BERKELEY CITY COUNCIL LAND USE, HOUSING, & ECONOMIC DEVELOPMENT COMMITTEE
REGULAR MEETING

Thursday, July 7, 2022
10:30 AM

Committee Members:

Councilmembers Ben Bartlett, Rigel Robinson, and Lori Droste
Alternate: Mayor Arreguin

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE

Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the City Council Land Use, Housing, & Economic Development Committee will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.

To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL https://us02web.zoom.us/j/83333124582. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the “raise hand” icon on the screen.

To join by phone: Dial **1-669-900-9128 or 1-877-853-5257 (Toll Free)** and Enter Meeting ID: **833 3312 4582**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized by the Chair.

Written communications submitted by mail or e-mail to the Land Use, Housing, & Economic Development Committee by 5:00 p.m. the Friday before the Committee meeting will be distributed to the members of the Committee in advance of the meeting and retained as part of the official record.

AGENDA

Roll Call

Public Comment on Non-Agenda Matters

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. Minutes – May 5, 2022

Committee Action Items

The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.

Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.

2. Efficiency Unit Ordinance
From: Councilmember Taplin (Author)
Referred: April 25, 2022
Due: October 11, 2022
Recommendation: Refer to the City Manager and Planning Commission to adopt objective standards for Efficiency Units pursuant to California Housing and Safety Code § 17958.1, developing an ordinance to amend the Berkeley Municipal Code modeled after standards implemented in the City of Davis and the City of Santa Barbara.
Financial Implications: Staff time
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

Committee Action Items

3. Referral: Keep Innovation in Berkeley
From: Councilmember Robinson (Author), Councilmember Taplin (Co-Sponsor), Mayor Arreguin (Co-Sponsor), Councilmember Harrison (Co-Sponsor)
Referred: June 13, 2022
Due: November 28, 2022
Recommendation: Refer to the City Manager and the Planning Commission to consider and return to Council with Zoning Ordinance amendments and other actions to encourage the growth and retention of Research & Development (R&D) in Berkeley. Staff and the Commission should explore:
1. Naming R&D as an allowed land use in the commercial districts of Telegraph (C-T and C-C) and Downtown Berkeley (C-DMU) with a [Zoning Certificate/AUP].
2. Updating the "District Purpose" sections of the MM and MU-LI districts to specifically embrace R&D. Consider doing the same for other districts where R&D is allowed, if deemed appropriate.
3. Amending R&D parking requirements in M-prefixed districts to align with Laboratory parking requirements and in C-prefixed districts, excluding C-T, to align with Manufacturing parking requirements.
4. Reviewing and considering repeal of Berkeley Municipal Code 23.206.080 to ensure that language regulating Biosafety Level (BSL) Classes 1-4 is clear and consistent with regulations in neighboring jurisdictions and other cities that support a broad range of R&D.
5. Returning to Council with additional recommendations, if any, that would serve to encourage R&D in Berkeley, as determined by staff or that present themselves through the Planning Commission process.
Financial Implications: Staff time
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170

Unscheduled Items

These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.

4. Amendments to Berkeley Municipal Code 23C.22: Short Term Rentals
From: Councilmember Harrison (Author)
Referred: July 28, 2020
Due: October 25, 2022
Recommendation: Amend Berkeley Municipal Code 23C.22: Short Term Rentals to clarify the ordinance and insure adequate host responsibilities, tenant protections and remedies for violating the ordinance.
Financial Implications: See report
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

Unscheduled Items

5. Amending BMC Chapter 13.84 to Expand Relocation Assistance and Conflict Resolution for Tenants
From: Councilmember Taplin (Author)
Referred: February 8, 2022
Due: October 25, 2022
Recommendation: Adopt a first reading of an Ordinance amending Berkeley Municipal Code Chapter 13.84 enacting the following changes to the City's Relocation Ordinance: 1. Section 13.84.010 – Delete language referring to "Relocation Services"; 2. Section 13.84.020 – Create definition of Emergency Relocation to establish process and expectation for owner to provide relocation money for emergency events; 3. Section 13.84.030 – 1) Change title to clarify that tenants are entitled to payments when Relocation applies, rather than "Services or Assistance". 2) Clarify the type of determination notices that parties would receive from City officials; 4. Section 13.84.040 – Create different procedures for "Planned Relocation" and "Emergency Relocation". Move "Owner Responsibilities" content to other sections; 5. Section 13.84.050 – 1) Change title to clarify that it is about procedure and not payments. 2) Add Notice and Order to "Determination Notice". 3) Move Section B and C to Appeals Section; 6. Section 13.84.060 – 1) Change title to clarify Relocation Prompted by owner. 2) Include language to indicate that Relocation can also be requested by owner when there is no building permit application. 3) Clarify in Section E that the "Owner must provide" proof of notice; 7. Section 13.84.070.A – 1) Include Moving and Storage to Short term Relocation entitlements if applicable to the situation. 2) Section 13.84.070.A.3 regarding a tenant's ability to pay costs up front. 3) 13.84.070.A.4.b – meal allowances. 4) 13.84.070.B.2.b – reimbursement for moving and storage costs changed to pay up front. 5) 13.84.070.B.3 – Changing how Rent Differential is calculated 6) Section 13.84.070.B.4 – Consider specifying different utility costs, such as disconnection and reconnection. 7) 13.84.070.N1 – Consider meals Per Diem rates for what is appropriate for the region. 8) Add Section to speak to replacement unit reservation costs and potential cancellation costs if move back notice is given earlier than expected; 8. Section 13.84.080 – Remove; 9. Section 13.84.100 1) Change Title 2) Change process for receiving notification that Relocation is or is not required. 3) 13.84.100.A.4 Change HAC to Hearing Officer. 3) Section 13.84.100.A.5 - Change appeal timeline from 5 to 10 days. 4) Section 13.84.100.B – Change Language to mirror HAC Process outlined in 19.44.
Financial Implications: Staff time.
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

Items for Future Agendas

- **Discussion of items to be added to future agendas**

Adjournment

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Written communications addressed to the Land Use, Housing & Economic Development Committee and submitted to the City Clerk Department will be distributed to the Committee prior to the meeting.

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Members of the City Council who are not members of the standing committee may attend a standing committee meeting even if it results in a quorum being present, provided that the non-members only act as observers and do not participate in the meeting. If only one member of the Council who is not a member of the committee is present for the meeting, the member may participate in the meeting because less than a quorum of the full Council is present. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900.

COMMUNICATION ACCESS INFORMATION:
To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date.

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I hereby certify that the agenda for this meeting of the Standing Committee of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on Thursday, June 30, 2022.

Mark Numainville, City Clerk

Communications

Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA, and are available upon request by contacting the City Clerk Department at (510) 981-6908 or policycommittee@cityofberkeley.info.

BERKELEY CITY COUNCIL LAND USE, HOUSING, & ECONOMIC DEVELOPMENT COMMITTEE
REGULAR MEETING MINUTES

Thursday, May 5, 2022
10:30 AM

Committee Members:

Councilmembers Ben Bartlett, Rigel Robinson, and Lori Droste
Alternate: Mayor Arreguin

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MINUTES

Roll Call: 10:32 am. Councilmembers Droste, and Robinson present.

Councilmember Bartlett arrived at 10:34 am.

Public Comment on Non-Agenda Matters: 2 speakers.

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. Minutes – April 21, 2022
Action: M/S/C (Droste/Robinson) to approve the April 21, 2022 minutes.
Vote: All Ayes.

Committee Action Items

The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.

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Financial Implications: Staff time
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
Action: Item continued to a future meeting at the request of the author.

Unscheduled Items

These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.

3. Amendments to Berkeley Municipal Code 23C.22: Short Term Rentals
From: Councilmember Harrison (Author)
Referred: July 28, 2020
Due: October 25, 2022
Recommendation: Amend Berkeley Municipal Code 23C.22: Short Term Rentals to clarify the ordinance and insure adequate host responsibilities, tenant protections and remedies for violating the ordinance.
Financial Implications: See report
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

Unscheduled Items

4. **Amending BMC Chapter 13.84 to Expand Relocation Assistance and Conflict Resolution for Tenants**
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Financial Implications: Staff time.
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

Items for Future Agendas

- **None**

Adjournment

Action: M/S/C (Bartlett/Droste) to adjourn the meeting.
Vote: All Ayes.

Adjourned at 10:42 a.m.

I hereby certify that this is a true and correct record of the Land Use, Housing, & Economic Development Committee meeting held on May 5, 2022.

_____
Sarah K. Bunting, Assistant City Clerk

02

BERKELEY CITY COUNCILMEMBER
TERRY TAPLIN
DISTRICT 2

CONSENT CALENDAR
May 10, 2022

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin

Subject: Efficiency Unit Ordinance

RECOMMENDATION

Refer to the City Manager and Planning Commission to adopt objective standards for Efficiency Units pursuant to California Housing and Safety Code § 17958.1, developing an ordinance to amend the Berkeley Municipal Code modeled after standards implemented in the City of Davis and the City of Santa Barbara.

FINANCIAL IMPLICATIONS

Staff time.

CURRENT SITUATION AND ITS EFFECTS

Establishing standards for Efficiency Units is a Strategic Plan Priority Project, advancing our goal to create affordable housing and housing support service for our most vulnerable community members.

BMC Chapter 23F.04 defines Group Living Accommodations (GLAs) as a "building or portion of a building designed for or accommodating a residential use by persons not living together as a household." This broad category includes several distinct housing types, such as Dormitories and Residential Hotels. While this definition rests on cohabitation by multiple persons not constituting a "household," state law provides a legal framework for establishing positive efficiency unit standards for one- or two-person households. California Housing and Safety Code § 17958.1 allows local governments to "permit efficiency units for occupancy by no more than two persons which have a minimum floor area of 150 square feet and which may also have partial kitchen or bathroom facilities, as specified by the ordinance." The City of Berkeley currently lacks such an ordinance.

Berkeley's current standards for Residential Hotels disincentivizes their production, limiting the supply of lower-cost housing that could be built without limited or no public subsidies. Development standards in Commercial districts are equivalent to those in R-3 zones, requiring a minimum of 350 square feet of total lot area per occupant, inclusive of 90 square feet of open space per occupant. This effectively permits fewer residents by area than other residential uses and reduces financial feasibility. For example, a proposed multifamily apartment development at 2720 San Pablo Ave. in the C-W district is on a 9,576 square-foot project site, with 25 dwelling units and a total of 97 bedrooms.

2180 Milvia Street, Berkeley, CA 94704 ● Tel: (510) 981-7120
E-Mail: TTaplin@cityofberkeley.info

If it were a GLA project such as a residential hotel, it would only be permitted a maximum of 27 bedrooms.

BACKGROUND

Berkeley has made insufficient progress on meeting its state-mandated Regional Housing Need Allocation (RHNA) goals for low- and moderate-income housing in the 2014-2022 RHNA cycle. As recently as the city's 2020 Housing Pipeline Report, the city had only fulfilled 23% of its moderate-income RHNA goals, 21% of its RHNA goals for Very-Low Income households, and a mere 4% for Low-Income households. Berkeley's next RHNA cycle is estimated to mandate roughly 3 times as many units as the previous cycle's total of 2,959 units across all income tiers. In 2019, development costs in the San Francisco Bay Area averaged $600,000 for new housing funded by 9% Low Income Housing Tax Credits.[1]

According to an October 2014 report on affordable housing development by several state housing agencies, "for each 10 percent increase in the number of units, the cost per unit declines by 1.7 percent."[2] A 2020 study by UC Berkeley's Terner Center on affordable housing projects funded by 9% Low Income Housing Tax Credits reported: "On average, efficiencies of scale translate into a reduction of about $1,162 for every additional unit in a project."[3]

Because GLAs typically offer lower market rents for smaller dwelling units, certain types of GLAs including Residential Hotels are exempted from Berkeley's Affordable Housing Mitigation Fee requirements pursuant to BMC 23C.12.020.B. With the exception of Dormitories, GLA units also count toward Berkeley's RHNA housing production targets for low- and moderate-income households if rents meet household affordability thresholds. Lower-cost housing forms with smaller dwelling units such as Single Room Occupancy (SRO) hotels have historically provided a significant portion of affordable housing for cities in the San Francisco Bay Area and nationwide without public subsidies for construction, but current zoning has made projects with this type of cost-effective unit size practically infeasible throughout much of Berkeley's transit-rich corridors.

The lack of Efficiency Unit standards has contributed to some consternation in the community with respect to recent GLA projects. For instance, an appeal of Use Permit # ZP2018-0229 for a Residential Hotel project at 2435 San Pablo Avenue—a permit that the City Council upheld in 2021—criticized the project as "neither fish nor fowl" because the project was designated as a Residential Hotel but resembled an Efficiency Unit

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[1] Reid, C. (2020). The Costs of Affordable Housing Production: Insights from California's 9% Low-Income Housing Tax Credit Program. *UC Berkeley Terner Center for Housing Innovation.* Retrieved from https://ternercenter.berkeley.edu/wp-content/uploads/pdfs/LIHTC_Construction_Costs_March_2020.pdf

[2] California Department of Housing and Community Development, et al. (2014). Affordable Housing Cost Study: Analysis of the Factors that Influence the Cost of Building Multi-Family Affordable Housing in California. Retrieved from https://www.treasurer.ca.gov/ctcac/affordable_housing.pdf

[3] See footnote 1.

project.[4] If the project were an Efficiency Unit, the individual efficiency kitchens and bathrooms would be subject to State standards (or local standards if the City were to adopt them), and the communal kitchens would be an amenity for residents rather than a requisite feature of a Residential Hotel.

Other jurisdictions in California have availed themselves of state authority to establish local standards. For example, the City of Davis establishes a definition of Efficiency Units pursuant to CHSC § 17958.1 with "a minimum floor area of two hundred twenty square feet and shall have a bathroom facility and a partial kitchen or kitchenette."[5] Davis Municipal Code § 40.01.010(e) and Santa Barbara Municipal Code § 30.185.040 establish standards for Efficiency Units consistent with state law.[6][7] Santa Barbara's standards also enable a minimum floor area of 150 square feet for "Affordable Efficiency Units" subject to deed restrictions for low- and very-low income households.

In 2014, the City of Seattle enacted strict limitations on new "congregate" micro-housing projects, and saw a corresponding increase in production of Small Efficiency Dwelling Units (SEDUs) following this change. However, due to increases in minimum floor area requirements and inability to access affordable housing incentives, the number of new SEDUs completed per year in Seattle has declined.[8]

Nevertheless, the data from Seattle shows a clear marginal benefit to housing affordability. A 2021 study of Seattle's microhousing market by the firm Kidder Matthews found that the average monthly rent of SEDUs was $277 or 18% lower than comparable market-rate studio apartments.[9]

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4 https://www.cityofberkeley.info/Clerk/City_Council/2021/01_Jan/Admin_Record_ZAB_Appeal__0_(2435)_San_Pablo_Ave.aspx

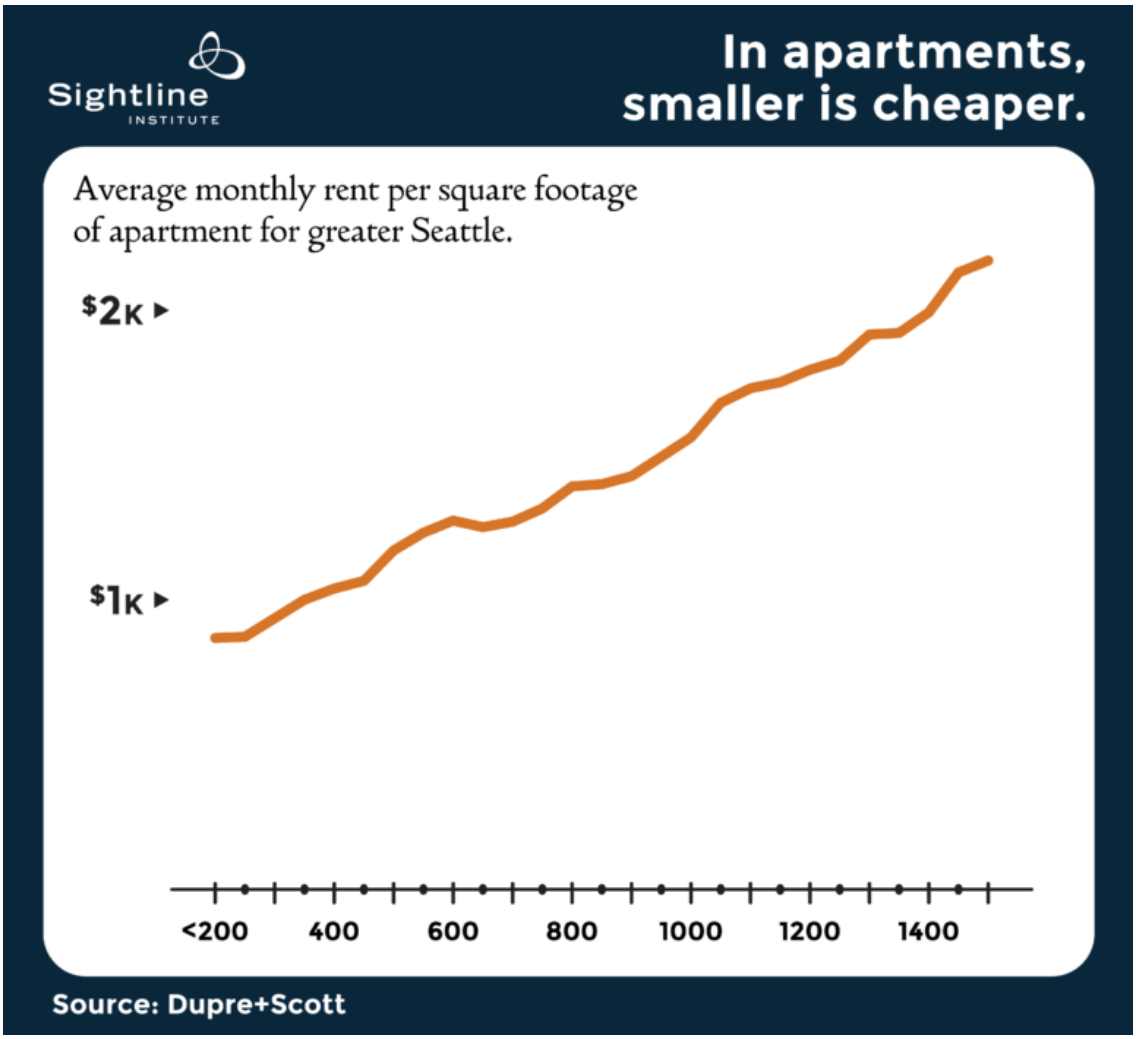
5 http://qcode.us/codes/davis/?view=desktop&topic=40-40_01-40_01_010#:~:text=Efficiency%20unit%20has%20the%20meaning,a%20partial%20kitchen%20or%20kitchenette

6 http://qcode.us/codes/davis/?view=desktop&topic=40-40_26-40_26_450

7 https://qcode.us/codes/santabarbara/view.php?topic=30-iii-30_185-30_185_040&frames=on

8 Neiman, D. (2021). When is Seattle Going to Fix Microhousing? *Sightline Institute.* Retrieved from https://www.sightline.org/2021/02/04/when-is-seattle-going-to-fix-microhousing/

9 Anderson, J. & Simon, D. (2021). 2021 Micro Report. *Kidder Matthews.* Retrieved from https://secureservercdn.net/72.167.230.230/qjx.818.myftpupload.com/wp-content/uploads/2021/12/2021-Micro-Report_Simon-Anderson-Team.pdf?time=1649887261



Sightline Institute, 2017[10]

In Berkeley, the 39-unit "Step Up Housing"[11] project at 1367 University Ave. will lease 180 square foot furnished studio units to the nonprofit Building Opportunities for Self Sufficiency (BOSS) for $1,400 per month, roughly $600 or 30% lower than local studio apartment rents. The City will be supporting the leasing and operations of the project with Measure P funds to provide permanent supportive housing.

Irrespective of subsidies, this cost is also $195 below the "fair market rent" for SRO/studio units in Alameda County set by the U.S. Department of Housing and Urban Development (HUD), and roughly the same as Alameda County's rent limit for deed-restricted studio units for a household earning 60% of Area Median Income.[12]

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[10] Neiman, D. (2017). How Seattle Killed Microhousing Again. *Sightline Institute.* Retrieved from https://www.sightline.org/2017/03/20/how-seattle-killed-micro-housing-again/

[11] https://www.cityofberkeley.info/Clerk/City_Council/2021/02_Feb/Documents/2021-02-23_Item_26_Step_Up_Housing_Initiative.aspx

[12] https://www.acgov.org/cda/hcd/documents/2021IncomeandRentLimits.pdf

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Incentives for affordable housing offer potential to reduce Vehicle Miles Traveled Per Capita by increasing housing options in Berkeley and shortening commute times for a greater share of the local workforce. In an analysis of 252 California Cities, Durst (2021) finds that "each additional affordable housing incentive is associated with a 0.37 percentage point decrease in the share of workers who commute more than 30 minutes."[13] With transportation accounting for 60% of Berkeley's carbon footprint, per capita VMT reduction is critical for emissions reductions. Research from UC Berkeley scholars and the CoolClimate Network finds that urban infill offers one of the greatest potential policy levers for municipalities to reduce their greenhouse gas emissions.[14] Notably, this study predates the City of Berkeley's 2019 prohibition on natural gas in new buildings,[15] which would further reduce the carbon footprint of future Berkeley residents relative to the regional average.

CONTACT PERSON

Councilmember Taplin Council District 2 510-981-7120

ATTACHMENTS

1. City of Santa Barbara Ordinance 5794
2. City of Davis Ordinance 2602

[13] Durst, N. J. (2021). Residential Land Use Regulation and the Spatial Mismatch between Housing and Employment Opportunities in California Cities. *Terner Center for Housing Innovation.* Retrieved from http://californialanduse.org/download/Durst%20Residential%20Land%20Use%20Regulation%202020.pdf

[14] Jones, C. et al. (2017). Carbon Footprint Planning: Quantifying Local and State Mitigation Opportunities for 700 California Cities. *Urban Planning, 3*(2). doi:10.17645/up.v3i2.1218.

[15] Cagle, C. (2019). Berkeley became first US city to ban natural gas. Here's what that may mean for the future. *The Guardian.* Retrieved from https://www.theguardian.com/environment/2019/jul/23/berkeley-natural-gas-ban-environment

ORDINANCE NO. 5794

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA BARBARA AMENDING THE SANTA BARBARA MUNICIPAL CODE BY AMENDING SECTIONS 30.185.040 AND 30.295.020 TO REGULATE ACCESSORY DWELLING UNITS IN THE NON-COASTAL ZONE OF THE CITY, AND REPEAL INTERIM URGENCY ORDINANCE NO. 5930

THE CITY COUNCIL OF THE CITY OF SANTA BARBARA DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 30.185.040 of Chapter 30.185 of Title 30 of the Santa Barbara Municipal Code is amended to read as follows:

30.185.040 Accessory Dwelling Units

Accessory dwelling units and junior accessory dwelling units shall be located, developed, and occupied subject to the following provisions:

A. Purpose. The purpose of this section is to:

1. Expand opportunities in the City to create additional housing to suit the spectrum of individual lifestyles and space needs, allow more efficient use of existing housing stock and public infrastructure, and provide a range of housing opportunities.
2. Allow accessory dwelling units or junior accessory dwelling units as an accessory use to a primary residential unit, consistent with California Government Code Section 65852.2 or 65852.22, as applicable.
3. Promote accessory dwelling units or junior accessory dwelling units with high-quality designs that are compatible with the surrounding neighborhood, historic resources, and historic districts; preserve the City's visual resources; promote long-term sustainability; and contribute to a desirable living environment.

B. Definitions. For the purposes of this section, the following words and phrases shall have the following meanings:

1. ***Accessory Dwelling Unit.*** An attached or a detached residential unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residential unit. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation and be located on the same parcel that the primary residential unit is or will be situated. The following

categories of accessory dwelling units are subject to specific development standards:

a. ***Special Accessory Dwelling Unit.*** These are specific types of smaller accessory dwelling units and junior accessory dwelling units with certain size, height, and setback standards described in subsection L. Development Standards for Special Accessory Dwelling Units. Special accessory dwelling units allow for more than one accessory dwelling unit on a lot.

b. ***Standard Accessory Dwelling Unit.*** These are typically larger accessory dwelling units with size, height, and setback standards generally described in subsection G. Development Standards for Standard Accessory Dwelling Units. Standard accessory dwelling units do not allow for more than one accessory dwelling unit on a lot.

An accessory dwelling unit also includes the following:

a. An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.

b. A manufactured home, as defined in Section 18007 of the Health and Safety Code.

2. ***Efficiency Kitchen.*** A kitchen that includes at a minimum:

   a. Appliances for cooking food and refrigeration, either built-in or countertop.

   b. A sink for food preparation greater than 12 inches by 12 inches, excluding the sink located in the bathroom.

   c. A food preparation counter.

3. ***Existing Floor Area.*** A legally permitted building constructed on the site with a final inspection or certificate of occupancy as of the date of application submittal, that conforms to current zoning standards or is legal nonconforming as to current zoning standards.

4. ***Junior Accessory Dwelling Unit.*** A unit that is no more than 500 square feet in size and contained entirely within the structure of an existing or proposed single residential unit. A junior accessory dwelling unit may include separate sanitation facilities or may share sanitation facilities with the existing or proposed single residential unit and includes an efficiency kitchen.

5. ***Passageway.*** A pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

6. ***Primary Residential Unit.*** The existing or proposed residential unit on a lot on which an accessory dwelling unit or junior accessory dwelling unit is permitted. The primary residential unit shall comprise one of the residential housing types described in Section 30.295.020.A (i.e., single-unit residential, two-unit residential, multi-unit residential) or mixed-use development.

7. ***Principal Place of Residence.*** The residence where a property owner actually lives for the greater part of time, or the place where the property owner remains when not called elsewhere for some special or temporary purpose and to which the

property owner returns frequently and periodically, as from work or vacation. There may be only one "principal place of residence," and where more than one residence is maintained or owned, the burden shall be on the property owner to show that the primary residential unit, or accessory dwelling unit, or junior accessory dwelling unit is the property owner's principal place of residence as evidenced by qualifying for the homeowner's tax exemption, voter registration, vehicle registration, or similar methods that demonstrate owner-occupancy. If multiple persons own the property as tenants in common or some other form of common ownership, a person or persons representing at least 50% of the ownership interest in the property shall reside on the property and maintain the property as a principal place of residence. Any person or persons who qualify for the homeowner's tax exemption under the California State Board of Equalization rules, may qualify as an owner occupant.

C. Where Permitted.

1. ***Accessory Dwelling Unit***. An accessory dwelling unit may be permitted in any zone that allows residential use, located on a lot developed or proposed to be developed with one or more residential units, except as prohibited below.

2. ***Junior Accessory Dwelling Unit.*** A junior accessory dwelling unit may be permitted in any zone that allows residential use, and shall be located on a lot developed with an existing or proposed single residential unit.

3. ***Prohibited Locations.*** No standard accessory dwelling unit shall be permitted on a lot located within the Fire Hazard Area (Extreme Foothill and Foothill), or as may be subsequently retitled in the future as the "Very High Fire Hazard Severity Zone," as defined in the City's Community Wildfire Protection Plan adopted by City Council.

   a. *Exception for Special Accessory Dwelling Units.* Accessory dwelling units permitted in accordance with all the configuration, standards, and special procedures outlined in subsection L. Development Standards for Special Accessory Dwelling Units, may be permitted on any lot, including lots located within any Fire Hazard Area (Extreme Foothill and Foothill), or as may be subsequently retitled in the future as the "Very High Fire Hazard Severity Zone," as defined in the City's Community Wildfire Protection Plan adopted by City Council, if the lot is zoned to allow for residential use and contains an existing or proposed primary residential unit.

D. Unit Configuration.

1. Only one accessory dwelling unit or junior accessory dwelling unit shall be permitted on a lot in addition to the primary residential unit in the configuration set forth in subsections D.2 and 3, below. However, multiple accessory units may be permitted in accordance with all the configuration, standards, and special procedures outlined in subsection L. Development Standards for Special Accessory Dwelling Units.

2. An accessory dwelling unit may be permitted in the following configurations:

a. Incorporated entirely within an existing or proposed primary residential unit;

b. Incorporated entirely within an existing accessory building, including garages, located on the same lot as the primary residential unit;

c. Attached to or increasing the size of an existing primary residential unit or accessory building located on the same lot as the primary residential unit; or

d. Detached from and located on the same lot as the existing or proposed primary residential unit. An accessory dwelling unit that is attached to another detached accessory building, but not the primary residential unit, or is attached by a breezeway or porch, is considered detached.

3. A junior accessory dwelling unit must be incorporated entirely within the existing floor area of an existing or proposed single residential unit or attached garage.

E. Sale, Rental, and Occupancy Terms. All accessory dwelling units and junior accessory dwelling units shall be subject to the following sale, rental, and occupancy terms:

1. ***Not to Be Sold Separately.*** An accessory dwelling unit or junior accessory dwelling unit shall not be sold separately from the primary residential unit.

2. ***Rental Terms.*** The accessory dwelling unit or junior accessory dwelling unit may be rented separately from the primary residential unit, however rental terms shall not be less than 31 consecutive days, nor shall rental terms allow termination of the tenancy prior to the expiration of at least one 31-day period occupancy by the same tenant.

3. ***Owner Occupancy.*** The following types of projects are subject to an owner occupancy requirement:

   a. All lots developed with junior accessory dwelling units; except that owner occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.

   b. Any accessory dwelling unit located in an RS zone submitted on or after January 1, 2025, unless otherwise prohibited by state law, or upon repeal of Government Code 65852.2 (a)(6)(B) removing the state-imposed prohibition of an owner occupancy requirement, whichever occurs first.

4. ***Owner's Unit.*** If owner occupancy is required, the property owner shall reside in and maintain either the primary residential unit or the accessory dwelling unit/junior accessory dwelling unit, as the property owner's principal place of residence ("owner's unit"). Owners of lots developed with an accessory dwelling unit/junior accessory dwelling unit shall live on the lot as long as the lot is developed with an accessory dwelling unit/junior accessory dwelling unit. Owners may re-designate the primary residential unit or the accessory dwelling unit/junior accessory dwelling unit as the owner's unit upon written notice to the Community Development Director and written approval of the re-designation by the Community Development Director, which approval shall not be denied unreasonably. The property owner shall not rent or lease both the primary

residential unit and the accessory dwelling unit/junior accessory dwelling unit simultaneously.

5. ***Hardship Waiver.*** If owner occupancy is required, in the event of a hardship, such as the death or disability of the property owner, job transfer, or similar significant personal situation which prevents the property owner from occupying one of the units as the owner's unit, a property owner or estate representative may apply for a temporary waiver of the owner-occupation requirement for a specific time period to allow the owner's unit to be occupied by a non-property owner pending disposition of the property through probate or non-probate transfer to a new owner, or the cessation of the circumstances preventing the property owner from occupying the owner's unit on the property. The Community Development Director shall review applications for a hardship waiver. Any such waiver shall specify the period of time for which it is granted, provided that no such waiver may be granted for a period longer than three years.

6. ***Removal of Recorded Owner Occupancy Requirement.*** With the exception of owner occupancy covenants required to permit a junior accessory dwelling unit, the Community Development Director will, in a form acceptable to the City Attorney, release an owner occupancy requirement recorded against the property prior to adoption of this ordinance upon the request of the property owner. No other covenants required pursuant to this section, and contained in the agreement recorded against the property, shall be released.

F. Required Features. Each accessory dwelling unit and junior accessory dwelling unit shall contain, at a minimum, the following features:

1. ***Residential Elements***. Permanent provisions for separate residential occupancy must be provided as follows within the contiguous livable floor space of the accessory dwelling unit or junior accessory dwelling unit and must be independent from the primary residential unit:

   a. A kitchen, consisting of a sink, cooking appliance, and refrigeration facilities. A junior accessory dwelling unit may utilize an efficiency kitchen.

   b. A bathroom consisting of a toilet, sink, and bathtub or shower. A junior accessory dwelling unit may share sanitation facilities with the existing or proposed single residential unit.

   c. A separate living room.

   d. A separate sleeping room, except in studio residential units, where a living room is considered a sleeping room.

2. ***Minimum Floor Area.*** Notwithstanding the dwelling unit minimum described in Section 30.140.150, Residential Unit, the minimum floor area for a newly constructed accessory dwelling unit is as follows:

   a. ***Efficiency Unit:*** 150 square feet.

   b. ***Studio Unit:*** 220 square feet.

c. ***All Other Units:*** 400 square feet.

Such usable floor area shall be exclusive of open porches, garages, basements, cellars, and unfinished attics. The minimum floor area for accessory dwelling units that are created by converting existing structures is 150 square feet.

3. ***Exterior Access.*** Exterior access to the unit, that is independent from the primary residential unit, must be provided. An interior connection consisting of one fire-rated lockable door between the primary residential unit and an accessory dwelling unit or junior accessory dwelling unit may be provided.

4. ***Fire Sprinklers.*** Fire sprinklers are required only if they are required for the primary residential unit.

5. ***Permanent Foundation.*** Attached and detached units shall be constructed with an approved permanent foundation.

6. ***Property Addresses.*** Addresses identifying all residential units on the lot, with minimum three- and one-half-inch numbers plainly visible from the street or road fronting the property shall be provided.

7. ***Public Sewer.*** Accessory dwelling units and junior accessory dwelling units shall be connected to a public sewer. If public sewer connection is not available, approval of a new or expanded onsite wastewater treatment system shall be required in accordance with the procedures from the Code of the County of Santa Barbara California prior to issuance of a building permit.

8. ***Water Meter.*** Accessory dwelling units shall comply with the water metering requirements of Title 14, Section 14.08.150 E.

9. ***Passageway.*** No passageway is required in conjunction with the construction of an accessory dwelling unit or junior accessory dwelling unit.

G. Development Standards for Standard Accessory Dwelling Units.

1. ***Development Standards Generally.*** The development standards listed in this section apply to standard accessory dwelling units and junior accessory dwelling units, except for those units permitted in accordance with all the configuration, standards, and special procedures outlined in subsection L. Development Standards for Special Accessory Dwelling Units.

   a. The reductions and exceptions to the development standards normally applicable to residential development allowed in this section are for the express purpose of promoting the development and maintenance of an accessory dwelling unit on the lot. If for any reason the accessory dwelling unit is not maintained on the lot in conformance with this section, the lot shall be brought into compliance with all of the requirements for the residential development, or with the legal nonconforming condition of the lot prior to the development of the accessory dwelling unit, including, but not limited to, the requirements for open yard, setbacks, and covered parking.

b. Except as otherwise specified in this subsection, projects developed in accordance with this section shall otherwise comply with the development standards applicable to an attached or detached accessory building for the housing type and the base zone in which the lot is located.

c. One primary residential unit shall be designated on a lot on which an accessory dwelling unit or junior accessory dwelling unit is permitted.

d. Notwithstanding the size limit of an attached accessory dwelling unit based on a percentage of the proposed or existing primary unit, or lot coverage, floor area ratio, open yard, and minimum lot size standards for an attached or detached accessory dwelling unit, an 800-square-foot, 16-foot high attached or detached accessory dwelling unit may be constructed in compliance with all other development standards for standard accessory dwelling units.

2. ***Maximum Floor Area.*** The maximum floor area for a standard accessory dwelling unit and junior accessory dwelling unit is as follows:

a. ***Attached Accessory Dwelling Unit.*** An accessory dwelling unit that is attached to, and increasing the size of, the primary residential unit shall not exceed 50% of the living area of the existing primary residential unit.

b. ***Converted Accessory Dwelling Unit.*** An accessory dwelling unit that is incorporated entirely within an existing primary residential unit, or within an existing accessory building, is not limited in size except that it shall not exceed the footprint of the existing structure.

c. ***Detached Accessory Dwelling Unit.*** An accessory dwelling unit that is detached from the primary residential unit and may or may not be attached to another detached accessory building, including detached garages, shall not exceed the following maximum floor area based on lot size and number of bedrooms:

i. *Lots up to 14,999 square feet and developed with one-bedroom or studio units*: 850 square feet.

ii. *Lots up to 14,999 square feet and developed with two or more-bedroom units*: 1,000 square feet.

iii. *Lots 15,000 square feet or larger:* 1,200 square feet.

d. ***Junior Accessory Dwelling Unit.*** The maximum floor area of a junior accessory dwelling unit shall be 500 square feet.

3. ***Building Separation.*** The minimum separation between the primary residential unit and a detached accessory dwelling unit shall be five feet.

4. ***Open Yard.*** No open yard areas are required for accessory dwelling units or junior accessory dwelling units. The minimum area, dimensions, and location of the required open yard pursuant to Section 30.140.140.C, Open Yards, for the existing or proposed primary residential unit on lots developed with single-unit or two-unit residential, may be reduced as follows in order to construct a standard accessory

dwelling unit pursuant to this subsection, or to construct an accessory dwelling unit proposed over a new or reconstructed maximum 500 square foot garage, provided all other open yard requirements are met:

a. ***Minimum Area.***

i. *Lots less than 6,000 square feet:* 500 square feet.

ii. *Lots 6,000 up to 7,999 square feet:* 800 square feet.

iii. *Lots 8,000 square feet up to 9,999 square feet:* 1,000 square feet.

iv. *Lots 10,000 square feet or greater:* 1,250 square feet.

b. ***Minimum Dimensions***. 15 feet long and 15 feet wide.

c. ***Location in Driveways and Turnarounds***. Notwithstanding Section 30.140.140.E.6.a, Vehicle Areas, the required open yard may be located in driveways and turnarounds, but not parking areas, in order to allow the construction of a new accessory dwelling unit.

5. ***Setbacks.*** The following setbacks shall apply to new and converted standard accessory dwelling units approved pursuant to this subsection:

a. ***New Construction***. Newly constructed accessory dwelling units shall comply with the following setback standards:

i. *Front Setback:* Meet the minimum front setback for residential structures in the zone, unless further limited by subsection H.8., Front Yard Location, below.

ii. *Interior Setback:* Four feet.

b. ***Conversion***. No setback is required to convert the existing, legally permitted, floor area of a main or accessory building to an accessory dwelling unit. Improvements to existing nonconforming buildings, including conforming additions, are allowed pursuant to Chapter 30.165, Nonconforming Structures, Site Development, and Uses.

c. ***Substantial Redevelopment***. No setback is required when an existing main or accessory building is substantially redeveloped and converted to an accessory dwelling unit, provided that the new building is reconstructed in the same location and with the same dimensions and floor area as the existing building.

i. *Exception for Small Conforming Additions.* One small 150-square-foot conforming first floor addition may be permitted on a substantially redeveloped and converted nonconforming accessory building.

d. ***New Construction Combined with Replacement of a Nonconforming Garage.*** The construction of an accessory dwelling unit may be combined with the demolition and replacement of a nonconforming detached garage if all of the following requirements are met:

i. The new garage is reconstructed in the same location and with the same dimensions as the existing garage; or

ii. The new garage is enlarged only as necessary to provide the same number of parking spaces and to meet the dimension requirements of the City of Santa Barbara Access & Parking Design Standards, but located no closer to the property line as the existing garage; and

iii. The accessory dwelling unit is constructed above the reconstructed garage; and

iv. The accessory dwelling unit and any additions to the garage shall conform with current setbacks; and

v. The new structure shall comply with all applicable height and building story limitations, and all other development standards are met.

e. ***Setback Encroachments.*** Setback encroachments allowed pursuant to Section 30.140.090, Encroachments into Setbacks and Open Yards, may be permitted for accessory dwelling units or junior accessory dwelling units.

H. Architectural Review. All accessory dwelling units or junior accessory dwelling units shall be subject to the following architectural design criteria as applicable to either new construction or exterior alterations, which shall be reviewed ministerially by the Community Development Director. For purposes of this section, portions of a building or site considered to be the accessory dwelling unit shall include all of the contiguous interior livable floor area of the accessory dwelling unit and any exterior alterations directly attached to, and integral to, the livable floor area of the accessory dwelling unit.

1. ***Prohibition of Shiny Roofing and Siding.*** New roofing and siding materials that are, shiny, mirror-like, or of a glossy metallic finish are prohibited.

2. ***Roof Tile.*** Where a new clay tile roof is proposed, the use of two-piece terra cotta (Mission "C-tile") roof is required and "S-tile" is prohibited, unless necessary to match the S-tile roof materials of the existing primary residential unit.

3. ***Skylights.*** New skylights shall have flat glass panels. "Bubble" or dome type skylights are not allowed.

4. ***Glass Guardrails.*** New glass guardrails are not allowed, unless necessary to match the glass guardrails of the existing primary residential unit.

5. ***Garage Conversion.*** If a garage is converted to an accessory dwelling unit, the garage door opening shall be replaced with exterior wall coverings, or residential windows and doors, to match the existing exterior garage wall covering and detailing.

6. ***Grading.*** No more than 250 cubic yards of grading (i.e., cut and/or fill under the main accessory dwelling unit building footprint and outside the main building footprint to accommodate the accessory dwelling unit) is proposed in the Hillside Design District or on lots in other parts of the City with a slope of 15% or greater.

7. ***Height.*** The construction of an accessory dwelling unit shall not exceed the following, whichever is greater:

   a. Height of the primary residential unit;

b. Number of stories of the primary residential unit; or

c. 17 feet.

This height limitation is not applicable to an accessory dwelling unit constructed above a garage, however, in no event shall the resulting building exceed the maximum height or number of stories allowed for a detached or attached accessory building in the zone.

8. ***Front Yard Location.*** The construction of a new detached accessory dwelling unit located in the front yard shall be subject to all of the following:

   a. The new accessory dwelling unit must be located a minimum of 20 feet back from all front lot lines or meet the minimum front setback for the zone in which the lot is located, whichever is greater.

   b. Unless constructed over a garage, the new unit shall be:

      i. No more than one-story and less than 17 feet in height; and

      ii. Screened from the street by topography, location, or landscape, in a manner designed to blend into the surrounding architecture or landscape, so as to minimize visibility of the accessory dwelling unit to the casual observer as viewed from the street.

9. ***Design Style.*** New detached or attached accessory dwelling units shall be compatible with the design of the primary residential unit regarding style, fenestration, materials, colors, and details if the accessory dwelling unit meets any of the following:

   a. Attached to, or if any portion of the accessory dwelling unit is located within 20 feet of, the primary residential unit;

   b. Located in the Hillside Design District and 20% or greater average slope;

   c. Two or more stories tall, or 17 feet or taller in building height;

   d. Located on a site on which there is a historical resource as follows:

      i. Listed on the National Register of Historic Places or the California Register of Historic Resources;

      ii. Designated as a City of Santa Barbara Landmark or Structure of Merit; or

      iii. Located in a designated historic district.

   e. Located in the front yard.

10. ***Privacy Standards.*** The construction of an accessory dwelling unit where any portion of the proposed construction is either: two or more stories tall or 17 feet or taller in building height, shall comply with the following:

   a. Upper story unenclosed landings, decks, and balconies greater than 20 square feet, that face or overlook the adjoining property, shall be located a minimum of 15 feet from the interior lot lines.

b. Upper story unenclosed landings, decks, and balconies, that do not face or overlook the adjoining property due to orientation or topography, may be located at the minimum interior setback line if an architectural screening element such as enclosing walls, trellises, awnings, or perimeter planters with a five-foot minimum height is incorporated into the unenclosed landing, deck, or balcony.

c. Upper story windows that face or overlook the adjoining property, located within 15 feet of the interior lot lines, shall be installed a minimum of 42 inches above finish floor.

11. ***Exceptions***. Discretionary applications for design review may be requested in the following circumstances:

a. An applicant may propose an accessory dwelling unit that does not meet these design criteria subject to approval by the Single Family Design Board, Architectural Board of Review, or Historic Landmarks Commission, as appropriate.

b. Discretionary design review may be required for any exterior alterations to the project site or main buildings that are not an integral part of the accessory dwelling unit, but are proposed in conjunction with the accessory dwelling unit, if required pursuant to Chapter 22.22, 22.68, or 22.69 of this code.

I. Protection for Historic Resources. No accessory dwelling unit or junior accessory dwelling unit shall be permitted if the proposal would cause a substantial adverse change in the significance of a historical resource listed on the National Register of Historic Places or the California Register of Historical Resources, designated as a City of Santa Barbara Landmark or Structure of Merit, or located in a designated historic district. The Community Development Director shall make this determination by reviewing the proposal for compliance with appropriate Secretary of Interior's *Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings*.

J. Parking Standards. No automobile parking spaces are required for accessory dwelling units or junior accessory dwelling units. The required parking for the existing residential units on site may be reduced or replaced as follows to construct an accessory dwelling unit:

1. ***No Replacement Parking Required***. When an existing garage, carport, or other covered parking structure is converted to an accessory dwelling unit or demolished in order to construct an accessory dwelling unit, those off-street parking spaces for the existing residential unit are not required to be replaced.

2. ***Optional Parking Standards***. If optional new or replacement parking spaces are proposed for either the primary residential unit or the accessory dwelling unit, those spaces may be provided as covered, uncovered, in a mechanical lift, or in a tandem configuration pursuant to f. below. The replacement spaces shall meet all of the following:

a. Covered parking shall meet the development standards applicable to the primary residential unit within the zone in which the lot is located.

b. All parking spaces must meet the minimum dimensions and development standards consistent with the City Parking Access & Design Standards and Section 30.175.090 Parking Area Design and Development Standards.

c. In order to maintain visibility for adjacent driveways and intersections, uncovered parking spaces shall comply with Section 30.140.230, Visibility at Driveways and Intersections.

d. Replacement uncovered parking spaces may be allowed in a front or interior setback, provided all uncovered parking spaces are contained within the area of an existing paved driveway and no increase to paved areas occurs in the setbacks.

e. New uncovered parking spaces, that are not replacement parking spaces as described above, may be located three feet from any interior lot line, provided a minimum of three feet in width of planting area is provided for the length of the paved parking area along the interior lot line.

f. Tandem parking configuration shall meet all the following:

i. No more than two automobiles shall be placed one behind the other.

ii. Both automobile parking spaces parked in tandem shall be assigned to the same residential unit. Tandem parking shall not create any traffic safety issues.

iii. Vertical or stackable tandem parking, provided by means of mechanical lifts, is subject to approval by the Public Works Director. Mechanical lifts shall be fully enclosed within a structure and shall require a recorded maintenance agreement, pursuant to Chapter 30.260, Recorded Agreements.

iv. Tandem parking in multi-unit and commercial zones is subject to approval by the Public Works Director. Tandem parking shall not create traffic safety issues.

K. Fire Hazard Area Standards. All accessory dwelling units or junior accessory dwelling units located in any Fire Hazard Area as defined in the City's Community Wildfire Protection Plan or as may be subsequently retitled in the future as a "High" or "Very High Fire Hazard Severity Zone" as defined in the Community Wildfire Protection Plan adopted by City Council, shall comply with the following standards as applicable to new construction or parking:

1. ***No Tandem Parking.*** No parking space shall be developed in a tandem configuration.

2. ***High Fire Construction.*** The accessory dwelling unit shall be designed to meet high fire construction standards adopted or enforced by the City, as determined by the Chief Building Official or the Fire Code Official.

3. ***No Variance or Modification***. No variance or modification to any Fire Code requirements or high fire construction standards shall be permitted.

4. ***Defensible Space***. The site must meet defensible space requirements, pursuant to Chapter 8.04 of this code, prior to occupancy and those requirements must be maintained.

5. ***Parking***. One covered or uncovered automobile parking space per unit or bedroom, whichever is less, meeting all of the same parking standards required for the primary residential unit as described in subsection J., Parking Standards, shall be required for an accessory dwelling unit.

    a. *Parking Exceptions for Certain Accessory Dwelling Units.* Automobile parking is not required for an accessory dwelling unit in any of the following instances:

        i. The accessory dwelling unit is located within a walking distance of one-half mile of a public transit stop, such as a bus stop or train station.

        ii. The accessory dwelling unit is located within an architecturally and historically significant historic district. For purposes of this provision, El Pueblo Viejo Landmark District, Brinkerhoff Avenue Landmark District, Riviera Campus Historic District, and the El Encanto Hotel Historic District, constitute architecturally and historically significant historic districts within the City and any district hereafter created deemed to be architecturally and historically significant.

        iii. The accessory dwelling unit is contained entirely within the permitted floor area of the existing primary residential unit or an existing accessory building.

        iv. When on-street parking permits are required but not offered to the occupant(s) of the accessory dwelling unit.

        v. When there is a "carshare vehicle" as defined in Chapter 10.73 of this code, located within a walking distance of 500 feet of the accessory dwelling unit.

L. Development Standards for Special Accessory Dwelling Units.

1. ***Development Standards Generally.*** The development standards listed in this section apply to specific types of small accessory dwelling units and junior accessory dwelling units with certain size, height, and setback standards that, if followed, allow for an accessory dwelling unit to be permitted on lots in a Fire Hazard Area, or more than one accessory dwelling unit on a lot, and allows additional reductions and exceptions to development standards for open yard and maximum floor area. Applications utilizing the special standards described in this section may not utilize the less restrictive configuration, size, and height standards allowed under another section to achieve a larger unit or more than one unit.

a. Any reductions and exceptions in this section are for the express purpose of promoting the development and maintenance of a special accessory dwelling unit or junior accessory dwelling unit on the lot. If for any reason the special accessory dwelling unit or junior accessory dwelling unit is no longer maintained on the lot, the lot shall be brought into compliance with all of the requirements for the remaining residential development, or with the legal nonconforming condition of the lot prior to the development of the accessory dwelling unit or junior accessory dwelling unit.

b. Except as otherwise specified in this section, projects developed in accordance with this Chapter shall otherwise comply with the development standards applicable to the housing type and base zone in which the lot is located.

c. One primary residential unit shall be designated on a lot on which an accessory dwelling unit or junior accessory dwelling unit is permitted. In the case when multiple residential units are existing on a lot, there shall be only one primary residential unit.

2. ***Configuration – Single Unit Lots.*** A lot developed with only one existing or proposed single-unit residence, may permit one of the following types of special accessory dwelling units:

a. *Converted Portion of Main Building.* Only one accessory dwelling unit or junior accessory dwelling unit contained entirely within the existing, legally permitted, fully enclosed livable floor area of the existing or proposed primary residential unit; or

b. *Converted Accessory Building.* Only one accessory dwelling unit contained entirely within the existing, legally permitted, fully enclosed floor area of a garage or other accessory building on the same lot as the primary residential unit, plus one 150-square-foot conforming first floor addition, if the expansion is limited to accommodating ingress and egress; or

c. *One Unit – New Construction.* One newly constructed accessory dwelling unit, detached from any other main or accessory building; or

d. *Two Units – Combination.* One junior accessory dwelling unit contained entirely within the existing, legally permitted, fully enclosed livable floor area of the existing or proposed primary residential unit, plus one newly constructed accessory dwelling unit, detached from any other main or accessory building.

3. ***Configuration – Two-Unit or Multi-Unit Lots.*** A lot developed with two or more existing residential units, may permit one of the following types of special accessory dwelling units:

a. *Converted Non-Livable Space.* At least one accessory dwelling unit, and up to 25 percent of the existing number of residential units on a lot, may be converted on a lot if contained entirely within portions of existing, legally

permitted, fully enclosed floor area of a residential structure that is not used as livable space, including but not limited to storage rooms, boiler rooms, passageways, attics, basements, or garages; or

b. *Two Units – New Construction.* No more than two newly constructed accessory dwelling units, detached from the main or accessory building.

4. ***Maximum Floor Area***

a. *Detached Accessory Dwelling Unit.* The maximum floor area of any detached, new construction, special accessory dwelling unit approved pursuant to this subsection is 800 square feet.

b. *Converted Accessory Dwelling Unit.* An accessory dwelling unit that is incorporated entirely within portions of existing floor area, approved pursuant to this subsection, is not limited in size.

c. *Junior Accessory Dwelling Unit.* The maximum floor area of a junior accessory dwelling unit shall not exceed 500 square feet.

5. ***Maximum Height – Detached Accessory Dwelling Unit.*** The maximum building height of a detached, new construction, special accessory dwelling unit approved pursuant to this subsection is 16 feet.

6. ***Exempt from Other Size Limitations.*** A special accessory dwelling unit or junior accessory dwelling unit approved pursuant to this subsection is exempt from any other size limitation in this Title.

7. ***Exempt from Open Yard.*** No open yard is required for a special accessory dwelling unit or junior accessory dwelling unit approved pursuant to this subsection. Open yard for any existing residential units on a lot may be reduced or eliminated entirely in order to permit a special accessory dwelling unit meeting all the standards and criteria in this subsection.

M. Building Permit Required. All accessory dwelling units and junior accessory dwelling units shall comply with applicable state and local building codes and shall require approval of a building permit. Applications shall be processed pursuant to Chapter 30.205, Common Procedures, and the specific requirements of this section. The City shall ministerially approve or disapprove a complete building permit application for an accessory dwelling unit or junior accessory dwelling unit in compliance with time periods established by state law.

1. ***Combined Permits***. An accessory dwelling unit or junior accessory dwelling unit permit shall not be combined with a permit for other proposed construction on the site unrelated to the accessory dwelling unit or junior accessory dwelling unit. If a permit application for an accessory dwelling unit or junior accessory dwelling unit is submitted at the same time as a permit application for a new single-unit dwelling, review of the permit for the accessory dwelling unit or junior accessory dwelling unit application shall be delayed until the permit for the single-unit dwelling has been approved.

2. ***Modifications and Minor Zoning Exceptions for Accessory Dwelling Units or Junior Accessory Dwelling Units.*** An accessory dwelling unit or junior accessory dwelling unit that is not in compliance with the development standards of this section may be granted a modification or minor zoning exception if all the required findings can be met, pursuant to the procedures outlined in Chapter 30.250, Modifications, or Chapter 30.245 Minor Zoning Exceptions.

3. ***Posted Sign.*** Within five calendar days after submitting an initial building permit application to the City, the property owner shall install a public notice in the form of a posted sign on the property in a manner deemed acceptable by the Community Development Director. The sign shall remain posted until a building permit is issued, or the application expires or is withdrawn. At the time of application submittal, the applicant shall sign an affidavit stating that he or she will post the required sign per this subsection. The validity of the permit shall not be affected by the failure of any property owner, resident, or neighborhood or community organization to receive this notice.

N. Recorded Agreement. Before obtaining a building permit for an accessory dwelling unit or junior accessory dwelling unit, the property owner shall execute an agreement, pursuant to Chapter 30.260, Recorded Agreements, containing a reference to the deed under which the property was acquired by the present owner which outlines the requirements regarding the sale, rental, and owner occupancy of lots developed with accessory dwelling units and junior accessory dwelling units as specified in subsection E. of this section.

O. Residential Density. An accessory dwelling unit or junior accessory dwelling unit is a residential use that is consistent with the existing General Plan designations and zoning for lots within the allowable residential zones. Any accessory dwelling unit or junior accessory dwelling unit permitted pursuant to this section does not exceed the allowable density for the lot upon which the accessory dwelling unit or junior accessory dwelling unit is located. (Ord. 5834, 2018)

SECTION 2. Section 30.295.020 of Chapter 30.295 of Title 30 of the Santa Barbara Municipal Code is amended to read as follows:

30.295.020 Residential Use Classifications.

A. Residential Housing Types.

1. ***Single-Unit Residential.*** One primary residential unit and up to one Accessory Dwelling Unit or one Junior Accessory Dwelling Unit located on a single lot. This classification includes individual mobilehomes and manufactured housing units installed on a foundation system pursuant to Section 18551 of the California Health and Safety Code and meeting the standards of Section 30.185.270, Mobilehomes, Recreational Vehicles and Modular Units, Individual Use.

2. ***Two-Unit Residential.*** No more than two residential units and may include one or more Accessory Dwelling Units located on a single lot. The residential units

may be located in a single building that contains two residential units (also known as a duplex) or in two detached buildings.

3. ***Multi-Unit Residential.*** Three or more attached or detached residential units and may include one or more Accessory Dwelling Units on a single lot. Types of multi-unit residential include townhouses, multiple detached residential units (e.g. bungalow court), and multi-story apartment buildings.

B. Special Residential Unit Types.

1. ***Accessory Dwelling Unit.*** An attached or a detached residential unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residential unit. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the primary residential unit is or will be situated. An accessory dwelling unit also includes the following:

   a. An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.

   b. A manufactured home, as defined in Section 18007 of the Health and Safety Code.

6. ***Junior Accessory Dwelling Unit.*** A unit that is no more than 500 square feet in size and contained entirely within the structure of an existing or proposed single-unit residential housing type. A junior accessory dwelling unit includes its own separate sanitation facilities, or shares sanitation facilities with the existing or proposed single residential unit and includes an efficiency kitchen.

SECTION 3. Severability and Interpretation.

A. Severability. If any provision of this Ordinance or the application thereof to any persons or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application and, to this end, the provisions of this Ordinance are hereby declared to be severable.

B. Interpretation. This Ordinance shall be construed to confer upon the City the maximum power and authority allowed by state and federal law. In the event state or federal law is found to conflict with and preempt any provision of this Ordinance, or in the event state or federal law changes to conflict with and preempt any provision of this Ordinance, the remaining and non-conflicting provisions of this Ordinance shall be interpreted and construed to give maximum effect to the remaining and non-conflicting provisions so as to effectuate to the greatest extent possible the purposes and restrictions expressed herein.

SECTION 4. CEQA

Under California Public Resources Code Section 21080.17, the California Environmental Quality Act (CEQA) does not apply to the adoption of an ordinance by a city or county

implementing the provisions of Section 65852.2 and 65852.22 of the Government Code, which is the state Accessory Dwelling Unit law.

SECTION 5. Local building codes

For purpose of Government Code Section 65852.2(a)(D)(viii) "local building codes" shall mean, but not be limited to, the uniform technical codes adopted through Santa Barbara Municipal Code Chapter 22.04 and any and all objective development, design, and environmental standards and policies adopted by or implemented within the City.

SECTION 6. Effect on Projects in the Permit Process

Applications for Accessory Dwelling Units subject to the City's Interim Urgency Ordinance No. 5927, extended by Ordinance No. 5930, that were received on or after January 1, 2017 but before the effective date of City Council adoption may continue to be processed in accordance with Government Code 65852.2 provided that a building permit is issued within 60 days after the effective date of the ordinance, or may elect to be processed in accordance with the proposed Title 30 ordinance amendments. All applications for Accessory Dwelling Units submitted on or after the effective date of City Council adoption, and any Accessory Dwelling Unit applications which have not yet received a building permit by the deadlines described above, shall be subject to the proposed Title 30 ordinance amendments.

SECTION 7. Interim Urgency Ordinance No. 5930

Interim Urgency Ordinance No. 5930 shall automatically terminate and have no further force or effect upon the effective date of this ordinance.

ORDINANCE NO. 5974

STATE OF CALIFORNIA)
)
COUNTY OF SANTA BARBARA) ss.
)
CITY OF SANTA BARBARA)

I HEREBY CERTIFY that the foregoing ordinance was introduced on October 27, 2020 and adopted by the Council of the City of Santa Barbara at a meeting held on November 10, 2020, by the following roll call vote:

AYES: Councilmembers Eric Friedman, Oscar Gutierrez, Meagan Harmon, Mike Jordan, Kristen W. Sneddon; Mayor Cathy Murillo

NOES: None

ABSENT: None

ABSTENTIONS: None

IN WITNESS WHEREOF, I have hereto set my hand and affixed the official seal of the City of Santa Barbara on November 11, 2020.

Sarah P. Gorman, CMC
City Clerk Services Manager

I HEREBY APPROVE the foregoing ordinance on November 11, 2020.

Cathy Murillo
Mayor

ORDINANCE NO. 2602

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DAVIS AMENDING VARIOUS SECTIONS OF CHAPTER 40 (ZONING) OF THE DAVIS MUNICIPAL CODE TO IMPLEMENT REGULATIONS REGARDING ACCESSORY DWELLING UNITS, JUNIOR ACCESSORY DWELLING UNITS, AND GUEST HOUSES, AND MAKING A DETERMINATION OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, effective January 1, 2020, Senate Bill 13 ("SB 13"), Assembly Bill 68 ("AB 68"), Assembly Bill 587 ("AB 587"), Assembly Bill 670 ("AB 670"), and Assembly Bill 881 ("AB 881") amended state regulations to further encourage the development and limit the standards cities may impose on accessory dwelling units ("ADUs") and junior accessory dwelling units ("JADUs"). Government Code Section 65852.2 also was amended in 2020 by Senate Bill 1030 ("SB 1030") and Assembly Bill 3182 ("AB 3182"). To comply with State law as amended by this recent legislation, the City must now update the Municipal Code; and

WHEREAS, on March 10, 2021, the Planning Commission of the City of Davis conducted a duly noticed public hearing on Ordinance No. 2602. At the hearing, all interested persons were given the opportunity to be heard. The Planning Commission received and considered the staff report and all the information, evidence and testimony presented in connection with this Ordinance. Following the close of the public hearing, the Planning Commission recommended approval of Ordinance No. 2602 to the City Council; and

WHEREAS, on May 4, 2021, the City Council of the City of Davis conducted a duly noticed public hearing on Ordinance No. 2602. At the hearing, all interested persons were given the opportunity to be heard. The City Council received and considered the staff report, the Planning Commission's recommendation, and all the oral and written information, evidence, comments, and testimony presented in connection with this Ordinance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DAVIS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The recitals above are true and correct and are hereby incorporated into this Ordinance.

SECTION 2. The General Plan of the City of Davis states that a variety of housing types should be encouraged to meet the housing needs of an economically and socially diverse Davis, and to encourage infill as an alternative to sprawl. The Housing Element of the General Plan of the City of Davis also contains a policy to continue to facilitate ministerial accessory dwelling units and discretionary accessory dwelling units. This Ordinance is therefore consistent with the City's General Plan.

SECTION 3. The definition of "Accessory dwelling unit" in Section 40.01.10 (Definitions) of Article 40.01 (In General) of Chapter 40 of the Davis Municipal Code is amended to read as follows, with all other definitions to remain the same:

"Accessory dwelling unit ("ADU"). Has the meaning set forth in Government Code Section 65852.2 and means an attached or detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit includes the following: an efficiency unit, as defined in Health and Safety Code Section 17958.1, and a manufactured home, as defined in Health and Safety Code Section 18007."

SECTION 4. The definition of "Accessory building or structure" in Section 40.01.010 (Definitions) of Article 40.01 (In General) of Chapter 40 of the Davis Municipal Code is hereby amended to read as follows, with all other definitions to remain the same:

"Accessory building or structure. A structure detached from a primary building located on the same lot and incidental to and subordinate to the principal building or use, including, but not limited to, garages, carports, storage sheds, gazebos, and guest houses. An Accessory Dwelling Unit is not an Accessory Building or Structure and is subject to separate regulations found in Sections 40.26.450 and 40.26.460."

SECTION 5. The definition of "Guest house" in Section 40.01.010 (Definitions) of Article 40.01 (In General) of Chapter 40 of the Davis Municipal Code is hereby amended to read as follows, with all other definitions to remain the same:

"Guest house. Living quarters or conditioned space within an accessory building for the use of persons living or employed on the premises, or for temporary use by guests of the occupants of the premises. Such quarters may have bathroom facilities (toilet, sink, tub/shower) and shall have no kitchen facilities. Such quarters shall not be rented or otherwise be used as a separate dwelling. A pool house, workshop, home office or studio is also considered a guest house."

SECTION 6. The definition of "Apartment, efficiency" in Section 40.01.010 (Definitions) of Article 40.01 (In General) of Chapter 40 of the Davis Municipal Code is hereby repealed.

SECTION 7. The following definitions are hereby added to Section 40.01.10 (Definitions) of Article 40.01 (In General) of Chapter 40 of the Davis Municipal Code to read as follows, with all other definitions to remain the same:

"Accessory dwelling unit, junior ("JADU"). Has the meaning set forth in Government Code Section 65852.22 and means a residential dwelling unit that is no more than 500 square feet in size and is contained entirely within a single-family residence, which does not include the garage. A JADU shall include an efficiency kitchen, and may include separate bathroom facilities or share bathroom facilities with the single-family residence."

"Attached ADU. An ADU that shares at least one common wall with the primary dwelling."

"Detached ADU. An ADU that is constructed as a separate structure from an existing or proposed single-family dwelling or multifamily dwelling. An accessory dwelling unit attached

to the primary structure via a roof, breezeway, trellis, or covered walkway shall be considered a detached ADU."

"Efficiency Unit. Has the meaning set forth in Section 17958.1 of the Health and Safety Code, and may be permitted for occupancy by no more than two persons. The efficiency unit shall have a minimum floor area of 220 square feet and shall have a bathroom facility and a partial kitchen or kitchenette."

SECTION 8. Section 40.03.045 [Conditional uses permitted with an administrative use permit (AUP)] of Article 40.03 (RESIDENTIAL ONE-FAMILY (R-1) DISTRICT) of Chapter 40 of the Davis Municipal Code is hereby amended in its entirety to read as follows:

"40.03.045 Conditional uses permitted with an administrative use permit (AUP).
The following conditional uses may be permitted in an R-1 district subject to the granting of an administrative use permit (AUP):

(a) Non-ministerial accessory dwelling unit. Accessory dwelling units that are not permitted pursuant to Section 40.26.450 (Ministerial accessory dwelling units) shall be permitted subject to the granting of an administrative use permit and shall be known as non-ministerial accessory dwelling units. Non-ministerial accessory dwelling units shall comply with all of the requirements of Section 40.26.460.

(b) Guest houses. Guest houses are conditionally allowable accessory structures, subject to the granting of an administrative use permit (AUP). Guest houses shall comply with all of the requirements of Section 40.26.470."

SECTION 9. Subdivisions (h) and (i) of Section 40.04.040 (Conditional Uses) of Article 40.04 (RESIDENTIAL ONE- AND TWO-FAMILY (R-2) DISTRICTS) of Chapter 40 of the Davis Municipal Code are hereby amended to read as follows, with all other subdivisions to remain the same:

"(h) Non-ministerial accessory dwelling units. Accessory dwelling units that are not permitted pursuant to Section 40.26.450 (Ministerial accessory dwelling units) shall be permitted subject to the granting of an administrative use permit and shall be known as non-ministerial accessory dwelling units. Non-ministerial accessory dwelling units shall comply with all of the requirements of Section 40.26.460.

(i) Guest houses. Guest houses are conditionally allowable accessory structures, subject to the granting of an administrative use permit (AUP). Guest houses shall comply with all of the requirements of Section 40.26.470."

SECTION 10. Subdivision (e) of Section 40.04A.030 (Accessory Uses) of Article 40.04A (RESIDENTIAL ONE- AND TWO-FAMILY CONSERVATION (R2-CD) DISTRICT) of Chapter 40 of the Davis Municipal Code is hereby amended to read in full, with all other subdivisions to remain the same:

"(e) Accessory dwelling units. Accessory dwelling units meeting the requirements of Section 40.26.450.

SECTION 11. Subdivision (g) of Section 40.04A.040 (Conditional Uses) of Article 40.04A (RESIDENTIAL ONE- AND TWO-FAMILY CONSERVATION (R2-CD) DISTRICT) of Chapter 40 of the Davis Municipal Code is amended in its entirety to read as follows, with all other subdivisions to remain the same:

"(g) Conversion of an existing non-conforming non-habitable accessory structure to a guest house as provided for in Section 40.04A.080 of this article; provided that:

(1) The accessory structure was not constructed in violation of any zoning ordinance previously in effect in the district; and

(2) The new use will not constitute a nuisance."

SECTION 12. A new Section 40.04A.045 is hereby added to Article 40.04A (RESIDENTIAL ONE-AND TWO FAMILY CONSERVATION (R-2CD) DISTRICT) of Chapter 40 of the Davis Municipal Code to read as follows:

"40.04A.045 Conditional uses permitted with an administrative use permit (AUP).
The following conditional uses may be permitted in an R-2CD district subject to the granting of an administrative use permit (AUP):

(a) Non-ministerial accessory dwelling unit. Accessory dwelling units that are not permitted pursuant to Section 40.26.450 (Ministerial accessory dwelling units) shall be permitted subject to the granting of an administrative use permit and shall be known as non-ministerial accessory dwelling units. Non-ministerial accessory dwelling units shall comply with all of the requirements of Section 40.26.460.

(b) Guest houses. Guest houses are conditionally allowable accessory structures, subject to the granting of an administrative use permit (AUP). Guest houses shall comply with all the requirements of Section 40.26.470."

SECTION 13. Paragraph (3) of Subdivision (a) of Section 40.04A.070 (Parking) of Article 40.04A (RESIDENTIAL ONE- AND TWO-FAMILY CONSERVATION (R2-CD) DISTRICT)of Chapter 40 of the Davis Municipal Code is hereby amended to read as follows, with all other paragraphs and subdivisions to remain the same:

"(3) Accessory Dwelling Unit Parking. No vehicle parking space is required for an ADU.

SECTION 14. Subdivision (e) of Section 40.07.030 (Accessory Uses) of Article 40.07 (Residential One- and Two-Family and Mobile Home (R-2-MH) District) of Chapter 40 of the Davis Municipal Code is hereby amended to read as follows, with all other subdivisions to remain the same:

"(e) Accessory dwelling units meeting the requirements of Section 40.26.450."

SECTION 15. Subdivision (d) of Section 40.14.040 (Accessory Uses) of Article 40.14 (Central Commercial (C-C) District) of Chapter 40 of the Davis Municipal Code is hereby amended to read as follows, with all other subdivisions to remain the same:

"(d) Accessory dwelling units meeting the requirements of Section 40.26.450."

SECTION 16. Subdivision (e) of Section 40.15.040 (Accessory Uses) of Article 40.15 (Mixed-Use District) of Chapter 40 of the Davis Municipal Code is hereby amended to read as follows, with all other subdivisions to remain the same:

"(e) Accessory dwelling units meeting the requirements of Section 40.26.450."

SECTION 17. Paragraph (15) of Subdivision (c) of Section 40.26.010 (Accessory buildings/structures) of Article 40.26 (Special Uses) of Chapter 40 of the Davis Municipal Code is hereby amended to read as follows, with all other subdivisions to remain the same:

"(15) Use for Dwelling Purposes. Accessory structures shall not be used for dwelling purposes."

SECTION 18. Paragraph (8) of Subdivision (d) of Section 40.26.010 (Accessory buildings/structures) of Article 40.26 (Special Uses) of Chapter 40 of the Davis Municipal Code is hereby amended in its entirety and a new paragraph (9) is hereby added to read as follows, with all other subdivisions to be renumbered accordingly and otherwise remain the same:

"(8) Accessory Dwelling Units. In accordance with the underlying zoning district, ministerial accessory dwelling units are subject to the standards in Section 40.26.450, and non-ministerial accessory dwelling units are subject to the standards in Section 40.26.460.

(9) Guest Houses. Guest houses are subject to the standards in Section 40.26.470 and in accordance with the requirements of the underlying zoning district."

SECTION 19. Section 40.26.450 of Article 40.26 (Special Uses) of Chapter 40 of the Davis Municipal Code is hereby amended in its entirety to read as follows:

"40.26.450 Ministerial Accessory Dwelling Units and Junior Accessory Dwelling Units.

(a) Purpose. The purpose of this section is to implement the requirements of Government Code Sections 65852.2 and 65852.22 to allow ministerial accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) in a manner that encourages their development but simultaneously minimizes impacts on traffic, parking, density, and other areas where the City is still permitted to exercise local control. ADUs that do not meet the provisions of this Section 40.26.450, shall be considered as non-ministerial ADUs subject to the provisions of Section 40.26.460.

(b) Definitions. For the purpose of this section, the following definitions apply. Otherwise, the words and phrases shall have the meanings respectively ascribed to them by section 40.01.010.

Manufactured Home. Has the meaning set forth in section 18007 of the Health and Safety Code.

Primary Dwelling. For purposes of this section, means the existing or proposed single-family or multi-family dwelling on the lot where an ADU would be located.

Public Transit. For purposes of this section, has the meaning set forth in Government Code Section 65852.2(j).

(c) Permitting procedures.

(1) Before constructing an ADU or converting an existing structure or portion of an existing structure or residence to an ADU or JADU, the applicant shall obtain permits in accordance with the requirements of this section.

(2) All ADUs and JADUs shall satisfy the requirements of the California Building Standards Code, as amended by the City, and any other applicable laws.

(3) Building permit approval only. An applicant shall not be required to submit an application for an ADU permit under subsection (d) of this section, and may instead seek building permit only approval for an ADU or JADU, or both, where the proposal satisfies the requirements of Government Code Section 65852.2(e)(1), as the same may be amended from time to time, the California Building Standards Code, as amended by the City, and any other applicable laws. An ADU or JADU approved pursuant to this subsection shall be rented only for terms of 30 days or longer. The following are the categories of ADUs and JADUs that shall be approved under this paragraph (3), unless Government Code Section 65852.2(e)(1) is amended to state otherwise:

(A) A JADU within the Primary Dwelling, and an ADU within the Primary Dwelling or an ADU within an existing accessory structure. One ADU and one JADU per lot with a proposed or existing single-family dwelling is allowed if all of the following apply:

(i) The JADU is within the proposed space of a single-family dwelling or existing space of a single-family dwelling and the ADU is within either the existing or proposed space of a single-family dwelling or an existing accessory structure. An ADU built in an existing accessory structure may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. Such an expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

(I) The space has exterior access from the proposed or existing single-family dwelling.
(II) The side and rear setbacks are sufficient for fire and safety.
(III) The JADU complies with the requirements of Government Code Section 65852.22 and with the requirements set forth in subsections c, d, and e of this section.

(B) Detached new construction ADU for Primary Dwelling. This ADU may be combined with a JADU described in subparagraph (a) above. One detached, new construction ADU for a lot with a proposed or existing single-family dwelling if all of the following apply:

(i) The ADU shall be no more than 800 square feet in size.
(ii) The ADU shall not exceed a height limit of 16 feet.
(iii) The ADU shall be set back a minimum of four feet from side and rear lot lines.
(iv) The ADU shall comply with the front yard setback as required by the zone in which it is located.

(C) ADU within non-livable space in existing multifamily structure. One ADU within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings. If requested, more than one ADU shall be allowed, up to the number of ADUs that equals 25 percent of the existing multifamily dwelling units in the structure.

(D) Detached new construction ADUs for existing multifamily dwelling. Not more than two detached ADUs located on a lot that has an existing multifamily dwelling, subject to a height limit of 16 feet and minimum four-foot rear and side setbacks.

(4) Projects Subject to ADU Permit Review and Timelines.
(A) The director or his/her designee shall ministerially review and approve an ADU permit application and shall not require a public hearing, provided that the submitted application is complete and demonstrates that the ADU complies with the requirements contained in this section and any other applicable law.

(B) ADU permit applications subject to ministerial approval shall be processed within the timelines established by California Government Code Section 65852.2.

(C) Where an ADU permit application is submitted with an application for a Primary Dwelling that is subject to discretionary review under this Code, the ADU permit application will be considered separately without discretionary review or a public hearing, following action on the portion of the project subject to discretionary review.

(D) In addition to obtaining an ADU permit, the applicant shall be required to obtain a building permit and any other applicable construction or related permits prior to the construction of the ADU.

(d) ADU permit application submittal requirements

(1) An ADU application is required to be filed with the Department of Community Development and Sustainability for an ADU that does not satisfy the requirements of subsection (c)(3) of this section (Building permit approval only). An ADU application shall be accompanied by the filing fee as established by resolution of the City Council, and shall include, but not be limited to, the following documents and information:

(A) Name and address of the applicant.

(B) Owner-Builder Acknowledgment and Information Verification Form.

(C) Assessor's parcel number(s) of the property.

(D) Plot Plan (Drawn to Scale). In sufficient detail to clearly describe:

(i) Physical dimensions of the property.
(ii) Location and dimensions of all existing and proposed structures, walls, and fences.
(iii) Location and dimensions of all existing and proposed easements, septic tanks, leach lines, seepage pits, drainage structures, and utilities.
(iv) Location, dimensions, and names of all adjacent roads, whether public or private.
(v) Setbacks.
(vi) Existing and proposed methods of circulation, including ingress and egress, driveways, parking areas, and parking structures.
(vii) Panoramic color photographs showing the property from all sides and showing adjacent properties.
(viii) A description of architectural treatments proposed for the ADU.
(ix) Written confirmation from any water district or sewer district providing service of the availability of service.

(E) Floor plans. Complete floor plans of both existing and proposed conditions shall be provided. Each room shall be dimensioned and resulting floor area calculation included. The use of each room shall be labeled. The size and location of all doors, closets, walls, and cooking facilities shall be clearly depicted. For an attached ADU, the plans must include the Primary Dwelling as well.

(F) Elevations. North, south, east, and west elevations that show all exterior structure dimensions, all architectural projections, and all openings for both the primary residence and the proposed accessory dwelling unit. For an attached ADU, the plans must include the Primary Dwelling as well.

(G) Additional Information. Such additional information as shall be required by the Community Development Department Director.

(2) All ADUs shall satisfy the requirements of Chapter 8, Buildings, of the Davis Municipal Code and require a building permit from the city building official.

(3) In accordance with State law, ADUs are an accessory use to the Primary Dwelling on the lot. ADUs shall not be considered to exceed the allowable density for the lot.

(e) Development Standards for ADUs. Except those ADUs approved pursuant to subsection (c)(3) of this section (Building permit approval only), ADUs shall comply with the following development standards:

(1) Location Restrictions. One ADU shall be allowed on a lot with a proposed or existing Primary Dwelling that is zoned to allow single family or multi-family residential use.

(2) Development Standards.

(A) Size restrictions. If there is an existing Primary Dwelling, an Attached ADU shall not exceed fifty percent (50%) of the gross floor area for the Primary Dwelling. A Detached ADU shall not exceed 850 square feet in gross floor area, or 1,000 square feet in gross floor area if the ADU provides more than one bedroom. In no case shall an ADU be less than 220 square feet, or the minimum square footage to allow an "efficiency unit" as defined in Health and Safety Code Section 17958.1, as that law may be amended.

(B) Height restrictions.

(i) An Attached or Detached ADU shall not exceed 16 feet in height, except as permitted in (ii) below.

(ii) An Attached ADU may be constructed on or as the second story of an existing primary single family residence (including the garage area) provided it complies with the height and setbacks as required by the zone in which the property is located.

(C) Setbacks. No new setback shall be required for an ADU that is constructed within an existing structure or new ADU that is constructed in the same location and with the same dimensions as an existing structure. For all other ADUs, the required minimum setback from side and rear lot lines shall be four feet. An ADU shall comply with all required front yard and street side yard setbacks otherwise required by the Davis Municipal Code.

(D) Lot Coverage, Floor Area Ratio, and Open Space. An ADU shall conform to all lot coverage, floor area ratio, and open space requirements applicable to the zoning district in which the property is located, except that an ADU that is 800 square feet or less, not more than 16 feet in height, and compliant with a minimum 4-foot side and rear setback, shall be considered consistent with all city development standards, irrespective of any other Municipal Code limitations governing lot coverage, floor area ratio, and open space.

(E) Design. All Accessory Dwelling Units that are approved subject to the provisions of subdivision (d) shall comply with the following design standards:

(i) The accessory dwelling unit shall have the same roof pitch as the primary dwelling with matching eave details, but may vary by up to 2/12 more or 2/12 less than the roof pitch of the primary dwelling unit. If the unit is located in a historic conservation zone, it must follow the roof pitch requirements for the design style allowed in that zone or subarea.

(ii) A garage converted to an ADU that does not proceed under the building permit only approval process shall include removal of the garage door(s) which shall be replaced with architectural features, including walls, doors, windows, trim and accent details to match the primary structure.

(iii) An ADU shall not require exterior alterations to the street-facing façade of a property that is historically designated or in a conservation overlay district.

(iv) The architecture of the ADU shall use the same architectural features, including walls, doors, windows, trim and accent details to match the primary structure.

(F) Exterior access. An ADU shall have a separate exterior access. Access stairs, entry doors and decks must face the primary residence or the alley, if applicable.

(G) Fire sprinklers. ADUs are required to provide fire sprinklers if they are required for the Primary Dwelling.

(H) Separation. An ADU shall be located at least 5 feet from the Primary Dwelling.

(I) Properties Listed on the California Register of Historic Resources. An ADU that has the potential to adversely impact any historical resource listed on the California Register of Historic Resources, shall be designed and constructed in accordance with the "Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings" found at 36 CFR 68.3, as the same may be amended from time to time.

(3) Parking.

(A) No additional vehicle parking space is required for a ministerial ADU.

(B) When an ADU is created by converting or demolishing a garage, carport or covered parking structure, replacement of parking space(s) eliminated by the construction of the ADU shall not be required as long as the ADU remains in use as a legal ADU.

(f) Standards for JADUs. In accordance with the standards set forth in Government Code Section 65852.22, JADUs shall comply with the following requirements, unless State law is amended to set forth different standards in which case State law standards will govern.

(1) A JADU shall be a minimum of 220 square feet and a maximum of 500 square feet of gross floor area. The gross floor area of a shared sanitation facility shall not be included in the maximum gross floor area of a JADU.

(2) A JADU must be contained entirely within the walls of the habitable portion of the existing or proposed single-family dwelling. The habitable portion of the single family dwelling does not include the garage or carport.

(3) A separate exterior entry from the main entrance to the single-family dwelling shall be provided to serve a JADU.

(4) A JADU may include separate sanitation facilities, or may share sanitation facilities with the existing single-family dwelling.

(5) A JADU shall include an efficiency kitchen or kitchenette, which shall include all of the following:
(A) A cooking facility with appliances.
(B) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the JADU.

(6) No additional parking is required for a JADU.

(g) Covenant required. Prior to the issuance of a Certificate of Occupancy for the ADU or JADU, the property owner shall record a declaration of restrictions, in a form approved by the City Attorney, placing the following restrictions on the property, the property owner, and all successors in interest:

(1) The ADU or JADU shall not be sold, transferred, or assigned separately from the Primary Dwelling, but may be rented.

(2) The ADU or JADU shall not be used for short term rentals for less than 30 consecutive days.

(3) If there is a JADU on the property, either the JADU or Primary Dwelling shall be occupied by the owner of record.

(4) The property owner and all successors in interest shall maintain the ADU and/or JADU and the property in accordance with all applicable ADU and/or JADU requirements and standards

(h) Services, impact fees, and utility connections.

(1) ADUs shall not be allowed where roadways, public utilities or services are inadequate in accordance with the general plan and zoning designation for the lot.

(2) ADUs and JADUs shall have adequate water and sewer services. These services may be provided from the water and sewer points of connection for the Primary Dwelling and not be a separate set of services. For an ADU that is not a conversion of an existing space, a separate utility connection directly between the accessory dwelling unit and the utility may be required. Consistent with Government Code Section 65852.2(f), the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit.

(3) The owner of an ADU shall be subject to the payment of all sewer, water and other applicable fees, including impact fees set forth in Government Code Section 66000 et seq., except as follows:

(A) ADUs that are less than 750 square feet shall not be subject to impact fees.
(B) ADUs that are 750 square feet or more shall be charged impact fees that are proportional in relation to the square footage of the Primary Dwelling unit.

(4) The City shall not issue a building permit for an ADU or JADU until the applicant provides a will serve letter from the local water and sewer provider. Notwithstanding the foregoing, if a private sewage disposal system is being used, the applicant must provide documentation showing approval by the Building Official in lieu of the will serve letter by the local sewer provider.

(i) Fire safety requirements. The construction of all new ADUs and JADUs shall meet minimum standards for fire safety as defined in the Building Code of the City of Davis and the Fire Code of the City of Davis, as the same may be amended by the City from time to time.

(j) Ownership. No ADU or JADU shall be created for sale or financing pursuant to any condominium plan, community apartment plan, housing cooperative or subdivision map.

(k) Occupancy. Except as provided elsewhere in this section, ministerial ADUs may be rented or owner occupied.

(l) Planned Development Districts. In the event that a residential planned development district includes standards that would preclude the construction of a ministerial ADU that would otherwise be permitted under this Section 40.26.450, the requirements of this section shall apply, and shall supersede the planned development standards as applied to ministerial ADUs within the applicable planned development district."

SECTION 20. A new Section 40.26.460 (Non-Ministerial Accessory Dwelling Units) is hereby added to Article 40.26 (Special Uses) of Chapter 40 of the Davis Municipal Code to read as follows:

"Section 40.26.460 Non-Ministerial Accessory Dwelling Units.

(a) Purpose. The purpose of this section is to allow accessory dwelling units (ADUs) that do not meet the provisions of Section 40.26.450. Non-ministerial ADUs are subject to the regulations of this section and the approval of an administrative use permit.

(b) The following standards shall apply to non-ministerial accessory dwelling units:

(1) The maximum size of a non-ministerial accessory dwelling unit shall be 1,200 square feet.

(2) The minimum setbacks shall be:

(A) Front yard, the same as is required by the zone where the ADU is located.

(B) Street side yard, 15 feet.

(C) Interior side yard, five feet.

(D) Rear yard, 10 feet.

(E) The minimum interior side yard and rear yard shall be three feet if said yards adjoin: an alley, park or greenbelt, or a zoning district that does not principally permit single-family dwellings or two-family dwellings (e.g., districts that permit multiple-family dwellings, nonresidential uses, agriculture, public and semipublic facilities, or similar principal permitted uses). The interior side yard and rear yard for a yard adjoining a zoning district that principally permits single-family or two-family dwellings shall comply with the general requirements in subparagraphs (C) and (D) above.

(3) The minimum required distance between the non-ministerial accessory dwelling unit and the primary dwelling unit, and all other structures on the property, shall be in conformance with the California Building Code.

(4) The maximum height shall be 30 feet.

(5) The maximum lot coverage shall be 50 percent for the primary dwelling and accessory dwelling units and all accessory structures combined.

(6) The minimum useable open space is 20 percent.

(7) No additional vehicle parking space is required for a non-ministerial ADU.

(8) The accessory dwelling unit shall have the same roof pitch as the primary dwelling with matching eave details, but may vary by up to 2/12 more or 2/12 less than the roof pitch of the primary dwelling unit. If the unit is located in a historic conservation zone, it must follow the roof pitch requirements for the design style allowed in that zone or subarea.

(9) A garage converted to an ADU that does not proceed under the building permit only approval process shall include removal of the garage door(s) which shall be replaced with architectural features, including walls, doors, windows, trim and accent details to match the primary structure.

(10) The architecture of the ADU shall use the same architectural features, including walls, doors, windows, trim and accent details to match the primary structure.

(11) Fencing or landscaping shall be installed and maintained between the unit and the neighboring property.

(12) For an accessory dwelling unit that is constructed as a second story or above a garage, all windows facing the side or rear lot lines shall be made of frosted or etched glass, or otherwise include a privacy film or treatment to ensure privacy for neighboring properties if the lot line abuts another residential property.

(13) Adequate open space and landscaping shall be provided for both the primary dwelling unit and the non-ministerial accessory dwelling unit.

(c) An application for a non-ministerial accessory dwelling unit may be approved only if the Director makes the findings required by Section 40.30A.070."

SECTION 21. A new Section 40.26.470 is hereby added to Article 40.26 (Special Uses) of Chapter 40 of the Davis Municipal Code to read as follows:

"Section 40.26.470 Guest Houses.

(a) Purpose. The purpose of this section is to further define and ensure compatibility of small accessory buildings otherwise called guest houses.

(b) Definitions. For the purposes of this section, the words and phrases shall have the meanings respectively ascribed to them by section 40.01.010.

(c) The following standards shall apply to guest houses:

(1) The maximum lot coverage shall be 50 percent for the total of the primary structure, any accessory dwelling unit, any other accessory structure and the proposed guest house.

(2) The maximum total square footage for a guest house is 1,200 square feet or 50 percent of the primary structure, whichever is less.

(3) A guest house shall have the same setbacks as an accessory building, pursuant to Section 40.26.010.

(4) A guest house shall meet the height requirement for accessory buildings in Section 40.26.010.

(5) No parking shall be required for guest houses.

(6) Guest houses may have restroom facilities (toilet, sink, bathtub and/or shower) but are prohibited from having a kitchen or cooking facilities.

(7) Only one guest house is permitted per lot.

(8) A guest house shall not be rented or leased separate from the principal dwelling unit or otherwise used as a separate dwelling unit.

(9) A guest house may be rented to a business authorized as a home occupation at the same address.

(10) Except as otherwise required by Government Code Section 65852.2, no more than one accessory dwelling unit and one guest house may be located on any lot where a single family residence exists on a property.

(11) A guest house shall comply with all standards applicable to an accessory building/structure in Section 40.26.010, except in the case of a conflict with the provisions herein, in which case the provisions in this section shall govern.

(d) An application for a guest house may be approved only if the Director makes the findings required by Section 40.30A.070."

SECTION 22. Section 40.30A.070 (Findings for Approval) of Article 40.30A (Administrative Use Permits) of Chapter 40 of the Davis Municipal Code is hereby amended in its entirety to read as follows:

"40.30A.070 Findings for Approval.
An administrative use permit approval shall be approved, conditionally approved, or denied by the Director (or the planning commission or city council if subject to an appeal) pursuant to the requirements of Article 40.39, Administrative Approvals, of this chapter. An administrative use permit shall only be granted for uses that the Zoning Code expressly provides may be authorized upon the approval of an administrative use permit, for example non-ministerial accessory dwelling units, guest houses, and certain cannabis-related uses. Such application may be approved only if the following findings are made:

(a) Conforms to general plan. The proposed structure or use conforms to the requirements and intent of this chapter and the general plan.

(b) Conditions and requirements will be met. Any additional conditions and requirements stipulated by the Director (or the planning commission or city council if subject to an appeal) have been or will be met.

(c) Not detrimental to public welfare. That such use will not, under the circumstances of the particular case, constitute a nuisance or be detrimental to the public welfare of the community.

(d) Compatible relationship with adjacent properties. That the location and design of the structure or use maintains a compatible relationship with adjacent properties and does not significantly impact the privacy, light, air, solar access or parking of adjacent properties."

SECTION 23. The City Council determines that this ordinance is exempt from environmental review under the California Environmental Quality Act, (California Public Resources Code §§ 21000, et seq., ("CEQA") and the CEQA Guidelines (14 California Code of Regulations §§ 15000, et seq.) because this zoning ordinance implements the provisions of Government Code Section 65852.2 and is therefore exempt from CEQA pursuant to Public Resources Code Section 21080.17 and California Code of Regulations Section 15282(h).

SECTION 24. This Ordinance shall take effect and be in full force and effect thirty (30) days from and after the date of its final passage and adoption.

SECTION 25. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

INTRODUCED on the 4th day of May, 2021, and PASSED AND ADOPTED by the City Council of the City of Davis on this 18th day of May, 2021, by the following vote:

AYES: Arnold, Carson, Chapman, Frerichs, Partida

NOES: None

Gloria J. Partida
Mayor

ATTEST:

Zoe S. Mirabile, CMC
City Clerk

03

CITY COUNCILMEMBER
RIGEL ROBINSON
DISTRICT 7

CONSENT CALENDAR
June 28, 2022

To: Honorable Mayor and Members of the City Council

From: Councilmember Rigel Robinson (Author), Councilmember Terry Taplin (Co-Sponsor), and Mayor Jesse Arreguín (Co-Sponsor), Councilmember Harrison (Co-Sponsor)

Subject: Referral: Keep Innovation in Berkeley

RECOMMENDATION

Refer to the City Manager and the Planning Commission to consider and return to Council with Zoning Ordinance amendments and other actions to encourage the growth and retention of Research & Development (R&D) in Berkeley. Staff and the Commission should explore:

1. Naming R&D as an allowed land use in the commercial districts of Telegraph (C-T and C-C) and Downtown Berkeley (C-DMU) with a [Zoning Certificate/AUP].
2. Updating the "District Purpose" sections of the MM and MU-LI districts to specifically embrace R&D. Consider doing the same for other districts where R&D is allowed, if deemed appropriate.
3. Amending R&D parking requirements in M-prefixed districts to align with Laboratory parking requirements and in C-prefixed districts, excluding C-T, to align with Manufacturing parking requirements.
4. Reviewing and considering repeal of Berkeley Municipal Code 23.206.080 to ensure that language regulating Biosafety Level (BSL) Classes 1-4 is clear and consistent with regulations in neighboring jurisdictions and other cities that support a broad range of R&D.
5. Returning to Council with additional recommendations, if any, that would serve to encourage R&D in Berkeley, as determined by staff or that present themselves through the Planning Commission process.

RECOMMENDED POLICY COMMITTEE TRACK

Land Use, Housing & Economic Development Policy Committee.

BACKGROUND

The City of Berkeley has over 400 "innovation sector" businesses in tech, biotech, R&D, and other STEM industries. The 2021 Berkeley Economic Dashboard (published in Q1 2022) reported robust growth opportunities in this sector, with 10 Berkeley-based

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companies receiving a total of nearly $9 million in federal and state grants for R&D.[1] 35% of Berkeley's innovation companies develop software, 31% develop biotechnology and healthcare technologies, and 13% develop clean technologies to support environmental sustainability and address climate change. Nearly 87% of these innovation companies are relatively early stage and take advantage of the city's coworking spaces, accelerators, and incubators.

It is critical for the City to continue efforts to encourage the growth of R&D in Berkeley. In addition to providing jobs and fueling economic development locally, innovation companies make a global impact across sectors, including in the healthcare field and the fight against climate change. Berkeley benefits from the presence of the University of California, Berkeley and the Lawrence Berkeley National Laboratory (LBNL), whose affiliates go on to found startups supported by the Berkeley Startup Cluster and accelerators or incubators like Berkeley SkyDeck or Bakar Labs.[2] There is a clear demand for R&D space from companies who have grown out of UC Berkeley and are seeking to build their enterprise in Berkeley, close to the talent, facilities, and entrepreneur support programs on campus. If the City's zoning regulations do not provide sufficient opportunities for emerging growth companies, they have no choice but to leave Berkeley and settle in nearby cities that accommodate them with open arms, such as Oakland, Emeryville, San Leandro, and Alameda.

On March 22, 2022, Council adopted the first reading of a Zoning Ordinance amendment that modified the land use definition of Research and Development (R&D) in Berkeley Municipal Code 23.502.020.R.8.[3] This amendment came to Council as a referral response to a March 20, 2020 referral from Mayor Arreguín and Councilmember Wengraf.

The original definition read:

> *Research and Development.* An establishment comprised of laboratory or other non-office space, which is engaged in one or more of the following activities: industrial, biological or scientific research; product design; development and testing; and limited manufacturing necessary for the production of prototypes.

The updated definition reads:

> *Research and Development:* An establishment engaged in the following activities: 1) industrial, biological or scientific research; and/or 2) product or process design, development, prototyping, or testing. This may include labs,

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[1] https://berkeleyca.gov/sites/default/files/2022-04/2022-03-22%20Item%2038%20Economic%20Dashboards%20Update.pdf

[2] https://berkeleystartupcluster.com/

[3] https://berkeleyca.gov/sites/default/files/city-council-meetings/2022-03-22%20Agenda%20Packet%20-%20Council%20-%20WEB.pdf

offices, warehousing, and light manufacturing functions as part of the overall Research and Development use.

The March 2020 referral observed that the R&D definition in the BMC did not adequately reflect present-day R&D business activities. For example, the definition prohibited R&D establishments from including office space and required the inclusion of a laboratory. The referral requested that the new definition reflect evolving business practices and provide flexibility for R&D establishments to occupy spaces that meet their operating needs. Modifying the R&D definition supported the City's Strategic Plan goal of fostering a dynamic, sustainable, and locally-based economy.

Through that process, additional issues have come to light that have the effect of inhibiting innovation in Berkeley, which this referral aims to address.

Recommendation #1: *Naming R&D as an allowed land use in the commercial districts of Telegraph (C-T and C-C) and Downtown Berkeley (C-DMU) with a [Zoning Certificate/AUP].*

BMC 23.204.020.A Table 23.204-1[4] and 23.206.020.A Table 23.206-1[5] lay out allowed land uses for each commercial and manufacturing district, respectively. Currently, R&D is permitted in three districts across the city: C-W (with an Administrative Use Permit) and MM and MU-LI (with a Zoning Certificate if under 20,000 sq. ft. and an AUP if over 20,000 sq. ft.).

Notably, the commercial districts in Southside (C-T), the southern portion of Telegraph (C-C), and the Downtown (C-DMU) do not currently allow R&D. R&D spaces close to campus would be extremely valuable to students, alumni, and others affiliated with UC Berkeley and LBNL. By allowing R&D in these districts, the City would make it easier to keep the innovation and talent that flows from the university in Berkeley.

Additional discussion at the Land Use, Housing & Economic Development Policy Committee, consultation with staff, and outreach to stakeholders should determine whether a Zoning Certificate or AUP is most appropriate. Startups have expressed that the City's permitting process remains a challenge, particularly if the Zoning Ordinance requires an AUP. This process can take months or even years, which is problematic for R&D companies whose runway for finding a suitable space to develop proof of concept is limited by the funding they have available from early-stage investors. The timelines associated with an AUP provide founders no concrete assurance and can jeopardize operations during the most critical time for startups.

[4] https://berkeley.municipal.codes/BMC/23.204.020

[5] https://berkeley.municipal.codes/BMC/23.206.020

However, noise disruption and biohazard safety are of particular concern when permitting new uses in C-T, C-C, and C-DMU due to their mixed-use residential buildings and proximity to residential districts. It is important that the committee, staff, and the Planning Commission consider strategies for mitigating any impacts of R&D on Telegraph and Downtown Berkeley, including required permits and the potential use of performance standards. Performance standards, which lay out metrics and regulations that the applicant must agree to before being issued a Zoning Certificate, may be an important tool to ensure conformance to the neighborhood without imposing lengthy permit approval timelines.

Recommendation #2: *Updating the "District Purpose" sections of the MM and MU-LI districts to specifically embrace R&D. Consider doing the same for other districts where R&D is allowed, if deemed appropriate.*

The "District Purpose" sections of the Zoning Ordinance determine the purpose of each zoning district, detailing what uses are allowed, welcomed, and explicitly stated to further the City's goals. R&D applicants need to feel confident that they will have a place in the district if they choose to locate there. In MM and MU-LI, where R&D is currently permitted, the Purpose sections do not mention R&D despite calling out the importance and belonging of similar industries, including manufacturing, industrial use, and laboratories.

Staff and the Commission should consider amending BMC 23.206.070.A and 23.206.080.A with the following language:

> **23.206.070 MM Mixed Manufacturing District.**
>
> A. District Purpose. The purpose of the Mixed Manufacturing (MM) district is to:
> 1. Implement the West Berkeley Plan MM designation;
> 2. Encourage development of a general manufacturing district for the full range of manufacturers, including larger scale materials processing manufacturers sometimes known as heavy manufacturers;
> 3. Encourage development of a manufacturing district targeted to manufacturing and industrial uses including research and development, so that manufacturers and industrial businesses will not be interfered with by incompatible uses;
> 4. Encourage the creation and continuation of well paid (often unionized) jobs for men and women without advanced degrees;
> 5. Provide an appropriate location for the development of compatible industries which can provide high quality employment for people at all educational levels, and add significantly to the tax base, such as the biotechnology industry and other research and development uses;
> 6. Allow reuse of upper story industrial space as offices to facilitate use of upper story space;

7. Maintain and improve the quality of the West Berkeley environment, while allowing the lawful and reasonable operation of the full range of manufacturers; and
8. Support the development of industrial businesses which contribute to the maintenance and improvement of the environment.

23.206.080 MU-LI Mixed Use-Light Industrial District.

A. District Purpose. The purpose of the Mixed Use-Light Industrial (MU-LI) district is to:
1. Implement the West Berkeley Plan Light Manufacturing District designation;
2. Encourage development of a mixed use-light industrial area for a range of compatible uses;
3. Encourage development of an area where light manufacturers can operate free from the economic, physical and social constraints caused by incompatible uses;
4. Encourage the creation and continuation of well-paid jobs which do not require advanced degrees;
5. Provide for the continued availability of manufacturing and industrial buildings for manufacturing uses, especially of larger spaces needed by medium sized and larger light manufacturers;
6. Provide opportunities for office development when it will not unduly interfere with light manufacturing uses and/or the light manufacturing building stock;
7. Provide the opportunity for ~~laboratory development~~ the development of research and development facilities in appropriate locations;
8. Support the development of businesses which contribute to the maintenance and improvement of the environment;
9. Allow on-site ancillary retail as a tool to maintain and enhance the economic viability of manufacturers in the district; and
10. Maintain and improve the quality of the West Berkeley environment, while allowing the lawful and reasonable operation of light industrial uses.

Recommendation #3: *Amending R&D parking requirements in M-prefixed districts to align with Laboratory parking requirements and in C-prefixed districts, excluding C-T, to align with Manufacturing parking requirements.*

BMC 23.322.030 details the minimum off-street parking spaces required for each use. Currently, in M-prefixed districts, R&D is not explicitly named in Table 23.322-4, meaning that it is parked under “All non-residential uses except uses listed below” at 2 spaces per 1,000 sq. ft. In contrast, laboratories are parked as 1 space per 650 sq. ft., despite R&D spaces typically accommodating a similar number of people per square foot as laboratories. This disadvantages R&D by requiring them to provide more parking than their laboratory counterparts, which is expensive and creates incentives for employees to drive to work that run counter to the City’s Climate Action Plan goals. For

the purposes of consistency, R&D parking requirements should be amended to align with Laboratory parking requirements.

In C-T, off-street parking is not required, so no amendments are needed. In C-prefixed districts excluding C-T, R&D is also not listed in Table 23.322-2. It may be unclear to applicants whether R&D falls under Manufacturing (which requires 1.5 spaces per 1,000 sq. ft. in C-DMU, 1 per 1,000 sq. ft. in C-W, and 2 per 1,000 sq. ft. in all other C-prefixed districts), or under “All non-residential uses except uses listed below,” (which requires 1.5 spaces per 1,000 sq. ft. in C-DMU and 2 per 1,000 in all other C-prefixed districts). This can create confusion for R&D companies looking to locate in C-W. Adding an R&D section here to align parking requirements with Manufacturing would improve clarity and consistency.

Staff and the Commission should consider the following additions to BMC 23.322.030 Table 23.322-2 and Table 23.322-4:

Table 23.322-2. REQUIRED OFF-STREET PARKING REQUIREMENTS IN COMMERCIAL DISTRICTS (EXCLUDING C-T)

Land Use	Required Parking Spaces
Residential Uses	
Accessory Dwelling Unit	See Chapter 23.306
Dwellings, including Group Living Accommodations	If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per unit All Other Locations: None required
Hotel, Residential	None required
Mixed-Use Residential (residential use only)	None required
Senior Congregate Housing	None required
Non-Residential Uses	
All non-residential uses except uses listed below	C-DMU District: 1.5 per 1,000 sq. ft. All Other Commercial Districts: 2 per 1,000 sq. ft.
Hospital	1 per each 4 beds plus 1 per each 3 employees
Library	C-DMU District: 1.5 per 1,000 sq. ft. All Other Commercial Districts: 1 per 500 sq. ft. of publicly accessible floor area

Nursing Home	1 per 3 employees
Medical Practitioners	C-DMU District: 1.5 per 1,000 sq. ft. All Other Commercial Districts: 1 per 300 sq. ft.
Hotels, Tourist	C-DMU District: 1 per 3 guest/sleeping rooms or suites C-C, C-U, C-W Districts: 1 per 3 guest/sleeping rooms or suites plus 1 per 3 employees All Other Commercial Districts: 2 per 1,000 sq. ft.
Motels, Tourist	C-DMU District: 1 per 3 guest/sleeping rooms or suites C-C, C-U, C-W Districts: 1 per guest/sleeping room plus 1 for owner or manager [1] All Other Commercial Districts: 2 per 1,000 sq. ft.
Large Vehicle Sales and Rental	C-DMU District: 1.5 per 1,000 sq. ft. C-SA District: 1 per 1,000 sq. ft. All Other Commercial Districts: 2 per 1,000 sq. ft.
Small Vehicle Sales and Service	C-DMU District: 1.5 per 1,000 sq. ft. C-SA District: 1 per 1,000 sq. ft. All Other Commercial Districts: 2 per 1,000 sq. ft.
Manufacturing	C-DMU District: 1.5 per 1,000 sq. ft. C-W District: 1 per 1,000 sq. ft [1] All Other Commercial Districts: 2 per 1,000 sq. ft.
Research and Development	C-DMU District: 1.5 per 1,000 sq. ft. C-W District: 1 per 1,000 sq. ft [1] All Other Commercial Districts: 2 per 1,000 sq. ft.
Wholesale Trade	C-DMU District: 1.5 per 1,000 sq. ft. C-W District: 1 per 1,000 sq. ft All Other Commercial Districts: 2 per 1,000 sq. ft.
Live/Work	If workers/clients are permitted in work area, 1 per first 1,000 sq. ft. of work area and 1 per each additional 750 sq. ft. of work area

Notes:

[1] Spaces must be on the same lot as building it serves.

Table 23.322-4. REQUIRED OFF-STREET PARKING IN MANUFACTURING DISTRICTS

Land Use	Required Parking Spaces

Residential Uses	
Accessory Dwelling Unit	See Chapter 23.306
Dwellings	None required
Group Living Accommodation	None required
Non-Residential Uses	
All non-residential uses except uses listed below	2 per 1,000 sq. ft.
Art/Craft Studio	1 per 1,000 sq. ft.
Community Care Facility	1 per 2 non-resident employees
Food Service Establishment	1 per 300 sq. ft.
Library	1 per 500 sq. ft. of publicly accessible floor area
Laboratories	1 per 650 sq. ft.
Research and Development	1 per 650 sq. ft.
Nursing Home	1 per 5 residents, plus 1 per 3 employees
Medical Practitioners	One per 300 sq. ft.
Large Vehicle Sales and Rental	MU-LI District: 1.5 per 1,000 sq. ft. All Other Districts: 1 per 1,000 sq. ft. of display floor area plus 1 per 500 sq. ft. of other floor area; 2 per service bay
Manufacturing	MU-R District: 1.5 per 1,000 sq. ft. All Other Districts: 1 per 1,000 sq. ft. for spaces less than 10,000 sq. ft.; 1 per 1,500 sq. ft. for spaces 10,000 sq. ft. or more
Storage, warehousing, and wholesale trade	1 per 1,000 sq. ft. for spaces of less than 10,000 sq. ft.; 1 per 1,500 sq. ft. for spaces 10,000 sq. ft. or more
Live/Work	MU-LI District: 1 per 1,000 sq. ft. of work area where workers/clients are permitted MU-R District: if workers/clients are permitted in work area, 1 per first 1,000 sq. ft. of work area and 1 per each additional 750 sq. ft. of work area

Notes:

[1] For multiple dwellings where the occupancy will be exclusively for persons over the age of 62, the number of required off-street parking spaces may be reduced to 25% of what would otherwise be required for multiple-family dwelling use, subject to obtaining a Use Permit.

Recommendation #4: *Reviewing and considering repeal of Berkeley Municipal Code 23.206.080 to ensure that language related to Biosafety Level (BSL) Classes 1-4 is clear and consistent with requirements in neighboring jurisdictions and other cities that support a broad range of R&D.*

BSL lab levels, ranging from BSL-1 to BSL-4, are set by the Centers for Disease Control and Prevention to protect laboratory personnel and the surrounding community. The primary risks that determine levels of containment are infectivity, severity of disease, transmissibility, and the nature of the work conducted.[6]

Chart of Biosafety Levels[7]

Biosafety Level	BSL-1	BSL-2	BSL-3	BSL-4
Description	· No Containment · Defined organisms · Unlikely to cause disease	· Containment · Moderate Risk · Disease of varying severity	· High Containment · Aerosol Transmission · Serious/Potentially lethal disease	· Max Containment · "Exotic," High-Risk Agents · Life-threatening disease
Sample Organisms	E.Coli	Influenza, HIV, Lyme Disease	Tuberculosis	Ebola Virus
Pathogen Type	Agents that present minimal potential hazard to personnel & the environment.	Agents associated with human disease & pose moderate hazards to personnel & the environment.	Indigenous or exotic agents, agents that present a potential for aerosol trans-mission, & agents causing serious or potentially lethal disease.	Dangerous & exotic agents that pose a high risk of aerosol-transmitted lab-oratory infections & life-threatening disease.
Autoclave Requirements	None	None	Pass-thru autoclave with Bioseal required in laboratory room.	Pass-thru autoclave with Bioseal required in laboratory room.

BMC 23.206.080.B.5[8] reads:

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[6] https://www.cdc.gov/training/quicklearns/biosafety/

[7] https://consteril.com/biosafety-levels-difference/

[8] https://berkeley.municipal.codes/BMC/23.206.080

> *Commercial Physical or Biological Laboratories.* Commercial physical or biological laboratories using Class 3 organisms are not permitted in the MU-LI district. Use of Class 2 organisms are permitted only in locations at least 500 feet from a Residential District or a MU-R district.

This section is the only place in the BMC where organism classes, presumably referring to BSL, are mentioned other than in the defined terms. Staff and the Commission should conduct a review of nearby jurisdictions, including Oakland, San Francisco, South San Francisco, Emeryville, Alameda, San Leandro, and Fremont, as well as other cities across the country that support a broad range of R&D, such as Cambridge, MA. This research should provide insight into best practices for BSL zoning regulations that keep the surrounding neighborhood safe while allowing biological labs where they make sense, with federally-required protocols and locally-required performance standards or other conditions in place.

Staff and the Commission should return to Council with amendments to this BMC section and other relevant sections that provide clarity for potential applicants, ensure that Biosafety Levels are clearly stated and defined in accordance with the most recent CDC guidelines, and bring the City of Berkeley in alignment with other jurisdictions.

Recommendation #5: *Returning to Council with additional recommendations, if any, that would serve to encourage R&D in Berkeley, as determined by staff or that present themselves through the Planning Commission process.*

The City Manager and/or Planning Commission may choose to return to Council with additional recommendations that would serve to encourage R&D in Berkeley, in addition to the ones suggested in this item.

FINANCIAL IMPLICATIONS
Staff time.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS
There are no identifiable negative environmental impacts associated with this action.

CONTACT PERSON
Councilmember Rigel Robinson, (510) 981-7170
Angie Chen, Legislative Assistant

04

Kate Harrison
Councilmember District 4

ACTION CALENDAR
July 28, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Kate Harrison

Subject: Amendments to Berkeley Municipal Code 23C.22: Short Term Rentals

RECOMMENDATION

Amend Berkeley Municipal Code 23C.22: Short Term Rentals to clarify the ordinance and insure adequate host responsibilities, tenant protections and remedies for violating the ordinance.

BACKGROUND

Berkeley has had regulations on short term rentals (STRs) since 2017, allowing STRs in most residential and commercial zones, as long as the host pays the transient occupancy tax and the unit being rented fits particular criteria (no Below Market Rate unit may be a short term rental, no unit may be a short term rental if it has had a No Fault Eviction in the past five years, etc). The City of Santa Monica also has an ordinance regulating STRs that places the regulatory burden on the *host platform* (i.e., AirBnB or other corporate host platforms) rather than the individual renting out their unit. Santa Monica placed four obligations on the host platform: collecting and remitting transient occupancy taxes, regularly disclosing listings and booking information to the City, refraining from booking properties not licensed by the City, and refraining from collecting fees for ancillary services.[1] The Ninth Circuit Court of Appeals upheld the legality in the case of *Homeaway.com v. Santa Monica*, thus confirming the rights of Cities to regulate short term rental host platforms.

The proposed amendments update the City of Berkeley's STR regulations to more closely align with Santa Monica's ordinance, as well as other amendments intended to ensure that the short term rentals in Berkeley serve the needs of the City. The primary five changes are as follows:

1) Regulatory burden shifted to the Host Platform

We clarify the definition of a hosting platform in 23C.22.030.H (page 2) as a marketplace that derives revenue from maintaining said short term rental marketplace. Regulating the host platform consolidates regulation and ensures that the transient

[1] *Homeaway.com v Santa Monica.* United State Court of Appeals for the Ninth Circuit. No. 18-55367.

occupancy tax owned to the City gets paid. Recommended changes to 23C.22.050.H and I (page 5) state that if a hosting platform is utilized to book a short term rental, both it and the individual host are legally responsible and are jointly liable for remitting the transient occupancy tax. New section 23C.22.050.I (pages 5-6) also outlines new duties of the hosting platform, including a regular disclosure of short term rental listings in the City as well as their address, length of stay, and listed prices. In addition, the hosting platform is responsible for ensuring that all short term rentals are appropriately licensed with a Zoning Certificate and adds the requirements that STRs must list the Zoning Certificate on any STR advertisements. The new regulations also include a safe harbor clause, making clear that hosting platforms that disclose listings, regularly remit the transient occupancy tax, and ensure the listing has a Zoning Certificate will be presumed to be in compliance with the chapter.

2) Hosts can have only one residence

Individual people have the right to rent out their homes on a short term basis, but in a housing crisis, it is in the best interest of the City to ensure that no one has extra units for STRs when they could house someone long term instead. To that end, 23C.22.030.F and 23C.22.030.I (pages 2-3) clarify that hosts may not have more than one principle place of residency, which may include accessory buildings or ADUs.

3) Short term rentals limited to single ADUs, single Accessory Buildings or Golden Duplexes not rented for the past ten years

The current ordinance limits use of Accessory Buildings or Accessory Dwelling Units to those that have not been rented for ten years. Additions to Section 23C.22.020.D (page 1) expand that prohibition to include more than one Accessory Building or ADU on a property and prohibits short term rentals in Golden Duplexes if those units have been rented in the last ten years. Unpermitted use of these units would be investigated by the Rent Stabilization Board under Section 23C.22.060.I (page 7).

4) Closing 14/30 day loophole

Under current law, any rental over 14 days is not a short term rental and thus does not require paying a transient occupancy tax. Any rental that is shorter than 30 days is not a long term rental and thus rent control and other rental protections are awarded to the tenant. As it now stands there are instances of regularly renting a unit for a period of time between 14 days and fewer than 30 days, thus circumventing standard regulations. 23C.22.030.N (page 3) and 23C.22.040 (page 4) close this loophole by disallowing rentals between 14 and 30 days, and stating that no Zoning Certificate or advertisement for a short term rental may be permitted for rentals longer than 14 days.

5) Remedies

New language under 23C.22.060E and 23C.22.060.J (page 7) clarify that in the case of a private right of action the prevailing party is entitled to recover reasonable costs and attorney's fees, thus making private right of action more financially feasible. The new

language also gives the City the right to issue administrative subpoenas to determine whether short term rentals are in compliance with the chapter. Both of these edits are intended to encourage enforcement and compliance.

Finally, the ordinance clarifies the definitions of the terms Accessory Building, Accessory Dwelling Unit, and the Transient Occupancy Tax and defines a Golden Duplex and other clarifying language.

CONTACT PERSON
Kate Harrison, Berkeley City Councilmember, (510) 981-7140

ATTACHMENTS
Ordinance

100Chapter 23C.22
Short-Term Rentals

23C.22.010 Purposes

The purposes of the Short-Term Rentals related regulations contained in this Chapter are:

A. To prevent long-term rental units from being replaced with Short-Term Rentals and protect affordable housing units from conversion.

B. To preserve and protect neighborhood character and livability from nuisances that are often associated with Short-Term Rentals.

C. To generate City revenue to share City infrastructure cost and other public expenditures by operation of Short-Term Rentals under established standards.

D. To provide alternative forms of lodging. (Ord. 7521-NS § 1 (part), 2017)

23C.22.020 Applicability

A. Short-Term Rentals shall be allowed in residential uses in the following zoning districts: R-1, R-1A, R-2, R-2A, R-3, R-4, R-5, R-S, R-SMU, C-DMU, C-1, C-NS, C-SA, C-T, C-W, and MU-R.

B. Short-Term Rentals shall be prohibited in below market rate (BMR) units. BMR units for Short-Term Rental purposes refer to Dwelling Units whose rents are listed as a result of deed restrictions or agreements with public agencies, and whose tenants must be income-qualified.

C. A property containing a Dwelling Unit protected by a No-Fault Eviction cannot operate Short-Term Rentals for five years from eviction unless it is a single-family home that has been vacated for purposes of Owner Occupancy in compliance with the Rent Stabilization Ordinance.

D. Short-Term Rentals are only allowed in a single, Accessory Building and in single existing Accessory Dwelling Units (ADUs), or a Golden Duplex unless such ADUs are or have within the last 10 (ten) years preceding the effective date of this ordinance been used for long term rentals, as defined by the requirements of the Rent Stabilization Ordinance. Short-Term Rentals shall not be allowed in Accessory Dwelling Units permitted after the date this Ordinance first became effective. (Ord. 7521-NS § 1 (part), 2017)

23C.22.030 Definitions

The definitions set forth in this Section shall govern the meaning of the following terms as used in this Chapter:

A. Accessory Building: A detached building containing habitable space, excluding a kitchen, which is smaller in size than the main building on the same lot, and the use of which is incidental to the primary use of the lot.

B. Accessory Dwelling Unit: A secondary dwelling unit that is located on a lot which is occupied by one legally established Single-Family Dwelling that conforms to the standards of Section 23C.24. An Accessory Dwelling Unit must comply with local building, housing, safety and other code requirements and provide the following features independent of the Single-Family Dwelling: 1) exterior access to Accessory Dwelling Unit; 2) living and sleeping quarters; 3) a full kitchen; and 4) a full bathroom. An Accessory Dwelling Unit also includes an efficiency unit and a manufactured home, as defined in the Health and Safety Code.

C. "Adjacent Properties" mean the Dwelling Units abutting and confronting, as well as above and below, a Dwelling Unit within which a Short-Term Rental is located.

D. "Dwelling Unit" means a building or portion of a building designed for, or occupied exclusively by, persons living as one (1) household.

E. "Golden Duplex" means an owner-occupied duplex that is exempt from rent control and eviction protection, so long as it was occupied by the owner on December 31, 1979 and is currently occupied by the owner.

F.. "Host" means any Owner and is used interchangeably in this Title with Owner Host. An Owner Host is a person who is the owner of record of residential real property, as documented by a deed or other such evidence of ownership, who offers his or her Host Residence, or a portion thereof, as a Short-Term Rental. For purposes of offering a Short-Term Rental, an Owner Host may not have more than one "Host Residence" in the City of Berkeley, excluding an Accessory Building or an Accessory Dwelling Unit on the same residential real property. A Tenant Host is a lessee of residential real property, as documented by a lease or other such evidence, who offers their Host Residence, or portion thereof, as a Short-Term Rental.

G. "Host Present" or "Host Presence" means the Host is living in the Host Residence during the Short-Term Rental period. In the case of a parcel comprised of a Single Family Dwelling and one or more authorized Accessory Dwelling Units and/or Accessory Buildings, the Host is considered Present if he or she is present in any Dwelling Unit on such property during the Short Term Rental period.

H. "Hosting Platform" means a business or person that provides a marketplace through which an Owner Host may offer a Dwelling Unit for Short-Term Rentals. A Hosting Platform is usually, though not necessarily, provided through an internet-based platform. It generally allows a Dwelling Unit to be advertised through a website provided by the Hosting Platform and provides a means for potential Short-Term Rental Transients to arrange and pay for Short-Term Rentals, and from which operator of the Hosting Platform derives revenue, including booking fees or advertising revenues, from providing or maintaining the marketplace.

I. "Host Residence" means a Host's principal place of residence as defined by whether the Host carries on basic living activities at the place of residence, and whether the place of residence is the Host's usual place of return. Motor vehicle registration, driver's license, voter registration or other evidence as may be required by the City shall be indicia of principal residency. A Host may have only one place of principal residency in the City, and if that principal place of residency contains more than one dwelling unit, the principal place of residency shall be only one such dwelling unit.

J. "Host Responsibilities" means the requirements that a "Host" is obligated to comply with as set forth in this Ordinance.

K. "Local Contact" means a person designated by the Host who shall be available during the term of any Short-Term Rental for the purpose of (i) responding within sixty minutes to complaints regarding the condition or operation of the Dwelling Unit or portion thereof used for Short-Term Rental, or the conduct of Short-Term Rental Transients; and (ii) taking appropriate remedial action on behalf of the Host, up to and including termination of the Short Term Rental, if allowed by and pursuant to the Short Term Rental agreement, to resolve such complaints.

L. "No Fault Eviction" means an eviction pursuant to the Ellis Act or Sections 13.76.130.A.9 or 10 of the Berkeley Municipal Code.

M. "Short-Term Rental" or "STR" means the use of any Dwelling Unit, authorized Accessory Dwelling Unit or Accessory Building, or portions thereof for dwelling, sleeping or lodging purposes by Short-Term Rental Transients. Short-Term Rental shall be an accessory use to a residential use and be considered neither a Tourist Hotel nor a Residential Hotel for purposes of this Title.

N. Short Term Rentals are allowed for 14 or fewer consecutive days. Any rental for more than 14 consecutive days is not permitted as a Short Term Rental, and any rental for more than 14 consecutive days and less than 30 consecutive days is not permitted in the City of Berkeley.

O. "Short-Term Rental Transient" or "STR Transient" means any person who rents a Dwelling Unit, authorized Accessory Dwelling Unit or Accessory Building, or portion thereof, for 14 or fewer consecutive days.

P. "Transient Occupancy Tax" or "TOT" means local transient tax as set forth in Berkeley Municipal Code Section 7.36. The tax is paid by the Short-Term Rental Transient at the time payment is made for the Short-Term Rental. The TOT is then remitted to the City.

23C.22.040 Permit And License Required

Short Term Rentals are permitted only in the Host Residence. A Zoning Certificate and a Business License for a Short-Term Rental shall be required for each Host to operate a Short-Term Rental. A Host must provide the Uniform Resource Locator (URL) — specifically, the website address — for any and all advertisements for the STR, if applicable, on the Zoning Certificate application.

No Zoning Certificate may be issued to allow for a Short-Term Rental of more than 14 consecutive days, and no advertisement for a Short Term Rental of more than 14 consecutive days is allowed.

23C.22.050 Operating Standards and Requirements

A Short-Term Rental is allowed only if it conforms to each of the operating standards and requirements set forth in this Section, and the Host complies with all Host Responsibilities set forth in this Ordinance.

A. Proof of Host Residency.

1. An Owner-Host of a Short-Term Rental must provide documentation of Owner Host and Host Residence status and, if applicable, Host Presence, as defined above.

2. A Tenant-Host must provide documentation of lessee status, Host Residence and Host Presence, if applicable, as defined in subdivisions C, E, and B of Section 23C.22.030. In addition, a Tenant-Host must present written authorization allowing for a Short-Term Rental in the Host Residence from the building owner or authorized agent of the owner.

B. STR Duration and Required Residency Timeframes

1. When the Host is Present, the unit, or a portion thereof, may be rented as a Short-Term Rental for an unlimited number of days during the calendar year.

2. When the Host is not Present, the number of days that the unit can be used for Short-Term Rental purposes shall be limited to 90 days per calendar year.

C. Number of Occupants. The maximum number of Short-Term Rental Transients allowed for a Short-Term Rental unit shall be as provided for in the Berkeley Housing Code (BMC Chapter 19.40).

D. Notification.

(i) Initial, one-time notification of the establishment of a Short-Term Rental by Zoning Certificate and Business license, shall be provided to the residents of all Adjacent Properties. Notification shall include Host and Local Contact information. Additional notification shall be required within a week of updated Host or Local Contact information.

(ii) In any advertisement for the STR, a Host must include the Zoning Certificate number.

E. Enforcement Fee. For the initial enforcement period, while enforcement costs are being determined, the Host shall pay an additional enforcement fee in an amount equal to 2% of the rents charged by that Host, not to exceed the cost of the regulatory program established by this Chapter over time. Such fees may be paid by the Hosting Platform on behalf of the Host. After the initial enforcement period, the Council may revise the enforcement fee by resolution.

F. Liability Insurance. Liability insurance is required of the Host, or Hosting Platform on behalf of the Host, in the amount of at least $1,000,000.

G. Documents Provided to STR Transients. Electronic or paper copies of the Community Noise Ordinance and Smoke-Free Multi-Unit Housing Ordinance must be provided to STR Transients upon booking and upon arrival.

H. Transient Occupancy Tax. ("TOT"). The TOT shall be collected on all Short-Term Rentals. The Host is responsible for collecting and remitting the TOT, in coordination with any Hosting Platform, if utilized, to the City. If a Hosting Platform collects payment for rentals, then both it and the Host shall have legal responsibility for collection and remittance of the TOT.

I. Housing Platform Responsibilities.

(i) Subject to applicable laws, A Hosting Platform shall disclose to the City on a regular basis each rental listing located in the City, the names of the person or persons responsible for each such listing, the address of each such listing, the length of stay for each such listing, and the price paid for each booking transaction.

(ii) A Hosting Platform shall not complete any booking transaction for any STR unless the Host has a valid Zoning Certificate at the time the Hosting Platform receives a fee the booking transaction.

(iii) A Hosting Platform shall not collect or receive a fee for a STR unless the Host has a valid Zoning Certificate at the time the Hosting Platform would otherwise be entitled to receive a fee for the booking transaction.

(iv) Safe Harbor: A Hosting Platform operating exclusively on the internet, which operates in compliance with subsections (i), (Ii) and (iii) above, shall be presumed to be in compliance with this Chapter.

J. Housing Code Compliance. Any building or portion thereof used for Short-Term Rentals shall comply with the requirements of the Berkeley Housing Code (BMC Chapter 19.40).

K. Payment of Additional Taxes: The Host shall pay all City taxes and fees owed, in addition to the TOT, if applicable, in a timely manner. 100

L. The Host shall be responsible for listing on any rental ad the Zoning Certificate number. The Host shall also provide both the Business License number, if required pursuant to Chapter 9.04, and Zoning Certificate for the STR to the City and/or a vendor hired by the City to administer this Chapter, upon request.

23C.22.060 Remedies

A. Compliance with Second-Response Ordinance. The Host shall comply with the Second Response Ordinance (BMC Chapter 13.48). The Host shall be prohibited from operating Short-Term Rentals for one year upon issuance of a third violation affidavit.

B. Violation of any provision of this Chapter is punishable as set forth in Chapters 1.20 and 1.28.

C. Violation of any provision of this Chapter is hereby declared to be a public nuisance subject to abatement under Chapters 1.24, 1.26 and 23B.64.

D. In any enforcement action by the City, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs; provided that, pursuant to Government Code Section 38773.5, attorneys' fees shall only be available in an action or proceeding in which the City has elected, at the commencement of such action or proceeding, to seek recovery of its own attorneys' fees. In no action or proceeding shall an award of

attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding.

E. Any resident of the City may bring a private action for injunctive or other relief to prevent or remedy a public nuisance as defined in this Chapter, or to prevent or remedy any other violation of this Chapter. No action may be brought under this subdivision unless and until the prospective plaintiff has given the City and the prospective defendant(s) at least 30 days written notice of the alleged public nuisance and the City has failed to initiate proceedings within that period, or after initiation, has failed to diligently prosecute. The prevailing party in any such action shall be entitled to recover reasonable costs and attorney's fees.

F. Any occurrence at a Short-Term Rental unit that constitutes a substantial disturbance of the quiet enjoyment of private or public property in a significant segment of a neighborhood, such as excessive noise or traffic, obstruction of public streets by crowds or vehicles, public intoxication, the service to or consumption of alcohol by minors, fights, disturbances of the peace, litter or other similar conditions, constitutes a public nuisance.

G. It shall be a public nuisance for any STR Transient of a Short-Term Rental unit where an event is taking place to refuse access to, or interfere with access by, Fire Department or other City personnel responding to an emergency call or investigating a situation.

H. Notwithstanding any provision of Chapter 13.48 to the contrary, a public nuisance as defined in this Section shall be subject to remedies set forth in Section 23C.22.060. (Ord. 7521-NS § 1 (part), 2017)

I. A violation of this Chapter by a Host Owner who offers or rents a rent controlled unit, multiple ADU's, multiple Accessory Buildings, or a Golden Duplex, may be reported to the Berkeley Rent Stabilization Board for investigation by the Board. Upon report of a violation to the Rent Stabilization Board, the Board is required to provide a written report of the investigation within 30 days. Where a violation is found, the Rent Board will immediately provide the written report supporting its finding of a violation to the City Attorney's office for remedial action by the City.

J. The City may issue and serve administrative subpoenas as necessary to obtain specific information regarding Short-Term Rentals located in the City, including but not limited to, the names of the persons responsible for each such listing, the address of each such listing, the length of stay for each such listing and the price paid for each stay, to determine whether the STR and related listing complies with this Chapter. Any subpoena issued pursuant to this section shall not require the production of information sooner than 30 days

from the date of service. A person or entity that has been served with an administrative subpoena may seek judicial review during that 30 day period.

05

BERKELEY CITY COUNCILMEMBER
TERRY TAPLIN
DISTRICT 2

CONSENT CALENDAR
Feb. 22, 2022

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin

Subject: Amending BMC Chapter 13.84 to Expand Relocation Assistance and Conflict Resolution for Tenants

RECOMMENDATION
Adopt a first reading of an Ordinance amending Berkeley Municipal Code Chapter 13.84 enacting the following changes to the City's Relocation Ordinance:

1. Section 13.84.010 – Delete language referring to "Relocation Services".

2. Section 13.84.020 – Create definition of Emergency Relocation to establish process and expectation for owner to provide relocation money for emergency events.

3. Section 13.84.030 – 1) Change title to clarify that tenants are entitled to payments when Relocation applies, rather than "Services or Assistance". 2) Clarify the type of determination notices that parties would receive from City officials.

4. Section 13.84.040 – Create different procedures for "Planned Relocation" and "Emergency Relocation". Move "Owner Responsibilities" content to other sections.

5. Section 13.84.050 – 1) Change title to clarify that it is about procedure and not payments. 2) Add Notice and Order to "Determination Notice". 3) Move Section B and C to Appeals Section.

6. Section 13.84.060 – 1) Change title to clarify Relocation Prompted by owner. 2) Include language to indicate that Relocation can also be requested by owner when there is no building permit application. 3) Clarify in Section E that the "Owner must provide" proof of notice.

7. Section 13.84.070.A – 1) Include Moving and Storage to Short term Relocation entitlements if applicable to the situation. 2) Section 13.84.070.A.3 regarding a tenant's ability to pay costs up front. 3) 13.84.070.A.4.b – meal allowances. 4) 13.84.070.B.2.b – reimbursement for moving and storage costs changed to pay up front. 5) 13.84.070.B.3 – Changing how Rent Differential is calculated 6) Section 13.84.070.B.4 – Consider specifying different utility costs, such as disconnection and reconnection. 7) 13.84.070.N1 – Consider meals Per Diem rates for what is appropriate for the region. 8) Add Section to speak to replacement unit reservation costs and potential cancellation costs if move back notice is given earlier than expected.

8. Section 13.84.080 – Remove.

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E-Mail:

9. Section 13.84.100 1) Change Title 2) Change process for receiving notification that Relocation is or is not required. 3) 13.84.100.A.4 Change HAC to Hearing Officer. 3) Section 13.84.100.A.5 - Change appeal timeline from 5 to 10 days. 4) Section 13.84.100.B – Change Language to mirror HAC Process outlined in 19.44

FINANCIAL IMPLICATIONS
Staff time.

CURRENT SITUATION AND ITS EFFECTS
Updating the City of Berkeley's Relocation Ordinance is a Strategic Plan Priority Project, advancing our goal to create housing support services for our most vulnerable community members.

The City of Berkeley's Relocation Ordinance (BMC Chapter 13.84) has so far been enforced primarily through voluntary code compliance by property owners. Relocation benefit requirements triggered by code enforcement at the determination of a Building Official and/or Fire Marshall can and should be more robust, with strong disincentives and penalties against "constructive eviction" or intimidation of tenants via substandard habitability.

California's Housing Crisis Act of 2019 (Senate Bills 330 [2019] and Senate Bill 8 [2021]) grants lower-income tenants relocation benefits and right of first refusal on new affordable units if new housing development were to displace residents of protected units, even temporarily, by demolition. This has provided an impetus for the City of Berkeley to update its Demolition Ordinance and Relocation Ordinance to strengthen tenant protections and avoid possible state pre-emption, although the need to strengthen the Relocation Ordinance has long preceded new state laws with respect to demolition. In particular, Section 8 tenants facing eviction by neglect, due to landlords who opt for abatement of payments rather than maintenance and repair when dwelling units fail a code enforcement inspection, have been a regular concern for the District 2 council office.

BACKGROUND
In its September 2018 meeting, the City of Berkeley's Housing Advisory Commission recommended the following changes to the Relocation Ordinance:

1. Updating the cost of pet boarding and motel costs more frequently, without the need for Council action.

2. Annual reports to the Housing Advisory Commission on number of tenants requiring relocation payments.

3. Enforcing relocation payments via tax lien on property owner.

4. Funding for Berkeley Rent Board to enforce Relocation Ordinance.

Following consultation with stakeholders, staff in the Department of Health, Housing and Community Services (HHCS) and the Berkeley Rent Board added the following recommendations:

1. Considerations for tenants with disabilities or high sensitivities to environmental conditions.

2. Considerations for hazardous or environmental but not structural conditions in building/unit; assessment of state licensed 3rd party reports and medical doctor assessments by City of Berkeley Health Officer or designee.

3. Stronger evaluation of substandard conditions from Building Official which would require relocation when there is:

    a. Lack of bathroom/toilette facilities for more than 24 hours

    b. Lack of water for more than 24 hours

    c. Lack of heating for more than 72 hours

In 2021, the Berkeley City Council and Berkeley Rent Board's 4x4 Committee discussed various possible amendments to the Demolition and Relocation Ordinances with Planning Department staff.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS
None.

CONTACT PERSON
Councilmember Terry Taplin Council District 2 510-981-7120

Attachments:
1: Ordinance

Berkeley Municipal Code Chapter 13.84

RELOCATION SERVICES AND PAYMENTS FOR RESIDENTIAL TENANT HOUSEHOLDS

Sections:

Section 13.84.010 Purpose.

The purpose of this Chapter is to ~~provide Relocation services and~~ require property Owners to make certain payments to residential Tenant Households temporarily Relocated as a result of Code Enforcement Activities or Voluntary Code Compliance in order to alleviate hardships associated with such Relocations; to facilitate the correction of code violations; and to protect the health, safety and welfare of Berkeley residents.

Section 13.84.020 Definitions

A. "Code Enforcement" or "Code Enforcement Activity" means an activity or activities initiated by the City to require an Owner to bring the property into compliance with applicable laws including, but not limited to, actions by the Building Official or Fire Marshall after a fire ordering Relocation.

B. "Emergency Relocation" for purposes of this Chapter means an unexpected event, such as a fire, or other conditions, not including a natural disaster, not created by the Tenant Household that have rendered the "Residential Unit" or "Room" "substandard" and uninhabitable as determined by the Building Official or Fire Marshal and require immediate relocation.

C. "Household" or "Tenant Household" for purposes of this Chapter means one or more individuals entitled to the occupancy of a rental unit or room who share living expenses.

D. “Natural Disaster” means any event or force of nature that is not caused by human action or inaction which results in death, injuries and/or damage to property, such as an earthquake, flood, or forest fire.
E. "Owner" means a person, persons, corporation, partnership or any other entity possessing ownership of a property individually, jointly, in common or in any other manner or his or her agent or assignee.
F. "Relocate" or “Relocation” means the required vacating of a Residential Unit or Room by a Tenant Household and the moving temporarily into another Unit or Room as a result of repairs required to bring the building or a portion thereof which contains a Residential Unit or Room occupied by the Tenant Household into code compliance whether such repairs are undertaken because of Code Enforcement or through Voluntary Code Compliance as defined below.
G. "Residential unit" or "Unit" means a building or portion of a building designed for, or occupied exclusively by, one or more persons living as a Household.
H. "Room" means a room in a hotel or boarding house or a rented room in a private dwelling occupied by a Tenant Household for at least thirty (30) consecutive days.
I. “Substandard” means the Building Official or Fire Marshal has deemed that the residential unit or room is not in compliance with California Health and Safety Code (H&SC), Section 17920.3 and may exist to the extent that it endangers the health and safety of its occupants or the public and therefore requires Relocation of the Tenant Household.
J. "Voluntary Code Compliance" means actions voluntarily initiated by an Owner to achieve compliance with applicable laws including, but not limited to, fumigation, as well as to seismically retrofit a building on the Inventory of Potentially Hazardous Soft Story Buildings established under Chapter 19.39 so as to remove it from such inventory under Section 19.39.080.B if such retrofit is required by the City.

Section 13.84.025 Notice

Whenever any notice or other communication is required by this Chapter to be served on, provided, given or delivered to, or filed with, any person, that notice or communication may be communicated by personal delivery, certified mail, first class mail, e-mail, or any other similar method that will provide a written record of the notice or communication.

Section 13.84.030 Eligibility for Relocation ~~services and assistance~~Payments

A. A Tenant Household shall be eligible for Relocation ~~assistance and~~ assistance and/or payments pursuant to this Chapter if the City determines that the condition of a building or portion thereof is such that a Unit or Room cannot be safely occupied by that Tenant Household while the building or portion thereof is being brought into code compliance and if such condition was not primarily or entirely created by the Tenant Household occupying the Unit or Room.

B. Determination by the City will be in the form of a Notice and Order ~~from the Building Official~~ or an Imminent Hazard or Unsafe Building Notice from the Fire Marshall or Building Official, including Yellow or Red Tags of property or units.: ~~1) Building Official~~

~~Notice and Order of Violation OR 2) Fire Marshall notice or copy of notice posted on the property…(in the case of fire?)~~

C. A Tenant Household shall not be eligible for Relocation assistance and payments pursuant to this Chapter if the required Relocation of the Tenant Household is the result of an earthquake or other Natural Disaster.

~~**Section 13.84.040 Owner responsibilities**~~

A. ~~The Owner shall be responsible for providing Relocation payments directly to the Tenant Household required to Relocate pursuant to~~ of ~~this Chapter. The Owner is also responsible for complying with the Berkeley Municipal Code Section 13.76.130 (Rent Stabilization and Eviction for Good Cause Ordinance).~~

B. Planned Relocation: ~~If the Owner or the City determines that Relocation is necessary~~ due to planned voluntary code compliance work~~, the Owner shall provide a written Notice of Temporary Relocation to any affected Tenant Households~~ at least ~~30 days in advance of the required Relocation unless the City orders abatement that requires Relocation in less than 30 days and, in such case, the Owner shall provide a Notice within 10 days of the City's abatement order. Such notice shall summarize the repairs to be undertaken and the estimated duration of Relocation. Any such notice which the Owner serves upon a Tenant Household shall refer to and shall be accompanied by a copy of this Chapter and the City's Request for Relocation Payment form. Nothing in this Section shall relieve the Owner of their obligation to serve any notice that would otherwise be required pursuant to state or local law.~~Emergency Relocation:

C. ~~The Owner shall notify the Tenant Household when repairs are completed and permit the Tenant Household to reoccupy the Residential Unit or Room as per Section 13.84.090. The Tenant Household shall retain all rights of tenancy that existed prior to Relocation, except as set forth in Section 13.84.070.G.2.~~

Section 13.84.050 Relocation ~~payment and appeals~~ Pprocedures for Code Enforcement Activity including Emergency Relocation Situations

A. Whenever a building or portion thereof which contains a Residential Unit or Room is declared in violation of any law, the Building Official or Fire Marshal, as appropriate, shall determine whether the conditions of the Unit or Room meet the criteria of "Substandard" as defined by California Health and Safety Code (H&SC), Section 17920.3, and exist to the extent that it endangers the health and safety of its occupants or the public and/or if the repairs necessary to abate the violation(s) cannot ~~reasonably~~ be reasonably accomplished without Relocation of the Tenant Household in possession of the Unit or Room. Such determination shall be served ~~in the same manner as the~~in the form of a as a "Notice and Order"~~of Violation~~. The absence of an express determination that Relocation is required as part of the Notice and Order shall be deemed a determination that Relocation is not required.

Commented [1]: The last revision included changes to the ordinance to address procedures for fires or other immediate relocation under Code Enforcement Action, so I'm not sure this is necessary.

Commented [2R2]: Need to be more specific as to what "immediate" means, I think. As currently written, 10 days may be too long to wait in an emergency situation. But would the Owner be required to pay the tenant before receiving their written request for relocation payments as described in Section 070? Just need to make sure the procedure spelled out in that section is revised to be consistent with the intent here.

Commented [3R2]: Perhaps within 3 days. This is generally the amount of Time Red Cross will provide assistance.

Commented [4R2]: Included 72 Hours to timeline.

B. The Owner shall be responsible for providing Relocation payments directly to the Tenant Household required to relocate pursuant to Section 13.84.060 and 13.84.070 of this Chapter. The Owner is also responsible for complying with the Berkeley Municipal Code Section 13.76.130 (Rent Stabilization and Eviction for Good Cause Ordinance).

C. Planned Relocation: If the Owner determines that Relocation is necessary due to planned Voluntary Code Compliance work, the Owner shall provide a written Notice of Temporary Relocation to any affected Tenant Households at least 30 days in advance of the required Relocation Such notice shall summarize the repairs to be undertaken and the estimated duration of Relocation. Any such notice which the Owner serves upon a Tenant Household shall refer to and shall be accompanied by a copy of this Chapter and the City's Request for Relocation Payment form. Nothing in this Section shall relieve the Owner of their obligation to serve any notice that would otherwise be required pursuant to state or local law.

D. Emergency Relocation: In the case of an "Emergency Relocation" where the Building Official or Fire Marshall determines that the "Residential Unit" or "Room" is unsafe and should not be occupied, the Owner is required to initiate short term Relocation to the Tenant Household within 72 hours from the official determination that the unit or room is uninhabitable. If the displacement of the tenant or household lasts for more than 29 days, the parties may adjust to Long-Term Relocation Payments or seek to find alternative arrangements that are acceptable for both parties.

E. The Owner shall notify the Tenant Household when repairs are completed and permit the Tenant Household to reoccupy the Residential Unit or Room as per Section 13.84.090. The Tenant Household shall retain all rights of tenancy that existed prior to Relocation, except as set forth in Section 13.84.070.G.2.

~~F. Any affected Tenant Household or Owner who disputes a determination made by the Building Official or Fire Marshal under subsection A of this section, may file a written request for a hearing by the Housing Advisory Commission. Such request for hearing must be filed within ten (10) days of the date of the Notice from the Building Official or Fire Marshall.~~

~~G. Appeals of determinations by the Building Official or Fire Marshall of the necessity to Relocate due to an imminent threat to life and safety shall not delay enforcement of the vacation ordered by the Building Official or Fire Marshall.~~

H. The determination by the Building Official or Fire Marshal that a Tenant Household is required to Relocate pursuant to this Chapter shall not relieve the Owner of his/her obligation to provide a Notice of Temporary Relocation pursuant to Section 13.84.0540. Any such Notice which the Owner serves upon a Tenant Household shall refer to and shall be accompanied by a copy of this Chapter, and the City's Request for Relocation Payment form. Nothing in this Section shall relieve the Owner of their obligation to serve any notice that would otherwise be required pursuant to state or local law.

I. Each Tenant Household which has been served with a Notice of Temporary Relocation from the Owner indicating that Relocation is required in accordance with the Notice of Violation shall complete a Request for Relocation Payment form to calculate the amount of the initial payment to which the Household is entitled pursuant to the Berkeley Municipal Code Section 13.84.070. The Tenant Household shall serve the completed

Request for Relocation Payment to the Owner within 30 days after receipt of the Notice of Temporary Relocation.

J. Within five (5) business days after receipt of the Tenant Household's completed Request for Relocation Payment form, the Owner shall make the initial Relocation payment directly to the Tenant Household as per Section 13.84.070, or follow the conflict resolution and appeal procedure as specified in Section 13.84.100.

Section 13.84.060 Relocation ~~payment~~ Pprocedures for Voluntary Code Compliance

A. Whenever an Owner applies for a building permit to bring a Residential Unit or Room into code compliance, the Owner shall be required to specify whether repairs will necessitate the Tenant Household occupying the Unit or Room to Relocate.

B. The City shall provide the Owner with a notice containing information about the Tenant Household's Relocation rights pursuant to this Chapter, as well as a copy of this Chapter and a City contact number where additional information can be obtained.

C. If the Owner determines that Relocation ~~may be~~ is necessary to undertake repairs to bring the property into code compliance or as a result of fumigation, the Owner shall serve all affected Tenant Households with a Notice of Temporary Relocation, a copy of this Chapter, and a copy of the City's Request for Relocation Payment form. These documents shall be provided to Tenants at least thirty (30) days in advance of the required Relocation. Nothing in this Section shall relieve the Owner of their obligation to serve any notice that would otherwise be required pursuant to state or local law.

D. If the Tenant Household disagrees with the Owner's determination of the necessity to Relocate, the Tenant Household may follow the conflict resolution and appeals procedure as specified in Section 13.84.100.

E. The Owner must provide to the Building Official ~~must receive~~ acknowledgment(s) of receipt by the Tenant Household(s) of the documents required by subsection C of this Section before the City will issue the building permits necessary to undertake repairs. Such acknowledgment may be in the form of the Tenant Household's signature asserting receipt, or other proof substantiating that a Notice was delivered to the affected Tenant Household(s).

F. Each Tenant Household which has been served with the Notice required by subdivision C or the Building Official's determination pursuant to Section 13.84.100.A.3 shall complete a Request for Relocation Payment form to calculate the amount of the initial payment to which the Household is entitled pursuant to the Berkeley Municipal Code Section 13.84.070. The Tenant Household shall notify the Owner of the amount of payment to which the Tenant Household is entitled within 30 days of receipt of the Notice from the Owner.

G. Within ten (10) days after receipt of the Tenant Household's completed Relocation Payment form, the Owner shall make the initial Relocation payment directly to the Tenant Household as per Section 13.84.070.C.5 or follow the conflict resolution and appeal procedure as specified in Section 13.84.100.

H. The Relocation of a Tenant Household pursuant to this Chapter shall not terminate the tenancy of the Relocated Household. The Relocated Household shall have the right to reoccupy the Unit or Room from which it was relocated as soon as the Unit or Room is ready for re-occupancy, except as set forth in Section 13.84.070.G.2.

Section 13.84.070 Relocation and other payments

A. Households to be relocated for twenty-nine (29) consecutive days or less shall be entitled to the following Relocation payments:

1. A per diem payment to compensate for hotel or motel accommodations and meals. Such payment amount shall be established by City Council Resolution and be based upon Tenant Household size.

2. Reimbursement for daily boarding costs for pets lawfully occupying the Unit or Room from which the Tenant Household was Relocated at the date of Relocation if the Tenant Household's temporary accommodation does not accept pets. The Tenant Household shall receive reimbursement for reasonable boarding costs. The maximum reimbursement rate shall be established by City Council Resolution. The Tenant Household must provide proof of the actual boarding costs incurred in order to receive reimbursement from the Owner. For purposes of this Section "pets" shall exclude any pet that is customarily kept in an enclosure such as a cage, terrarium or aquarium, and the number of pets lawfully occupying a Unit or Room shall be the number specifically permitted by written agreement.

3. Reimbursement for actual documented moving and storage expenses shall include both moving costs to the replacement unit(s) and moving costs back to the original Unit. Moving costs shall consist of actual reasonable costs of moving, including transportation of personal property, packing and unpacking, insurance of personal property while in transit, storage of personal property, and any additional reasonable costs associated with the required moving. Payments for a one-way move shall not exceed rates established in the Fixed Residential Moving Cost Schedule approved by the Federal Highway Administration and published in the Federal Register on a periodic basis.

4. The initial relocation payment shall be due ~~within ten days of~~upon the Owner's receipt of the Tenant Household's Request for Relocation Payment and shall include all projected expenses related to relocation as authorized by this chapter. If the period of Relocation is less than 10 days, the initial Relocation payment shall include the per diem payment for the full period. If the period of Relocation exceeds 10 days, the initial Relocation payment shall include either:

a. A lump sum per diem payment for the full period of Relocation, or

b. The per diem payment for a minimum of 10 days, with subsequent payment contingent upon verification of hotel costs and other eligible costs incurred by the Tenant Household. Such payments are due to the Tenant Household immediately upon Owner's receipt of documentation verifying the Household's expenses. ~~If the~~ Tenant Household's ~~does not incur hotel costs, it is only~~ that obtain replacement housing without cooking facilities are entitled to receive a meal allowance for each member of the Household during the remaining period of Relocation.

B. Households to be relocated for a period of thirty (30) consecutive days or longer shall be entitled to Relocation payments that include all of the following:

1. A one-time dislocation allowance to help defray incidental Relocation expenses. The amount of the dislocation allowance shall be established by City Council Resolution.

2. The Household's choice of reimbursement for actual moving and storage expenses or a fixed payment, subject to the following requirements:

a. If a fixed payment is chosen, no documentation of expenses is necessary. The amount of the fixed payments shall be established by City Council Resolution.

b. Reimbursement for actual documented moving and storage expenses shall include both moving costs to the replacement unit(s) and moving costs back to the original Unit. Moving costs shall consist of actual reasonable costs of moving, including transportation of personal property, packing and unpacking, insurance of personal property while in transit, compensation for any damage occurring during moving, storage of personal property, disconnection and reconnection of utility services and any additional reasonable costs associated with the required moving. Payments for a one-way move shall not exceed rates established in the Fixed Residential Moving Cost Schedule approved by the Federal Highway Administration and published in the Federal Register on a periodic basis.

3. If the rental costs incurred by the Tenant Household during the period of Relocation exceed the amount of rent being paid on the Unit or Room to be vacated, the Household shall be eligible for a rent differential payment. The rent differential payment shall be equal to the difference between the rent paid on the Unit or Room to be vacated and the rent paid for a Unit or Room temporarily leased during the period of Relocation, with the following restrictions:

a. The rent differential payment shall not exceed a ceiling established annually by the City based on the average market rent statistics gathered and published by the Rent Stabilization Program for the prior calendar year.

b. The ceiling for the rent differential payment shall be based on the bedroom size of the Unit or Room to be vacated, with the exception of payments for Relocation from Rooms which shall be calculated on the same basis as payment for Relocation from a studio apartment.

c. The rent differential payment for a Tenant Household receiving a rental subsidy shall be based on the amount of rent paid by the Tenant Household for the Unit or Room leased by the Tenant Household during the period of Relocation. The Owner may coordinate with the entity providing the subsidy to assure the continuity of the rental subsidies during the period of Relocation.

4. Reimbursement for the documented utility cost(s) that the Tenant Household incurs in their replacement housing, if the Owner had been paying that particular utility cost for the vacated Unit or Room. Costs for disconnecting and reconnecting utilities as part of the construction work are the Owner's responsibility even if the utility accounts are in the Tenant Household's name.

C. The initial Relocation payment pursuant to Subsection 13.84.070.B shall be due within ten days of the Owner's receipt of the Tenant Household's Request for Relocation Payment, and shall include:

1. The dislocation allowance;

2. Either the fixed payment for moving and storage costs if applicable, or payment for moving costs based on a reasonable estimate from a qualified professional mover;

3. The rent differential payment for one month, or, if the Relocation is anticipated to exceed ninety days, then the initial payment shall include the rent differential payment for the first three month period.

D. Subsequent payments for rent differential, utilities and storage costs pursuant to subdivisions B.2.b through B.4, when applicable, shall be made on a monthly basis thereafter. Such payments shall be made at least 7 (seven) days in advance of when the Tenant Household's monthly rental payment is due. Instead of monthly payments the Owner may make one lump sum payment for the full amount due for the rent differential payments to the Tenant Household. If the Tenant Household qualifies for reimbursement for monthly storage or utilities costs, these payments continue on a monthly basis or upon receipt by the Owner of documentation that verifies the Household's expenses.

E. Payments pursuant to subdivisions B.2.b through B.4, when applicable, shall continue until such time that the Unit from which the Tenant Household was relocated is available for occupancy or the Tenant Household has notified the Owner of their intent to permanently vacate the Unit.

F. If the Tenant Household has not been offered the opportunity to reoccupy the Unit from which it relocated within six (6) months from the date of their Relocation, the Tenant Household shall be entitled to receive an additional dislocation-allowance payment. The Tenant Household must provide written request for the additional dislocation payment to the Owner which includes confirmation of their intent to reoccupy the Unit. Such payment is due within ten (10) days after receipt of the Tenant Household's request. Acceptance of such payment does not constitute a Tenant Household's relinquishment of any tenancy rights.

G. ~~1.~~ In lieu of the per diem payments in subdivision A of this Section, or rent differential and utility payments in subsections B.3 and B.4 of this Section, the Owner may offer an alternate rental Unit or Room to the Tenant Household that is comparable to the Unit or Room being vacated and is owned by the Owner.

1. The amount of rent paid by the Household for such Unit or Room shall not exceed the rent being paid on the Unit or Room from which the Tenant Household Relocated.
2. If the Tenant Household accepts the Owner's offer, the Tenant Household does not relinquish its right to re-occupy the Unit or Room from which it is being Relocated unless the Tenant Household provides written notice surrendering possession of the Unit or Room.
3. A Tenant Household that accepts an alternate Unit or Room is entitled to receive the dislocation allowance in subdivision B.1 of this Section, and compensation for moving and storage costs if applicable as provided in subdivision B.2 of this Section.
4. If the Tenant Household does not timely notify the Owner of its intent to reoccupy the Unit or Room under Section 13.84.090 and seeks to remain in its alternate unit, it thereby surrenders its right to reoccupy the Unit or Room from which it has relocated and terminates its tenancy of that Unit or Room, and the rent for the alternate Unit or Room shall not be limited by this Chapter and may be increased

to an amount otherwise permissible by Chapter 13.76. Nothing in this Section limits the Owner's right to evict a Tenant Household pursuant to Section 13.76.130.A.11.

H. A Tenant Household that is Relocated for thirty (30) days or more shall not be responsible for any rent due on the Unit or Room from which it was Relocated during the period of Relocation and failure to pay rent during this period shall not constitute relinquishment of tenancy rights.

I. The Owner and Tenant Household may mutually agree upon temporary housing and Relocation payments other than that provided by this Chapter. Such agreement shall be in writing and signed by both the Owner and Tenant Household with a copy provided to the City's Housing and Community Services Department.

J. If a Tenant Household's actual Relocation period is shorter than the period for which the Owner has paid, the Tenant Household must repay the overpaid amount to the Owner within thirty (30) days of receiving written notice from the Owner of the overpayment. If the Tenant Household has incurred a financial obligation to pay rent, utilities, or storage costs during the remaining period of their Relocation, these costs may be deducted from the amount to be repaid to the Owner, subject to the provisions of subdivision B of this Section.

K. All payments to Tenant Households under this Chapter shall be made to those persons in the Tenant Household from whom the Owner has received rental payments during the immediately preceding rental period, in the same proportion in which such payments were made. The Owner shall have no liability or other obligation with respect to further division or allocation of such payments among the members of the Tenant Household. Nothing in this Section shall be construed to affect the determination of the actual number of Tenants in the Tenant Household for purposes of Chapter 13.76.

L. The size of a Tenant Household shall be determined based on the number of individuals entitled to occupy the Unit or Room at the time a determination of the building official is served under Section 13.84.050 or a Notice of Temporary Relocation is served under Section 13.84.060.C.

M. Upon receipt of the full relocation payment under this Chapter and a Notice of Temporary Relocation, the tenant household shall relocate within 30 calendar days. Failure to relocate pursuant to such notice may entitle the landlord to issue a notice to vacate and be a basis for good cause eviction pursuant to Section 13.76.130.A.7a.

N. The City Council shall by resolution adopt a reasonable reimbursement rate for the following based upon surveys of prevailing costs for services, subject to limitations set forth in this Chapter and any additional limitations set forth in the Resolution:

1. Per diem rates for hotel accommodations and meal allowance pursuant to subdivisions A.1 and A.3 of this Section;
2. Maximum boarding costs for pets pursuant to subdivision A.2 of this Section;
3. Dislocation allowance pursuant to subdivision B.1 and F of this Section;
4. Fixed payments for moving and storage pursuant to subdivision B.2 of this Section.

~~**Section 13.84.080 City's involvement in Relocation payments**~~

A. ~~The City may provide payment required by Section 13.84.070 to Tenant Households in situations where the Owner fails or refuses to pay for required Relocation costs. The City shall recover from the Owner all costs incurred as a result of making such payments. In order for the City to consider such payments, a request must be made by the Tenant Household to the City Manager or his or her designee within twenty (20) days from the Owner's failure or refusal to make the required payments as required in Sections 13.84.050.F and 13.84.060.G.~~

1. ~~Upon receipt of a request from a Tenant Household the City shall mail a written notice to the Owner of the Owner's obligation under this Chapter to provide Relocation assistance and payment and the time when payment is required. The notice shall also specify that failure to make required payments may result in the City making such payments and recovering the costs of doing so from the Owner through a special assessment lien on the Owner's property that shall include an administrative lien fee.~~

2. ~~If within ten (10) days of the receipt of the notice provided pursuant to subdivision A.1 of this Section, the Owner continues to fail or refuse to make the necessary payments, the City may make the required Relocation payment to the Household. The City shall then bill the Owner for the amount of payment, plus any administrative and other costs it would not have otherwise incurred. If the Owner does not pay the City within a thirty (30) day period, the City may recover the costs as a special assessment lien on the Owner's property along with an administrative lien fee in accordance with Berkeley Municipal Code Chapter 1.24. The City Manager or his or her designee shall notify the Owner.~~

Section 13.84.090 Move-back option

A. The Relocation of a Tenant Household pursuant to this Chapter shall not terminate the tenancy of the Relocated Household. The Relocated Household shall have the right to reoccupy the Unit or Room from which it was relocated as soon as the Unit or Room is ready for reoccupancy, and the Tenant Household shall retain all rights of tenancy that existed prior to the displacement.

B. If a Household wishes to avail itself of this option, it must inform the Owner of its current address during the period of Relocation.

C. For Tenant Households displaced for thirty consecutive days or more, Owners shall notify the Tenant Household at least thirty (30) days in advance of the availability of the Unit or Room. Within ten (10) days of receipt of the notice of availability, a Tenant Household must notify the Owner if it wishes to reoccupy the Unit or Room. The Owner must hold the Unit or Room vacant at no cost to the Tenant Household for thirty (30) days from the date of the Tenant Household's written notice of its intent to reoccupy the Unit or Room is received.

D. For Households displaced for twenty-nine consecutive days or less and receiving a per diem payment, Owners shall notify the Household at least one day in advance of the availability of the Unit or Room. The Household shall be entitled to receive a per diem payment for up to twenty-four hours after receiving such notice that the Unit or Room is ready for occupancy. Within ten (10) days of receipt of the notice of availability from the Owner, the Household must notify the Owner of its intent to reoccupy the Unit or Room. A Tenant Household shall be entitled to reimbursement for non-refundable costs

associated with securing replacement housing based on the owner's initial estimate of the duration of displacement.

E. A Unit or Room shall be deemed to be permanently surrendered and the tenancy terminated, when the Tenant Household provides notice in writing to the Owner that it does not intend to reoccupy the Unit or Room from which it was relocated or does not notify the Owner of its intent to reoccupy the Unit or Room. If the Owner has not made Relocation payments as required by this Chapter and the Unit or Room becomes permanently vacated, then it shall be presumed that the surrender of the right of possession of the Unit or Room was involuntary unless the Owner has received a written notice from the Tenant Household permanently surrendering its right to their Unit or Room.

Section 13.84.100 ~~Conflict Resolution and~~ Appeal Procedures and Conflict Resolution ~~for Voluntary Code Compliance~~

A. Appeals under this Chapter ~~related to Voluntary Code Compliance s~~shall be filed as set forth below. ~~Appeal procedures related to Code Enforcement Activity are addressed in Section 13.84.050.~~

1. Appeals Related to Code Enforcement Activity.
   a. Any affected Tenant Household or Owner who disputes a determination made by the Building Official or Fire Marshal that relocation is either required or not required under this chapter under subsection A of this section, may file a written request for a hearing by the City Hearing Officer in accordance with Berkeley Municipal Code Section 19.44 only after attempting to resolve the issue through conflict resolution through the Rent Stabilization Board or any other appropriate entity. Such request for hearing must be filed within ten (10) days of the date of the Notice from the Building Official or Fire Marshall, or ten (10) days after conflict resolution attempts have been exhausted.
   b. Appeals of determinations by the Building Official or Fire Marshall of the necessity to relocate due to an imminent threat to life and safety shall not delay enforcement of the order to vacate the premises by the Building Official or Fire Marshall.
2. Appeals Related to Voluntary Code Compliance
3. If ~~the Tenant Household disputes the Owner's determination of the necessity for Relocation, or~~ either party disputes the amount of Relocation payments or other terms of the Relocation, before submitting an appeal, the parties must ~~the City may refer the parties to~~obtain ~~a~~ conflict resolution or mediation services provided through the Rent Stabilization Board or any other appropriate entity ~~upon request by both parties for such referral in lieu of an appeal to the Building Official per subsection A.3 of this Section~~. The purpose of such referral shall be the negotiation of a mutually acceptable agreement pertaining to the terms of the Relocation. If no agreement is reached, then either party may follow the appeals procedure as set forth in this Section. Nothing in this Chapter shall preclude the parties from meeting on their own at any time, with or without a mediator, in an attempt to resolve their disagreements.

Commented [5]: Get input from Rent Board Staff.

Commented [6R6]: FYI, Matt Siegel and Jay K. were part of the committee that developed the recommendations.

Commented [7R6]: Make this section for all appeals. Can we make conflict resolution required BEFORE an appeal can be entertained?

4. If the Owner disagrees with the Tenant Household's claim for Relocation payments, and such disagreement cannot be resolved through conflict resolution or mediation, then the Owner may file a written request for a hearing by the City Hearing Officer~~Housing Advisory Commission~~ as to the amount of the claim, or his or her responsibility for Relocation assistance pursuant to this Chapter. Such a request must be filed within ~~five~~ ten (~~5~~10) business days of the conclusion of mediation~~ or within ten (10) days of the Owner's receipt of the Tenant Household's claim of Relocation payments as set forth in Sections 13.84.050.E or 13.84.060.F, whichever comes later~~.

5. If the Tenant Household disagrees with the Owner as to the necessity to Relocate, and such disagreement cannot be resolved through conflict resolution or mediation, the Tenant Household may request in writing that the Building Official make a determination. Such request must be filed within ~~five~~ ten (~~5~~10) business days of the conclusion of mediation,~~ or within ten (10) days of the Tenant Household's receipt of the Relocation notice in Section 13.84.060.C, whichever comes later~~. The Building Official shall determine whether Relocation is necessary and the Owner shall serve all affected Tenant Households with a copy of the Building Official's determination. This decision shall be final.

B. All hearings conducted before the City Hearing Officer~~Housing Advisory Commission~~ shall follow the procedures outlined in BMC Section 19.44 and be scheduled for the next available meeting unless a postponement is agreed upon by all parties. The Commission may convene a special meeting if delay of a hearing until the next regularly scheduled meeting would create a hardship. The Owner and all affected Tenant Households shall be notified of the time and place of the hearing at least ten (10) days before the date of hearing. The Commission shall render its decision on any such appeal within ten (10) days after the hearing on the appeal is closed. The Commission's decision related to payments shall be final. The City Hearing Officer's determination related to the Tenant's Household need to relocate shall be sent to the Building Official or Fire Marshall for consideration and the Building Official or fire Marshall shall make the final decision if Relocation is required.

C. Nothing in this Chapter shall in any way preclude or limit any aggrieved party from seeking judicial review after such person has exhausted the administrative remedies provided by this Chapter. However, it shall be conclusively presumed that a litigant has not exhausted his/her administrative remedies as to any issue which is not raised in the administrative proceedings authorized herein.

Section 13.84.110 Private right of action

Any Tenant that believes that the provisions of this Chapter have been violated shall have the right to file an action for injunctive relief and/or damages. Treble damages may be awarded for willful failure to comply with the payment obligations established by this Chapter and for actual damages incurred by a Household as a result of the Owner's willful failure to offer the Relocated Household the opportunity to reoccupy the Unit from which it relocated. In any action brought under this Chapter, the court may award reasonable attorney fees to any prevailing party.

Section 13.84.120 Severability

If any provision of this Chapter is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the Chapter shall not be invalidated.