Berkeley is aging. Yet all the new development now occurring and likely to occur over the next several years is significantly worsening traffic congestion in Berkeley, and will dramatically add to the time it will take to reach an emergency room several miles south of Berkeley in Oakland.

--Soula Culver
Berkeley, CA

Lapira, Katrina

From: jenny miller <jennymllr@hotmail.com>
Sent: Monday, November 16, 2020 7:53 AM
To: Pearson, Alene
Subject: My article re Bayer's EIR and plans for expansion

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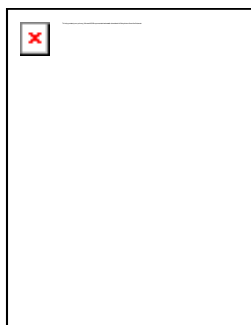
Dear Ms. Pearson,

Thirty years ago when Bayer's development agreement was up for consideration, I wrote this article. Someone who used to be on the Planning Commission said Bayer plans to use the same EIR from 30 years ago? I don't know if that's true, since so much has changed in that time, but in any case, I did a very close examination of Bayer's EIR thirty years ago, and my comments are contained in this article. I hope you will find it useful.

Sincerely,

Jenny Miller

<https://www.opednews.com/articles/Buyer-Beware--An-Historic-by-jenny-miller-Anthrax-Auschwitz-Bayer-Bio-weapons-160917-415.html>



[Article: Buyer Beware: An Historical Look at Bayer's Unethical Practices | OpEdNews](https://www.opednews.com/articles/Buyer-Beware--An-Historic-by-jenny-miller-Anthrax-Auschwitz-Bayer-Bio-weapons-160917-415.html)

Article: Buyer Beware: An Historical Look at Bayer's Unethical Practices - This lengthy investigation into the history of Bayer's unethical practices was prompted by the proposed expansion of its ...

www.opednews.com