



Planning Commission

AGENDA

REGULAR MEETING OF THE PLANNING COMMISSION

This meeting is held in a wheelchair accessible location.

Wednesday, April 3, 2019
7:00 PM – 10:00 PM

South Berkeley Senior Center
2939 Ellis Street

See “*MEETING PROCEDURES*” below.

All written materials identified on this agenda are available on the Planning Commission webpage: <http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=13072>

PRELIMINARY MATTERS

- 1. Roll Call:** **Wiblin, Brad**, appointed by Councilmember Kesarwani, District 1
Martinot, Steve, appointed by Councilmember Davila, District 2
Schildt, Christine, Chair, appointed by Councilmember Bartlett, District 3
Lacey, Mary Kay, appointed by Councilmember Harrison, District 4
Beach, Benjamin, appointed by Councilmember Hahn, District 5
Kapla, Robb, Vice Chair appointed by Councilmember Wengraf, District 6
Fong, Benjamin, appointed by Councilmember Robinson, District 7
Vincent, Jeff, appointed by Councilmember Droste, District 8
Wrenn, Rob, appointed by Mayor Arreguin
- 2. Order of Agenda:** The Commission may rearrange the agenda or place items on the Consent Calendar.
- 3. Public Comment:** Comments on subjects not included on the agenda. Speakers may comment on agenda items when the Commission hears those items. (See “*Public Testimony Guidelines*” below):
- 4. Planning Staff Report:** In addition to the items below, additional matters may be reported at the meeting. **Next Commission meeting: May 1, 2019**
- 5. Chairperson’s Report:** Report by Planning Commission Chair.
- 6. Committee Reports:** Reports by Commission committees or liaisons. In addition to the items below, additional matters may be reported at the meeting.
- 7. Approval of Minutes:** Approval of Draft Minutes from the meeting on March 6, 2019.
- 8. Future Agenda Items and Other Planning-Related Events**

AGENDA ITEMS: All agenda items are for discussion and possible action. Public Hearing items require hearing prior to Commission action.

- 9. Action:** **Public Hearing on Eliminating Residential Off-Street Parking Requirements in the R-S**
Recommendation: Hold a Public Hearing and make a recommendation to City Council.
Written Materials: Attached
Web Information: N/A
Continued From: January 16, 2019
- 10. Action:** **Public Hearing on Amendments to Inclusionary Housing Regulations**
Recommendation: Hold a Public Hearing and make a recommendation to City Council.
Written Materials: Attached
Web Information: N/A
Continued From: N/A
- 11. Discussion:** **Policy Referral Matrix**
Recommendation: Review and discuss Policy Referral Matrix
Written Materials: Attached
Web Information: N/A
Continued From: N/A

ADDITIONAL AGENDA ITEMS: In compliance with Brown Act regulations, no action may be taken on these items. However, discussion may occur at this meeting upon Commissioner request.

Communications: None

Late Communications (Received after the Packet deadline):

Information Items

- Abridged Commissioners' Manual: 2018 Edition

ADJOURNMENT

Meeting Procedures

Public Testimony Guidelines:

Speakers are customarily allotted up to three minutes each. The Commission Chair may limit the number of speakers and the length of time allowed to each speaker to ensure adequate time for all items on the Agenda. **To speak during Public Comment or during a Public Hearing, please line up behind the microphone.** Customarily, speakers are asked to address agenda items when the items are before the Commission rather than during the general public comment period. Speakers are encouraged to submit comments in writing. See "Procedures for Correspondence to the Commissioners" below.

Consent Calendar Guidelines:

The Consent Calendar allows the Commission to take action with no discussion on projects to which no one objects. The Commission may place items on the Consent Calendar if no one present wishes to testify on an item. Anyone present who wishes to speak on an item should submit a speaker card prior to the start of the meeting, or raise his or her hand and advise the Chairperson, and the item will be pulled from the Consent Calendar for public comment and discussion prior to action.

Procedures for Correspondence to the Commissioners:

- To have materials included in the packet, the latest they can be submitted to the Commission Secretary is close of business (5:00 p.m.), on Tuesday, eight (8) days prior to the meeting date.
- To submit late materials for Staff to distribute at the Planning Commission meeting, those materials must be received by the Planning Commission Secretary, by 12:00 p.m. (noon), the day before the Planning Commission meeting.
- Members of the public may submit written comments at the Planning Commission meeting. To submit correspondence at the meeting, please provide 15 copies, and submit to the Planning Commission Secretary before the start time of the meeting.
- If correspondence is more than twenty (20) pages, requires printing of color pages, or includes pages larger than 8.5x11 inches, please provide 15 copies.
- Written comments/materials should be directed to the Planning Commission Secretary, at the Land Use Planning Division (Attn: Planning Commission Secretary).

Communications are Public Records: Communications to Berkeley boards, commissions, or committees are public records and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission, or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service, or in person, to the Secretary of the relevant board, commission, or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the Secretary to the relevant board, commission, or committee for further information.

Written material may be viewed in advance of the meeting at the Department of Planning & Development, Permit Service Center, **1947 Center Street, 3rd Floor**, during regular business hours, or at the Reference Desk, of the Main Branch Library, 2090 Kittredge St., or the West Berkeley Branch Library, 1125 University Ave., during regular library hours.

Note: If you object to a project or to any City action or procedure relating to the project application, any lawsuit which you may later file may be limited to those issues raised by you or someone else in the public hearing on the project, or in written communication delivered at or prior to the public hearing. The time limit within which to commence any lawsuit or legal challenge related to these applications is governed by Section 1094.6, of the Code of Civil Procedure, unless a shorter limitations period is specified by any other provision. Under Section 1094.6, any lawsuit or legal challenge to any quasi-adjudicative decision made by the City must be filed no later than the 90th day following the date on which such decision becomes final. Any lawsuit or legal challenge, which is not filed within that 90-day period, will be barred.

Meeting Access: This meeting is being held in a wheelchair accessible

location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services Specialist, at 981-6418 (V) or 981-6347 (TDD), at least three (3) business days before the meeting date.

Please refrain from wearing scented products to public meetings.



Planning Commission

1 **DRAFT MINUTES OF THE REGULAR PLANNING COMMISSION MEETING**
2 **March 6, 2019**

3 The meeting was called to order at 7:03 p.m.

4 **Location:** South Berkeley Senior Center, 2939 Ellis Street, Berkeley, CA

5 **1. ROLL CALL:**

6
7 **Commissioners Present:** Benjamin Beach, Robb William Kapla, Mary Kay Lacey, Steve
8 Martinot, Christine Schildt, Brad Wiblin , Rob Wrenn, Bella Smith (Alternate), Jeff Vincent.

9 **Commissioners Absent:** Benjamin Fong (excused)

10 **Staff Present:** Secretary Alene Pearson, Alisa Shen and Nilu Karimzadegan

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

12 Presentation Item 9 (Local Community Preference for Affordable Housing: Case Studies),
13 Presentation Item 10 (Housing and Community Benefits Ideas for the Adeline Corridor), Action
14 Item 11 (Formation of Adeline Corridor Plan Subcommittee) and Action Item 12 (Formation of an
15 Affordable Housing Mitigation Fee (AHMF) Subcommittee).

16 **3. PUBLIC COMMENTS:** 3 speakers.

17
18 **4. PLANNING STAFF REPORT:**

19 Staff provided updates on an information item that is provided in this packet:

- 20 • The first information item is a reports on projects at 2025 Durant Avenue/2020 Bancroft
21 Way in which 26 Off-Street Parking spaces on ground floor were converted to 2 dwelling
22 units. These items were reviewed at ZAB a week after February 6, 2019 Planning
23 Commission's discussion on parking reform.

24 **Information Items:**

- 25 • 2025 Durant Avenue/2020 Bancroft Way Staff Report (Use Permit to remove 26 parking
26 spaces on the ground floor to construct 2 new dwelling units).
27 • African American Holistic Resource Center Feasibility Study.
28

29 **Communication:** None

30 **Late Communications** (Received after the Packet deadline):

- 31 • Letter from South Berkeley Now, Re: Adeline Corridor Plan.
- 32 • Email from Ellen Woods, Re: SUPPORT POLICIES THAT REVERSE DISPLACMNET
- 33 IN SOUTH BERKELEY.
- 34 • Email from Janice Greenberg, Re: 3/6/19.
- 35 • Email from Katharine Bierce, Re: Please prioritize new affordable housing in the Adeline
- 36 corridor.
- 37 • Email from Larisa Cummings, Re: Adeline Corridor plans
- 38 • Email from Negeene Mosaed, Re: Prioritizing people over profit and saving the South
- 39 Berkeley Community.
- 40 • Email from Allen Barth, Re: Yes: Demand City take action on displacement in Adeline
- 41 Corridor plan—March 6 Planning Commission meeting.
- 42 • Email from Ariana Thompson-Lastad, Re: please use Adeline Corridor plan to prevent
- 43 displacement.
- 44 • Email from Darryl Bartlow, Re: Berkeley. Do not marginalize and disenfranchise the
- 45 African American citizens. Thank you.
- 46
- 47

47 **Late Communications** (Received and distributed at the meeting):

- 48 • Proposed work outline for: Moving South Berkeley Forward: Soil sampling and urban
- 49 farm design for the Santa Fe Right of Way, Berkeley, CA and brochure including list of
- 50 Berkeley's School Gardens, College Gardens, Youth Training Gardens, Nonprofit
- 51 Garden Projects and Community Garden.
- 52 • Email from Christine Schwartz including the link to the video of the Planning
- 53 Commission meeting, Re: Planning Commission Meeting March 6, 2019 at South
- 54 Berkeley Senior Center
- 55

56 **5. CHAIR REPORT.**

57 Chair acknowledged and thanked the people who have been involved in putting the African
58 American Holistic Resource Center Feasibility Study together and encouraged the
59 commissioners and the members of the public to look at the Adeline Corridor plan and reflect
60 on the conversation regarding displacement in South Berkeley.

61 **6. COMMITTEE REPORT:** None.

62

63 **7. APPROVAL OF MINUTES:**

64 Motion/Second/Carried (Vincent/ Wiblin) to approve the Draft Planning Commission Meeting
65 Minutes from February 6, 2019 with minor edits to item 9, 11 and 12. Ayes: Benjamin Beach,
66 Robb William Kapla, Mary Kay Lacey, Steve Martinot, Christine Schildt, Rob Wrenn , Jeff
67 Vincent, Brad Wiblin. Noes: None. Abstain: Ella Smith. Absent: Benjamin Fong. (8-0-1-1)

68

69 **8. FUTURE AGENDA ITEMS AND OTHER PLANNING-RELATED EVENTS:** The following
70 public hearing items are tentatively planned for the next Planning Commission meeting on
71 April 3, 2019:

72

73 1) Affordable Housing Mitigation Fee referral.

74 2) Southside park-free overlay Zoning Ordinance amendments.

75 3) The Comprehensive Cannabis amendments.

76
77 **AGENDA ITEMS**

78
79 **9. Presentation: Local Community Preference for Affordable Housing: Case Studies**

80 Adeline Corridor Principle Planner, Alisa Shen introduced UC Berkeley graduate student Eli's
81 Kaplan who presented: "Implementing a Community Preference Policy for Affordable Housing
82 in Berkeley."

83 **Public Comments:** 14 speakers.

84 **10. Presentation: Housing and Community Benefits Ideas for the Adeline Corridor**

85 Rick Jacobus of Street Level Advisors (member of the consultant team for the Adeline Specific
86 Plan project) presented the "Affordable Housing and Community Benefits for the Adeline
87 Corridor."

88 **Public Comments:** 14 speakers

89 **11. Action: Formation of Adeline Corridor Plan Subcommittee**

90 Staff provided a roadmap of the work to complete the Adeline Corridor plan. The tentative
91 schedule is as follow:

- 92 • April /May 2019: Staff will be finalizing Draft Plan and Draft EIR
- 93
- 94 • May/June 2019: Staff will bring Draft Plan to Commissions and will hold Subcommittee
95 and community meetings to present documents and gather feedback. This will be
96 concurrent with the 45-day Planning Commission period on Draft EIR.
- 97
- 98 • July/August 2019: Staff will go over the feedback on the Draft EIR and will prepare
99 responses to comments.
- 100
- 101 • September/October 2019: Staff and the Planning Commission will initiate public
102 hearings on the Final EIR.
- 103
- 104 • End of year 2019/Early 2020: Recommendation to City Council

105 Motion/Second/Carried (Schildt /Kapla) to create a Subcommittee consisting of Benjamin
106 Beach, Christine Schildt, Brad Wiblin and Rob Wrenn to review Draft Plan and Draft EIR and
107 initiate a recommendation for Full Commission Review. Ayes: Benjamin Beach, Robb William
108 Kapla, Mary Kay Lacey, Steve Martinot, Christine Schildt, Ella Smith, Brad Wiblin, Rob Wrenn
109 , Jeff Vincent. Noes: None. Abstain: None, Absent: Benjamin Fong. (9-0-0-1)

112 **PUBLIC COMMENTS: 3**

113 **12. Action: Formation of an Affordable Housing Mitigation Fee (AHMF) Subcommittee**

114 Staff reported that City Council requested Planning Commission make a recommendation on
115 the AHMF Referral to City Council by April 30, 2019. Planning Commission created a
116 Subcommittee to address Council's request.

117 Motion/Second/Carried (Schildt /Wrenn) to create Subcommittee consisted of Benjamin
118 Beach, Mary Kay Lacey, Christine Schildt and Brad Wiblin to initiate a Response to the AHMF
119 Referral. Ayes: Benjamin Beach, Robb William Kapla, Mary Kay Lacey, Steve Martinot,
120 Christine Schildt, Ella Smith, Brad Wiblin, Rob Wrenn , Jeff Vincent. Noes: None. Abstain:
121 None, Absent: Benjamin Fong. (9-0-0-1)
122
123

124 **Public Comments: 6 Comments**

125 **The meeting was adjourned at 10:29 pm**

126 **Commissioners in attendance: 9 of 9**

127 **Members in the public in attendance: 48**

128 **Public Speakers: 40 speakers**

129 **Length of the meeting: 3 hours and 26 minutes**



Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: April 3, 2019

TO: Members of the Planning Commission

FROM: Elizabeth Greene, Senior Planner
Alex Nelms, Planning Intern

SUBJECT: Eliminating Residential Off-Street Parking Requirements in the R-S

RECOMMENDATION

Hold a Public Hearing on the draft Zoning Ordinance amendments to Section 23D.48.080 (Residential Southside (R-S)) which eliminate residential off-street parking requirements for new residential projects (see *Attachment 1*). Recommend draft language, with any necessary changes, to City Council.

INTRODUCTION

Over the past year, City Council has forwarded six referrals to the Planning Commission that promote student and affordable housing. Throughout 2018, the Commission studied these referrals along with similar ideas raised in the More Student Housing Now (MSHN) Resolution, at the February 2018 student housing forum/discussion at Planning Commission, and in the final report of the Subcommittee on Affordable Housing and Community Benefits. On January 16, 2019, Planning Commission agreed to an approach that grouped proposals into immediate, short-term, and long-term actions in order to provide a clear path to more housing.

One of the suggested short-term actions was to extend the Car-free Housing Overlay (“Overlay”) to additional parcels in the Southside. The Overlay, created by the Southside Plan, removes residential off-street parking requirements for new dwelling units. It affects the entire Telegraph Commercial (C-T) and Residential Southside Mixed-Use (R-SMU) districts and approximately two-thirds of the R-S district. The Overlay allows new developments to have more residential units without the added cost and space of off-street parking. The short-term action aimed to encourage new development in areas of the district which currently have residential off-street parking requirements.

After deliberating about the extent of the Overlay expansion, the Commission requested a Public Hearing to consider Zoning Ordinance language to expand the Car-Free Housing Overlay to the entire R-S District.

DISCUSSION

This report introduces amendments to the off-street parking requirements in the R-S district. The proposed Zoning Ordinance language can be found in Attachment 2. A map of the affected geography can be found in Attachment 3. This section provides an analysis of the proposed Zoning Ordinance amendment, explains consistency with the Southside and General Plans, and explains compliance with Environmental Review (CEQA).

Proposed Amendment to Section 23D.48.080 Parking

Removing residential off-street parking requirements in the R-S District would have two impacts to *newly* constructed residential developments:

- 1) Eliminate off-street parking for all new Dwelling Units and Group Living Accommodations (GLA) rooms; and
- 2) Remove the ability to receive parking permits under the Residential Permit Parking Program (RPP) for occupants of residential projects that are constructed without parking after the effective date of these amendments.

Non-residential off-street parking requirements would still be in effect since these are not affected by the Overlay. All existing residential off-street parking spaces, built before the effective date of these amendments, would not be affected. Pre-existing off-street parking spaces may be reduced if approved through a Use Permit. Residents of residential projects without off-street parking built before the effective date are still entitled to receive on-street parking permits.

Analysis

The removal of off-street parking requirements indirectly encourages housing affordability, in the short-term and long-term, by reducing the construction costs and providing more space for housing. Compared to a new development built with off-street parking, developers can charge lower rent immediately since they will have fewer costs and more tenants. In the long-term, lower-income residents and/or students in the Southside have a lot to gain from having a larger supply of high-density housing without parking for three reasons: (1) these communities typically have lower rates of auto-use, (2) their rent is lower and doesn't include parking they might not use, and (3) they would be within walking distance of major transit stops, UC Berkeley campus, and commercial spaces.

Recent studies support the connection between the removal of off-street parking requirements and development of affordable housing. In a 2017 study of parking's impact on residential rents, researchers found that the added cost of a parking garage is approximately \$1,700 per year or 17 percent of a unit's rent, regardless of parking utilization (see Link 1). Noted parking researcher, Donald Shoup, has determined that minimum parking requirements generally lower density and raise auto-dependence if parking is not fully used, compensated for, or justified (see Link 2).

The Southside Plan adopted relaxed development standards, in addition to the Overlay, to encourage development; however, increased density will only be realized when new buildings are built. Looking specifically at projects built in the R-S since Southside Plan adoption, there

seems to be a disparity between properties inside and outside of the current Overlay (see *chart in Attachment 3 and the Expanding the Car-Free Overlay section in Attachment 4*). R-S properties inside the Overlay, approximately two-thirds of the district, had five developments in comparison, only one R-S parcel outside of the Overlay was developed during this same time period (UC student housing at 2201 Dwight Way).

Consistency with the Southside and General Plans

The proposed ordinance amendment is generally supported by the Southside Plan (see Link 4) and General Plan (see Link 5) since it will encourage affordable housing and alternative transportation. Policies from these plans referenced in this report are found in Attachment 5.

The Southside Plan would support this amendment since its policies encourage the creation of more student and affordable housing. The Plan's most significant actions towards encouraging residential development were the creation of the R-S District and introduction of the Car-Free Housing Overlay. At same time, the Plan intended for the Southside to provide opportunities for alternative transportation modes (i.e., public transit, walking). Zoning Ordinance amendments are supported by Policies LU-A1, LU-E3, LU-F4, and LU-F18 and Actions LU-A1.C and F, LU-F4.A, and LU-F18.A.

According to these policies, the Car-Free Housing Overlay and the R-S District were designed to encourage residential development and changes to these regulations should be considered as deemed necessary to produce additional affordable housing.

General Plan

The General Plan parallels the Southside Plan's support regarding this Zoning Ordinance amendment. The General Plan policies LU-23, LU-25 and T-31 encourage reduced residential parking requirements to provide additional housing in transit-oriented locations while minimizing impacts on existing residents.

Environmental Review

CEQA is used to evaluate physical impacts resulting from change in use and activity, such as increased development or traffic, on an identified area. The environmental impacts of removing the residential off-street parking requirements from a portion of the R-S district, from a CEQA standpoint, are not significant.

The Southside Plan Environmental Impact Report (EIR), which was certified in 2011, anticipated substantial growth within the Southside Plan area. The reduction of R-S residential off-street parking requirements could result in increased residential density and non-automotive traffic since it may attract residents who don't own cars. However, the impact of the R-S amendments would not cause any significant difference to the area's character nor to the EIR's anticipated growth due to the small amount of affected parcels (11), the uncertain length of time for all of those parcels to redevelop under the suggested Zoning Ordinance amendments, and the existing high density and low car-ownership in the area.

Increasing the development potential in one-third of the R-S district would not generate growth beyond what was studied in 2011.

CONCLUSION

The proposed Zoning Ordinance amendments would expand the Car-Free Housing Overlay to the rest of the R-S district and remove residential off-street parking requirements for new residential developments. The removal of the off-street parking requirements could encourage more affordable housing in the 11 affected parcels.

ATTACHMENTS:

1. Public Hearing Notice Eliminating Residential Off-Street Requirements
2. Proposed ordinance language
3. Map of Car-Free Housing Overlay with Proposed Expansion
4. 1/16/2019 Planning Commission report
5. Relevant Southside Plan and General Plan policies

LINKS:

1. [C.J. Gabbe and Greg Pierce, The Hidden Cost of Bundled Parking \(2017\)](#)
2. [The High Cost of Free Parking \[Video\] \(2017\)](#)
3. [Southside Plan \(2011\)](#)
4. [City of Berkeley General Plan \(2003\)](#)



PLANNING COMMISSION

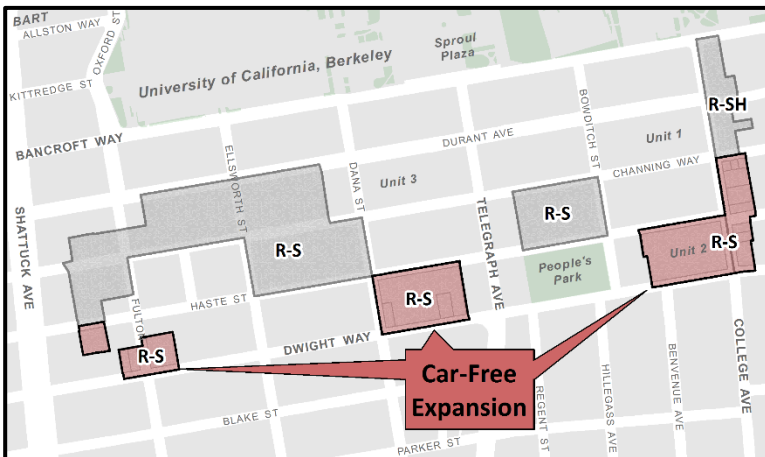
NOTICE OF PUBLIC HEARING

APRIL 3, 2019

Amendments to Parking Requirements in the Residential Southside (R-S) District.

The Planning Commission of the City of Berkeley will hold a public hearing on the above matter, on **Wednesday, April 3, 2019**, at the South Berkeley Senior Center, 2939 Ellis Street (at Ashby Avenue) in Berkeley (location is wheelchair accessible). The meeting starts at 7:00 p.m. and ends at 10 p.m.

PROJECT DESCRIPTION: Amend Chapter 23D.48 (Residential Southside (R-S) District) to remove off-street parking requirements in all new residential developments. Changes to be considered apply to the portion of the R-S district that is not currently in the Car-Free Housing overlay and are summarized below:



- Eliminate off-street parking for all new Dwelling Units and Group Living Accommodations (GLA) rooms; and
- Remove the ability to receive parking permits under the Residential Permit Parking Program (RPP) for occupants of residential projects that are constructed without parking after the effective date of these modifications.

LOCATION: Portions of the R-S District not currently in the Car-Free Housing overlay (see map).

ENVIRONMENTAL REVIEW STATUS: The proposed Zoning Ordinance amendment is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3), because it can be seen with certainty that the proposed amendments to the R-S District would not have significant effects on the environment and are within the growth studied by the Southside Plan Environmental Impact Report (EIR) in 2011.

PUBLIC COMMENT

Comments may be made verbally at the public hearing and in writing before the hearing. Written comments concerning this project should be directed to:

Planning Commission
Alene Pearson, Secretary
Land Use Planning Division
1947 Center Street
Berkeley, CA 94704

Fax: (510) 981-7489
E-mail: apearson@cityofberkeley.info

To assure distribution to Commission members prior to the meeting, **correspondence must be received by 12:00 noon, eight (8) days before the meeting date.** Fifteen (15) copies must be submitted of any correspondence that requires color printing or pages larger than 8.5x11 inches.

COMMUNICATION ACCESS

To request a meeting agenda in large print, Braille, or on audiocassette, or to request a sign language interpreter for the meeting, call (510) 981-7410 (voice), or 981-6903 (TDD). Notice of at least five (5) business days will ensure availability.

FURTHER INFORMATION

Questions should be directed to **Alene Pearson**, at (510) 981-7489, or **apearson@cityofberkeley.info**. Past and future agendas are also available on the Internet at: https://www.cityofberkeley.info/Clerk/Commissions/Commissions_Planning_Commission_Homepage.aspx

Chapter 23D.48
R-S Residential Southside District Provisions

Sections:

- 23D.48.010 Applicability of Regulations**
- 23D.48.020 Purposes**
- 23D.48.030 Uses Permitted**
- 23D.48.040 Reserved**
- 23D.48.050 Special Provisions -- Design Review**
- 23D.48.060 Reserved**
- 23D.48.070 Development Standards**
- 23D.48.080 Parking -- Number of Spaces**
- 23D.48.090 Findings**

23D.48.080 Parking -- Number of Spaces

A. All parking shall be provided in accordance with the requirements of this section and Chapter [23D.12](#), except as set forth in this Section.

B. The following provisions shall apply to properties within the R-S District:

1. No Off-street Parking Spaces shall be required for new Dwelling Units, Group Living Accommodations rooms, or for Accessory Dwelling Units. ~~located within the Car-Free Housing Overlay. The Car-Free Housing Overlay area is as follows:~~

~~The complete block bounded by:~~

- ~~• Dana, Haste, Ellsworth and Channing.~~

~~The partial blocks bounded by:~~

- ~~• Bowditch, Haste, Telegraph and Channing, minus the portion of the block within 150 feet of Telegraph Avenue;~~
- ~~• Dana, Channing, Ellsworth and Durant, minus the lot abutting the west side of Dana; and~~
- ~~• Ellsworth, Channing, Fulton and Durant, minus the north-west corner with 130 feet of frontage along Fulton and 100 feet of frontage along Durant.~~

~~Additional properties as described below:~~

- ~~• The properties abutting the east side of College Avenue between Bancroft Way and Channing Way, and including 2709 Channing Way;~~
- ~~• The properties abutting both sides of Channing between Fulton and Shattuck, except those abutting Shattuck, and also excluding the parcel at 2111–2113 Channing;~~
- ~~• The properties abutting the west side of Fulton Street from Channing Way extending north along Fulton 127.5 feet and extending south along Fulton 180 feet; and~~
- ~~• The properties abutting the north side of Haste, beginning 150 feet west of Fulton Street, and extending an additional 200 feet west along Haste.~~

2. For ~~properties not included in the Car-Free Housing Overlay, and for~~ non-residential uses ~~within the Car-Free Housing Overlay~~, Off-Street parking requirements shall be determined by the parking requirements of Section [23D.40.080](#) (R-4).

3. Bicycle parking spaces shall be provided at the ratio of one space per 2,000 square feet of gross floor area of commercial space, and in accordance with the requirements of Section [23E.28.070](#).

C. Occupants of residential projects ~~within the Car-Free Housing Overlay area~~ that are constructed without parking after the effective date of this Chapter shall not be entitled to receive parking permits under the Residential Permit Parking Program (RPP), under Chapter [14.72](#) of the BMC.

D. Existing parking spaces for Main Buildings may be reduced if approved through a Use Permit with findings that the parking reduction is consistent with the purposes of the District and meets the findings in Section [23E.28.140](#).

E. Any construction which results in the creation of 10,000 square feet of new or additional non-residential gross floor space shall satisfy the loading space requirements of Chapter [23E.32](#) as follows:

1. Off-street loading spaces at the ratio of one space for the first 10,000 square feet of gross floor area of non-residential space; and
2. Off-street loading spaces at the ratio of one space for each additional 40,000 square feet of gross floor area of non-residential space above the first 10,000 square feet.

F. All Use Permits under this Chapter shall be subject to a condition of approval requiring payment of a Transportation Services Fee (TSF) if and when adopted. (Ord. 7208-NS § 1 (part), 2011)

Car-Free Housing Overlay

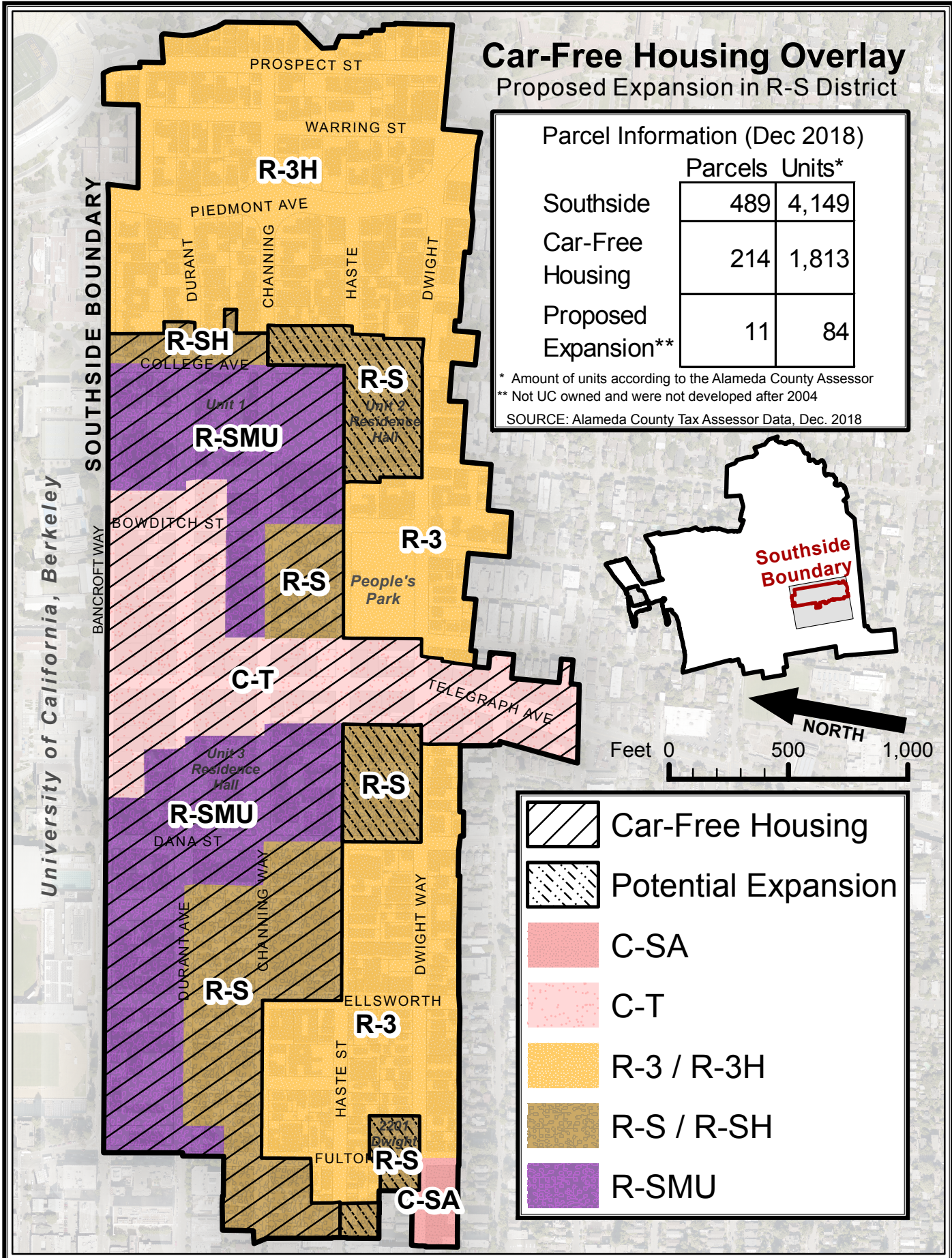
Proposed Expansion in R-S District

Parcel Information (Dec 2018)

	Parcels	Units*
Southside	489	4,149
Car-Free Housing	214	1,813
Proposed Expansion**	11	84

* Amount of units according to the Alameda County Assessor
 ** Not UC owned and were not developed after 2004

SOURCE: Alameda County Tax Assessor Data, Dec. 2018



	Car-Free Housing
	Potential Expansion
	C-SA
	C-T
	R-3 / R-3H
	R-S / R-SH
	R-SMU



Planning and Development Department
Land Use Planning Division

Item 10
Planning Commission
January 16, 2019

STAFF REPORT

DATE: January 16, 2019
TO: Members of the Planning Commission
FROM: Elizabeth Greene, Senior Planner
SUBJECT: Student Housing in the Southside

INTRODUCTION

On September 5, 2018, the Planning Commission considered ways to facilitate the creation of additional student housing in the Southside area. The Commission reviewed City Council (Council) referrals and the More Student Housing Now resolution. It also considered proposed State laws and discussed the environmental analysis that would be necessary for different options.

This report provides information requested at the September meeting. It describes options which could be implemented in the shorter term, and those that have moderate and long-range timelines. It also provides information regarding the preparation of a new CEQA document to provide environmental analysis for future regulatory changes. The report concludes with options for the Commission to consider as ways to promote affordable student housing.

BACKGROUND

At the September 5, 2018 Commission meeting, City staff provided key information for the Commission to consider when formulating options for increasing opportunities for student housing. These included Council referrals, State law, and the status of existing CEQA documents. The discussion focused on zoning changes in the area immediately south of the UC campus, known as the Southside, which is already home to many students and has a specific plan (the Southside Plan (2011)) and zoning ordinances in place to allow high-density housing.

The Commission asked staff to continue to analyze the five actions proposed in the September 5, 2018 report (see Attachment 1), giving priority to the car-free housing and conversion of commercial space options and considering the affordability incentives and requirements of each. Staff was also asked to consider proposals from Commissioner Wrenn (see Attachment 2), explore ways to expedite a new environmental analysis, continue to analyze an in-lieu fee option for density bonus projects, and to prioritize actions which can be implemented quickly and inexpensively.

DISCUSSION

The following section contains descriptions and evaluations of options for the Commission to consider that could increase opportunities for student housing in the immediate, short and long term:

- Immediate (No ordinance changes necessary): SB 1227 and UC development of housing;
- Short-term (Zoning ordinance changes which don't require additional CEQA analysis): Car-Free Housing and conversion of ground-floor retail; and
- Long Term (Zoning ordinance changes which require additional CEQA analysis of impacts): Modifications of development standards, such as height, FAR, and open space.

This section also explains the status of on-going studies related to community benefits and the possible need for a CEQA analysis to implement ordinance changes, and also how Commissioner Wrenn's recommendations fit into these options.

Immediately Available Options

These are options which can be implemented immediately because they do not require changes to the Zoning Ordinance and thus do not trigger any CEQA review.

SB 1227

This bill became law after the Planning Commission meeting in September. It requires cities and counties to grant a 35% density bonus when an applicant for a housing development of five or more units proposes a project that includes at least 20% of the units designated for lower income students. Previous density bonus laws did not have a way to consider affordable student units (counted as beds, not dwellings) as part of a project.

This law has several features which will affect the development of student housing in the Southside:

1. Definition of a unit: For affordable student units, a unit is equivalent to one rental bed and its shared portion of common area space. This will allow Group Living Accommodation (GLA) projects to be eligible for density bonuses.
2. Affordability requirement: The units must remain affordable for 55 years. This is consistent with other density bonus projects.
3. Renter qualifications: To be eligible for an affordable student unit, an individual must be enrolled full time at a qualified college or university and either eligible for or receiving financial aid from the institution. Enrollment and financial aid status will be verified by the institution.
4. Priority for homeless: Priority for the units shall be given to low income students experiencing homelessness, as verified by a homeless service provider or the institution.
5. Rents: Rents will be calculated at 30% of 65% of the area median income for a single-room occupancy unit type.

This law could result in more GLAs, which are often used for student housing. No changes would be required to the Zoning Ordinance.

Encourage UC to develop housing on UC-owned land

The City Council could encourage UC Berkeley to move forward with plans to develop housing on UC-owned land. Projects on UC-owned property may be able to progress faster than standard projects because they are not subject to the same kind of discretionary review and their impacts may already have been considered in University environmental documents.

This has the potential to create a significant number of new units designed specifically for student housing. The Chancellor has committed to adding 7,500 new beds by 2028.

Short-Range Options (9 months – 1 year)

The short-range options require modifications to the Zoning Ordinance. These changes would not significantly change the number of units compared to those considered by the original Southside Plan EIR, and therefore do not exceed the capacity studied in the existing CEQA analysis, so no new CEQA analysis would be required.

Expanding Car-Free Overlay

In 2011, the Southside Plan established a Car-Free Housing overlay which removed the requirement for parking at new dwelling units and Group Living Accommodations (GLA). This overlay was applied to the C-T and R-SMU Districts and approximately two-thirds of the R-S District. See Attachment 3 for a map of the Southside area.

Since the passage of the Southside Plan, 458 privately-developed units have been built in the Car-Free-Housing overlay district, compared to 19 in the areas of the Southside outside the overlay. It is unclear whether there is a direct correlation, or if it simply the case that the area within the overlay also has the greater potential for density due to its development pattern and other zoning standards. It is worth pointing out that within the R-S district, there were 5 developments within the overlay portion, while the only development in the R-S district outside of the overlay was a UC project that was also built without providing parking.

Expanding the Car-Free Housing overlay to the remainder of the R-S District may make that area more attractive to developers and result in additional projects. Most of these properties are already developed with student housing or are owned by UC. The two blocks east of Fulton Street between Durant Avenue and Channing Way, and a portion of the block west of Dana Street between Channing Way and Haste Street, are developed with a wide range of densities on lots of varying size. Removing the parking requirement could increase the feasibility of redeveloping these properties.

Expanding this overlay into the R-3 District within the Southside area (i.e. thereby encompassing all of the Southside area) could incentivize new development there as well, and could result in a significant number of new units; staff believes additional analysis should be conducted before pursuing such a course of action to determine the potential impacts on the neighboring districts which abut the Southside.

While removing parking regulations could encourage housing development in general, it could conflict with the Green Affordable Housing effort to use parking waivers as an incentive to create affordable housing.

Convert ground floor commercial tenant spaces to residential units

Several Council referrals recommended allowing the conversion of ground floor retail space into residential units, particularly in areas that experience a high commercial vacancy rate. The current C-T zoning, which extends along Telegraph Avenue and portions of Durant Avenue and Bancroft Way, prohibits residential use on the ground floor and requires transparency or window displays for offices on the ground floor in order to contribute to the pedestrian experience.

Although interesting storefronts and ground floor activity are generally preferable in pedestrian oriented commercial districts, it could be retained while also allowing ground floor residential units behind retail storefronts. This was recently permitted as part of a Density Bonus project at 2546-2580 Bancroft Avenue, which allowed two residential units, along with other residential space, behind four commercial tenant spaces.

There is not general consensus regarding the minimum dimensions a tenant space needs to have in order to allow for a viable business (see Attachment 4), and the numbers probably vary according to the district and the types of uses expected to locate there. In the Bancroft Avenue example mentioned above, the commercial spaces are 60 – 70 feet deep. San Francisco requires commercial activity (“active uses”) in the first 25 feet behind a street frontage, while Cleveland requires a 40-foot depth.

Additional study and outreach to the business community would be needed to determine the best minimum depth for commercial tenant spaces in the Southside. Depending on the figure and the overall depth of the building or lot, this could allow property owners to consider adding an additional half floor of housing to existing or new buildings. This is not expected to add a significant number of units.

Long-Range Options (18 months – 3 years)

The long-range options will require a new environmental study prior to ordinance changes because the changes are anticipated to result in growth beyond that anticipated in the existing Southside EIR.

As mentioned at the September meeting, the Southside Plan has been modified twice since its 2011 adoption to allow for additional density. The analysis conducted with each change determined that any growth would be within the capacity studied in the EIR, and no new environmental analysis was needed.

Since 2011, 472 units in private (non-University) projects have been approved in the Southside area. Based on these figures, development of non-University residential units in the Southside is likely to exceed the development potential anticipated in the Southside Plan EIR. Future changes to the Zoning Ordinance which could generate significant growth will require a new environmental study. These are consistent with Commissioner Wrenn’s recommendations from September.

Modifications to the Zoning Ordinance could include the following:

1. Increased building height limits or allowed number of stories
2. Increased Floor-Area-Ratio (FAR)
3. Reduced setbacks
4. Reduced open space requirements

The Commission could also consider reclassifying all or portions of the R-3 District to a higher density district, such as R-S or R-SMU.

These types of changes are the most likely to result in significant increases in housing units and GLAs, as they will increase the size of residential and mixed-use buildings permitted in the Southside. In addition to the environmental analysis, these changes will also require study to determine how to best increase the size of existing and new buildings while respecting the existing character of the Southside.

On-going Studies

There are several current and imminent studies that are being conducted for citywide consideration that could affect affordable / student housing development in the Southside, either by increasing incentives for building affordable units, or by changing development standards to allow more units in general.

Community Benefits

There are currently two studies to determine how community benefit requirements could be used in Berkeley. The information that comes out of these studies could be used to develop a program that can be used in the Southside.

1. A development feasibility study, which considers the effect of various development fees on the likelihood of new residential development, is being undertaken at the direction of City Council. The outcome could inform the decision on ideal densities and fee burdens for different housing types.
2. A pilot project for a local affordable housing incentive program is being studied as part of the Adeline Corridor Specific Plan. The program could establish density bonuses for developers, beyond those provided through the State Density Bonus program, based on a higher percentage of affordable units provided in a project.

Since City resources are already being focused on these studies, it is advisable to wait for the results of these studies rather than starting similar studies in the Southside.

Density Bonus studies

The City is also evaluating possible changes to local implementation of the State's Density Bonus regulations.

1. The City has contracted Opticos to study housing density in Berkeley. This would inform density standards that could be included in zoning districts, and would modify how density bonus projects are evaluated.
2. Similar to the incentive program described above, the City could develop a separate, in-lieu program that could allow developers to pay in-lieu fees for affordable units and receive additional density bonuses from the City.

CEQA Analysis of Zoning Ordinance Changes

As mentioned at the September meeting, the Southside Plan has been modified twice since its 2011 adoption to allow for greater development potential. The analysis conducted with each change determined that any growth would be within the capacity studied, and no new environmental analysis was needed.

Since the September meeting, Council has approved \$250,000 for a new environmental analysis to study ordinance changes which could result in additional density in the Southside. Staff is determining the range of development standard modifications and resulting development capacity to include in this new analysis. A Request for Proposals (RFP) to select a consultant is expected to be released in early spring 2019.

Because this analysis would allow the City to consider changes to development standards which could significantly change the development potential in the Southside, it could lead to a significant number of new housing units.

CONCLUSION

Based on the Council referrals, State law and environmental analysis requirements described in this report, Staff believes the following actions are the most efficient path for the Planning Commission to encourage affordable student housing in Berkeley:

- 1) Draft a letter for Council to send to UC Berkeley encouraging development of housing on University-owned property;
- 2) Direct staff to schedule a Public Hearing to consider ordinance language to expand the Car-Free Housing overlay to the entire R-S District; and
- 3) Give staff direction on development standards to consider in a new environmental document.

ATTACHMENTS

1. 9/5/18 Planning Commission staff report
2. Commission Wrenn's 9-5-18 recommendations
3. Map of the Southside area
4. Article: Designing At Ground Level (The Urbanist, June 2014)

Expanding the Car-Free Overlay
Relevant Southside Plan and General Plan Policies and Actions

Southside Plan (2011)

LAND USE AND HOUSING ELEMENT

IV. Objectives, Policies and Actions

A. Land Use Subareas in the Southside

The Car-Free Housing (CFH) area shall be primarily located in the Southside west of College Avenue and north of Haste Street, and along Telegraph Avenue to Parker Street. The intention of this district is to encourage additional housing development and also reduce automobile use in the Southside, in conformance with other Land Use and Transportation policies within the Southside Plan. [Pg. 56]

Objective LU-A: Increase the amount of housing and housing types in the Southside

Policy LU-A1: Provide incentives to encourage development of a variety of different housing types that are affordable to students, University employees, and employees of Southside businesses.

C. Adopt zoning regulations for new R-SMU and R-S zoning districts with relaxed standards pertaining to parking, open space, lot coverage, and setbacks to encourage additional housing development.

F. Review housing production in the Southside as part of General Plan reviews to determine if these zoning regulations have been successful in encouraging the production of more affordable housing. Consider modifying regulations if review suggests that change could result in production of more affordable housing. [Pg. 58]

Objective LU-E: Maintain and locate neighborhood services in the Southside so residents can meet their needs without increasing auto trips to and from the area.

Policy LU-E3: The specific location of land uses and the design of new buildings in each subarea should reinforce the pedestrian, bicycle, and transit orientation of the Southside. [Pg. 62]

Policies for the Residential Subareas

Policy LU-F4: Encourage new residential development in the R-S Residential High Density Subarea.

A. Create new R-S zoning regulations, including development standards to encourage construction of new housing, prohibit new office uses, reduce parking requirements for residential uses in the Car-Free Housing area and increase allowable lot coverage. [Pg. 63]

Parking and Transportation Policy for Multiple Subareas

Policy LU-F18: Encourage and support transit and other alternatives to automobile use in the Southside.

A. Amend the Zoning Ordinance to incorporate reduced parking requirements in the districts which are partially or entirely within the Car-Free Housing area.

1. The Car-Free Housing provisions shall eliminate residential parking requirements in the Car-Free Housing area shown on Map LU-9.

2. Residents of new housing that is constructed without parking in the Car-Free Housing area shall not be eligible for residential Parking Permits. [Pg. 66]

General Plan (2001)

Policy LU-3 Infill Development

Encourage infill development that is architecturally and environmentally sensitive, embodies principles of sustainable planning and construction, and is compatible with neighboring land uses and architectural design and scale. (Also see Urban Design and Preservation Policies UD-16 through UD-24.)

Policy LU-23 Transit-Oriented Development

Encourage and maintain zoning that allows greater commercial and residential density and reduced residential parking requirements in areas with above-average transit service such as Downtown Berkeley. (Also see Transportation Policy T-16.)

B. Encourage higher density housing and commercial infill development that is consistent with General Plan and zoning standards in areas adjacent to existing public transportation services.

E. In locations served by transit, consider reduction or elimination of parking requirements for residential development.

Policy LU-25 Affordable Housing Development

Encourage development of affordable housing in the Downtown Plan area, the Southside Plan area, and other transit-oriented locations. (Also see Housing Policy H-16.)

A. Consider revisions to the Zoning Ordinance to require and/or encourage inclusion of a greater percentage of affordable housing units

and a greater percentage of units restricted to households with low or very low income in multi-family housing projects, than currently required under the Inclusionary Housing Ordinance.

Policy LU-37 University Housing

Encourage the University to maximize the supply of housing for students, faculty, and staff to minimize the impacts of the University on the citywide supply of housing. (Also see Housing Policies H-35 through H-37.)

A. Support sensitively designed additional housing for students, faculty, and staff within walking distance of campus. New developments should conform with the City height limits and zoning, and be compatible with the surrounding area's dominant architectural style, and should avoid removal or compromise of on-site or adjacent historic structures.

TRANSPORTATION ELEMENT

Policy T-31 Residential Parking

Regulate use of on-street parking in residential areas to minimize parking impacts on neighborhoods. (Also see Land Use Policy LU-10.)

D. Do not issue parking permits to residents of new car-free housing developments or to residents of projects which have been granted variances to reduce required off-street parking.

E. Discourage use of on-street parking for long-term storage of cars.

G. Ensure provision of adequate off-street parking for new projects in low-density residential areas.

Policy T-34 Downtown and Southside Parking Management

Manage the supply of Downtown and Southside public parking to discourage long-term all-day parking and increase the availability and visibility of short-term parking for local businesses. (Also see Economic Development and Employment Policy ED-6.)

K. Increase the availability of short-term parking by encouraging better utilization of existing parking as recommended by the Southside/Downtown Transportation Demand Management Study, including making parking that is currently not available to the public, available for short-term parkers.



Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: April 3, 2019
TO: Members of the Planning Commission
FROM: Alene Pearson, Principal Planner
SUBJECT: Public Hearing on Amendments to Inclusionary Housing Regulations

RECOMMENDATION

Hold a Public Hearing on a Council referral related to Zoning Ordinance amendments to Berkeley Municipal Code (BMC) Chapter 23C.12 (Inclusionary Housing Regulations) which would apply to residential ownership projects built on contiguous lots under common ownership (see *Attachment 1: Public Hearing Notice*). Planning Commission is asked to recommend draft amendments to City Council.

BACKGROUND

On February 19, 2019, City Council referred to the Planning Commission a short-term referral to consider Zoning Ordinance amendments that modify Applicability of Regulations (BMC Section 23C.12.020) of the Inclusionary Housing Requirements. This referral requests four actions that modify the Affordable Housing Mitigation Fee (AHMF) structure and its application to residential projects that will be sold, not rented. Only one of the referral actions is being presented in this report and it aims to broaden the Inclusionary Housing Regulations to include residential ownership projects built on contiguous lots under common ownership or control (see *Attachment 2: February 19, 2019 City Council Referral and Meeting Minutes*).

Due to the quick turn-around time for this referral (City Council requested a response by April 30, 2019), a subcommittee of the Planning Commission was formed and held a meeting on March 14, 2019 to discuss the Zoning Ordinance language proposed in the referral and to consider feedback from the public. Based on that discussion and feedback, the subcommittee drafted language for the Planning Commission to consider (see *Attachment 3: Draft Zoning Ordinance Amendments*).

On March 21, 2019, City Council's Policy Committee on Land Use, Housing & Economic Development discussed a related referral proposal that will come before City Council shortly (see *Attachment 4: March 21, 2019 City Council Policy Committee Proposed Referral*). The new referral is focused on reforming the entire AHMF structure, including by considering replacing the per-unit fee with a per-square-foot fee. The new referral is focused on rental-housing projects. The Committee discussed how these two referrals aim to accomplish similar

goals, and requested that the Planning Commission be made aware of the AHMF referral that is under consideration at the City Council Policy Committee. Staff is also working with the Planning Commission and Council on a number of other referrals that touch on aspects of the AHMF program, including a development feasibility study that addresses the cost burden on development of the totality of fees in Berkeley, community benefits zoning, and permit expediting, as well as the residential demolition ordinance.¹

DISCUSSION

This report introduces amendments to the Applicability of Regulations Section (BMC 23C.12.020) of the Inclusionary Housing Regulations chapter of the Zoning Ordinance². As drafted, the proposed Zoning Ordinance amendments would apply to:

...lots under *common ownership and/or control, design, marketing, or financing* whose collective size, including the area of any surface easements, and zoning designation is such to allow construction of five or more Dwelling Units, regardless of whether those units are all built simultaneously.

Staff research and analysis of this item has been limited due to timing constraints; however ordinance implementation will require a substantial amount of research on each project to determine for the subject lot, and adjacent lots, the potential existence of common ownership and/or control. Staff research / applicant submittal requirements could include:

- Title history
- Property easements
- LLC and other corporate parties with financial interests and controlling roles
- Property marketing materials
- Property designers
- Property financing mechanisms.

Implementation may also require applying the ordinance to sequential development projects that may not have first been known to be related, requiring additional research to track the above information over time as properties are developed and/or change ownership. For example, because this ordinance applies to ownership projects, it is likely that condominium associations and individual buyers could assume control and ownership of properties that are developed in succession by a single builder – someone who acquires property over time, and would otherwise be subject to the fee, but wasn't in control or is no longer in control of the adjacent properties. An implementation process and associated staff resources would need to be put in place, and funding made available, if this ordinance is to move forward.

¹ For a summary of existing City ordinances, regulations and programs, see <https://www.cityofberkeley.info/ContentDisplay.aspx?id=74682> and <https://www.cityofberkeley.info/ContentDisplay.aspx?id=106946>.

² BMC Section 23C.12 applies only to ownership projects. Despite recent legislation (the "Palmer fix"), this section has not been amended to conform to the new provisions applicable to rental housing inclusionary / fee requirements. Rental projects are instead addressed in BMC Section 22.20.065, which was adopted in 2011 and amended since then. Live/Work project requirements are set forth in BMC 23E.20. Condominium conversion projects are addressed in BMC Section 21.28.

NEXT STEPS

Planning Commission is asked to hold a Public Hearing, discuss draft Zoning Ordinance amendments, and make a recommendation to City Council.

ATTACHMENTS:

1. Public Hearing Notice
2. February 19, 2019 City Council Referral and Meeting Minutes
3. Draft Zoning Ordinance Amendments
4. March 21, 2019 City Council Policy Committee Proposed Referral



PLANNING COMMISSION

NOTICE OF PUBLIC HEARING

APRIL 3, 2019

Amendments that Modify the Inclusionary Housing Requirements for Projects on Contiguous Lots under Common Ownership

The Planning Commission, of the City of Berkeley, will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 23A.20.30, on **Wednesday, April 3, 2019**, at the South Berkeley Senior Center, 2939 Ellis Street (at Ashby Avenue) in Berkeley (location is wheelchair accessible). The meeting starts at 7:00 p.m. and ends at 10 p.m.

PROJECT DESCRIPTION: The proposed amendments modify the Applicability of Regulations Section of the Inclusionary Housing Requirements (BMC 23C.12.020) to cover residential projects built on contiguous lots under common ownership and/or control. Amendments respond to City Council's February 19, 2019 referral to broaden inclusionary housing requirements. Changes to be considered are provided below:

23C.12.020 Applicability of Regulations

A. The following types of projects must comply with the inclusionary housing requirements of this chapter:

1. Residential ~~h~~Housing ~~p~~PProjects for the construction of five or more Dwelling Units;
2. Residential ~~h~~Housing ~~p~~PProjects for the construction of one to four new Dwelling Units, when such Units are added to an existing one to four unit property, which has been developed after August 14, 1986, and the resulting number of units totals five or more. All Units in such a property are subject to the requirements of this chapter;
3. Residential ~~h~~Housing ~~p~~PProjects proposed on ~~lots~~ any part of a single lot or on a grouping of contiguous lots under common ownership and/or control, design, marketing, or financing, whose collective size, including the area of any surface easements, and zoning designation is such to allow construction of five or more Dwelling Units, regardless of whether those units are all built simultaneously. For the purposes of this Section, "common ownership and/or control" shall be interpreted broadly.

B. For purposes of this Section, "Residential Housing Project" means a project involving the construction of at least one Dwelling Unit. This chapter does not apply to Dormitories, Fraternity and Sorority Houses, Boarding Houses, Residential Hotels or Live/Work Units, which are not considered Dwelling Units provided however that Live/Work Units are subject to low income inclusionary provisions set forth in Section [23E.20.080](#).

C. This chapter sets forth specific inclusionary housing requirements for the Avenues Plan Area, which prevails over any inconsistent requirements set forth elsewhere in this chapter. (Ord. 6478-NS § 4 (part), 1999)

LOCATION:. Citywide: The zoning map is available online:

http://www.ci.berkeley.ca.us/uploadedFiles/IT/Level_3_General/Zoning%20Map%2036x36%2020050120.pdf

ENVIRONMENTAL REVIEW STATUS: The proposed Zoning Ordinance amendment is not considered a project under Public Resources Code Section 21065 and CEQA Guidelines Section 15378, because the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment. In addition, the proposed amendment is exempt from CEQA as it can be seen with certainty that there is no possibility for causing a significant effect on the environment (CEQA Guidelines Section 15061(b)(3)).

PUBLIC COMMENT

Comments may be made verbally at the public hearing and in writing before the hearing. Written comments concerning this project should be directed to:

Planning Commission
Alene Pearson, Secretary
Land Use Planning Division
1947 Center Street
Berkeley, CA 94704

Fax: (510) 981-7489
E-mail: apearson@cityofberkeley.info

To assure distribution to Commission members prior to the meeting, **correspondence must be received by 12:00 noon, eight (8) days before the meeting date.** Fifteen (15) copies must be submitted of any correspondence that requires color printing or pages larger than 8.5x11 inches.

COMMUNICATION ACCESS

To request a meeting agenda in large print, Braille, or on audiocassette, or to request a sign language interpreter for the meeting, call (510) 981-7410 (voice), or 981-6903 (TDD). Notice of at least five (5) business days will ensure availability.

FURTHER INFORMATION

Questions should be directed to **Alene Pearson**, at (510) 981-7489, or apearson@cityofberkeley.info. Past and future agendas are also available on the Internet at: https://www.cityofberkeley.info/Clerk/Commissions/Commissions_Planning_Commission_Homepage.aspx

**ANNOTATED AGENDA
BERKELEY CITY COUNCIL MEETING
Tuesday, February 19, 2019
6:00 PM**

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – CHERYL DAVILA
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – RIGEL ROBINSON
DISTRICT 8 – LORI DROSTE

Preliminary Matters

Roll Call: 6:13 p.m.

Present: Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, Arreguin

Absent: None

Ceremonial Matters:

1. Adjourned in memory of Jim Samuels, Berkeley Commissioner.

City Manager Comments: None

City Auditor Comments:

The City Auditor discussed the importance taking operational cost information and tradeoffs into consideration in the decision making process for the delivery of services. The City Auditor also noted her that her upcoming Audit Plan will include a focus on payments leaving the City.

Public Comment on Non-Agenda Matters: 7 speakers.

Consent Calendar

Public Comment on Consent Calendar and Information Items Only: 15 speakers.

Action: M/S/C (Wengraf/Hahn) to adopt the Consent Calendar in one motion except as indicated.

Vote: All Ayes.

Council Action Items

21. Refer to the Planning Commission an amendment to BMC Chapter 23C.12.020 (Inclusionary Housing Requirements - Applicability of Regulations) and the Affordable Housing Mitigation Fee Resolution to Close a Loophole for Avoiding the Mitigation Fee through Property Line Manipulation

From: Councilmembers Harrison, Robinson, and Hahn

Recommendation: Refer to the Planning Commission an amendment to BMC Section 23C.12.020 (Inclusionary Housing Requirements - Applicability of Regulations) to close a loophole allowing prospective project applicants to avoid inclusionary affordable housing requirements for owner occupied projects by modifying property lines so that no lot is large enough to construct five or more units. Adopt an updated resolution pursuant to BMC 22.20.065 (Affordable Housing Mitigation Fee) addressing the same issue for rental projects.

Financial Implications: See report

Contact: Kate Harrison, Councilmember, District 4, 981-7140

Action: M/S/C (Harrison/Davila) to accept revised material from Councilmember Harrison on Item 21.

Vote: Ayes – Kesarwani, Davila, Bartlett, Harrison, Hahn, Robinson, Arreguin; Noes – Wengraf; Abstain – Droste.

Action: 3 speakers. M/S/Failed (Droste/Wengraf) to adopt the revised material submitted by Councilmember Harrison revised to read as follows:

1. Refer to the Planning Commission an amendment to BMC Section 23C.12.020 (Inclusionary Housing Requirements – Applicability of Regulations) and BMC Section 22.20.065 (Affordable Housing Mitigation Fee) to close a loophole allowing prospective project applicants to avoid inclusionary affordable housing requirements for projects by modifying property lines so that no lot is large enough to construct five or more units; the Commission should return to Council with a report.
2. Refer to the Planning Commission to consider modifying the structure of in-lieu fees for owner-occupied developments to a flat per-unit fee, as with rental developments, or a per square foot fee; the Commission should return to Council with a report.
3. Refer to the Housing Advisory Commission to assess the appropriateness of the fee level as suggested in the proposed amendments to BMC 23C.12.
4. The Planning Commission is to consider the following language from the item submitted at the meeting: *It is possible that the new fee structure will be adopted prior to the Housing Advisory Commission approving the level of the fee. In this instance, those projects that opt to pay the in-lieu fee and are permitted after the new fee structure is adopted but before the new fee level is adopted shall be given the choice of paying the current fee level, or the one that is adopted.*

Vote: Ayes – Kesarwani, Wengraf, Droste; Noes – Bartlett, Harrison, Hahn, Robinson, Arreguin; Abstain – None; Absent – Davila.

Councilmember Davila absent 8:38 p.m. – 9:14 p.m.

Council Action Items

Action: M/S/Carried (Harrison/Hahn) to adopt the revised material submitted by Councilmember Harrison revised to read as follows:

1. Refer to the Planning Commission an amendment to BMC Section 23C.12.020 (Inclusionary Housing Requirements – Applicability of Regulations) and BMC Section 22.20.065 (Affordable Housing Mitigation Fee) to close a loophole allowing prospective project applicants to avoid inclusionary affordable housing requirements for projects by modifying property lines so that no lot is large enough to construct five or more units; the Commission should return to Council with a report by April 30, 2019.

2. Refer to the Planning Commission to consider modifying the structure of in-lieu fees for owner-occupied developments to a flat per-unit fee, as with rental developments, or a per square foot fee; the Commission should return to Council with a report.

3. Refer to the Housing Advisory Commission to assess the appropriateness of the fee level as suggested in the proposed amendments to BMC 23C.12.

4. The Planning Commission is to consider the following language from the item submitted at the meeting: *It is possible that the new fee structure will be adopted prior to the Housing Advisory Commission approving the level of the fee. In this instance, those projects that opt to pay the in-lieu fee and are permitted after the new fee structure is adopted but before the new fee level is adopted shall be given the choice of paying the current fee level, or the one that is adopted.*

Vote: Ayes – Bartlett, Harrison, Hahn, Robinson, Arreguin; Noes – Wengraf; Abstain – Kesarwani, Droste; Absent – Davila.

Information Reports

22. Referral Response: Supporting Worker Cooperatives

From: City Manager

Contact: Jordan Klein, Economic Development, 981-7530

Action: Item 22 held over to February 26, 2019.

23. Referral Response: City Maintained Below Market Rate Units (BMR) Online Resource

From: City Manager

Contact: Kelly Wallace, Housing and Community Services, 981-5400

Action: Received and filed.

24. Mental Health Commission 2018/2019 Work Plan

From: Mental Health Commission

Contact: Karen Klatt, Commission Secretary, 981-5400

Action: Received and filed.

Public Comment – Items Not Listed on the Agenda - 0 speakers.

Adjournment



Kate Harrison
Councilmember District 4

ACTION CALENDAR
February 19th, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmember Kate Harrison, Rigel Robinson, and Sophie Hahn

Subject: Refer to the Planning Commission an amendment to BMC Chapter 23C.12.020 (Inclusionary Housing Requirements - Applicability of Regulations) and the Affordable Housing Mitigation Fee Resolution to Close a Loophole for Avoiding the Mitigation Fee through Property Line Manipulation

RECOMMENDATION

Refer to the Planning Commission an amendment to BMC Section 23C.12.020 (Inclusionary Housing Requirements - Applicability of Regulations) to close a loophole allowing prospective project applicants to avoid inclusionary affordable housing requirements for owner occupied projects by modifying property lines so that no lot is large enough to construct five or more units. Adopt an updated resolution pursuant to BMC 22.20.065 (Affordable Housing Mitigation Fee) addressing the same issue for rental projects.

BACKGROUND

A key strategy in Berkeley's effort to develop affordable housing requires that new housing construction include a portion of below market rate units. This requirement can be found in BMC Chapter 23C.12 (Inclusionary Housing Requirements) and BMC Section 22.20.065 (the Affordable Housing Mitigation Fee, or AHMF, Ordinance). The Inclusionary Housing Requirements section covers owner-occupied housing, while the AHMF Ordinance covers rented housing. The AHMF Ordinance for rental housing also provides for the Council to enact an enabling resolution to set the level of the fee and "additional limitations" on the application of the fee.

The Inclusionary Housing Requirements section mandates inclusionary affordable housing in owner-occupied projects if they either 1) result in the construction of five or more new dwelling units, 2) result in the construction of fewer than five new units if they are added to an existing one- to four-unit property developed after August 14, 1986, and increase the total number of units to more than five, or 3) are built on lots whose size and zoning designation would allow construction of five or more dwelling units. Developers have exploited the ability to modify lot lines on contiguous properties they own so that no lot is big enough to include five or more units, thus avoiding any affordability requirement under condition 3.

Page 2 of 6

Update BMC Chapter 23C.12.020 and the Affordable Housing Mitigation Fee to Close a Loophole Avoiding the Fee through Property Line Manipulation

ACTION CALENDAR
February 19th, 2019

The AHMF Enabling Resolution, meanwhile, covers only those projects that result in the construction of 5 or more new units of rental housing, regardless of whether the lot could fit more units or if the project is adding units to an existing building.

This item:

- Amends the Inclusionary Housing Requirements section to cover owner-occupied projects built on any part of a contiguous property under common ownership and control whose size and zoning designation is such to allow construction of five or more Dwelling Units, regardless of how the property is divided.
- Amends the AHMF Enabling Resolution for rental housing to mirror the provisions of the Inclusionary Housing Requirements section regarding projects that add units to existing projects or are on property that could accommodate more than five units, including the amended language discussed above.

FISCAL IMPACTS OF RECOMMENDATION

May increase revenues to the Housing Trust Fund.

ENVIRONMENTAL SUSTAINABILITY

Increasing the supply of affordable housing in Berkeley may limit commute times and thus greenhouse gas emissions, in line with Berkeley's environmental goals.

CONTACT PERSON

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

Attachments:

- 1: Ordinance
- 2: Resolution
- 3: Track Changes from Resolution No. 68,074-N.S

ORDINANCE NO. -N.S.

CLOSING MODIFIED PROPERTY LINE LOOPHOLE IN INCLUSIONARY
HOUSING REQUIREMENTS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 23C.12.020 is amended to read as follows:

23C.12.020 Applicability of Regulations

A. The following types of projects must comply with the inclusionary housing requirements of this chapter:

1. Residential housing projects for the construction of five or more Dwelling Units;
2. Residential housing projects for the construction of one to four new Dwelling Units, when such Units are added to an existing one to four unit property, which has been developed after August 14, 1986, and the resulting number of units totals five or more. All Units in such a property are subject to the requirements of this chapter;
3. Residential housing projects proposed on any part of a single property or two or more contiguous properties under common ownership and control whose size and zoning designation is such to allow construction of five or more Dwelling Units.

B. This chapter does not apply to Dormitories, Fraternity and Sorority Houses, Boarding Houses, Residential Hotels or Live/Work Units, which are not considered Dwelling Units. Live/Work Units are subject to low income inclusionary provisions set forth in Section 23E.20.080.

C. This chapter sets forth specific inclusionary housing requirements for the Avenues Plan Area, which prevails over any inconsistent requirements set forth elsewhere in this chapter.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

RESOLUTION NO. ##,###-N.S.

CHANGING THE AFFORDABLE HOUSING MITIGATION FEE PURSUANT TO BERKELEY MUNICIPAL CODE SECTION 22.20.065; AND RESCINDING RESOLUTION NO. 68,074-N.S.

WHEREAS, on June 28, 2011, the City adopted the Affordable Housing Mitigation Fee Ordinance No. 7,192-N.S., adopting Berkeley Municipal Code Section 22.20.065, which would require developers of market rate housing to pay an mitigation fee to address the resulting need for below market rate housing, and offered the alternative to provide units in lieu of the fee; and

WHEREAS, Berkeley Municipal Code Section 22.20.065 did not establish the fee, but authorized the City Council to adopt such fee by resolution; and

WHEREAS, Berkeley Municipal Code Section 22.20.065 authorizes the City Council to specify by resolution additional limitations not inconsistent-with section 22.20.065; and

WHEREAS, on June 27, 2017 the City adopted Resolution NO. 68,074, establishing the fee at \$37,000 per new unit of rental housing; and

WHEREAS, Berkeley Municipal Code Section 22.20.065 and the Affordable Housing Mitigation fee both aim to address the need for below market rate housing and therefore should have parity in applicability;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley as follows:

1. The Affordable Housing Mitigation Fee authorized and provided for by Section 22.20.065 shall be \$37,000 per new unit of rental housing, payable at the issuance of Certificate of Occupancy, but shall be subject to a \$3,000 discount if paid in its entirety no later than issuance of the building permit for the project on which the fee is due. The Affordable Housing Mitigation Fee shall only apply to market rate units.
2. The Affordable Housing Mitigation Fee will be automatically adjusted by the annual percentage shown in the California Construction Cost Index published by the California Department of General Services, every other year beginning in 2018, on July 1. The automatic adjustment tied to the California Construction Cost Index shall not cause the fee to exceed the maximum fee established by the most recent Nexus study, and shall apply to all projects that have not received final approval by the City of Berkeley prior to the date of the automatic adjustment.
3. For purposes of this resolution, "new rental housing" includes group living accommodations, except for those categories that are currently exempt pursuant to BMC Section 23C.12.020.B, at an equivalency rate of one new rental unit per two bedrooms in a group living accommodation, such that one-half the fee adopted by this resolution shall be imposed on each bedroom.
4. For purposes of this resolution, "new rental housing" shall not include developments of four units or fewer units unless they meet any of the following criteria:
 - a) Residential housing projects for the construction of one to four new units, when such units are added to an existing one to four unit property, which has been developed after August 14, 1986, and the resulting number of units totals five or more. All units in such a property are subject to the requirements of this resolution;

- b) Residential housing projects proposed on any part of a contiguous property under common ownership and control whose size and zoning designation is such to allow construction of five or more units, regardless of how said property may be divided.
5. For the purposes of this resolution, "new rental housing" shall not include cooperative student housing developed by the Berkeley Student Cooperative.
6. The definition of "new rental housing" excludes units which are offered at no cost to support nonprofit public benefit activities.
7. No fee shall be assessed under the following circumstances.
 - a) No fee shall be assessed when new rental housing is built to replace rental units that have been destroyed through no fault of the owner of those units, as long as the applicant files a complete permit application within two years after destruction of the pre-existing units. Staff shall determine on a case by case basis both whether rental units have been "destroyed" and whether such destruction was through the fault of the owner. The issuance of a permit to demolish all or part of a building containing rental units shall not be determinative. However fees shall be assessed on rental units in a replacement project in excess of the number destroyed.
 - b) No fee shall be assessed on rental units that have been expanded, renovated, or rehabilitated unless the units were vacant for more than two years before the applicant filed a complete permit application for such expansion, renovation or rehabilitation.
8. Notwithstanding anything to the contrary, staff may waive all or part of the fee adopted by this resolution pursuant to Sections 22.20.070 and 22.20.080.
9. Except as set forth in section 2, this and future increases in the Affordable Housing Mitigation Fee shall apply only to projects whose applications for the required discretionary entitlements have not received final approval as of the effective date of the fee.

BE IT FURTHER RESOLVED that Resolution No. 68,074-N.S. is hereby rescinded.

Track Changes from Resolution No. 68,074-N.S

1. The Affordable Housing Mitigation Fee authorized and provided for by Section 22.20.065 shall be \$37,000 per new unit of rental housing, payable at the issuance of Certificate of Occupancy, but shall be subject to a \$3,000 discount if paid in its entirety no later than issuance of the building permit for the project on which the fee is due. The Affordable Housing Mitigation Fee shall only apply to market rate units.
2. The Affordable Housing Mitigation Fee will be automatically adjusted by the annual percentage shown in the California Construction Cost Index published by the California Department of General Services, every other year beginning in 2018, on July 1. The automatic adjustment tied to the California Construction Cost Index shall not cause the fee to exceed the maximum fee established by the most recent Nexus study, and shall apply to all projects that have not received final approval by the City of Berkeley prior to the date of the automatic adjustment.
3. For purposes of this resolution, "new rental housing" includes group living accommodations, except for those categories that are currently exempt pursuant to BMC Section 23C.12.020.B, at an equivalency rate of one new rental unit per two bedrooms in a group living accommodation, such that one-half the fee adopted by this resolution shall be imposed on each bedroom.
4. For purposes of this resolution, "new rental housing" shall not include developments of four units or fewer units unless they meet any of the following criteria:
 - a) Residential housing projects for the construction of one to four new units, when such units are added to an existing one to four unit property or any part of two or more contiguous properties, which has been developed after August 14, 1986, and the resulting number of units totals five or more. All units on such a property are subject to the requirements of this resolution;
 - b) Residential housing projects proposed on any part of a property or two or more contiguous properties under common ownership and control whose size and zoning designation would cumulatively allow construction of five or more units.
- 4.5. For the purposes of this resolution, "new rental housing" shall not include cooperative student housing developed by the Berkeley Student Cooperative.
- 5.6. The definition of "new rental housing" excludes units which are offered at no cost to support nonprofit public benefit activities.
- 6.7. No fee shall be assessed under the following circumstances.
 - a) No fee shall be assessed when new rental housing is built to replace rental units that have been destroyed through no fault of the owner of those units, as long as the applicant files a complete permit application within two years after destruction of the pre-existing units. Staff shall determine on a case by case basis both whether rental units have been "destroyed" and whether such destruction was through the fault of the owner. The issuance of a permit to demolish all or part of a building containing rental units shall not be determinative. However fees shall be assessed on rental units in a replacement project in excess of the number destroyed.
 - b) No fee shall be assessed on rental units that have been expanded, renovated, or rehabilitated unless the units were vacant for more than two years before the applicant filed a complete permit application for such expansion, renovation or rehabilitation.
- 7.8. Notwithstanding anything to the contrary, staff may waive all or part of the fee adopted by this resolution pursuant to Sections 22.20.070 and 22.20.080.
- 8.9. Except as set forth in section 2, this and future increases in the Affordable Housing Mitigation Fee shall apply only to projects whose applications for the required discretionary entitlements have not received final approval as of the effective date of the fee.

Chapter 23C.12 INCLUSIONARY HOUSING REQUIREMENTS

Sections:

- [23C.12.010](#) Purpose
- [23C.12.020](#) Applicability of Regulations
- [23C.12.030](#) General Inclusionary Requirement: 20% of Units
- [23C.12.035](#) Payment of In-Lieu Fees as an Alternative to Providing Inclusionary Units within a Project
- [23C.12.040](#) Requirements Applicable to all Inclusionary Units
- [23C.12.050](#) State of California Density Bonus Requirements
- [23C.12.060](#) Inclusionary Unit Requirements for Rental Housing Projects
- [23C.12.070](#) Inclusionary Unit Requirements for Ownership Projects*
- [23C.12.080](#) Special Requirements for Avenues Plan Area
- [23C.12.090](#) Administrative Regulations*
- [23C.12.100](#) Fees

23C.12.010 Purpose

The purpose of this chapter is to promote achievement of the City Housing Element goals for developing affordable housing for Households with incomes below the median, as defined in this chapter, or, in the case of Limited Equity Cooperatives, households with incomes below 120% of the median income by requiring the inclusion of affordable Dwelling Units in specified proposed developments, hereinafter referred to as projects. (Ord. 6478-NS § 4 (part), 1999)

23C.12.020 Applicability of Regulations

- A. The following types of projects must comply with the inclusionary housing requirements of this chapter:
1. Residential ~~h~~Housing ~~p~~P~~r~~ojects for the construction of five or more Dwelling Units;
 2. Residential ~~h~~Housing ~~p~~P~~r~~ojects for the construction of one to four new Dwelling Units, when such Units are added to an existing one to four unit property, which has been developed after August 14, 1986, and the resulting number of units totals five or more. All Units in such a property are subject to the requirements of this chapter;
 3. Residential ~~h~~Housing ~~p~~P~~r~~ojects proposed on ~~lots~~ any part of a single lot or on a grouping of contiguous lots under common ownership and/or control, design, marketing, or financing, whose collective size, including the area of any surface easements, and zoning designation is such to allow

construction of five or more Dwelling Units, regardless of whether those units are all built simultaneously.
For the purposes of this Section, "common ownership and/or control" shall be interpreted broadly.

B. For purposes of this Section, "Residential Housing Project" means a project involving the construction of at least one Dwelling Unit. This chapter does not apply to Dormitories, Fraternity and Sorority Houses, Boarding Houses, Residential Hotels or Live/Work Units, which are not considered Dwelling Units provided however that Live/Work Units are subject to low income inclusionary provisions set forth in Section [23E.20.080](#)–; provided further that rental housing projects are subject to provisions set forth in BMC Chapter 22.20.

C. This chapter sets forth specific inclusionary housing requirements for the Avenues Plan Area, which prevails over any inconsistent requirements set forth elsewhere in this chapter. (Ord. 6478-NS § 4 (part), 1999)

23C.12.030 General Inclusionary Requirement: 20% of Units

A. Any project subject to this chapter is required to include at least 20% of the total number of Dwelling Units within the project as Inclusionary Units, except that Limited Equity Cooperatives are required to include at least 51% of their units as Inclusionary Units.

B. In applying the percentages above, any decimal fraction above a whole number of Dwelling Units shall be paid as an in-lieu fee.

C. For the purpose of determining the median income levels for Households under this chapter, the City shall use the Oakland Primary Metropolitan Statistical Area (PMSA) statistical figures that are available to the City from the most recent U.S. Census. (Ord. 6478-NS § 4 (part), 1999)

23C.12.035 Payment of In-Lieu Fees as an Alternative to Providing Inclusionary Units within a Project

A. Applicability. As an alternative to providing inclusionary units required in an ownership project, the applicant may elect to enter in an agreement with the City to pay fees as set forth in this section, in-lieu of providing units that are not required to be provided at below market prices pursuant to Government Code Section [65915](#).

B. Purpose. The fee shall be deposited in the City's Housing Trust Fund.

C. Amount of Fee.

1. The in-lieu fee shall be sixty two and a half percent (62.5%) of the difference between the permitted sale price for inclusionary units and the amounts for which those units are actually sold by the applicant.
2. This fee shall be calculated and collected based on the sales prices of all of the units in a project to which the inclusionary requirement applies, such that the fee as charged shall be a percentage of the difference between the actual sales price for each unit, and the sales price that would have been permitted had that unit been an inclusionary unit. The percentage shall be determined using the following formula: the number of units for which an in-lieu fee is substituted for an inclusionary unit divided by the total number of units to which the inclusionary ordinance applies, multiplied by 62.5%.
3. This fee shall only be applicable to units in a project that are counted in determining the required number of inclusionary units in a project and shall not be applicable to any units provided as a density bonus.
4. In the event that the City Manager makes a determination that an actual sales price does not reflect the fair market value of a unit, the City Manager shall propose an alternate price based on the fair market value of the unit. In the event that the developer and the City Manager cannot agree on a fair market value the City Manager shall select an appraiser to carry out an appraisal of the unit and the appraised value shall be used as the market value.

D. Calculation of Inclusionary Sales Price.

1. The allowable inclusionary sales price for the purpose of calculating the in-lieu fee pursuant to this section shall be three (3) times eighty percent (80%) of the Area Median Income (AMI) last reported as of the closing date of the sale of the unit, with the exception that if the developer has already been authorized to charge an inclusionary sale price based on development costs pursuant to Ordinance 6,790-N.S. (adopted January 27, 2004, sunsetted February 19, 2006) the allowable inclusionary sale price for the purposes of this section shall be the price permitted under that ordinance.
2. Area median income (AMI) shall be calculated in accordance with the affordability regulations established by the City Manager pursuant to Section [23C.12.090](#).

E. Time of Payment of Fee. The developer shall be required to pay the applicable in-lieu fee no later than the closing date of the sale of a unit as a condition of said closing.

F. Use Permit Obtained Prior to Adoption of This Section. This section shall apply to projects for which all required Permits have already been issued, as long as no units on those projects to which this section would apply have been sold. (Ord. 6946-NS § 1, 2006)

23C.12.040 Requirements Applicable to all Inclusionary Units

A. All Inclusionary Units other than those in Limited Equity Cooperatives shall be sold to the City or its designee or to Low Income, Lower Income or Very Low Income Households or shall be rented to Households of similar incomes. Units in Limited Equity Cooperatives shall be sold or rented to Households whose gross incomes do not exceed 120% of the Oakland PMSA median.

B. The applicant shall execute a written agreement with the City indicating the number, type, location, approximate size and construction schedule of all Dwelling Units and other information as required for determining compliance with this chapter.

C. All Inclusionary Units in a project and phases of a project shall be constructed concurrently with, or prior to, the construction of non-inclusionary units.

D. All Inclusionary Units shall be reasonably dispersed throughout the project, be of the same size and contain, on average, the same number of bedrooms as the non-Inclusionary Units in the project; and be comparable with the design or use of non-inclusionary units in terms of appearance, materials and finish quality.

E. In projects where the calculation of the inclusionary requirement results in a fraction of a unit, such a fraction shall be paid in the form of an in-lieu fee to the City.

1. The in-lieu fee shall be the fractional value of the difference between development cost (excluding marketing costs and profit) and actual sales price for the average comparable unit in projects, where Government Code Section [65915](#) does not apply, and the difference between affordable cost for an appropriately-sized household and the fractional value of the average comparable actual sales price for the fraction of the unit in projects where Government Code Section [65915](#) does apply to require a Density Bonus or equivalent incentive.;

2. The in-lieu fee shall be used by the City or its designee (such as a non-profit housing development corporation), to provide, construct or promote the creation or retention of low income housing in the City. The use of in-lieu fees for specific housing programs shall be brought before the Housing Advisory and Appeals Board for review and approval.

F. Where the applicant demonstrates, and Staff concurs, that the direct construction and financing costs of the Inclusionary Units, excluding marketing cost and profit (and also excluding land costs if a Density Bonus or equivalent incentive is provided), exceed the selling prices allowed for Inclusionary Units by this chapter, the Board may approve one or more of the following measures to reduce costs or increase profitability:

1. Reduction of the floor area or in the interior amenities of the Inclusionary Units, provided that such units conform to applicable building and housing codes;
2. An increase in the number of bedrooms in the Inclusionary Units;
3. In a home ownership project, construction of rental units in a number required to meet the inclusionary provisions of this chapter applicable to rental housing projects;
4. Waiving of the in-lieu participation fees for fractions of units. (Ord. 6676-NS § 2, 2002; Ord. 6478-NS § 4 (part), 1999)

23C.12.050 State of California Density Bonus Requirements

A. The City shall grant a density increase of at least 25% over the otherwise allowable maximum residential density permitted by this Ordinance and the General Plan in effect when the application for the development was determined to be complete, and at least one of the concessions or incentives set forth in Government Code Section [65915\(h\)](#); unless the decision maker makes a written finding that the additional concession or incentive is not required in order to provide for affordable housing costs as defined in Health and Safety Code Section [50052.5](#), or for rents for the targeted units to be set as specified in Government Code Section [65915\(c\)](#); or the City shall provide other incentives of equivalent financial value based on the land cost per Dwelling Unit; if an applicant agrees, or proposes, to construct at least one of the following three alternatives to comply with Density Bonus requirements:

1. Twenty percent of the total units of a housing development for lower income Households, as defined in Health and Safety Code Section [50079.5](#); or
2. Ten percent of the total units of a housing development for very low income Households, as defined in Health and Safety Code Section [50105](#); or
3. Fifty percent of the total Dwelling Units of a housing development for qualifying residents, as defined in Civil Code Section 51.3.

B. For purposes of this chapter, the Density Bonus shall not be included when determining the number of housing units which is equal to 10% or 20% of the total. The Density Bonus shall apply to housing developments consisting of five or more Dwelling Units.

C. The use of a Density Bonus is preferred over other types of concessions or incentives. Incentives may include, but are not limited to, fee deferments and waivers, granting of Variances, relaxation of otherwise applicable Permit conditions and provision of government benefits.

D. If the Density Bonus or equivalent incentive granted is above 25%, the applicant shall agree to a cost certification process. (Ord. 6848-NS § 3 (part), 2005: Ord. 6478-NS § 4 (part), 1999)

23C.12.060 Inclusionary Unit Requirements for Rental Housing Projects

A. All Inclusionary Units shall be occupied by Low, Lower or Very Low Income Households.

B. The maximum rental price for Inclusionary Units shall be affordable, as set forth in Section E below, to an appropriate-sized Household whose income is 81% of the Oakland PMSA median.

C. In projects requiring more than one Inclusionary Unit, at least 50% of those units shall be rented at a price that is affordable to Low or Lower Income Households, provided that the City can make available rental subsidies through the federal Section 8 Existing Housing Program or an equivalent program. When there is an uneven number of Inclusionary Units, the majority of units shall be priced to be affordable to a Household at 50% of median income if subsidies are available. If no rental subsidies are available, all Inclusionary Unit prices shall be affordable to Households at 81% income of the Oakland PMSA median.

D. If an applicant agrees to provide 10% Lower Income Inclusionary Units, the rental price for such units shall be affordable to a Household with income that is 60% of the Oakland PMSA median.

E. A unit shall be considered affordable if the rent (including utilities) does not exceed 30% of a Household's Gross Income.

1. Gross Household Income and utility allowance shall be calculated according to the guidelines used by the Berkeley Housing Authority for the federal Section 8 Existing Housing Program;

2. For purposes of calculating rent, appropriate Household size shall be determined by using the schedule contained in the administrative regulations developed for this chapter.

F. Dwelling Units designated as Inclusionary Units shall remain in conformance with the regulations of this section for the life of the building.

G. The City or its designee shall screen applicants for the Inclusionary Units and refer eligible Households of the appropriate Household size for the unit. For purposes of occupancy, the appropriate Household size standards used by the Housing Authority for the federal Section 8 Existing Housing Program or any future equivalent program shall be used. The applicant or owner shall retain final discretion in the selection of the eligible Households referred by the City.

H. The owner shall provide the City with data on vacancies and other information required to insure the long-term affordability of the Inclusionary Units by eligible Households. (Ord. 6478-NS § 4 (part), 1999)

23C.12.070 Inclusionary Unit Requirements for Ownership Projects*

A. Inclusionary Units in ownership projects shall be sold as set forth below:

1. Inclusionary Units in ownership projects shall be sold at a price that is affordable to an appropriate-sized Household whose income is no more than 80% of the area median income reported for the Oakland PMSA for households of that size, unless the cost of development of the unit is greater than the affordable sales price. Appropriate sizes of household and the ratio of income to sales price for affordable units shall be defined by City Manager regulation;

2. Inclusionary ownership units shall be affirmatively marketed to tenants with Section 8 housing vouchers, and who are known to be interested in participating in the Section 8 homeownership program, or other equivalent program(s) of the City of Berkeley, which are in effect at the time said units are offered for sale by the developer.

B. The applicant for a project other than a Limited Equity housing Cooperative shall be required to give right-of-first-refusal to purchase any or all new Inclusionary Units to the City or a City-designated agency or organization for a period of not less than 60 days as evidenced by issuance of a Certificate of Occupancy.

C. Should the City choose not to exercise its right-of-first-refusal, it shall provide the applicant or owner with a purchaser or with a list of eligible purchasers within a period of not less than 60 days. If the list is not provided, the applicant may select a Low Income purchaser of his or her choice as long as the City verifies income eligibility and the unit is sold at an affordable price as described in this chapter. The City shall maintain a list of eligible Low Income Households and review the assets and incomes of prospective purchasers of the Inclusionary Units on a project by project basis and refer potential purchasers to the applicant or owner.

1. All purchasers of Inclusionary Units shall be first-time home buyers from Low, Lower or Very Low Income Households. Purchasers shall also be required to occupy the unit except that such requirement may be waived with the approval of the City. In such cases, the unit shall be rented to a Low, Lower or Very Low Income Household at a rent affordable by such Households;

2. Eligible City Residents will have first preference for Inclusionary Units; second preference will be given to eligible persons employed in the City. Other preferences and priorities may also be established administratively, with Planning Commission review, to help meet the City's Housing Element goals;

3. The City shall advise all prospective purchasers on the City's eligibility list of the resale restrictions applicable to ownership of Inclusionary Units as specified in this chapter and shall provide purchasers with a Declaration of Restrictions applicable to ownership of Inclusionary Units as specified in this chapter;

4. Purchasers of Inclusionary Units in Limited Equity Cooperatives at time of first occupancy shall be first time home buyers with Gross Incomes no greater than 120 percent of the Oakland PMSA median. Subsequent purchasers of Inclusionary Units in Limited Equity Cooperatives shall be first time home buyers whose yearly Gross Income is no more than 44 percent of the cost of a unit at the time of sale, provided that such income shall be no more than 110 percent of the Oakland PMSA median.

D. All Inclusionary Units developed under this chapter except for those in Limited Equity Cooperatives shall be subject to the resale restrictions set forth below.

1. Home ownership Inclusionary Units offered for sale or sold under the requirements of this chapter shall be offered to the City or its designee for a period of at least 60 days by the first purchaser or subsequent purchasers from the date of the owner's notification to the City of intent to sell. The resale price of the unit shall not exceed the original price and customary closing costs, except to allow for the lower of any increase of either the Consumer Price Index (CPI) for all urban consumers (as produced by the U.S. Bureau of Labor Statistics or its successor agencies) applicable to the Oakland PMSA or of the increase as measured in household income guidelines published annually by the U.S. Department of Housing and Urban Development (or its successor agencies) for the Oakland PMSA;

2. This resale formula shall supercede and replace the earlier resale formula in deed restrictions executed between February 19, 1987 (adoption date for Ordinance 5791-N.S.) and May 23, 2006. The City of Berkeley, or its designee, shall notify each such owner of this change to the resale formula

contained in their deed restriction within 60 days of adoption of this section. All other terms and conditions of these deed restrictions shall remain in effect;

3. If the City does not act on its right-of-first-refusal, the same procedure for new Inclusionary Units shall be used for selection of a purchaser.

E. The seller shall not levy or charge any additional fees nor shall any finders fee or other monetary consideration be allowed, other than customary real estate commissions if the services of a licensed real estate agent are employed.

F. The City or its designee may monitor resale of Inclusionary Units in Limited Equity Cooperatives. The City or its designee shall monitor the resale of ownership Inclusionary Units. The owners of any Inclusionary Units shall attach, lawfully reference in the Grant Deed conveying title of any such inclusionary ownership unit, and record with the County Recorder a Declaration of Restrictions provided by the City, stating the restrictions imposed pursuant to this chapter. Violators of any of the terms thereof may be prosecuted by the City. (Ord. 6920-NS § 1-2 (part), 2006; Ord. 6478-NS § 4 (part), 1999)

*Specific text which previously amended Berkeley Municipal Code Sections 23C.12.070A, 23C.12.070D, and 23C.12.090 for the period January 27, 2004 through February 19, 2006 was repealed on February 19, 2006 as stated in the sunset provision of Ordinance 6,790-N.S. These specific text amendments were reinstated by Ordinance 6,920-N.S., adopted on May 23, 2006.

23C.12.080 Special Requirements for Avenues Plan Area

A. The City Council finds and determines that:

1. The Avenues Plan process identified a number of regional and Berkeley-specific barriers to housing development;
2. Among the Berkeley-specific barriers were high land prices; lengthy, difficult and uncertain permit processes; and insufficient financing, especially for affordable housing projects;
3. The Avenues Plan area represents a core area of the City where it is particularly appropriate to encourage housing development because of the area's generally good access to workplaces, transit service, senior services and retail stores;

4. The policy to encourage housing in this area is reflected in a number of documents, including, but not limited to, the City’s Housing Element of the Master Plan, the Concept Plan for the General Plan revision, the Downtown Plan, the South Berkeley Area Plan, the West Berkeley Plan and the University Avenue statement of planning of goals;

5. Despite the City’s support for housing in this area, new housing development here has been limited and this has hindered revitalization of the area;

6. As part of a multi-pronged experimental strategy to create incentives to encourage housing development, relaxation of various inclusionary zoning requirements within the Avenues Plan area as set forth in this section is appropriate;

7. These changes will also assist the buyer of below market rate Inclusionary Units, by allowing him/her to gain greater appreciation on his or her investments (market conditions permitting), making the investment more similar to conventional home ownership, while retaining the long term affordability of Inclusionary Units;

8. The changes will also encourage the construction of larger, family-sized units rather than the smaller units which have generally been built in multi-family developments;

9. These changes in inclusionary zoning will be followed by mechanisms to make more financing available and changes in zoning standards and permit processes;

10. The success of these changes will be reviewed annually, until the five year time period of the Avenues Plan experiment expires July 1, 2000.

B. This section applies on the streets and the addresses listed in the Table below. The area of applicability consists of the entire C-2 District and portions of the C-1, C-SA, C-W, C-N, R-2A, R-3 and R-4 Districts as indicated in the Table. Within this area, the provisions of this section supersede any inconsistent provisions of this chapter.

Table 23C.12.080	
Avenues Plan Area: Street and Address Range	
Street	Addresses
Acton	1940-2100

Addison	841-1145 odd, 1846 up
Adeline	All
Alcatraz Avenue	1700-1937
Allston Way	1901-1999 odd, 2000 up
Ashby Avenue	1830-2117, 2118-2198 even
Bancroft Way	2000-2300
Berkeley Square	All
Berkeley Way	1200-1800 even only, 1800-1920, 1920-2000 even only, 2000 up
Blake	1800-2100
Bonar	2000-2099
Bonita	1900-1950 even, 1950-1999
Browning	portion of West Campus only
California	1950-2009
Carleton	2000-2117
Center	All
Channing Way	1800-1850 even, 2000-2200, 2200-2300 odd
Cowper	All
Chestnut	1910-1950 even, 1950 up
Curtis	1900-2100, portion BUSD
Delaware	1041-1112, 2000-2200 even
Derby	2000-2113
Dover	All
Durant Avenue	2000-2300
Dwight Way	1800-1850 even, 1850-2200
Ellis	3124-3320 odd

Emerson	2000-2111
Essex	1901-2106
Fairview	1750 up
Fulton	2200-2400, 2400-2606 even
Grant	1800-1900 odd, 1900-2050, 2501-2599 odd
Harold Way	All
Harmon	1750 up
Harper	2901-3123 odd
Haste	1900-1998 even, 2000-2200
Hearst	1032-1200, 1800-2000 even, 2000-2200
Henry	1900 up
Jefferson Avenue	2000-2050
King	3221 up, odd
Kittredge	All
Martin Luther King Jr. Way	1900-2050, 2051-2199 odd, 2400-2450 even, 2450-2600, 2900 up
McGee Avenue	1900-2050
McKinley Avenue	2400-2500 odd
Milvia	1800-1950 odd, 1950-2199, 2200-2450 odd, 2450-2550, 2550-2900 odd only
Newbury	All
Oregon	2000-2122
Otis	All
Oxford	1800-2200
Parker	1800-1998 even, 2000-2200
Prince	1830-2105
Russell	1820-2000 even, 2000-2117

Sacramento	1900-2000, 2050-2100 even
San Pablo Avenue	1800-2199
Shattuck Avenue	1800 up
Shattuck Square	All
Stuart	2100-2107
Tremont	All
University Avenue	840 up
Walnut	1800 up
West	1950-1999
Whitney	All
Woolsey	1750-2110
6th	1916-2099
7th	1912-2099
8th	1910-2099
9th	1910-2099
10th	1908-2099
62nd	1700 up
63rd	1700 up

C. This section shall remain in effect until July 1, 2000, at which time the Planning Commission, in consultation with other relevant Commissions, shall re-examine its effectiveness. At that time the Commission may initiate modifications to, or an extension of, this section.

D. For purposes of this section, the following definitions apply:

1. Project means the total number of housing units planned to be built on a single lot or on a grouping of contiguous, commonly owned or controlled lots, regardless of whether those units are all built simultaneously;

2. Affordable family-sized unit means a unit which:

- a. Is at least 850 square feet in area if two bedrooms or 1,100 square feet if three bedrooms or more;
- b. Contains at least two lawful bedrooms;
- c. Contains at least as many bathrooms as the corresponding two bedroom market rate units; and
- d. Is sold at a price that is affordable to an appropriate sized Household whose income is no more than 80 percent of the metropolitan area median as reported by the Department of Housing and Urban Development (HUD).

E. Except as provided in this chapter, the number of Inclusionary Units required are as set forth in the following table:

Total Number of Units Built	Number of Inclusionary Units Required
10-14	1
15-19	2
Each additional multiple of 5 units	1 additional

F. For every five units which the applicant can demonstrate with bona fide sales documents have been sold at a price at or below that affordable to an appropriate sized Household with an income of 100 percent of metropolitan area median, the applicant shall be released of the obligation to provide one Inclusionary Unit.

G. For every ten affordable family-sized units, the applicant shall be released of the obligation to provide one Inclusionary Unit sold at a price at or below that affordable to an appropriate sized Household with an income of 100 percent of metropolitan area median.

H. Within the area of applicability for that portion of a project wherein both the Inclusionary and the non-inclusionary Units contain at least as many bathrooms as the corresponding two bedroom market rate units, only ten percent of units are required to be Inclusionary.

I. The first Inclusionary Unit in projects with units for sale shall be sold at a price that is affordable to an appropriate sized Household whose income is no more than 80 percent of the Oakland PMSA median as reported by HUD. Except as otherwise provided in Section [23C.12.080.D.2.d](#) above, the second Inclusionary Unit shall be sold at a price that is affordable to an appropriate sized Household whose income is no more than

100 percent of the PMSA median and subsequent Inclusionary Units shall be sold alternately at these price levels.

J. Inclusionary sale units in projects in the Avenues Plan Area shall be sold at a price such that first year housing cost (including homeowners' association dues, if any) for a Household of appropriate size with an income at the targeted level shall not exceed 33 percent of income. This cost shall be calculated assuming that the buyer makes a ten percent down payment, which shall not be considered a portion of the cost. The housing cost shall be calculated for each project at the time the condominium association budget is approved by the Department of Real Estate and shall not be changed subsequent to that time for that project, regardless of future changes in cost.

K. The resale price of Inclusionary Units within the Avenues Plan Area may increase at the rate of increase of the Consumer Price Index for All Urban Consumers (CPI-U) applicable to the metropolitan area. (Ord. 6478-NS § 4 (part), 1999)

23C.12.090 Administrative Regulations*

A. The City Manager or his/her designee shall promulgate rules and regulations pertaining to this chapter, including but not limited to setting and administering gross rents and sale prices, requiring guarantees, entering into recorded agreements with applicants and taking other appropriate steps necessary to assure that the required low income and very low income Dwelling Units are provided and occupied by Low Income Households. (Ord. 6920-NS § 3 (part), 2006; Ord. 6478-NS § 4 (part), 1999)

*Specific text which previously amended Berkeley Municipal Code Sections 23C.12.070A, 23C.12.070D, and 23C.12.090 for the period January 27, 2004 through February 19, 2006 was repealed on February 19, 2006 as stated in the sunset provision of Ordinance 6,790-N.S. These specific text amendments were reinstated by Ordinance 6,920-N.S., adopted on May 23, 2006.

23C.12.100 Fees

The City Council, by resolution, may establish fees for the administration of this chapter. (Ord. 6887-NS § 1, 2005)



CONSENT CALENDAR
TBD (Continued from February
26, 2019)

To: Honorable Mayor and Members of the City Council

From: Councilmembers Rigel Robinson, Sophie Hahn, Mayor Jesse Arreguin,
and Councilmember Lori Droste

Subject: Refer to the City Manager and the Housing Advisory Commission to Consider
Reforming the Affordable Housing Mitigation Fee

RECOMMENDATION

Refer to the City Manager, the Planning Commission, and the Housing Advisory Commission to consider possible reforms to the Affordable Housing Mitigation Fee, including adopting a per-square-foot fee structure, potentially on a geographic basis.

BACKGROUND

Currently, all new residential development of five units or more must either pay an Affordable Housing Mitigation Fee to the City's Affordable Housing Trust Fund, set aside 20% of a project's units as below market rate housing, or some combination of the two. For rental developments, the fee is currently calculated based on the number of residential units in the project according to the following formula (BMC Section 22.20.065):

$$[A \times \text{Fee}] - [(B+C)/(A \times 20\%) \times (A \times \text{Fee})]$$

Where:

A = Total number of units in the project

B = Number of Very-Low Income Units provided in the project.

C = Number of Low-Income Units provided in the project.

By calculating Affordable Housing Mitigation Fees on a per-unit basis, current law incentivizes developers to build fewer units. In the past, developers have replaced standard layouts (studio, one-bedroom, and two-bedroom units) with dorm-style layouts (up to eight beds per unit). This increases the *density* of each unit but reduces the overall *number* of units, allowing applicants to pay significantly smaller fees without providing any additional housing.

Another way for developers to reduce their contribution to the Affordable Housing Trust Fund is to build larger, more expensive units, rather than smaller, more affordable units. This perverse incentive is clearly in opposition to the City's affordable housing goals.

This problem was highlighted in a recent report by the Turner Center. In interviews with architects and builders, they were told that a conscious decision was sometimes made to increase unit size but decrease unit count to reduce fees.¹ Calculating the fee on a per-square-foot basis eliminates that incentive. Developers would no longer be able to reduce their contribution to the Affordable Housing Trust Fund by manipulating floor layouts. In addition, by eliminating the financial penalty for building more units, developers would be incentivized to propose denser projects, which is directly in line with the City's housing goals.

Such a change was recently enacted in San Francisco, taking effect January 1st of this year. The language from San Francisco's website (<https://sf-planning.org/inclusionary-affordable-housing-program>) describing the process they undertook to arrive at their new model is attached. Staff and the Commissions should consider their research, methodology, and conclusions when drafting their response.

A per-square-foot fee may not be desirable across all neighborhoods in Berkeley. The same Turner Center study found that "in some cities there is a need for larger family-sized units, and in those places a per-square-foot fee that incentivizes smaller units might be less desirable."² In considering this referral, staff and the Commissions should consider the need for different housing types in different parts of the City. A per-bed fee may be more appropriate for some neighborhoods where micro-units would be out of place while still disincentivizing dorm-style layouts.

This referral asks staff and the Commissions to analyze the current fee structure and possible alternatives, with particular regard to the per-unit form. Staff and the Commissions should consider the need for different styles of housing in different parts of the city. The final recommendation presented to council should include one or more possible amendments to the code to address these changes.

FINANCIAL IMPLICATIONS

Potential revenues increases to the Affordable Housing Trust Fund from larger structures facing higher fees; potential revenue decreases from smaller units facing lower fees. Analysis must be conducted to determine the overall effect of these countervailing forces. Multiple fee levels should be assessed, including those that results in net zero changes in Affordable Housing Trust Fund revenues and those that increase revenues.

ENVIRONMENTAL SUSTAINABILITY

Increasing the affordability and density of housing near public transit has the potential to substantially reduce greenhouse gas emissions in line with the City's environmental

¹ http://turnercenter.berkeley.edu/uploads/Development_Fees_Report_Final_2.pdf

² Ibid

goals. Potential revenue increases to the Affordable Housing Trust Fund could permit greater expenditures on housing affordability near transit.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

Attachments:

1: San Francisco's Amendments (<https://sf-planning.org/inclusionary-affordable-housing-program>)

Attachment 1: San Francisco's Amendments

2019 Affordable Housing Fee Update

Effective January 1, 2019, residential development projects that comply by paying the Affordable Housing Fee will be subject to the following fee based on the Gross Floor Area of residential use, rather than the number of dwelling units. The fee will be applied to the applicable percentage of the project, as set forth in Section 415.5 of the Planning Code:

Affordable Housing Fee: \$199.50 per square foot of Gross Floor Area of residential use, applied to the applicable percentage of the project:

- **Small Projects** (fewer than 25 dwelling units): 20% of the project's Gross Floor Area of residential use
- **Large Projects** (25 or more units), **Rental:** 30% of the project's Gross Floor Area of residential use
- **Large Projects** (25 or more units), **Ownership:** 33% of the project's Gross Floor Area of residential use

Note: The impact fee register in place at the time of payment shall be applied. However, a project for which a Site Permit has been issued prior to January 1, 2019 shall remain subject to the fee method and amount set forth in the impact fee register in place as of December 31, 2018. Additionally, projects with an Environmental Evaluation Application that was accepted prior to January 1, 2013 pursuant to Planning Code Section 415.3(b) shall also remain subject to the fee method and amount set forth in the impact fee register in place as of December 31, 2018. [The impact fee register may be found here.](#)

This change is pursuant to amendments to Section 415.5 that were adopted by the Board of Supervisors in July, 2017 (Board File No. 161351). Specifically, the Code requires that the Fee reflect MOHCD's actual cost to subsidize the construction of affordable housing units over the past three years, and directed the Controller to develop a new methodology for calculating, indexing, and applying the Fee, in consultation with the Inclusionary Housing Technical Advisory Committee (TAC). In May, 2018 the Controller and TAC determined that the Fee should be applied on a per gross square foot basis to ensure that MOHCD's cost to construct the required amount of off-site affordable housing is appropriately and equitably captured from all projects, regardless of the size and number of units distributed within the project. The Controller directed MOHCD, in consultation with the Planning Department, to convert MOHCD's per unit cost to a per-square-foot fee, based on the average residential Gross Floor Area of projects that have paid the Fee in the past three years. The Fee amount indicated above has been calculated accordingly.

Pursuant to Section 415.5 and the specific direction of the Controller and TAC, MOHCD shall update the amount of the Affordable Housing Fee each year on January 1, using the MOHCD average cost to construct an affordable unit in projects that were financed in the previous three years and the Planning Department's average residential Gross Floor Area of projects that have elected to pay the Fee and have been entitled in the same time period. Each year this analysis will be updated to include new projects from the most recent year, and drop older projects that no longer fall into the three year period of analysis. The updated Fee amount will be included in the Citywide Impact Fee Register that is posted December 1 and effective on January 1.

Planning Commission & Policy Group Work Plan

Grouping Description (Approach/Status/Sequencing)	Referral // Task	REFERRAL RANK		Look Up (Row # in PC Referral Table)	2019													
		RRV	HAP		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec		
Cannabis: -- Apothecarium Location to CC on 2/26. -- Comp Cann 1 to CC on 3/12 (nurseries, buffers, quotas, events, microbiz) -- Comp Cann 2 to PC/CC/HC in April, CC in July (delivery, equity, lounges, discretion, cultivation > M-District.)	Apothecarium Location	---	---	---		cc												
	Cultivation Beyond M-District	started		4					ph		cc							
	Retail Nurseries (1)	started		23														
	Retail Nurseries (2)	NR (started)		40				cc										
	Cannabis Equity	NR (started)		51						ph		cc						
	Special Events	---	---	---				cc										
Student Housing: -- Short Term: MSHN Car-free Overlay PH to PC on 4/3 -- Med Term: EIR RFP for Mods to Dev Stds Released in March	Increase 20' height and FAR	16 (started)		26					RFP						pc			
	Convert GF Com to GF Res	25 (started)		36														
	MSHN & SB1227	NR (started)	4	47					ph		cc							
	Flex Conversion to Mini Dorms	NR		43														
Parking Reform: Reduction in Parking in exchange for TDM and Housing Consider Residential Bike Parking from adopted Berkeley Bike Plan	Green Affordable Housing Policy 1	started	17	7						pc		pc		ph			cc	
	Green Dev Stds from CEAC	CEAC started		10														
	Residential Bike Parking	---	---	---					pc		pc		ph				cc	
Density Bonus // Density Study // Objective Stds: Phase 1: Compliance with State Law / Update ZO Chapter (CC on 3/12) Phase 2: Develop a Local Incentive Program (DB > 35%) Phase 3: Density Studies re: corridors & maybe missing middle Compliance with State Laws: JSISHL's work on Objective Stds and Density Stds (will inform Phase 3) & overlaps with Affordable Housing Referrals	Density by parcel; 2. Healthy/safety detriments; 3. Design review; and 4. View/shadow impacts	started	5	21				jsis		jsis		pc		pc				
	C-T: FAR of 5.0 and CB with focus on Labor Practice and Aff Housing	started	3	11	see Student Housing RFP													
	C-T Pilot Density Bonus: fees in lieu of on-site and apprentice program	56 (started)		17				cc	Phase 2									
	Opticos Density Study	---	---	---														
	(anticipated) Missing Middle Density Study	---	---	---														
	Implement State Law HAA & SB-35	---	---	---	jsis		jsis											
Adeline Corridor: Draft Plan and Draft EIR circulated in May Ranked Adeline Referrals to be addressed in Plan.	Community Benefit Agreement	10		22				pc		sc	pc	sc	sc	ph			cc	
	Prohibit Autosales	NR		39				pc		sc	pc	sc	sc	ph			cc	
	Adeline Corridor Plan Development	---	---	---				pc		sc	pc	sc	sc	ph			cc	
	Ashby BART Development	---	---	---														
	Health Equity/Innovation District	Comm		33														
Affordable Housing Flex GF use referral overlap with Student Housing Referral Streamline and Ministerial Approval overlap with SB-35 and HAA	Streamline >50% BMR	started	12	8														
	Flexible Non-commercial GF uses	started	18	15														
	Ministerial Approval HTF or >50% BMR	NR (started)		27														
Fees and Nexus Studies Finishing internal outreach re: Steet Level Advis Fee Tool Beginning work (initial stages) on Demo Ordinance & AHMF referrals. Lot Line portion of AHMF Referral goes to PC on 3/6 with a PH on 4/3 and CC on 4/30. PC subcom meetings as well.	Demolition Ordinance	started	16															
	Waive Fees HTF projects	31		24														
	Inclusionary Req for Live Work	NR		42														
	Decrease AHMF for TIC conversions	NR		46														
	Street Level Advisors Fee Study	---	---	---														
	AHMF Referral	---	---	---				pc	pc	cc								
Long Range Planning Projects	Zoning Ordinance Revision Project	started		9							sc		sc	pc		pc		
	San Pablo Ave Specific Area Plan	23		5														
	Pacific Steel Visioning	---	---	---														
	North Berkeley BART Visioning	---	---	---														
	WB Service Center Referral	---	---	---														
	UC Berkeley LRDP	---	---	---														
	Berkeley Transfer Station (Zero Waste lead)	---	---	---														
	Berkeley Marina Master Plan (PRW lead)	---	---	---														
Civer Center Plan (OED lead)	---	---	---															
ADUs	Homeless Program	13		28														
	JADUs	20		16														
	Public Safety in Fire Zones	43		30														

DRAFT WORKING DOCUMENT

Grouping Description (Approach/Status/Sequencing)	Referral // Task	REFERRAL RANK		Look Up (Row # in PC Referral Table)	2019											
		RRV	HAP		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
	ADA Standards	NR		41												
	Revisit/Revise	NR		44												
ZOAs for Businesses	Home Occupations	started		1					cc							
	Expand boundaries of Downtown Arts District	17		13												
	Beer and Wine in the M-District	NR		49												
	Development Agreements	NR		45												
Miscellaneous	Toxic Remediation Regulations	started		2												
	Green Stormwater Reqmts from CEAC	CEAC started		6												
	Lower discretion for internal remodeling	15		29												
	Deny permits to violators from HAC	41		3												
	Air Pollution Perf Stds from CEAC	27		19												
	Tree Planting	NR		50												

Abbreviations: HAP = Housing Action Plan jsis = Joint Subcommittee on Implementation of State Housing Laws
 cc = City Council sc = Sub Committee of the Planning Commission pc = Planning Commission ph = Public Hearing at Planning Commission
 AH = Affordable Housing ADU = Accessory Dwelling Unit NR = Not Ranked RRV = Reweighted Range Voting

LEGEND:
 active
 started, not active
 next
 not active

REFERRAL TRACKING, Planning Dept.

#	Open general referrals from Council	Original Sponsor	RRV?	Background	Planning Division	Notes
1	Classify Home Occupation Activities receiving five or fewer visits per year as "Moderate Impact"	CM Maio	started	Referral from 12/6/11.	LUP	
2	Amend Zoning Code to facilitate remediation of toxic conditions in manufacturing districts	CMs Moore and Wozniak	started	Referral from 5/1/12.	LUP	
3	Give Zoning discretion to deny new permits to individuals with outstanding code violations at other Berkeley sites	HAC	41	Referral from 9/9/14.	LUP, BSD	
4	Referral to PlanComm to amend Zoning Ord to expand Medical Cannabis Cultivation beyond the M District	MCC	started	Referral from 11/18/14.	LUP	
5	Initiate an area planning process with community outreach re future development on San Pablo Ave.	CMs Moore and Maio	23	Referral from 7/14/15.	LUP	
6	Referral to City Manager, PlanComm, CEAC to consider requiring Green Storm water Infrastructure systems on all new large residential and commercial developments	CM Arreguin	started	Referral from 9/15/15.	LUP, TMD	
7	"Green Affordable Housing": Consider revisions to parking requirements and project approval processes	CM Droste	started	Referral from 10/27/15.	LUP	
8	Referral to streamline permit process for housing projects which include > 50% affordable units (and other conditions)	CM Worthington	started	Referral from 1/19/16	LUP	
9	Changes to Zoning Ordinance and other practices to improve Land Use Permit process	PDD--C.Johnson	started	Direction from Council per staff request 1/26/16.	LUP	
10	Referral to PlanComm, CEAC, Energy Comm to create Citywide Green Devt standards by extending C-DMU Green Building reqmts to all commercial districts	CM Arreguin	started	Referral from 4/26/16.	LUP, TMD, OESD	
11	Referral to City Manager to develop Community Benefits in association with Telegraph (C-T) District dev't standards	CM Worthington	started	Referral from 7/12/16.	LUP	
12	Improve customer service in PSC, including web-based solutions, better materials, case management for apps, etc	CM Arreguin	started	Referral from 7/19/16.	BSD	
13	Referral to Planning Comm to consider expanding boundaries of Downtown Arts District and add allowable ground floor uses	Mayor Bates	17	Referral from 10/18/16.	LUP	
14	CM, Energy Comm to develop "Deep Green" building policies for energy efficiency, sustainable building	Mayor Arreguin	22	Referral from 2/28/17.	OESD	
15	Referral to Planning Comm to amend Zoning Ord to allow non-commercial ground floor uses	CM Worthington	started	Referral from 4/4/17. Duplicate of previous referral from CM Wengraf 1/20/15.	LUP	
16	Referral to Planning Comm to draft an Ordinance to allow "Junior ADUs"	CMs Wengraf, Droste	20	Referral from 5/2/17.	LUP	
17	Refer to PlanComm, HAC, CM: Create pilot program for a City Density Bonus in Telegraph Commercial district, to generate in-lieu fees to use to build housing. Consider feasibility of requiring one FT apprentice for every \$3M construction costs.	CMs Worthington and Bartlett	56	Referral from 5/30/17	LUP	
18	Referral to City Manager and EnergyComm to develop an Ord requiring EV charging infrastructure (as defined) on all new buildings	CM Bartlett	34	Referral from 6/13/17.	OESD	
19	Referral to PlanComm to consider new Standard Condition of Approval to mitigate effects from outdoor air pollution on Indoor Air Quality	CEAC	27	Referral from 7/11/17.	LUP	
20	Referral to CEAC to consider a South Berkeley Cigarette Butt Litter Prevention program	CM Bartlett	54	Referral from 7/11/17.	TMD	
21	Referral to CM-PC-ZAB-DRC: From HOUSING ACCT ACT item, Revise General Plan and Zoning Ord to add written standards re: 1. Density by parcel; 2. Healthy/safety detriments; 3. Design review; and 4. View/shadow impacts	Mayor Arreguin	started	Referral from 7/11/17.	LUP	
22	Referral to City Manager and Plan Comm to create a zoning overlay for Adeline Corridor area, with regulations to be adopted for purposes of setting processes to reach Community Benefits Agreements	CM Bartlett	10	Referral from 7/25/17.	LUP	
23	Refer to PlanComm and CannaComm to create Ord to clarify City policy on cannabis re existing retail plant nurseries	CM Worthington	started	Referral from 7/25/17.	LUP	
24	Return with Ord to waive mitigation/impact fees for Housing Trust fund projects, analyze other poss fee waivers, and send letter to BUSD encouraging same with its fees	CM Hahn	31	Referral from 9/12/17.	LUP	
25	Referral to CEAC and City Manager to consider ordinance banning idling of vehicle engines	CM Bartlett	58	Referral from 9/12/17.	TMD	
26	Referral to CityMgr and PlanComm to amend Zoning Ord to increase max height by 20' and adjust FAR in area bounded by Bancroft, College, Dwight and Fulton	CM Worthington	16	Referral from 10/31/17.	LUP	
27	Refer to CM and PlanComm to amend ZO to allow ministerial approval of Zoning-Complaint Housing which gets Housing trust Funds or is >50% BMR	CM Droste	***	Referral from 12/5/17	LUP	
28	Refer to CM and HAC to create a 2nd Dwelling Unit/ADU Pilot program to house homeless	CM Bartlett	13	Referral from 12/19/17.	LUP	
29	Refer to PlannComm allowing certain internal remodeling activities with an AUP, rather than a UP, when existing non-conforming max lot coverage would not be increased	CM Maio	15	Referral from 2/27/18.	LUP	
30	Refer to PlannComm to consider steps to address public safety issues raised by ADUs in Very High Fire Hazard zones	LUP--	43	Referral from 2/27/18 under Item 22b re urban fire safety	LUP	

69 of 85

REFERRAL TRACKING, Planning Dept.

31	Refer to Energy Comm to develop strategies and Draft EV Plan to encourage greater EV usage	CM Wengraf	35	Referral from 3/13/18.	OESD	
32	Referral to CM and DisabilComm to revise City Elevator Ord to address concerns of disabled community	CM Worthington	6	Referral from 3/13/18.	BSD	
33	Referral to PlanComm, two other Comms, and the City Manager to establish a "Health Equity + Innovation District"	CM Bartlett	Comm	Referral from 3/27/18	LUP?	
34	Referral to CEAC to assess capacity to join outreach program re harmful plastic microfibers; staff to write letter to EBMUD reporting out CEAC info and asking re water sourcing, copy letter to Council as Info	CM Harrison	***	Referral from 4/24/18	TMD	
35	Refer to staff to develop policies to incentivize residential energy efficiency and electrification, in support of CAP goals. \$50K also referred to budget process to support this work	EnergyComm	22	Referral from 4/24/18; see also annotated agenda	OESD	
36	Refer to CM and PlanComm to consider allowing conversion of commercial space to residential uses, in area bounded by College, Fulton, Bancroft, and Dwight	CM Worthington	25	Referral from 5/1/18; see also annotated agenda	LUP	
37	Refer to the Energy Comm and Transportation Comm steps to make Berkeley a Fossil Fuel Free City (see numerous details)	CM Davila	***	Referral from 6/12/18; see annotated agenda for details	OESD	
38	Refer to Energy Comm to study and report back on making Berkeley a "Carbon Sink" (under item declaring Climate Emergency)	CM Davila	***	Referral from 6/12/18; see annotated agenda for details	OESD	
39	Refer to PlannComm and Adeline Corridor Process an Ord to prohibit new auto sales and auto uses in C-SA zones	Mayor Arreguin	***	Referral from 7/10/18; see annotated agenda for additional direction.	LUP	
40	Ord allowing previously approved plant nurseries in area between San Pablo, Sixth, University and Dwight to become retail cannabis nurseries	CM Worthington	***	Referral from 7/31/18. City Atty to determine if PlanComm consider req'd first. If not, to AgCmte to sched. See also annotated Ag.	LUP	
41	Request for Council to include input from disability community and others regarding ADU accessibility requirements before next ADU Ord revisions	Disability Comm	***	Referral from 9/13/18.	LUP	
42	Referral to Planning Comm to consider revising Zoning Ord Secs 23C and 23E to make inclusionary housing requirements for Live/Work units consistent with other unit types	CM Harrison	***	Referral from 9/13/18.	LUP	
43	Referral to PlanComm to consider changes to Zoning and Mini-Dorms Ords to give flexibility for conversion of accessory buildings to home office uses in some cases	CM Wengraf	***	Referral from 9/13/18; also see supplemental memo.	LUP	
44	Refer to PlannComm additional revisions to ADU Ordinance	CM Hahn	***	Referral from 9/13/18; also see amendments per annotated agenda.	LUP	
45	Refer to City Manager and PlanComm to update BMC Chapter 22.16 re Development Agreements, to maximize community benefits and comply with State law	Mayor Arreguin	***	Referral from 10/30/18.	LUP	
46	Referral to City Manager to amend 21.28.080 to decrease the Affordable Housing Mitigation Fee rate in particular circumstances related to Tenant-in-Common conversion to ownership	CM Maio	***	Referral from 11/27/18. See also annotated agenda.	LUP	
47	City Manager and Planning Dept to promptly move forward with parts of More Student Housing Now reso and SB 1227 implementation	CM Worthington	***	Referral from 11/27/18.	LUP	
48	City Manager to consider adding condition to Zoning Board-approved permits to highlight Pay Transparency requirements	CM Worthington	***	Referral from 11/27/18.	LUP; FYI BSD	
49	City Manager and Planning Comm to consider ZO amendments re beer and wine sales in M District	Council	***	Referral from 12/4/18 within action adopting Small Biz ZO amends (see annotated agenda)	LUP	
50	Six month referral to PlanComm to consider Ord requiring projects above certain size to plant trees	CM Davila	***	Referral from 12/11/18.	LUP	

Ranking legend:

- **##s** are rankings per most recent Council RRV, 6-12-2018
- **"started"** is a referral on which substantive work began before last Council RRV, thus not subject to re-ranking
- **"***"** are unranked referrals, adopted after the last RRV date

70 of 85

Housing Action Plan referrals

	Referrals from Housing Action Plan	Primary City Dept*	HAP Rank	Planning Division
HAP 1	Develop a Small Sites Program to assist non-profits in acquiring multi-unit properties of 25 units or less. Consider giving priority to the creation of limited and non-equity cooperatives affiliated with a democratic community land trust. Consider	HHCS	High	
HAP 2	Develop an ordinance modeled after Washington D.C.'s Tenant Opportunity to Purchase Act (TOPA) that offers existing tenants in multi-unit properties of three units or more the first right of refusal when property owners place rental property on	HHCS	High	
HAP 3	A) Draft an ordinance creating a pilot Density Bonus policy for the Telegraph Commercial District to grant additional density for projects in the Telegraph area which pay Affordable Housing Fees in lieu of units on-site. B) Study the creation of a new City Density Bonus plan to allow developers of multi-family housing to add	Planning	High	LUP
HAP 4	Examine and eliminate barriers to developing student housing and senior housing.	HHCS	High	
HAP 5	Create specific per acre density standards, including standards for projects that include density bonus units.	Planning	High	LUP
HAP 6	Develop enforcement tools for Short-Term Rental Ordinance and Section 8 Non-Discrimination Ordinance (BMC Chapter 13.31, "Discrimination based on source of income prohibited"). Request that the City Manager direct staff to draft a fine	Planning	High	LUP
HAP 7	Refer to the City Manager and Planning Commission, and/or Housing Advisory Commission an ordinance to clarify existing preferences in allocating City affordable housing units to Berkeley residents living within 1/2 mile of any new	City Atty	High	
HAP 8	Increase commercial linkage fee by California Construction Cost Index CCCI.	Planning	High	LUP
HAP 9	Identify Parcels of City owned land appropriate for siting assisted-living modular micro-unit buildings; take affirmative steps to speed the permitting and approvals process; obtain zoning approval and a building permit and approvals process for	HHCS	High	
HAP 10	Utilize list of city properties developed by city staff and further examine opportunities for placing affordable housing on these sites.	HHCS	High	
HAP 11	Investigate the feasibility of developing workforce housing, in conjunction with Berkeley Unified School District, for teachers and other school district employees. The investigation should include research into what other California jurisdictions	PRW	High	
HAP 12	a) Streamline the Affordable Housing Permitting process for Projects with majority of Affordable Housing (50% affordable units or more, Worthington referral 1/19/16); b) Remove Structural barriers to Affordable Housing (Green Affordable Housing	Planning	High	BSD, LUP
HAP 13	Examine and eliminate barriers to building and renting Accessory Dwelling Units.	Planning	High	LUP
HAP 14	Develop Measure U1 Priorities and Implementation Criteria. Include consideration of ability to leverage funds and placing a measure on the November 2018 ballot to allow possible bonding against revenues.	Finance, City Mgr	High	
HAP 15	Establish a City maintained online resource that would provide a brief overview of the history and purpose of Below Market Rate (BMR) units, a current list of all buildings that contain BMR units and the characteristics of the units, the percent of	HHCS	High	
HAP 16	Impose fees when multifamily properties are destroyed due to fault of property owner (Demolition ordinance, RHSP, Relocation fees, fines).	Planning	Medium	
HAP 17	Green Affordable Housing Package policy #1: Prioritize housing over parking in new developments. Reduce parking in R-4.	Planning	Medium	LUP
HAP 18	Amend Zoning code to allow housing and other non-commercial uses on the ground floor.	Planning	Medium	LUP
HAP 19	To encourage landlords to accept Section 8 and Shelter + Care vouchers study a program that is intended to encourage rehabilitation of substandard units that could be leased to recipients of Section 8 and Shelter + Care vouchers. Possible	HHCS	Medium	
HAP 20	Collaborate with Berkeley Housing Authority Board to invest capital funds from sale of the public housing for more affordable housing (Longer term referral).	HHCS	Medium	
HAP 21	To encourage landlords to accept Section 8 and Shelter + Care vouchers: identify organizations who can support financial literacy and management for Section 8 tenants, including establishing bank accounts with direct deposit to Landlords.	HHCS	Medium	
HAP 22	Establish Office of Anti-Displacement, and hire Anti-Displacement Advocate (non-city funded position).	Non-profit TBD	Medium	
HAP 23	Provide housing counseling and legal services for Berkeley's low-income, elderly or disabled distressed homeowners.	City Council	Medium	

Policy Work Meetings and Agenda Items

Item 11
 Planning Commission
 April 3, 2019

Dates	Meeting	Agenda Items
3/27/2019	JSISHL	Review Three (3) COB SB-35 Applications RE: Objective Standards
4/3/2019	PLANNING COMISSION	AHMF Referral Recommendations PH Southside Car-free Overlay ZOAs PH Policy Referral Matrix and Calendar Review
4/30/2019	CITY COUNCIL	AHMF Referral
5/1/2019	PLANNING COMISSION	Comp Cann II PH Parking Reform I (bumped from April by AHMF Referral) ZORP Status Update and Subcommittee Formation
Mid May	PC ADELINE SUBCOM	Review Approach
5/22/2019	JSISHL	Density Bonus / Density Standards
6/5/2019	PLANNING COMISSION	Adeline Draft Plan and Draft EIR TDB
week of 6/10/19	ADELINE SUBCOM	Plan Review
mid June	ZORP SUBCOM	Review Bundle 2
July	CITY COUNCIL	Comp Cannabis II Southside Car-free Overlay ZOAs
7/17/2019	PLANNING COMISSION	Parking Reform TBD

Other Things to Consider:

This is a working document that will be revised to reflect current schedule and work plan.

Items should take approx 3-4 PC meetings (and 2 CC meetings).

Meeting 1: Background & proposed direction

Meetings 2/3: Discussion (sometimes this will only take 1 meeting)

Meeting 4: Public Hearing

Meeting 5/6: City Council Meeting -- assume 3 months to get on agenda. First and second readings needed



ABRIDGED COMMISSIONERS' MANUAL 2018 EDITION

The material in this guide is available in alternative formats upon request. Alternative formats include audio-format, braille, large print, electronic text, etc. Please contact the Disability Services Specialist and allow 7-10 days for production of the material in an alternative format.

Phone: 1-510-981-6418 | TTY: 1-510-981-6347

This Quick Reference Guide has been created for commissioners and board members. It is an easy, quick way to review common points of interest about commissioner service. More in-depth guidance, and the City's official guidelines and regulations related to commissions, may be found in the **Commissioners' Manual**, which outlines key concepts and rules related to the terms, requirements, work and purview of commissioners throughout their time on a commission or board. **Commissioners are encouraged to familiarize themselves with the Manual, as it contains comprehensive procedural and regulatory information that is critical to commissioners' work.**

You may find the Commissioners' Manual by contacting the City Clerk Department at 510-981-6900 or emailing commission@cityofberkeley.info, or by visiting the Boards and Commissions page on the City's website at <https://www.cityofberkeley.info/commissions/>.

TABLE OF CONTENTS

INTRODUCTION	4
Commission Purview:.....	4
SERVING ON A COMMISSION.....	4
Membership and Appointments:.....	4
Oath of Office:.....	4
Terms of Office:	4
Vacancies:	4
Commissions with Special Regulations:.....	4
Attendance Requirements:.....	4
Absences, Leaves of Absence, and Terminations: There are various kinds of absences; below is information about them, and how they may lead to automatic termination.....	5
Resignations:	5
Accommodations for Commissioners with Disabilities:	5
Stipend:	6
Conflict of Interest and Form 700: Members of Berkeley’s commissions provide advice to the C.....	6
Commission Organization and Officers:	6
Use of the City Logo and Business Card Policy:	6
COORDINATION AND COMMUNICATION WITH COUNCIL, STAFF, AND OTHERS	7
Coordination and Communication with City Council:	7
Coordination and Communication with Staff:.....	7
Commission Relationship with City Manager:	8
PUBLIC MEETINGS AND AGENDAS.....	8
The Brown Act:	8
Types of Meetings:.....	9
Brown Act Violations and Danger Areas: Below are some of the “danger areas” related to the Brown Act.	9
Placing Items on a Commission Agenda:.....	9
COMMISSION PROCEDURES	10
Polling, Quorum, and Voting:	10
Rules and Procedures of Commission Meetings:	10
Order and Decorum:	10
COMMISSION REPORTS TO COUNCIL	11
INFORMATION FOR CHAIRS AND VICE-CHAIRS	12

INTRODUCTION

For comprehensive information related to the purposes and organization of the board and commission system, and how their work is established, please refer to the Commissioners' Manual.

Commission Purview: Every commission is created by enabling legislation, which may take the form of an ordinance or resolution. When appointed, Commissioners are provided a copy of the enabling legislation pertinent to their commission or board. This enabling legislation defines the role, scope, and responsibilities of the commission.

SERVING ON A COMMISSION

Membership and Appointments: In order to be appointed to serve on a commission, commissioners must abide by certain requirements, such as residency requirements, and not be employees of the City of Berkeley. Appointments are generally made by a Councilmember appointing someone pursuant to the Fair Representation Ordinance.

Oath of Office: Before commissioners can participate as voting members of their commissions, they must take the Oath of Office as required by law, at the City Clerk Department or through their commission secretaries. Failure to take the Oath of Office within 30 days of the appointment date is cause for automatic termination.

Terms of Office: Most commissions have both “term minimums” and “term maximums.”

Vacancies: Vacancies are filled via the commission appointment or reappointment process.

Commissions with Special Regulations: The following commissions require special qualifications or unique terms for appointment: Sugar-Sweetened Beverage Product Panel of Experts, Mental Health Commission, Community Health Commission, Fair Campaign Practices Commission, Cannabis Commission, Homeless Services Panel of Experts, Loan Administration Board, and Youth Commission.

Attendance Requirements: It is important to note that all commissions are subject to certain attendance regulations. Failure to comply with attendance rules can result in automatic termination.

Commissioners must attend all meetings in order to avoid being marked absent. A commissioner is “absent” unless he or she 1) has been granted an excused absence because the meeting conflicts with a religious or cultural holiday (see below); or 2) The commissioner has obtained an approved leave of absence from their appointing councilmember or commission. Commissioners should inform the secretary as far in advance as possible if they cannot attend a meeting.

A commissioner must be present at least one hour, or 50% of the entire meeting, whichever is less, to be counted as present for purposes of attendance.

Absences, Leaves of Absence, and Terminations: There are various kinds of absences; below is information about them, and how they may lead to automatic termination.

Leaves of Absence: Leaves of Absence (LOA) may be granted to the commissioner by the appointing councilmember for a specific meeting, or a period not to exceed three months. Written notice of the LOA must be filed by the Councilmember with the City Clerk prior to the actual absence. Leaves of Absence may not be granted retroactively. Commissioners interested in seeking a Leave of Absence should **contact their appointing Councilmember with their request in advance of the absence**, and should consult the Commissioners' Manual to review specific exceptions and rules related to Leaves of Absence.

Automatic Terminations: The following are reasons why commissioners are automatically terminated:

- Absence from three consecutive meetings. Note that Commissions that meet on a reduced schedule may have different attendance rules.
- Absence from 50% or more of all regular meetings in a six-month period. Note that newly appointed commissioners must attend more than half of all regular meetings held during the reporting period since being appointed in order to avoid termination.
- The non-filing of required Conflict of Interest Disclosure statements.
- Failure to take the Oath of Office within 30 days of the appointment date.
- Non-residency.
- Failure to meet any eligibility requirements of the ordinance, resolution, or other law establishing the commission or regulating its membership.

Resignations: Commissioners wishing to resign must submit a written resignation **directly to the City Clerk** and to the appointing Councilmember or the Council, as appropriate. Either an electronic or a hard copy resignation will be accepted.. Resignations are effective the day the notice is received by the City Clerk unless a future date is indicated.

Accommodations for Commissioners with Disabilities: Commissioners who have a disability have a right to reasonable accommodations necessary for them to participate in City meetings and programs. The Americans with Disabilities Act (ADA) and other laws mandate that the City provide programmatic access and effective communication for people with disabilities to be able to participate in the City's programs, services, and activities including public meetings. For more information, contact the City's Disability Compliance Program at 6418.

Stipend: To remove economic hardship barriers, the City Council authorizes payment in lieu of certain expenses to commissioners of all Council-appointed boards, commissions, committees, task forces, and joint subcommittees who meet certain household income criteria. Eligibility criteria and payment information may be found in the Commissioners' Manual. Commissioners submit periodic eligibility paperwork directly to the Commission Secretary.

Conflict of Interest and Form 700: Members of Berkeley's commissions provide advice to the City Council, study various matters and, in the case of certain commissions, function in a quasi-judicial capacity. All members of commissions should be aware of the need to avoid any instances of conflict of interest. Conflict of interest standards are generally applicable to all commissions, with specific requirements sometimes applicable to particular boards and commissions. Conflict of Interest is reviewed in the Commissioners' Manual in depth. Some important points related to Conflict of Interest include:

- Commissioners are prohibited from making contracts in which they are financially interested.
- Commissioners are prohibited from participating in any decisions if it is reasonably foreseeable that the decision will have a financial effect on interests of the commissioner or his or her family, separate from the effect of the decision on the public in general.
- Commissioners must disclose the conflict and then remove themselves (recusal) from proceedings if there is a Conflict of Interest.

Most, commissioners are required to file a Form 700 Statement of Economic Interests in which they disclose specified financial interests. Failure to file the Form 700 within 30 days of appointment will result in termination from the commission. Form 700s are required upon appointment, annually, and when leaving a commission.

Commission Organization and Officers: All commissions have a chair and vice-chair as its officers. Officers are elected by a majority of the members of the commission. The terms, training requirements, and duties of these offices are described in the Commissioners' Manual.

Use of the City Logo and Business Card Policy: The City of Berkeley does not provide business cards for members of appointed boards and commissions. Commissioners are prohibited from using the city logo, branding, or collateral to create their own business cards.

COORDINATION AND COMMUNICATION WITH COUNCIL, STAFF, AND OTHERS

Coordination and Communication with City Council: The role of a commission is to advise the City Council. The City Council is responsible for accepting, rejecting, or modifying commission recommendations. The Council relies on the various commissions to increase the variety of viewpoints and talents brought to bear on City problems. By concentrating on specific areas, commissioners use their expertise and conduct detailed analyses that the Council itself may not have the time to pursue. It is expected that commissions will adopt positions of advocacy within their specific purview. However, the City Council's role is to take into consideration the many varied and sometimes conflicting public needs and render its judgment of what will best serve the public good. The Council must weigh the effect of any given recommendation, not only on the particular area of interest but on all other City goals and programs.

A commission transmits its findings, responses to referrals, and other recommendations to the Council through the Council agenda, or by transmitting a letter of communication.

There are many factors related to an item being placed on an agenda or in transmitting a letter to the Council. The commission secretary facilitates the process of communicating with the Council; consult the Commissioners' Manual for more information about this topic.

Coordination and Communication with Staff: The commission secretary, a City employee designated to assist the commission in its functions, performs administrative duties and ensures that the commission is apprised of laws and processes affecting proposed recommendations.

The commission secretary is also a representative of the City Manager, and therefore advises the commission of staff's recommendations. In this sense, the secretary is an active participant with the commission, although without a vote, rather than merely a passive transmitter of information. The secretary assists the commission but is not an employee of the commission. At all times, the secretary is directly responsible to the department director and City Manager.

In coordinating with staff, commissioners must:

- Ensure all contacts from the commission to any member of the staff, including those to a higher-level employee (e. g. the City Manager), are transmitted through the secretary. Conversely, all contacts from staff to the commission go through the secretary.
- Keep all contacts with staff members clearly in the framework of the commission assignment.
- Not ask for individual reports, favors, or special considerations.

- Direct complaints from the public directly to the secretary, who will respond on behalf of the City.
- Realize that the assigned secretary reports directly to a supervisor and may not be able to carry out every request that the commission may have.

Further information related to the secretary's role with the commission is provided in the Commissioners' Manual.

Commission Relationship with City Manager: The City Manager has a direct interest in the work of all commissions as they often advise the City Council on issues that will affect the use of staff time and City resources.

IMPORTANT REMINDER: When considering the appropriateness of communicating publically as a commissioner, remember these simple guidelines:

- The City Council speaks for the City
- Commissions speak to the Council
- Commissioners speak as private individuals

Any time a commissioner uses their commission title or references their membership on a city commission when speaking publically, they must state the following:

"I am speaking in an individual capacity and not representing the [Commission Name] or the City of Berkeley."

PUBLIC MEETINGS AND AGENDAS

The Brown Act: The Brown Act is the state's open meetings act. It is intended to ensure that the public has adequate notice of what actions its elected and appointed local decision makers may take and that those decisions and the deliberations leading to them occur in public.

The Brown Act applies to the meetings of legislative bodies such as commissions.

Any contact between a quorum of the legislative body, either directly or through intermediaries, to hear, discuss, deliberate, or take action "on any matter within the subject matter jurisdiction" of the City or commission is a meeting. All meetings must be conducted in compliance with the Brown Act. Meetings also include retreats, forums, workshops, and similar types of events. The definition of a meeting extends to contact in person, by telephonic or other electronic medium, or through intermediaries. With a few narrow exceptions not applicable to most commissions, all meetings of legislative bodies must be open to the public.

Types of Meetings: Meeting types include:

- Regular meetings—meetings that occur at dates, times, and places set by formal action of the commission at the beginning of the year.
- Special meetings—meetings called to hear a specific item or items. These meetings are not “standing” meetings with set dates, times, and places.
- Subcommittee meetings—meetings with less than a quorum of the parent committee, designated by the commission for a specific task and a limited duration. These subcommittees are advisory to their parent commission, not to Council, and are tasked with studying specific issues. Note that ad hoc subcommittees have different agenda requirements than other kinds of meetings.
- Public hearings—meetings that are held when required by law. Not all commissions hold public hearings.
- Concurrent meetings of commissions—meetings held by two or more commissions or subcommittees to discuss an issue that falls under their purview.

Each type of meeting has its own requirements related to how the meeting is noticed (how many hours prior to the meeting the agenda is published, and where it is published). More information related to how the Brown Act treats these meetings is available in the Commissioners’ Manual. The Manual also explains what gatherings are not considered meetings under the Brown Act.

Brown Act Violations and Danger Areas: Below are some of the “danger areas” related to the Brown Act.

- Serial Meetings: One type of illegal meeting is a “serial meeting.” A serial meeting is one in which a quorum of a legislative body communicates with each other, directly or indirectly, through whatever medium, to develop collective concurrence. There are many types of serial meetings, all of which are prohibited.
- Retreats, Forums, Workshops: Retreats, forums, study sessions, workshops, and similar are considered meetings. Any such activity, where a quorum of the commission is present and discussing commission business, **is a meeting**. It must meet all the requirements for notice, public participation, location, and accessibility.
- Lobbying: Serial lobbying by members of the public of all commission members is not prohibited *as long as they are not acting as intermediaries between members of the legislative body.*

Placing Items on a Commission Agenda: Any commissioner may submit items to appear on their respective commission’s agenda. Commissions should adopt procedures and guidelines in their bylaws for submitting items to the commission agenda.

COMMISSION PROCEDURES

Following proper procedures will ensure the validity and integrity of commission actions. It is essential that commissioners remember that the standards of conduct and transparency are higher for public legislative bodies. Procedures ensure clear and efficient conduct of commission business and facilitate a productive public process.

Polling, Quorum, and Voting: The Commissioners' Manual reviews proper procedures for polling to ensure there is a quorum for a meeting. A quorum is the minimum number of commissioners who must be present for the valid transaction of business. Voting refers to the number of affirmative votes needed to pass a motion.

Rules and Procedures of Commission Meetings: Procedures for meetings are established via meeting rules. Parliamentary procedures for chairs and commissioners, the precedence of motions, and voting procedures are available in informational materials provided by the City Clerk Department. Parliamentary rules derive from Robert's Rules of Order.

Order and Decorum: The ways in which the public may address the commission at meetings, and the conduct of public at these meetings, is addressed in the Commissioners' Manual.

Commissioners must adhere to these standards of conduct:

- While the commission is in session, the commissioners should not interrupt the proceedings or any commissioner or member of the public who has the floor.
- The chair or the vice-chair may participate in the debate, subject only to such limitations of debate as are imposed on all commissioners. The chair should not be deprived of any of the rights and privileges enjoyed by a commissioner by reason of his or her acting as the presiding officer.
- Every commissioner desiring to speak should address the chair and, upon recognition by the chair, should confine himself or herself to the question under debate.
- A commissioner, once recognized, should not be interrupted when speaking unless it is to call him or her to order or for a point of personal privilege. If a commissioner, while speaking, is called to order, he or she should cease speaking until the question of order can be determined, and, if in order, he or she should be permitted to proceed.

COMMISSION REPORTS TO COUNCIL

The City Council values the recommendations that commissions make, and commissions should follow guidelines to create high-quality reports. The agenda process and the Council's agenda schedule are important to consider when creating a report.

To transmit findings to the Council, **action of the full commission is required.** Commissions should prepare the text of their reports or letters with the approval of the full commission. Basic steps for communicating to the Council include:

- An item is placed before the commission by Council referral, staff, or a commissioner.
- The commission agendas the topic.
- The commission discusses the agenda item and votes to send its recommendation or findings to Council.
- The commission drafts a report, approving the text by motion and vote, and sends it to the secretary (it may take several commission meetings to fully discuss an item and agree on findings). Final editing may be assigned to specific commissioners.
- The secretary enters the report into the Council agenda review process within three weeks from receiving the final text of the report from the commission.

There are procedural aspects related to providing the Council with high-quality reports, such as going through a comprehensive review process, evaluating financial implications, using the correct format, and clearly stating the implications of the recommendation. Reports should include:

- A clear recommendation on what action the commission is asking Council to take.
- A realistic evaluation of the financial implications of the recommendation and, if possible, potential funding sources.
- The reasons for the recommendation and the facts that support them.
- The resolution or ordinance in proper format, if needed.

INFORMATION FOR CHAIRS AND VICE-CHAIRS

The chair, who is elected by the majority of the commission for a one year term, presides at commission meetings and ensures the work of the commission is accomplished.

The election of the chair and vice-chair is usually in February; check the commission's specific enabling legislation for exceptions. The term for both chair and vice-chair is one year. Elections must be placed on the commission agenda, as described in the Commissioners' Manual. Regulations for officer elections include:

- Nominations for chair and vice-chair require a motion (with second).
- A commissioner may nominate himself or herself.
- Any member of the commission, regardless of length of tenure on the commission may be elected chair or vice-chair.
- There is no automatic succession from vice-chair to chair.
- Motions to nominate must be voted on in the public forum, and no secret ballots are allowed.
- A roll call vote is recommended for votes on commission officers, and is required if any commissioner requests a roll call vote.
- The results of the vote must be publicly announced and the vote recorded in the minutes.
- A commissioner may not be elected chair if he or she will not be able to finish the term due to the two-year limitation.

A commissioner shall not serve as chair for more than two consecutive years; there are no term limits for the vice-chair.

The vice-chair assumes the duties of the chair in his or her absence.

Some of the major duties for the chair include:

- Presiding over meetings effectively by exerting sufficient control of the meeting to eliminate irrelevant, repetitious, or otherwise unproductive discussion. At the same time, the chair must ensure that all viewpoints are heard and are considered in a fair and impartial manner.
- Controlling the debate among commissioners so everyone has a chance to speak.
- Participating in debate.
- Making motions, and seconding motions.
- Presiding over public hearings.
- Ensuring commission bylaws, if any, and procedures are followed. The chair cannot make rules related to the conduct of meetings; only the full commission may do so.
- Appointing commissioners to temporary subcommittees subject to the approval of the full commission.

- Approving the agenda prior to distribution. This is limited to the structure and order of the agenda and does not grant the chair the authority to remove an item submitted by commissioners or staff if submitted by the established deadline.
- Signing correspondence on behalf of the commission.
- Representing the commission before the City Council. Other commissioners may be the representative with the formal approval of the commission by motion and vote.
- Responding to inquiries from the media to clarify actions taken by the commission, but *not editorializing, offering personal opinions, or speculating about future actions when speaking in such capacity.*
- Approving commission reports to Council. The chair cannot modify content that was approved by the full commission.
- Calling special meetings when necessary.

Per the City Council, chairs and vice-chairs are required to participate in mandatory annual training. A video training provided by the City Clerk Department satisfies this requirement. The video features training on commission procedures and legal requirements. This training video must be viewed and the Affirmation of Completion must be filed with the City Clerk no later than 60 calendar days from the date of election as chair or vice-chair. Failure to comply with these requirements will result in the immediate forfeiture of the position of chair or vice-chair. While not mandatory for commissioners other than the chair and vice-chair, completion of this training is encouraged for all commissioners.