ACTION CALENDAR
April 22, 2008

To: Honorable Mayor and Members of the City Council
From: Phil Kamlarz, City Manager

Submitted by: Dan Marks, Director, Planning

Subject: Item 60A, Development Standards Related to Density Bonus

RECOMMENDATION
1. Consider the two alternate Ordinances attached to this report addressing development standards for mixed-use, commercial and residential buildings in commercial districts;
2. Find the Ordinances compliant with the Dutra legislation, consistent with the General Plan, and exempt from the California Environmental Quality Act, as discussed in the September 19, 2006 staff report (Attachment 3); and
3. Conduct a first reading of the preferred Ordinance language. The Planning Commission recommends adoption of the Joint Subcommittee’s recommended language (Attachment 1); planning staff recommend adoption of the staff recommended language (Attachment 2). Both Ordinances include a “sunset clause” repealing the Ordinance in the event Proposition 98 fails on the June 2008 ballot.
4. Schedule a special meeting for April 28 at 5 p.m. for the second reading of the preferred Ordinance language.

SUMMARY
The following summarizes the proposed amendments (italicized text indicates where the staff and Subcommittee recommendations differ):

- Both the Joint Subcommittee and staff proposals would introduce “Transition Setbacks.” These setbacks increase with each additional story on commercial district lots abutting residential districts in the C-1, C-T and C-W Districts.
- In both recommendations, in all districts a minimum setback of 10 feet would be required when abutting a residential district.
- For the second floor and above, the size of the setbacks in the C-W District are different in the staff and Subcommittee proposals: the Subcommittee recommends the fourth floor now require a use permit, the first and second floors be setback 10 feet from an abutting residential district, and the third be setback 20 feet; staff recommends the fourth floor continue to be allowed without additional discretion and
the fourth floor be setback 30 feet from an abutting residential district and 10 feet from the primary street frontage. Staff also recommends the second and third floors be setback an average of 20 feet (minimum of 15 feet) and the first floor 10 feet from an abutting residential district.

- The Subcommittee recommends the amount of open space allowed on the roof be limited to 25% of the required open space; staff recommends a 75% limit.

- Both recommendations would modify the amount of open space required in the C-1 and C-W Districts to decrease with the number of units in a project. (No change to the required open space amounts in the other commercial districts).

- Both recommendations would prohibit ground floor residential units unless authorized by a use permit.

- Both recommendations would introduce minimum development standards for ground floor commercial uses, including a minimum 12-foot floor to ceiling height and minimum area and street frontage requirements.

- Both recommendations would require a minimum of 25% of the required residential parking spaces and all of the required commercial spaces to be at grade in mixed-use buildings, and in exclusively commercial buildings 25% of the required spaces to be at grade.

The proposed amendments are Attachments 1 and 2 to this report. They are discussed in greater detail in the September 19, 2006 City Council staff report, Attachment 3.

FISCAL IMPACTS OF RECOMMENDATION
Due to the additional requirements for use permits, both the Joint Subcommittee- and staff-proposed amendments will increase demand on City staff resources to prepare use permits and Council appeal reports. Fees for use permits are expected to offset some of the cost of staff time preparing the permits.

Modified development standards would reduce the overall size of developments in those commercial zones of the City that allow for mixed-use development (allows both commercial and residential uses). Reduced development potential would have an as yet undetermined impact to City income due to losses in potential sales tax and property tax shares.

CURRENT SITUATION AND ITS EFFECTS
The Planning Commission has been considering changes to development standards and procedural changes to implementation of state density bonus law recommended by the Joint Density Bonus Subcommittee since fall 2007. The Planning Commission is midway through review of proposed development standard changes. Based on concern about the potential effect of Proposition 98 (on the June 3, 2008 statewide ballot), the
Commission recommends the City Council consider adopting the changes prior to the potential effective date of Proposition 98 (June 4, 2008). The Commission will continue to consider the proposed changes and provide a final recommendation to Council in the fall.

BACKGROUND
Below is a timeline showing the development and consideration of the proposed changes to development standards by the Joint Subcommittee, Planning Commission, other Boards and Commissions, and City Council:¹

- Fall of 2005, City Council combined the Zoning Adjustment Board (ZAB) and Housing Advisory Commission (HAC) ad hoc subcommittees on density bonus with Planning Commission (PC) members to form the Joint Density Bonus Subcommittee (Council Resolutions N.S 63,032 and N.S. 63,061). The purpose of the Joint Subcommittee was “to facilitate the public’s participation and bring together both policy and implementation perspectives for the purpose of making recommendations to the City Council on changes to existing density bonus procedures as required by Government Code Section 65915.”

- 2005 to 2006, the Joint Subcommittee developed changes to development standards for mixed-use projects and procedural changes to staff implementation of state density bonus law.

- Fall of 2006, proposed Proposition 90 on the November ballot could jeopardize the changes to development standards prepared by the Joint Subcommittee and staff. Planning staff recommends accelerated review of those changes for an effective date prior to Proposition 90’s potential effective date.

- September 2006, a joint ZAB, HAC, and PC public meeting on the proposed changes is conducted. The planning staff and Joint Subcommittee recommend slightly different sets of changes. The PC conducts a public hearing and recommends no action by the City Council based on concern over lack of time to evaluate the complex legislation and notify affected property owners.

- September 19, 2006, the City Council adopts the staff-recommended set of changes with a sunset clause repealing the Ordinance if Proposition 90 fails. After failure of the proposition, the amendments are repealed.

- Spring 2007, the Joint Subcommittee reconvenes to consider procedural recommendations. March 26, 2007 the Subcommittee makes a final recommendation for changes to staff implementation of density bonus law.

¹ Staff reports and materials for these activities are available on the City Council’s website as attachments to Item 25 on the September 19, 2006 agenda.
Fall 2007 to spring 2008, the Planning Commission reviews the recommendations of the Joint Subcommittee and staff in order to make a final recommendation to City Council in fall of 2008. This process is still underway and expected to be completed by fall 2008.

Spring 2008, concern over Proposition 98 leads the PC to recommend accelerated consideration of development standards by the City Council. On April 8, 2008, the PC held a public hearing on the proposed amendments; notice was provided to property owners in the Commercial Districts.

Recent Planning Commission Consideration and Action
During the fall of 2007 and the spring of 2008, Planning Department staff presented background on the development standards and density bonus recommendations to the Planning Commission. The Commission has taken public testimony, which includes ZAB and HAC members of the former Joint Subcommittee, as well as input from other members of the public.

The Commission has discussed state density bonus law (Government Code Section 65915), the Joint Subcommittee’s proposed changes to staff implementation of that law, and staff-proposed modifications to the existing staff procedures.

The Commission has also discussed changes to development standards. Their discussion included the topics of required setbacks from abutting residential districts, open space requirements, roof-top open space, and the use of parking lifts in mixed-use buildings. The Commission will continue consideration of the proposed changes this spring and summer, leading to recommendations to the City Council in the fall.

On April 8, 2008 the Commission conducted a public hearing on a set of proposed changes to development standards at a special meeting. The special meeting and hearing was conducted in response to Proposition 98, which appears on the June 3 2008 State ballot.

Staff and the Joint Subcommittee generated the proposed changes to development standards during fall 2006 (due to Proposition 90, also an eminent domain and regulatory takings initiative). The Commission considered the same set of proposed development standard changes (both those of staff and the Joint Subcommittee) on April 8.

Public comment on the issue was wide-ranging. Numerous citizens spoke against higher density residential development along those commercial corridors that abut lower-density residential neighbors. Several members of the community spoke in favor of higher density development along commercial and mixed-use corridors based on the role housing near transit and goods and services can play in reducing auto dependence.
Following public comment, the Commission made the following recommendation to Council.

Motion/Second/Carried (GP/PD) to recommend that:
  • The City Council adopt the Joint Subcommittee recommendation because it grants the greatest flexibility should Proposition 98 pass;
  • Both the staff and subcommittee recommendations should be sent to the City Council for consideration;
  • The Council should take up the recommendations quickly due to Proposition 98 on the June ballot;
  • The amendments adopted by Council should include a sunset clause should Proposition 98 fail; and
  • The Commission’s recommendation is temporary and does not prejudice future recommendations.

Previous City Council and Planning Commission Action
On September 19, 2006, Council took the following actions:

Moved, seconded, failed (Olds/Maio; Noes – Moore, Capitelli, Bates; Abstain – Anderson, Wozniak) a substitute motion to adopt first reading of an ordinance as proposed by the Subcommittee.

Moved, seconded, carried (Wozniak/Capitelli; Noes – Olds; Abstain – Anderson, Worthington) the main motion to adopt first reading of an ordinance amending Berkeley Municipal Code (BMC) Title 23 as proposed by staff and further amended to include a sunset provision. Second reading scheduled for September 26, 2006.

Prior to the Council vote, the Planning Commission considered the proposed amendments at a public hearing on September 13, 2006. The Planning Commission made the following motions:


Motion/Second/Carried to recommend the City Council to take no action on the recommendations. (Stoloff/Pollack). Ayes: Gurley, Kaufer, Pollack, Samuels, Stoloff. Noes: Blake, Burke, Sheen, Wengraf. Abstain: None. Absent: None.

Proposition 98
Proposition 98, also know as the “California Property Owners and Farmland Protection Act” addresses the eminent domain process and government regulations that could reduce property values. Regulations that are mandatory and are found to “transfer an economic benefit” at the expense of the property owner could fall under the provisions of Proposition 98. The Proposition most directly impacts rent control and inclusionary ordinances. Depending on future court interpretations, local governments could be liable to compensate property owners for economic losses incurred due to those ordinances. The practical effect could be the repeal or cessation of enforcement of those ordinances. In December 2007 the City Council formally opposed Proposition 98.

Proposition 98 also could be interpreted to affect the feasibility of making future changes to development standards and zoning regulations. Cities could be financially liable for decisions that “transfer an economic benefit to one or more private persons at the expense of the property owner.” In other words, if a City action lowers property values for some but increases them for others, the City could be found liable. A change to zoning regulations could negatively affect the properties subject to change or the neighboring properties.

RATIONAL FOR RECOMMENDATION
Concern about the possible outcome of Proposition 98, as described above, is the basis for the Planning Commission recommendation to the City Council. Reducing the development potential in terms of size and number of dwelling units in the commercial districts could lower the value of properties. Property owners in the effected districts could under Proposition 98 seek compensation from the City if it is found that these losses have in effect been transferred to neighboring properties as economic benefits. Making the changes to development standards so that they take effect in advance of the effective date of Proposition 98 would reduce the risk for the City should it decide to permanently implement some or all of changes to development standards generated by the Joint Subcommittee.

The Commission recommended the Council adopt the Joint Subcommittee’s recommendation, instead of the staff recommendation, based on the assumption that it provides the City the greatest flexibility to modify development standards after passage of Proposition 98 in a way that expands development potential. The City’s ability to make future changes to development standards would depend upon court interpretations of Proposition 98.

ALTERNATIVE ACTIONS CONSIDERED
The City Council could:

1. Adopt only certain sections of either of the proposed Ordinances;
2. Modify portions of either of the proposed Ordinances;
3. Take no action.
Should the Council decide to take no action, the existing development standards for mixed-use buildings in the commercial districts would remain unchanged. It is possible that it would be difficult for the City to make the changes under consideration in the future if Proposition 98 passes. In order for the amendments to be effective prior to the potential effective date of Proposition 98, the Council will need to conduct a second reading of the amendments more than 30 days prior to June 3, 2008. This will require scheduling of a special meeting.

CONTACT PERSON
Dan Marks, Director, Planning, 981-7410

Attachments:
1: Ordinance – Joint Subcommittee on Density Bonus
2: Ordinance – Staff
3: September 19, 2006 City Council report without attachments.
Attachments to Item 25, September 19, 2006 City Council report are available online: http://www.ci.berkeley.ca.us/citycouncil/2006citycouncil/packet/091906/09-19a.htm
4: April 8, 2008 Planning Commission Public Hearing Notice
Attachment 1: Joint Subcommittee on Density Bonus

ORDINANCE NO. -N.S.


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

Section 1. That Berkeley Municipal Code 23E.04.050 is amended to read as follows:

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

A. Any structure that is located in a commercial District that abuts or confronts a lot or lots in a residential District shall conform to the following yard setback requirements unless otherwise specified by the provisions of an individual District or this section:

1B. The minimum width of any side yard shall be five (5) feet;

2G. The minimum depth of any rear yard shall be ten (10) feet, or ten percent (10%) of the depth of the lot, whichever is greater;

3D. The minimum depth of any front yard, or the minimum width of any side yard on the street side, shall be the same required yard as specified for the adjacent residential District.

B. Notwithstanding the foregoing, a minimum setback of 10 feet shall be provided along a property line abutting a residential District in all cases.

C. The Board may approve a Use Permit authorizing yards smaller than those required above if it finds that such smaller yard would provide greater privacy or improved amenity to a lot in the residential District.
Section 2. That Berkeley Municipal Code 23E.04.070 is added and shall read as follows:

**Section 23E.04.070 Usable Open Space**
The area of each lot which is reserved for Usable Open Space shall conform to the standards of Section 23D.04.050. In addition, such areas shall satisfy the following conditions unless otherwise specified in individual District standards.

A. With the exception of the C-2 District, no more than 25% of the required open space shall be located on the roof of the top story of a building. The Board may modify this requirement by Use Permit.

B. In the C-1 and C-W Districts, Useable Open Space requirements shall be as set forth below. The Board may modify these requirements by Use Permit.

<table>
<thead>
<tr>
<th>Number of Units</th>
<th>Open Space per unit (square feet)</th>
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Section 3. That Berkeley Municipal Code 23E.28.085 is added and shall read as follows:

**Section 23E.28.085 Lift Parking**

With the exception of the C-2 District, the following requirements for at grade required parking shall apply:

A. In mixed-use buildings, all required commercial parking spaces shall be provided at grade and may not be met by mechanical lift parking. The Board may modify this requirement by Use Permit.

B. In mixed-use and exclusively residential buildings, a minimum of 25% of the required residential parking spaces shall be provided at grade and may not be met by mechanical lift parking. The Board may modify this requirement by Use Permit.
C. In exclusively commercial buildings (i.e., with no residential uses), a minimum of 25% of the required parking shall be provided at grade and may not be met by mechanical lift parking. The Zoning Officer may modify this requirement by Administrative Use Permit.

Section 4. That Berkeley Municipal Code 23E.36.060.E is added and shall read as follows:

E. The following uses may only be allowed on the ground floor of a Mixed Use building if authorized by a Use Permit pursuant to Sections 23E.36.090.A and B: residential units and uses that serve the residential uses (with the exception of, and not limited to, parking, lobby/entry areas, space for leasing and management of the building, and utility/service areas, e.g. trash and recycling, laundry, and storage facilities).

Section 5. That Berkeley Municipal Code 23E.36.070.C(2) is added and shall read as follows:

2. For all areas in the C-1 District that are not located within the University Avenue Strategic Plan Overlay area, when a lot abuts a residential district the following provisions shall apply. The Board may approve a Use Permit to modify these provisions.

   a. The requirements of Sections 23E.04.050 and 23E.04.060 shall apply; and

   b. Transition Setback: On the second story and above, an average 20-foot and minimum 15-foot setback shall be provided from the property line of any abutting lot that is in a residential district.

Section 6. That Berkeley Municipal Code 23E.36.070.D is amended to read as follows:

D. Any Mixed Use building (residential and commercial) shall satisfy all of the standards and requirements of this District, except that the Off-street Parking and Usable Open Space requirements for the Residential Use portion shall be as set forth in the R-3 District requirements and the Usable Open Space requirements shall be as set forth in Section 23E.04.070. T

   he Board may issue a Use Permit to modify the Off-street Parking and Usable Open Space requirements where it finds such modification promotes any of the general purposes set forth in Section 23E.36.090.C.

Section 7. That Berkeley Municipal Code 23E.36.070.G is added and shall read as follows:

G. For all areas in the C-1 District that are not located within the University Avenue Strategic Plan Overlay area, ground level commercial space shall have a minimum
of 12 feet clear floor to ceiling height, shall be equivalent to a minimum area of 30% of the Project’s land area, and shall occupy a minimum of 75% of the Project’s primary street frontage. The Board may approve a Use Permit to modify these provisions.

Section 8. That Berkeley Municipal Code 23E.40.060.D is added and shall read as follows:

D. The following uses may only be allowed on the ground floor of a Mixed Use building if authorized by a Use Permit: residential units and uses that serve the residential uses (with the exception of, and not limited to, parking, lobby/entry areas, space for leasing and management of the building, and utility/service areas, e.g. trash and recycling, laundry, and storage facilities).

Section 9. That Berkeley Municipal Code 23E.44.060.E is added and shall read as follows:

E. The following uses may only be allowed on the ground floor of a Mixed Use building if authorized by a Use Permit: residential units and uses that serve the residential uses (with the exception of, and not limited to, parking, lobby/entry areas, space for leasing and management of the building, and utility/service areas, e.g. trash and recycling, laundry, and storage facilities).

Section 10. That Berkeley Municipal Code 23E.48.060.E is added and shall read as follows:

E. The following uses may only be allowed on the ground floor of a Mixed Use building if authorized by a Use Permit: residential units and uses that serve the residential uses (with the exception of, and not limited to, parking, lobby/entry areas, space for leasing and management of the building, and utility/service areas, e.g. trash and recycling, laundry, and storage facilities).

Section 11. That Berkeley Municipal Code 23E.52.060.E is added and shall read as follows:

E. The following uses may only be allowed on the ground floor of a Mixed Use building if authorized by a Use Permit: residential units and uses that serve the residential uses (with the exception of, and not limited to, parking, lobby/entry areas, space for leasing and management of the building, and utility/service areas, e.g. trash and recycling, laundry, and storage facilities).

Section 12. That Berkeley Municipal Code 23E.56.060.E is added and shall read as follows:
E. The following uses may only be allowed on the ground floor of a Mixed Use building if authorized by a Use Permit: residential units and uses that serve the residential uses (with the exception of, and not limited to, parking, lobby/entry areas, space for leasing and management of the building, and utility/service areas, e.g. trash and recycling, laundry, and storage facilities.

Section 13. That Berkeley Municipal Code 23E.56.070.C is amended to read as follows:

C. No yards for Main Buildings, Accessory Buildings, or Accessory Structures shall be required, except as set forth below:

1. The fourth or higher story of any building located on a lot adjacent to Telegraph Avenue, between Bancroft Way and Dwight Way, shall be set back a minimum of ten feet from the Telegraph Avenue street line;

2. When the subject lot is adjacent to an abutting or confronting lot in a residential zone, the following provisions shall apply. The Board may approve a Use Permit to modify these provisions.
   a. The requirements of Section 23E.04.050 and 23E.04.060 shall apply; and,
   b. Transition Setback: On the second story and above, an average 20-foot and minimum 15-foot setback shall be provided, and on the fourth story and above a minimum 30-foot setback shall be provided, from the property line of any abutting lot that is in a residential district.

Section 14. That Berkeley Municipal Code 23E.60.060.E is added and shall read as follows:

E. The following uses may only be allowed on the ground floor of a Mixed Use building if authorized by a Use Permit: residential units and uses that serve the residential uses (with the exception of, and not limited to, parking, lobby/entry areas, space for leasing and management of the building, and utility/service areas, e.g. trash and recycling, laundry, and storage facilities).

Section 15. That Berkeley Municipal Code 23E.64.040.D is amended to read as follows:

D. All newly constructed main structures in designated nodes shall be at least two stories or 25 feet in height, except gasoline stations. In addition, the standards of 23E.64.070.F shall apply.
Section 16. That Berkeley Municipal Code 23E.64.060.F is added and shall read as follows:

F. The following uses may only be allowed on the ground floor of a Mixed Use building if authorized by a Use Permit: residential units and uses that serve the residential uses (with the exception of, and not limited to, parking, lobby/entry areas, space for leasing and management of the building, and utility/service areas, e.g. trash and recycling, laundry, and storage facilities).

Section 17. That Berkeley Municipal Code 23E.64.070.B is amended to read as follows:

B. The height for a main building shall not exceed the following limits and shall satisfy the following requirements:

| Table 23E.64.070
<table>
<thead>
<tr>
<th>Building Height Limitations</th>
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<tbody>
<tr>
<td>Use Type</td>
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<tr>
<td>Commercial Only</td>
</tr>
<tr>
<td>Live/Work Only</td>
</tr>
<tr>
<td>Mixed Use**</td>
</tr>
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<td>Residential Only</td>
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*Within designated nodes there is a minimum height requirement, see Section 23E.64.040.D

** A building that is used for mixed use (commercial and residential) purposes may be constructed to a height of four stories and 50 feet, subject to obtaining a Use Permit. The 4th story must be used for residential or live/work purposes.

Section 18. That Berkeley Municipal Code 23E.64.070.C(1) is amended to read as follows:

1. When a lot is adjacent to an abutting or confronting lot in a residential zone district the following provisions shall apply. The Board may approve a Use Permit to modify these provisions, the requirements of Section 23E.04.050 and 23E.04.060 shall apply to require additional yard and building feature standards.
   a. The requirements of Sections 23E.04.050 and 23E.04.060 shall apply; and
   b. Transition Setback: On the second story a setback of 10 feet and on the third story a setback of 20 feet shall be provided from the property line of any abutting lot that is in a residential district.
Section 19. That Berkeley Municipal Code 23E.64.070.D is amended to read as follows:

D. Each lot shall contain the following minimum useable open space areas as set forth in Section 23E.04.070. The Board may approve a Use Permit to modify these provisions:

1. Forty square feet of usable open space for each dwelling unit;

2. Forty square feet of usable open space for each Live/Work Unit.

Section 20. That Berkeley Municipal Code 23E.64.070.F is added and shall read as follows:

F. The following additional development standards and use restrictions shall be applicable to mixed-use and exclusively commercial projects. The Board may approve a Use Permit to modify these provisions.

1. Ground level commercial space shall have a minimum of 12 feet clear floor to ceiling height.

2. Ground level commercial space in designated nodes shall be equivalent to a minimum area of 30% of the Project’s land area and shall occupy a minimum 75% of the Project’s primary street frontage.

3. Ground level commercial space in non-node areas shall be equivalent to a minimum area of 15% of the Project’s land area and shall occupy a minimum 50% of the Project’s primary street frontage.

Section 21. The proposed action is exempt from review under the California Environmental Quality Act because it can be seen with certainty that the proposed amendments would not have a significant effect on the environment.

Section 22. This ordinance shall be automatically repealed, and shall be of no further force or effect, if Proposition 98 on the June 2008 California ballot does not take effect.

Section 23. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 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.
ORDINANCE NO. -N.S.


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

Section 1. That Berkeley Municipal Code 23E.04.050 is amended to read as follows:

Section 23E.04.050 Special Yard Requirements for C- Lots Abutting Residential Zones
A. Any structure that is located in a commercial District that abuts or confronts a lot or lots in a residential District shall conform to the following yard setback requirements unless otherwise specified by the provisions of an individual District or this section:

1B. The minimum width of any side yard shall be five (5) feet;

2G. The minimum depth of any rear yard shall be ten (10) feet, or ten percent (10%) of the depth of the lot, whichever is greater;

3D. The minimum depth of any front yard, or the minimum width of any side yard on the street side, shall be the same required yard as specified for the adjacent residential District.

B. Notwithstanding the foregoing, a minimum setback of 10 feet shall be provided along a property line abutting a residential District in all cases.

C. E. The Board may approve a Use Permit authorizing yards smaller than those required above if it finds that such smaller yard would provide greater privacy or improved amenity to a lot in the residential District.
Section 2. That Berkeley Municipal Code 23E.04.070 is added and shall read as follows:

**Section 23E.04.070 Usable Open Space**
The area of each lot which is reserved for Usable Open Space shall conform to the standards of Section 23D.04.050. In addition, such areas shall satisfy the following conditions unless otherwise specified in individual District standards.

A. With the exception of the C-2 District, no more than 75% of the required open space shall be located on the roof of the top story of a building. The Board may modify this requirement by Use Permit.

B. In the C-1 and C-W Districts, Useable Open Space requirements shall be as set forth below. The Board may modify these requirements by Use Permit.

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Section 3. That Berkeley Municipal Code 23E.28.085 is added and shall read as follows:

**Section 23E.28.085 Lift Parking**

With the exception of the C-2 District, the following requirements for at grade required parking shall apply:

A. In mixed-use buildings, all required commercial parking spaces shall be provided at grade and may not be met by mechanical lift parking. The Board may modify this requirement by Use Permit.
B. In mixed-use and exclusively residential buildings, a minimum of 25% of the required residential parking spaces shall be provided at grade and may not be met by mechanical lift parking. The Board may modify this requirement by Use Permit.

C. In exclusively commercial buildings (i.e., with no residential uses), a minimum of 25% of the required parking shall be provided at grade and may not be met by mechanical lift parking. The Zoning Officer may modify this requirement by Administrative Use Permit.

Section 4. That Berkeley Municipal Code 23E.36.060.E is added and shall read as follows:

E. The following uses may only be allowed on the ground floor of a Mixed Use building if authorized by a Use Permit pursuant to Sections 23E.36.090.A and B: residential units and uses that serve the residential uses (with the exception of, and not limited to, parking, lobby/entry areas, space for leasing and management of the building, and utility/service areas, e.g. trash and recycling, laundry, and storage facilities).

Section 5. That Berkeley Municipal Code 23E.36.070.C(2) is added and shall read as follows:

2. For all areas in the C-1 District that are not located within the University Avenue Strategic Plan Overlay area, when a lot abuts a residential district the following provisions shall apply. The Board may approve a Use Permit to modify these provisions.

   a. The requirements of Sections 23E.04.050 and 23E.04.060 shall apply; and

   b. Transition Setback: On the second story and above, an average 20-foot and minimum 15-foot setback shall be provided from the property line of any abutting lot that is in a residential district.

Section 6. That Berkeley Municipal Code 23E.36.070.D is amended to read as follows:

D. Any Mixed Use building (residential and commercial) shall satisfy all of the standards and requirements of this District, except that the Off-street Parking and Usable Open Space requirements for the Residential Use portion shall be as set forth in the R-3 District requirements and the Usable Open Space requirements shall be as set forth in Section 23E.04.070. The Board may issue a Use Permit to modify the Off-street Parking and Usable Open Space requirements where it finds such modification promotes any of the general purposes set forth in Section 23E.36.090.C.

Section 7. That Berkeley Municipal Code 23E.36.070.G is added and shall read as follows:
G. For all areas in the C-1 District that are not located within the University Avenue Strategic Plan Overlay area, ground level commercial space shall have a minimum of 12 feet clear floor to ceiling height, shall be equivalent to a minimum area of 30% of the Project’s land area, and shall occupy a minimum of 75% of the Project’s primary street frontage. The Board may approve a Use Permit to modify these provisions.

Section 8. That Berkeley Municipal Code 23E.40.060.D is added and shall read as follows:

D. The following uses may only be allowed on the ground floor of a Mixed Use building if authorized by a Use Permit: residential units and uses that serve the residential uses (with the exception of, and not limited to, parking, lobby/entry areas, space for leasing and management of the building, and utility/service areas, e.g. trash and recycling, laundry, and storage facilities).

Section 9. That Berkeley Municipal Code 23E.44.060.E is added and shall read as follows:

E. The following uses may only be allowed on the ground floor of a Mixed Use building if authorized by a Use Permit: residential units and uses that serve the residential uses (with the exception of, and not limited to, parking, lobby/entry areas, space for leasing and management of the building, and utility/service areas, e.g. trash and recycling, laundry, and storage facilities).

Section 10. That Berkeley Municipal Code 23E.48.060.E is added and shall read as follows:

E. The following uses may only be allowed on the ground floor of a Mixed Use building if authorized by a Use Permit: residential units and uses that serve the residential uses (with the exception of, and not limited to, parking, lobby/entry areas, space for leasing and management of the building, and utility/service areas, e.g. trash and recycling, laundry, and storage facilities).

Section 11. That Berkeley Municipal Code 23E.52.060.E is added and shall read as follows:

E. The following uses may only be allowed on the ground floor of a Mixed Use building if authorized by a Use Permit: residential units and uses that serve the residential uses (with the exception of, and not limited to, parking, lobby/entry areas, space for leasing and management of the building, and utility/service areas, e.g. trash and recycling, laundry, and storage facilities).
Section 12. That Berkeley Municipal Code 23E.56.060.E is added and shall read as follows:

E. The following uses may only be allowed on the ground floor of a Mixed Use building if authorized by a Use Permit: residential units and uses that serve the residential uses (with the exception of, and not limited to, parking, lobby/entry areas, space for leasing and management of the building, and utility/service areas, e.g. trash and recycling, laundry, and storage facilities.

Section 13. That Berkeley Municipal Code 23E.56.070.C is amended to read as follows:

C. No yards for Main Buildings, Accessory Buildings, or Accessory Structures shall be required, except as set forth below:

1. The fourth or higher story of any building located on a lot adjacent to Telegraph Avenue, between Bancroft Way and Dwight Way, shall be set back a minimum of ten feet from the Telegraph Avenue street line;

2. When the subject lot is adjacent to an abutting or confronting lot in a residential zone, the following provisions shall apply. The Board may approve a Use Permit to modify these provisions.
   a. The requirements of Section 23E.04.050 and 23E.04.060 shall apply; and, for additional yard and building feature requirements.
   b. Transition Setback: On the second story and above, an average 20-foot and minimum 15-foot setback shall be provided, and on the fourth story and above a minimum 30-foot setback shall be provided, from the property line of any abutting lot that is in a residential district.

Section 14. That Berkeley Municipal Code 23E.60.060.E is added and shall read as follows:

E. The following uses may only be allowed on the ground floor of a Mixed Use building if authorized by a Use Permit: residential units and uses that serve the residential uses (with the exception of, and not limited to, parking, lobby/entry areas, space for leasing and management of the building, and utility/service areas, e.g. trash and recycling, laundry, and storage facilities).

Section 15. That Berkeley Municipal Code 23E.64.040.D is amended to read as follows:
D. All newly constructed main structures in designated nodes shall be at least two stories or 25 feet in height, except gasoline stations. In addition, the standards of 23E.64.070.F shall apply.

Section 16. That Berkeley Municipal Code 23E.64.060.F is added and shall read as follows:

F. The following uses may only be allowed on the ground floor of a Mixed Use building if authorized by a Use Permit: residential units and uses that serve the residential uses (with the exception of, and not limited to, parking, lobby/entry areas, space for leasing and management of the building, and utility/service areas, e.g. trash and recycling, laundry, and storage facilities).

Section 17. That Berkeley Municipal Code 23E.64.070.B is amended to read as follows:

B. The height for a main building shall not exceed the following limits and shall satisfy the following requirements:

<table>
<thead>
<tr>
<th>Use Type</th>
<th>Height (ft.)</th>
<th>Stories (number)</th>
<th>Special Requirements/Limitations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial Only</td>
<td>40</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Live/Work Only</td>
<td>40</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Mixed Use</td>
<td>50</td>
<td>4</td>
<td>The 4th floor story must be used for residential or live/work purposes and must be setback 10 feet from the primary street frontage in addition to the Transition Setback of Section 23E.64.070.C(1).</td>
</tr>
<tr>
<td>Residential Only</td>
<td>40</td>
<td>3</td>
<td></td>
</tr>
</tbody>
</table>

*Within designated nodes there is a minimum height requirement, see Section 23E.64.040.D

Section 18. That Berkeley Municipal Code 23E.64.070.C(1) is amended to read as follows:

1. When a lot is adjacent to an abutting or confronting lot in a residential zone district the following provisions shall apply. The Board may approve a Use Permit to modify these provisions, the requirements of Section 23E.04.050 and 23E.04.060 shall apply to require additional yard and building feature standards.
a. The requirements of Sections 23E.04.050 and 23E.04.060 shall apply; and

b. Transition Setback: On the second story and above, an average 20-foot and minimum 15-foot setback shall be provided, and on the fourth story and above a minimum 30-foot setback shall be provided, from the property line of any abutting lot that is in a residential district.

Section 19. That Berkeley Municipal Code 23E.64.070.D is amended to read as follows:

D. Each lot shall contain the following minimum useable open space areas as set forth in Section 23E.04.070. The Board may approve a Use Permit to modify these provisions.

1. Forty square feet of usable open space for each dwelling unit;

2. Forty square feet of usable open space for each Live/Work Unit.

Section 20. That Berkeley Municipal Code 23E.64.070.F is added and shall read as follows:

F. The following additional development standards and use restrictions shall be applicable to mixed-use and exclusively commercial projects. The Board may approve a Use Permit to modify these provisions.

1. Ground level commercial space shall have a minimum of 12 feet clear floor to ceiling height.

2. Ground level commercial space in designated nodes shall be equivalent to a minimum area of 30% of the Project’s land area and shall occupy a minimum 75% of the Project’s primary street frontage.

3. Ground level commercial space in non-node areas shall be equivalent to a minimum area of 15% of the Project’s land area and shall occupy a minimum 50% of the Project’s primary street frontage.

Section 21. The proposed action is exempt from review under the California Environmental Quality Act because it can be seen with certainty that the proposed amendments would not have a significant effect on the environment.

Section 22. This ordinance shall be automatically repealed, and shall be of no further force or effect, if Proposition 98 on the June 2008 California ballot does not take effect.
Section 23. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 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.
To: Honorable Mayor and Members of the City Council

From: Phil Kamlarz, City Manager

Submitted by: Dan Marks, Director, Planning and Development

Subject: Item 25, Development Standards Related to Density Bonus

RECOMMENDATION
Consider the two alternate Ordinances attached to this report addressing development standards for mixed-use, commercial and residential buildings in commercial districts and either conduct a first reading of the preferred Ordinance language after considering Dutra compliance, General Plan consistency, and exemption from the California Environmental Quality Act, or provide staff with further direction. Alternately, take no action as recommended by the Planning Commission due to the lack of time to sufficiently evaluate the complex legislation and notify property owners of the proposed changes.

SUMMARY
In the Fall of 2005 the City Council appointed a Joint Subcommittee on Density Bonus, consisting of members of the Planning Commission, Housing Advisory Commission, and Zoning Adjustments Board, to make recommendations to the Council on possible changes to the City’s existing density bonus procedures. For the past twelve months the Joint Subcommittee has worked on recommendations related to development standards, the city’s inclusionary ordinance, and density bonus law implementation. The Joint Subcommittee had finalized most of their recommendations when, in August 2006, Planning Department staff informed them of the possible impacts of Proposition 90 on the ballot in November and suggested that should Proposition 90 pass, it could preclude several of the recommendations under consideration. The Subcommittee chose to accelerate their considerations in order to make recommendations to the Council in time for it to act prior to potential adoption of Proposition 90.

Staff proposed recommendations to achieve the objectives of the Joint Subcommittee. The Joint Subcommittee and staff agreed on a number of policy recommendations, however two key differences remain. The Joint Subcommittee has indicated that it would like to continue to work to refine its recommendations over the next few months, but believes that its recommendations form a reasonable base-line which can be modified in the future.

The following summarizes the proposed amendments (italicized text indicates where the staff and Subcommittee recommendations differ):
• Both the Joint Subcommittee and staff proposals would introduce “Transition Setbacks” that increase with the height of the building on commercial district lots abutting residential districts in the C-1, C-T and C-W Districts.

• In both recommendations, in all districts a minimum setback of 10 feet would be required.

• For the second floor and above, the size of the setbacks in the C-W District are different in the staff and Subcommittee proposals: the Subcommittee recommends the fourth floor now require a use permit, the first and second floors be setback 10 feet from an abutting residential district, and the third be setback 20 feet; staff recommends the fourth floor continue to be allowed without additional discretion and be setback 30 feet from an abutting residential district and 10 feet from the primary street frontage, staff recommends the second and third floors be setback an average of 20 feet (minimum of 15 feet) and the first floor 10 feet from an abutting residential district.

• The Subcommittee recommends the amount open space allowed on the roof be limited to 25% the maximum of required open space; staff recommends a 75% limit.

• Both recommendations would modify the amount of open space required in the C-1 and C-W Districts to decrease with the number of units in a project.

• Both recommendations would prohibit ground floor residential units unless authorized by a use permit.

• Both recommendations would introduce minimum development standards for ground floor commercial uses, including a minimum 12-foot floor to ceiling height and minimum area and street frontage requirements.

• Both recommendations would require a minimum of 25% of the required residential parking spaces and all of the required commercial spaces to be at grade in mixed-use buildings, and in exclusively commercial buildings 25% of the required spaces would be at grade.

On September 13, 2006, the Planning Commission considered the staff and Joint Subcommittee recommendations and recommended (5-4) to the Council that it take no action in regard to modifications in development standards in C-Districts pending further review by the City. The majority of the Commission concluded that, despite the risks posed by Proposition 90, it could not make any reasonable judgments in the time available regarding the potential impacts of the proposed changes on future development. While the Commission was concerned with the possibility that Proposition 90 might pass, it felt that the danger of precipitous action was even greater and that the inability in the time available to adequately notice and engage all those most directly affected by the ordinance changes was unfair and could have significant unforeseen impacts on the development of new housing in Berkeley. A motion to support the staff recommendation with a sunset clause that would guarantee that the matter would be revisited after November 7 failed (4 – 5).
Staff concludes the proposed amendments are consistent with the General Plan and would be exempt from review under CEQA.

PLANNING COMMISSION PUBLIC HEARING AND ACTION
On September 13 the Planning Commission (PC) held a public hearing to consider the Joint Subcommittee’s proposals and the options presented by staff. Several members of the public, including a number of market rate and affordable housing developers, addressed the Commission. Housing developers expressed their opposition to the proposed legislation because it would result in reduced building envelopes and thus reduced project value. They indicated that even the level of reductions proposed in the staff option would render housing development infeasible. Some developers indicated that property values would have to decline by as much as 50% to compensate for the reduced project values. Affordable housing developers indicated that substantial additional public subsidies would be needed to make up for the increased costs of development that could result form the proposed amendments. Several members of the public also addressed the PC. Their concerns centered on the size of the zoning project envelopes along the avenues and that when coupled with state density bonus law made for projects that were too large.

After closing the public hearing, the Planning Commission discussed the issues at length. Many Commission members expressed concern about the lack of public outreach and input, particularly, the lack of full property owner notification. Commission members also indicated that there was not enough time for them to fully understand the scope and ramifications of the proposed amendments to make an informed recommendation to the Council. The Commission indicated that in light of the complexity and breadth of the amendments, perhaps the City should take no action right now, despite the difficulties posed by Proposition 90. The Commission was concerned that the recommendations may have been assembled too quickly to try to respond to the potential state legislation, however, one Planning Commission member pointed out that the majority of the Joint Subcommittee’s recommendations had been completed prior to the knowledge of Proposition 90.

Commission members acknowledged the need to address the size of building, but stated that effort should be focused on the relationship between the C- and R- Districts. They stated that the parking and open space aspects of the proposals added complexity to the process and did not address the central issue. Some Commission members also expressed their concern that the Joint Subcommittee spent their time reducing development potential without addressing the primary issue of the Council’s referral, which was to clarify the density bonus process. Other Commissioners emphasized the areas of similarity between the staff and Joint Subcommittee recommendations and that if these actions are not taken now, it may not be possible to make them later. Also, some members emphasized that the amendments could be revisited and revised later.

The Planning Commission’s discussion also included questions about to the final size of projects under the proposed amendments. Members of the HAC and ZAB argued that in many cases building envelopes might achieve similar sizes to those produced today, but would need
numerous use permits to do so. However, both the Joint Subcommittee and Staff recommendations would reduce the size of the base project, the number of density bonus units, and thus the size of the overall project. The reduction of the base project will reduce the size of the eventual building in two ways: the building is smaller to start out with and will receive a smaller density bonus. Even though the proposals provide for use permits to exceed the new standards, it will not lead to buildings of the same sizes as can be built under the City’s current regulations.

After lengthy discussion, a motion was made that the Council should take no action on the proposed amendments at this time. A substitute motion was then made to adopt the staff’s proposed Ordinance with a sunset provision to require the City to review the amendments again very soon. The substitute motion failed, and the main motion passed by a 5-4 vote.

OTHER BOARD AND COMMISSION REVIEW
On September 6 staff facilitated a joint meeting of the Housing Advisory Commission, Planning Commission, and Zoning Adjustments Board. Staff provided a full overview of the amendments and the efforts of the joint subcommittee to date. The group discussed the recommendations at length, but no actions were taken.

On Thursday September 7, the HAC discussed the recommendations at their regular meeting and voted 8—to support the joint subcommittee recommendations. The ZAB discussed the proposed amendments at their regular meeting of September 14, and voted 6-1 to support the staff recommendations, however, they subsequently took separate votes on the issues where the staff and subcommittee recommendations differ: the rooftop open spaces restriction and fourth floor in the C-W District. The ZAB voted 5-2 to support the Joint Subcommittee’s recommendation to restrict rooftop open space to 25% of the total open space required. The ZAB failed to get a majority vote to recommend that Council adopt the Joint Subcommittee’s recommendation to require a use permit for a fourth floor in the C-W District; they voted 6-0 to recommend the Council continue to study the issue.

FISCAL IMPACTS OF RECOMMENDATION
Due to the additional requirements for use permits, both the Joint Subcommittee and Staff proposed amendments will increase demand on City staff resources to prepare use permits and Council appeal reports. Fees for use permits are expected to offset some of the cost of staff time preparing the permits.

CURRENT SITUATION AND ITS EFFECTS
The Joint Subcommittee on Density Bonus (the Joint Subcommittee) has been considering zoning amendments related to implementation the State’s density bonus law (Govt. Code Section 65915) for over 15 months. Passage of Proposition 90 jeopardizes the work conducted so far by the Joint Subcommittee because this proposition may require local governments to compensate private property owners for any future zoning change that would cause “substantial economic loss.” Most of the Zoning amendments developed by the Joint Subcommittee likely would be subject to this Proposition 90 requirement. For this reason, staff recommends the Joint
Subcommittee’s proposed changes be considered for adoption prior to the potential effective date of Proposition 90 (November 8, 2006).

**BACKGROUND**

The City’s Inclusionary Ordinance requirements trigger eligibility for a density bonus under the State’s Density Bonus law. Density bonus projects are typically larger than projects allowed only under the City’s Zoning Ordinance. Neighbors often oppose these larger projects. Additionally, the State’s affordable housing laws limit the Board’s discretion over the ultimate size and shape of these projects. In 2006, staff proposed and the PC and CC adopted a workplan item to address density bonus in Berkeley. The ZAB Ad Hoc Subcommittee on Density Bonus and later the Joint Subcommittee on Density Bonus were formed to address these issues along with staff. The following text discusses the State’s affordable housing laws, their implementation (typically through density bonus provisions), the role of the City of Berkeley’s Inclusionary Ordinance, the overall effects on the City’s housing stock, and efforts by the various density bonus subcommittees.

**Berkeley’s Inclusionary Ordinance**

In 1986 Berkeley adopted its Inclusionary Housing Ordinance, creating BMC Chapter 23C.12. This law requires developers of most multi-unit projects to designate 20% of their new units as “inclusionary” (i.e., affordable) units, as defined by the ordinance. In general, developers must rent or sell the specified Inclusionary Units at lower-than-market-rate prices affordable to households with below-median annual incomes. The allowed prices vary according to the income level of the targeted households (i.e., Moderate, Lower, and Very-Low Income Households), determined by the family incomes as percentage of area’s median family income.

Chapter 23C.12 requires that half of the Inclusionary Units (i.e., 10% of all units) be affordable to households earning 50% of area median income (if subsidies are available, and they typically are); otherwise, all Inclusionary Units must be affordable to households earning no more than 80% of area median income.\(^1\)

**State Affordable Housing Laws**

In order to increase the supply of “affordable housing units” throughout the State, the State of California adopted an Affordable Housing Law (Government Code Section 65589.5) and a Density Bonus Law (Government Code Section 65915).

*The Affordable Housing Law* precludes a local government, under most circumstances, from denying an “affordable housing project. *The Density Bonus Law* provides financial incentives – i.e., additional market rate units and modification of development standards – to developers if they build a specified amount of affordable housing. Almost all projects qualifying for a density bonus also qualify for this protection under Section 65589.5.

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\(^1\) See BMC Sections 23C.12.060 for detailed definitions on qualifying prices and income levels.
The Density Bonus Law (Section 65915) requires local governments to approve additional market rate units, over and above what a jurisdiction’s Zoning Ordinance would otherwise allow, for projects that provide a specified amount of “affordable units.” The jurisdiction must also modify any development standards that might preclude the construction of these bonus market-rate units. For example, a 30-unit project might be entitled to an additional 10 market-rate units, which could only be constructed by allowing a fourth story in a zoning district that otherwise allows only three. The Density Bonus Law would require the City to waive the three-stories only standard, allowing a 4th story to accommodate the 10 density bonus units.

Above and beyond the mandated density bonus, the jurisdiction must also grant up to three incentives or concessions, as requested by the developer, if they are necessary to cover the cost of the affordable units. These incentives or concessions can include even more reductions in development standards (i.e., reducing setbacks, allowing more height, or reducing parking requirements to lower the development cost, etc), but can also include allowing more units. The Density Bonus units are an “entitlement” if the project meets the standards established in the State Density Bonus Law; the incentives or concessions are additional provisions that would “result in identifiable, financially sufficient, and actual cost reductions.”

Through 2004, with only minor changes, mixed-use projects (commercial on the ground floor with residential units above) that complied with the Berkeley Inclusionary Ordinance also qualified for 25% density bonus under the State Density Bonus Law. Some qualified for additional concessions (typically additional market-rate units), and protection under the State Affordable Housing Law, Section 65589.5.

Effective January 1, 2005, the State amended the State Density Bonus Law to increase incentives to developers to build more affordable units. These amendments increased the maximum density bonus (from 25% to 35%) and the number of concessions (from 1 to up to 3). As a result, rental projects now satisfying the Berkeley Inclusionary Ordinance automatically qualify for at least a 32.5% density bonus (up from 25%); condo projects qualify for at least a 15% bonus (up from 10%).

Changes in Housing Development
For the previous two decades (1980 to 2000), the number of housing units within Berkeley changed little. About 600 units were lost in the 1980s and about 1140 units were created in the 1990s – on net, increasing the housing stock by only 540 units. The University developed about half of these units, thus only an additional 270 units became available to the generally public over this twenty year period.

Starting in 1995, the picture changed dramatically. From 1995 through today, the City has approved 28 large-scale development projects (mostly mixed-use projects with ground floor commercial and upper-floor residential), adding almost 1,500 units to the housing stock. Eight of these 28 projects are subsidized all-affordable projects providing about 400 Inclusionary Units. The 20 for-profit projects provided another 200 Inclusionary units, plus 900 market-rate
units. Another three large-scale projects have been proposed and another four are under discussion and applications are imminent.

Zoning Adjustments Board Activity

The Zoning Adjustments Board (the Board) acted on the use permits for each of these 28 projects – averaging about four large-scale projects a year for the past 7 years. The Board struggled with the complex procedures for determining the size of the density bonus and the number and type of concessions due each project. They also struggled with the dilemmas of neighborhood opposition to new developments and with the design challenges of large-scale projects immediately adjacent to residentially-zoned land.

For the most part, they Board could neither deny these projects nor reduce their overall mass and height due to the combination of the requirements of Berkeley’s Inclusionary Ordinance, the State Density Bonus Law (Section 65915) and the State Affordable Housing Law (Section 65589.5). They often felt frustrated by their inability to reduce a project’s mass, to respect its proximity to residentially-zoned land, or simply to improve the project’s design. They also felt frustrated by the complex Berkeley process for determining a project’s density bonus and incentives and concessions. Board members began examining the density bonus procedures for possible opportunities to reclaim some discretion over these projects. The State Density Bonus Law defines the density bonus as additional units over the “maximum amount of units otherwise allowed by law.” In most California jurisdictions, the density bonus is a percentage increase over the applicable density standard. But Berkeley is one of a few communities that does not have residential density standards (i.e., units per acre).²

Lacking density standards, Staff developed procedures for determining the “maximum amount of units otherwise allowed by law”. This calculation became known as “the base project.” In its simplest form, staff adopted a five-step process to determine the size of a density bonus project:

1. **Define the Hypothetical Building Envelope:** Determine the maximum residential building envelope that would require only one use permit but would otherwise meet all of the applicable development standards – a space available for residential units and all of its associated requirements (i.e., open space, parking, setbacks, height, stories, etc.)

2. **Derive the Base Project (unit count and size):** Calculate the number of “average-sized” units that could be accommodated in the hypothetical residential building envelope, while still meeting all of the applicable development standards. [i.e., divide the area of the Hypothetical Building Envelope by the Average Units Size, to derive the Base Project.] This resulting number of units represents the maximum number of units allowed at this site, of the size being proposed. It becomes a proxy density standard for this project at this site.

3. **Derive the Density Bonus Project:** Apply the developer’s entitled density bonus percentage (i.e., 25%, 32.5%, etc.) to the number of base project units; combine the

² Berkeley has density standards only in the R-1A, R-2, and R-2A zoning districts, none of which could support a large mixed-use project.
bonus units and the base project units to determine the “Density Bonus Project” that the developer is entitled to build.

4. **Identify and Waive Development Standards, as necessary, to allow construction of the Density Bonus Project:** Because the Density Bonus units increase the project size over what is otherwise allowed, typically some development standards must be waived or reduced for this Density Bonus Project to be built. Frequently 35% additional units require an additional building floor, a reduction in setbacks, a reduction in required parking or open space, etc. There are tradeoffs among these options – the Board could approve an increase in height or a reduction in setbacks, for example. The Applicant may request and the Zoning Adjustments Board must decide what development standards to waive or reduce to accommodate the entire Density Bonus Project – i.e., the Base Project and the Density Bonus Units. Under most conditions, the ZAB may not deny the project or reduce the number of units; it can only require changes that reduce “detriments” without reducing the number of units.

5. **Additional Incentives or Concessions:** The applicant is entitled to the Density Bonus Project – up through 4 above. The applicant may request additional benefits – called concessions or incentives – as necessary to cover the cost of the affordable units.

This process limited the Board’s discretion to (1) defining the base project, (2) deciding what development standards should be waived or reduced, (3) determining whether the request concession should be granted or denied, and (4) acting on other project elements (such as design, traffic considerations, etc.) that did not affect the project mass or number of units.

Over time, as staff applied these procedures to more and more projects, they encountered case by case variations that required additional assumptions within each of these steps. Staff had to accommodate Building Code light and air requirements, residential “uses” (such as entry ways, laundry rooms, game rooms) that were outside an individual housing unit, and projects requesting concessions but no density bonus units, for example.

Board members rightly observed that the size of this hypothetical base project, determined by staff in the absence of a density standard, drove the size of the overall project; the process to define the base project contained most of the discretionary elements available to the city. The ZAB thus appointed a four-member Density Bonus Subcommittee to examine the existing density bonus procedures in search of possible changes, both immediate and long-term, that would give them more control over the configuration of density bonus projects.

**ZAB Density Bonus Subcommittee**
The ZAB Density Bonus Subcommittee met from May through October, 2005, examining in detail the methods used to derive the base project and to apply the State Density Bonus Law. They identified a few administrative measures that staff could adopt immediately and recommended other changes for consideration by the Joint Density Bonus Subcommittee.

In that same time period, both the Housing Advisory Commission (HAC) and the Planning Commission appointed Density Bonus Subcommittees. By Fall 2005 the Council appointed a
Joint Density Bonus Subcommittee, comprised of members from all three bodies, which replaced the three individual committees.

**Joint Subcommittee on Density Bonus**

The Council charged the Joint Subcommittee, with staff support, to increase transparency in the density bonus process. The Joint Subcommittee has been meeting publicly since August 2005. The Council charged the Joint Subcommittee on Density Bonus (the Joint Subcommittee) to review the City’s implementation of State Density Bonus Law. Specifically, the body was formed to facilitate public participation and to develop policy and implementation procedures for Council consideration regarding density bonus procedures and associated inclusionary housing issues. (See Attached Council Resolutions N.S 63,032 and N.S. 63,061.)

When the group convened, the ZAB Ad Hoc Subcommittee on Density Bonus (ZAB Subcommittee) had already developed a series of proposals, which became the starting point for the Joint Subcommittee’s deliberations (See Attachment 6).

The Joint Subcommittee has considered the three broad categories of potential changes:

1. Requirements of the City’s Inclusionary Ordinance and potential amendments to the ordinance;
2. Implementation of the State Density Bonus law; and
3. Changes to development standards in order to decrease floor area of the base project subject to the density bonus calculation and thus to provide the City with greater discretion over the size of density bonus projects.

**Amendments to the Inclusionary Ordinance**

The Joint Subcommittee looked at the level of affordability and percentage of total units required by the City’s Inclusionary Ordinance. They evaluated the possibility of recommending a change in the required percentage of inclusionary units, but did not develop a formal recommendation. The Joint Subcommittee also evaluated an optional in-lieu fee that developers could pay instead of providing inclusionary units on-site. The in-lieu fee option was recommended by the Joint Subcommittee then adopted by the Council in June of 2006. The Joint Subcommittee and Council recommended the Housing Advisory Commission and staff also work to develop an in-lieu fee for rental inclusionary units as well.

**Implementation of the State Density Bonus Law**

The Joint Subcommittee began by evaluating the City’s implementation of Density Bonus Law. They reviewed the application submittal requirements for density bonus projects and procedures for defining the base project. The Joint Subcommittee did not complete this task; however, by Spring 2006 the ZAB Subcommittee and Land Use Division staff had developed improvements to the application submittal requirements that are currently being used and are attached to this report.
Changes to the Base Project
An underlying interest of the Joint Subcommittee was to decrease the residential floor area of the base project envelope, thereby reducing the size of the state-mandated density bonus project, and to increase ZAB discretion over a projects’ bulk and massing. An additional interest was to improve the physical transition between commercial and residential properties. The range of considerations is discussed below. Many of these recommendations were finalized as of July 24, prior to the City’s knowledge of the potential effects of Proposition 90, including the minimum 10 foot setback from abutting residential districts, the modified open space standards, the C-W development standards, and the limit on ground floor residential uses.

Commercial District Setbacks from Abutting Residential Districts: Currently, on corner lots, the front yard is defined as the shorter of the two street frontages. Berkeley’s lot patterns are such that on some major streets (such as San Pablo and University Avenues) the shorter frontage of a corner lot faces the side street (making it the front yard) and the yard separating the commercial parcel from an abutting residential parcel becomes the side yard. Section 23E.04.050 requires a five-foot side yard and a 10-foot rear yard. The Joint Subcommittee recommended redefining front yards for these corner parcels as the yard opposite the longest edge that abuts a residential district; thereby the rear yard setback would apply to the length that abuts a residential property on corner lots. However, staff recommended a 10-foot setback for all commercial property lines abutting residential districts, regardless of the location of the front and side yards; many interior lots fronting side streets in commercial districts would not have been addressed by the Joint Subcommittee’s recommendation. The Joint Subcommittee agreed with the staff recommendation resulting in a 10 foot setback on all commercial lots abutting a residential district.

Staff also recommended larger second story and above setbacks from abutting residential districts, to ease the transition between the commercial and residential development. This proposed “Transition Setback” would increase with the height of the building, and would also reduce the residential floor area and thus the base project for density bonus calculation. The increased setbacks would also provide the ZAB with more discretion over the ultimate size and shape of the building by requiring a use permit to be reduced. The ordinance amendments include upper story transition setbacks for the C-1, C-T and C-W Districts; the Joint Subcommittee and staff setback recommendations differ for the C-W District. The “Transition Setback” is only recommended for these three districts because the remaining commercial districts have existing development standards that serve to moderate the development potential in relation to the adjacent residential districts. Table 1 below summarizes the proposed setbacks as well as other recommended modifications to development standards.

Finally, in the C-1, C-T, C-W Districts staff has developed clarifying amendments to implement the existing policy regarding required yards on commercial lots abutting residential districts under 23E.04.050.

Development Standards in the C-W: The C-W district allows mixed-use buildings to be 50 feet tall and four stories. In order to gain greater discretion over the mixed-use projects in the C-W
District and to decrease the residential floor area in the base project, the Joint Subcommittee recommends reducing the maximum height and number of stories that would be allowed to three stores and 40 feet, to be exceeded with a use permit. Staff does not agree with the Joint Subcommittee’s recommendation because San Pablo is a wide avenue that can support a larger building form, loss of an entire floor would result in a substantial reduction in residential yield, this loss in housing is on a regional transit corridor, and staff believes the second story and above transition setbacks are sufficient.

Location of Open Space: The Subcommittee considered limiting the maximum percentage of the required open space that would be allowed by right on rooftops and balconies and requiring a minimum percentage of the required open space to be at the ground level, with the idea that these limits might be exceeded with a use permit. The rationale behind this effort was that limiting the amount rooftop and balcony open space would require open space in the base project to be located on the ground floor or podium level, which would decrease the size of the base project and improve the quality of open space. Ultimately, the Joint Subcommittee decided to recommend only restrictions on rooftop open space, allowing a maximum of 25% of the required open space on the roof of the top floor; staff recommends a limit of 75%. Staff’s recommendation differs from that of the subcommittee because when combined with the Subcommittees increased open space requirement in the C-W, the result would be a further reduction in residential floor area to accommodate the open space on the ground, balcony or podium level. Staff feels this further reduction is unnecessary given the transition setbacks on the second story and above. Further, this restriction adds to the complexity of the base project calculation and unpredictability of the project design process.

Modified Open Space Requirements: The Joint Subcommittee considered requiring uniform open space requirements for all mixed-use and residential projects in commercial districts. The amount of required open space would decrease as the number of units in a building increased. The current open space requirements for the commercial districts are shown in the table below.

<table>
<thead>
<tr>
<th>Open Space Required per Unit</th>
<th>Districts</th>
</tr>
</thead>
<tbody>
<tr>
<td>200 square feet</td>
<td>C-NS, C-1, C-N, C-E</td>
</tr>
<tr>
<td>100 square feet</td>
<td>C-2</td>
</tr>
<tr>
<td>40 square feet</td>
<td>C-SA, C-T, C-SO, C-W</td>
</tr>
</tbody>
</table>

The Joint Subcommittee recommended the universal open space requirements to provide consistent standards across districts because they felt it would be easier to implement. Staff did not recommend the universal open space requirements because different districts have different objectives of which the required open space is a component. Ultimately staff and Joint Subcommittee agreed on requiring the progressively decreasing open space amounts for the C-1 and C-W Districts, which would increase the amount of required open space for most projects in the C-W but decrease the amount for the C-1. However, staff’s recommendation hinges on allowance of up to 75% of the required open space to be located on the roof.
TABLE 1 – SUMMARY OF PROPOSED AMENDMENTS

The Joint Density Bonus Subcommittee recommends the following standards. Planning staff concurs, except where indicated. After making density bonus calculations, all standards could be modified with a use permit.

<table>
<thead>
<tr>
<th>Proposed Change</th>
<th>All other Commercial Districts</th>
<th>C-W (for non UASP areas)</th>
<th>C-T</th>
</tr>
</thead>
<tbody>
<tr>
<td>Setbacks from property lines abutting residually zoned districts.</td>
<td>Ground floor</td>
<td>10'</td>
<td>10' [Staff, 20']</td>
</tr>
<tr>
<td></td>
<td>2nd floor</td>
<td>10</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>3rd floor</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>4th floor</td>
<td>No fourth floor.</td>
<td>Currently not allowed</td>
</tr>
<tr>
<td></td>
<td></td>
<td>[Staff: 4th floor w/ 30’ setback]</td>
<td></td>
</tr>
<tr>
<td>Setbacks from primary street frontage</td>
<td>4th floor</td>
<td>No 4th floor.</td>
<td>Currently not allowed</td>
</tr>
<tr>
<td></td>
<td></td>
<td>[Staff: 10’]</td>
<td></td>
</tr>
<tr>
<td>Open Space</td>
<td>Maximum Amt on topmost roof</td>
<td>25%. [Staff: 75%]</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Required area varies by # of units</td>
<td>Yes. [Staff: Yes, if 75% max on topmost roof]</td>
<td></td>
</tr>
<tr>
<td>Ground Floor Uses</td>
<td>No Residential Units Commercial:</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td></td>
<td>12’ floor-to-ceiling</td>
<td>n.a.</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>% of Parcel Area</td>
<td>n.a</td>
<td>30%/75% (at nodes)</td>
</tr>
<tr>
<td></td>
<td>% of Street Frontage</td>
<td></td>
<td>15%/50% (non nodes)</td>
</tr>
<tr>
<td>Parking Lifts for Required Parking (for mixed use and residential buildings 3)</td>
<td>Commercial Spaces @ grade</td>
<td>100%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Residential Spaces at grade</td>
<td>25%</td>
<td></td>
</tr>
</tbody>
</table>

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3 For 100% commercial buildings, 25% of the parking spaces must be at grade. This requirement does not affect density bonus calculations.
EXHIBIT 1 – DEVELOPMENT ENVELOPES: BASE CASE AND WITH DENSITY BONUS

C-1 – EXISTING DEVELOPMENT STANDARDS

C-1 – JOINT SUBCOMMITTEE DEVELOPMENT STANDARDS

C-1 – STAFF DEVELOPMENT STANDARDS
C-W – EXISTING DEVELOPMENT STANDARDS

C-W – JOINT SUBCOMMITTEE DEVELOPMENT STANDARDS

C-W – STAFF DEVELOPMENT STANDARDS
Parking Lifts: The Subcommittee considered limiting the percentage of required parking that could be provided with parking lifts. They were concerned that required commercial parking that is provided in lifts is not utilized because some users, such as the elderly, people with physical disabilities, and people traveling with small children, find operating lift parking onerous and potentially dangerous. Further, requiring a certain proportion of the required parking to be provided at-grade limits both the floor area of a building and the possible number of units, and thereby the potential size of the base project. The Subcommittee and staff recommend a minimum of 25% of the required parking for residential units and all of the commercial spaces be provided at grade. They also recommend that 25% of the required spaces in exclusively commercial buildings be provided at grade. These requirements serve the purposes of providing more accessible parking and reducing the buildable area of a lot.

Ground Floor Residential: Current practice is to discourage residential units on the ground floor of mixed-use buildings. The Subcommittee and staff recommend prohibiting the location of residential units on the ground floor. The proposed language allows for typical residentially-related uses to be located on the ground floor, such as lobbies, space for the leasing and management of the building, and utility, garbage, recycling, and laundry areas. However, such areas would not be counted towards the base project from which the density bonus is calculated. Only residential units and their uses located on the second floor and above would count towards the base project.

Recent amendments to the C-1 district zoning standards added language to prohibit all residential uses except parking on the ground floor for buildings in the University Avenue Strategic Plan Overlay Area (UASP). Staff considers this language impractical. Therefore, staff developed different language to prohibit residential units and uses from the ground floor for the other commercial districts and the C-1 non-UASP areas.

Standards for Ground Floor Commercial Space: The Subcommittee wanted to address the quality of ground floor commercial space in mixed use projects. It considered various approaches to developing standards for commercial space, including minimum floor to ceiling heights and minimum depths. Staff developed recommendations based on the UASP model, which were endorsed by the Subcommittee. They are recommended for the C-1 District non-UASP areas and the C-W District. The proposed standards would establish minimum ground floor commercial space and street frontage standard and require a minimum floor to ceiling height of 12 feet.

Two-Menu Option for Concessions and Incentives: State Density Bonus Law allows a project applicant to request up to three concessions and incentives in addition to unlimited waivers and modifications. A city may only deny the request if it finds that it is not financially necessary for the project based on financial data provided by the applicant. The Subcommittee researched the practice of other cities and found that some cities use a “two menu” approach to concessions or incentives in which one menu itemizes concessions and incentives that the applicant may request without providing financial data and the second lists those concessions and incentives that require submission of financial data. This proposal would not be affected by the passage of
Proposition 90, and was not developed enough to make a solid recommendation to the Council. The Joint Subcommittee recommended the idea be considered further at a later date.

Potential Impacts on Future Development
The analysis below addresses the statutory requirements of Gov. Code Section 65863 (“Dutra Compliance”).

Effect on Total Unit Yield
The reductions in housing development potential identified are large, reflecting the scope of the transitions to the residential neighborhoods, new open space and parking criteria, and protections for ground floor commercial uses. With respect to Gov. Code Section 65863(c), the reduction still retains a substantial housing development capacity in the “opportunity sites” in these the corridors: up to 1402 units with the Joint subcommittee recommendations, and up to 1787 units with Staff’s recommendations. So while the reduction in housing yield cuts across the entire districts, beyond the “opportunity sites” in the City’s Housing Element, the remaining capacity in the reduced envelope is still substantial when compared with the total housing target of 1269 units in the entire previous reporting period.

To replace the reduced housing yield in these districts, would require finding approximately 25 new 30-unit project sites with the Joint subcommittee recommendations and approximately 13 new 30-unit project sites with Staff’s recommendations. Given the City’s experience to date, in which so much of the development has occurred on sites that are not identified “opportunity sites” in the C-1, C-T, and C-W districts, it is evident that the Housing “opportunity sites” significantly underestimate the capacity of the Avenue Commercial corridors.

The Housing element also identifies housing opportunities in other portions of the City. In fact the City is currently reviewing the Downtown Plan that is predominantly C-2 and not subject to the proposed amendments.

Effect on Below Market Rate Yield
Achieving the targets for below market rate (BMR) units is understandably more difficult. The City’s strong support for BMR units has achieved remarkably high percentages of BMR units to market rate:

- 496 units out of 1245 units or 40% of total units for the category of completed and Building permits issues; and
- 647 units out of 1715 units or 38% of total units for all projects with zoning approval.
  (See Attachment 3.)

Much of this success may be attributed to the vitality of the non-profit housing developers and the City’s proactive participation. Still, the total BMR unit production is also constrained by the capital sources available to the non-profit developers.
Unmet Regional Housing Need for Current Reporting Period
Including all projects for which zoning entitlements have been granted, the City’s progress towards ABAG’s targets is very strong for all categories except Moderate Income assisted (81-120% AMI):
- 1715 total units or 135% of ABAGs’ target
- 1061 or 233% of market rate units
- 647 units or 79% of total below market units

The remaining unmet housing targets in the current reporting period is:
- 71 units of Very Low Income or 20% of ABAG’s target
- 185 units of Moderate Income or 63% of ABAG’s target
- 256 units total

Were the City to maintain the same percentage of below market rate units to total units (approximately 40%), a total of 640 additional units would be required. The remaining development capacity in the existing “opportunity sites” in the C-1, C-T and C-W districts with implementation of the proposed amendments is estimated to be 1402 units for the Subcommittee recommendations and 1787 units with Staff’s recommendations. The remaining capacity in the districts affected by the proposed amendments is sufficient to meet the remaining need of 640 units for the current reporting period.

Conclusions
The analysis of available opportunity sites illustrates:
- There remains substantial housing development capacity with the reduced base project zoning envelopes recommended by the Joint subcommittee and Staff.
- There is sufficient development opportunity to meet the city’s share of the regional housing need as defined in the current Housing Element.

General Plan Consistency
The changes recommended by the Joint Subcommittee and staff would reduce development project base-envelopes and increase city discretion over projects that exceed the base-envelope. Among other changes, the proposed modifications to the Zoning Ordinance would reduce the size of buildings and therefore the number of units allowed as-of-right under various state statutes, for those projects that choose to take advantage of those statutes. The proposals under consideration represent significant reductions in base building envelopes in C-1 and C-W zoning districts as compared to the current practice. The recommendation of the Joint Subcommittee decreases the base-building envelope by up to 38% (37% residential floor area reduction) in the C-W zone (primarily San Pablo Avenue) and up to 25% (22% residential floor area reduction) in the C-1 zones (non-UASP). The staff’s recommendation includes base-building envelope reductions of 19% (13% residential) and 21% (17% residential) in the same areas, respectively. Both recommendations would also reduce base-building envelopes in the C-T District to by amount similar to those anticipated for the C-1 District.
The remaining commercial zoning districts (with the exception of the C-2, Downtown) do not carry the same recommendations as is proposed in the C-1, C-T and the C-W Districts. Generally speaking the City’s other commercial districts have development standards that significantly limit their development envelope (see table of C-District development standards in Attachment 4 to this report). These districts will be affected by the proposed requirement for minimum amounts of at-grade parking, which would reduce base building envelopes by requiring more land area be devoted to parking stalls. Recommendations for all C-districts also include a required ten-foot setback for all commercial lots abutting residential districts, restrictions on the amount of required open space on the rooftop, and restriction of ground floor residential units except by use permit. Base building envelope reductions from these changes would not be as significant as the reductions that are proposed for the C-1, C-T and C-W zoning districts resulting from the transition setback and open space standards (in the C-W). The C-2 zone was discussed but the Joint Subcommittee and staff are not proposing changes (except as noted above) in that district.

Housing density yields in the C-1, C-T and the C-W will be reduced under the proposed recommendations. The City is required by Gov. Code Section 65863 to perform an analysis of the effect of the modification in zoning regulations on the City’s ability to accommodate housing needs, often referred to as a “Dutra” analysis, after the sponsor of the legislation. The “Dutra” analysis attached to this report indicates that, for instance, the base project reduction in the C-W would reduce the yield of housing units on sites identified in the Housing Element’s as Opportunity Sites from 1,807 units to below 600 units on the same lots. While the revisions would significantly reduce the potential development on previously identified “opportunity sites,” the overall potential yield of the C-W zone is higher than the Housing Element recognizes because of the number of other potential opportunity sites in the City. For example, a number of projects have received or are seeking entitlements that were not listed on the Housing Opportunity Sites list. These include 1800 San Pablo, 700 University, and 1001 Ashby Avenue. These projects and others will contribute to Berkeley’s overall achievement of housing production and towards the City’s achieving its regional fair share of housing.

According to the Housing Element, average densities in the C-W zone can approach 150 units to the acre, and 100 units to the acre in the C-1 zone. Actual proposed densities have been somewhat below those identified in the Housing Element. Under the proposed recommendations, staff estimates densities in the C-W zone would still approach 65 units to the acre under the Joint Subcommittee recommendation, and 87 units to the acre under the staff’s recommendation, but could be somewhat higher or lower, depending on unit size. In the C-1 zone, those densities would approach 77 and 84 units to the acre based on the Joint Subcommittee and staff recommendations, respectively. As developers seek ways to limit the impacts to yield, and if property values do not adjust significantly downward, it is likely that the average size of units will decrease.

Staff modeled a mixed use project on a corner lot under the existing and proposed C-1 and C-W standards to determine the potential effects on project size resulting from the proposed amendments. One scenario maintains consistent unit counts in the project, and the second holds
unit size constant. In the first case, unit sizes in the C-W zone would reduce from 1,072 square feet to 672 square feet in the Joint Subcommittee recommendation, and down to 920 square feet in the staff’s recommendation to maintain an equal unit yield given the reduced residential floor area. In the C-1 zone unit sizes would decrease from 807 square feet to 628 square feet for the Joint Subcommittee recommendation and 677 square feet in the staff recommendation. Holding the unit size constant, the same project in the C-W zone goes from 30 units down to 19 units in the Joint Subcommittee recommendation and to 26 units in the staff recommendation. The unit counts falls from 30 to 23 units in C-1 under the Joint Subcommittee recommendation and to 25 under the staff’s recommendation.

The General Plan is a complex land use document that has various elements with goals and objectives for guiding the development and use of land in the City of Berkeley. The three primary elements that pertain to these proposals include the Housing Element, Land Use Element and Transportation Element. All General Plans seek to balance often disparate objectives. Indeed, in almost all General Plans there are inherent tensions between various goals. For instance, the General Plan encourages relatively high densities on the Avenues to accomplish a number of goals, including greater reliance on transit, relieving development pressure on interior neighborhoods, and maintaining the community’s diversity. The General Plan also requires a very high level of discretionary and design review authority over projects in order to protect neighborhoods from the impacts of that development.

The proposed recommendations will result in fewer housing units developed on a lot-by-lot basis, which may increase development costs per unit. Fewer units per project means that production may lag behind current and future demand. In addition, there will be fewer new residents to support commercial activities on some of the Avenues. Fewer units and smaller buildings means that there will be less people along major transit corridors, and therefore would not be consistent with sustainable land use practices which generally encourage higher densities along such corridors – both to promote transit usage and reduce reliance on autos. Finally, they will add complexity and uncertainty to the use permit and density bonus determination process by increasing the number of discretionary requirements that projects are subject to. Despite these possible outcomes from the recommended changes, the size of buildings permitted on the Avenues under any of the options continues to be comparatively large and allow for relatively high densities, compared to the densities permitted in many cities. As noted earlier, the capacity of the Avenues to accommodate new residential development under any of the options continues to be significant.

The proposals address General Plan goals and long-standing community issues related to development on commercial corridors adjacent to low-density residential districts. This conflict is a result of Berkeley’s existing land use pattern sometimes referred to as strip zoning, where commercial lots are one half block deep straddling the Avenues, and the “back half” of the blocks are generally low density residential. The imposition in the C-1, C-W and C-T zones of transitional development standards should result in less impacts on adjacent residents and may result in faster discretionary project review times (if, indeed, there is less neighborhood opposition). The proposed standards will result in better transitions to adjacent low-density
residential districts. The recommendations will also result in better ground floor commercial space for mixed-use projects.

The proposed recommendations are generally consistent with the General Plan. As stated in the Housing Element (page 70),

The main purpose of Berkeley’s residential land use policies are to protect the character and value of existing neighborhoods while channeling most new residential development into downtown and commercial areas located along transit corridors.

Residential densities along the transit corridors will still be significantly higher than in most of their adjacent residential districts. Relatively high densities can still be achieved through the State’s density bonus provisions. In addition, use permits on a case-by-case basis can modify most all of the proposed new standards.

Environmental Review (CEQA) Status
The proposed zoning amendments are consistent with the General Plan. They will generally result in reductions in the size of development projects in commercial districts. The amendments will result in smaller buildings and generally lower residential densities. As a result, the intensity of use for individual and cumulative development projects will be reduced and therefore have less impact on the environment, including less traffic, less overall noise, etc. The proposed project would not modify where housing could occur, so it is clear it would not increase the exposure of people to environmental impacts in relation to current policy or increase impacts on historic resources or have other environmental affects not already considered in the City’s General Plan Environmental Impact Report.

As a result, the amendments are exempt from the California Environmental Quality Act pursuant to Gov. Code Sec. 15061(b)(3) because it can be seen with certainty that the amendments would not have a significant effect on the environment.

RATIONALE FOR RECOMMENDATION
Both the Joint Subcommittee and Staff recommendations would increase the Zoning Adjustments Board’s discretion over development projects in the commercial districts by requiring more use permits than under the current regulations. This would provide the ZAB greater control over the massing and height of proposed buildings. Additionally, both proposals would reduce the size of the base project used for calculation of the density bonus. This would lead to smaller final projects. In particular, the projects would have greater setbacks between the commercial and residential districts, addressing a longstanding issue for residential neighborhoods abutting new large-scale commercial development. Both proposals would also establish minimum standards for ground level commercial space, leading to better and larger commercial spaces than sometimes proposed. Both proposals would also require a use permit for residential uses on the ground floor of mixed-use buildings, which will encourage more ground floor area be devoted to commercial space. Both proposals include modified open space standards for the C-1 and C-W districts. The new standards will decrease the amount of space...
required for most C-1 projects, where the current requirement of 200 square feet per unit is unreasonable for larger projects, and will increase the amount required for most C-W projects, where the current requirement of 40 square feet per unit is considered too little. The two proposals include minimum amounts of at grade parking to provide more easily accessible parking to the elderly, disabled, and families with small children. Finally, both proposals would require a minimum 10-foot setback from abutting residential districts, which addresses those existing situations where only a five foot setback is currently required.

The Joint Subcommittee’s recommendation would result in shorter buildings in the C-W district, addressing the concern that the C-W district allows taller buildings than in other zoning districts and that these taller buildings impact adjacent residential uses. The Joint Subcommittee’s recommendation would also limit the amount of rooftop open space to 25% of the total required, which would result in more open space located on the ground and podium levels, thus reducing the size of the building and, according to the Joint Subcommittee, improving the quality of the open space.

**ALTERNATIVE ACTIONS CONSIDERED**
The City Council could:

1. Adopt only certain sections of either of the proposed Ordinances;
2. Modify portions of the either of the proposed Ordinances;
3. Incorporate a sunset clause into either of the proposed Ordinances; or
4. Take no action.

As discussed above, the Joint Subcommittee and staff considered a broad range of options for addressing the city’s implementation of density bonus law and for reducing the base project envelope. The Council could modify any of the specific standards proposed in the staff or Joint Subcommittee proposed Ordinances. Possible changes to the proposed Ordinances include:

- Adopt only some of the proposed amendments, such as the restriction on ground floor residential units and the 10-foot minimum setback on commercial lots abutting a residential district;
- Reduce or increase the proposed Transition Setback amounts in the C-1, C-T, and C-W Districts, or apply these requirements to other districts;
- Adopting the reduced building height in the C-W District, but not the Transition Setback;
- Reduce or increase the proposed at-grade parking requirements or consider limiting the districts to which these apply;
- Reduce or increase the proposed open space standards for the C-1 and C-W Districts, or apply these requirements to other districts;
- Reduce or increase the amount of required usable open space allowed on rooftops; or
- Reduce or increase the size of the project area devoted to ground floor commercial space.
The Council could adopt a sunset clause along with any proposed legislation. The sunset clause could ask that the City review the adopted amendments by a set date or they measures would no longer be in effect. The City could either revise or repeal the measures based on additional consideration and analysis.

Alternately, the Council could choose to not adopt any zoning ordinance amendments. Should the Council leave the existing commercial district development standards in place, it is probable that it would be difficult for the Council to adopt similar measures in the future should Proposition 90 pass. However, it is possible that some modification to the city’s development standards to address the residential-commercial interface could be developed so long as they did not result in a “substantial economic loss” to the commercial district property owners. Additionally, further measures could be developed to improve the implementation of density bonus law even if Proposition 90 does pass. Such measure could include refinement of the application submittal requirements checklist and calculation of base project density.

CONTACT PERSON
Mark Rhoades, AICP, Land Use Planning Manager, Planning, 981-7411

Note: Attachments not included in 4-22-08 report.
Attachments:
1: Ordinance – Joint Subcommittee on Density Bonus
2: Ordinance – Staff
3: September 13 Planning Commission staff report and materials: memorandum from Principal Planner Allan Gatzke to the Planning Commission regarding Housing Element and Dutra compliance; draft zoning ordinance text; Memorandum regarding 9/7 HAC action; supplemental materials and late communications. (Joint Subcommittee and ZAB Subcommittee background materials were also provided as part of the September 13 Planning Commission packet; these items are attachments 5 and 6 to this report)
4: September 6 Joint Planning Commission, Housing Advisory Commission and Zoning Adjustments Board meeting materials and memorandum listing attached background materials: (1) Table of Proposed Changes in Development Standards; (2) One page discussion of Impacts of Proposed Changes in Development Standards; (3) Comparison table of subcommittee and staff proposed changes in development standards for commercial districts; (4) Table showing analysis of effect of the options on a prototypical building site for the C-1 and C-W Districts in terms of resulting floor area reductions; (5) Proposition 90 text and Legislative Analyst description; (6) August 4, 2006 email from Planning Manager Mark Rhoades regarding Proposition 90; (7) Density Bonus Law: Government Code Section 65915; (8) Findings for denying affordable housing projects: Government Code Section 65589.5; (9) Steps for figuring density bonus in Berkeley; (10) Analysis of State density bonus law by Rick Judd, ZAB member; (11) Permit Application Requirements for Density Bonus Projects; (12) Table with the existing development standards for all Commercial Districts; and (13) Workshop and Public Hearing Notice; (14) City Council resolutions establishing Joint Subcommittee on Density Bonus; supplemental materials and late communications.
5: Joint Subcommittee on Density Bonus background materials.
6: ZAB Ad Hoc Subcommittee on Density Bonus background materials.
7: Supplemental report on ZAB action 9/14/06.
The City of Berkeley is considering changes to the building size and design requirements for new buildings in the City’s commercial zoning districts that are mixed-use (commercial and residential), residential, or commercial (retail or office). In general, the proposed changes are intended to reduce the size of buildings and create a larger buffer between the commercial districts and adjacent residential neighborhoods. The new regulations would apply to new construction, not existing buildings.

The commercial districts are located along the City’s major corridors: San Pablo Avenue, University Avenue, Telegraph Avenue, Shattuck Avenue, Adeline Street and parts of Ashby Avenue, Sacramento Street, College Avenue, and Solano Avenue (see map of commercial districts).

PUBLIC HEARING: The Planning Commission of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 23A.20.030, on Tuesday, April 8 at the North Berkeley Senior Center, 1901 Hearst Avenue (at Martin Luther King, Jr. Way), Berkeley (wheelchair accessible). The meeting starts at 7:00 p.m.

Following the public hearing, the Planning Commission may vote to recommend adoption, modification, or rejection of the proposed amendments. The proposed amendments will be forwarded for action to the City Council.

PROJECT DESCRIPTION: Proposed amendments to Title 23 (Zoning Ordinance) of the Berkeley Municipal Code to modify the lot and development standards for mixed-use, residential, and commercial projects in the commercial zoning districts including but not limited to amendments that:

- Restrict open space on building rooftops;
- Limit use of “parking lifts” for required parking spaces through minimum standards for at-grade spaces;
- Increase setbacks on commercial lots from abutting residential districts;
- Prohibit most residential uses on the ground floor in mixed-use buildings;
- Add minimum size requirements for ground floor commercial spaces; and
- In the C-W District, reduce the maximum mixed-use building height to three stories and 40 feet and increase open space requirements.

The amendments are designed to provide building mass transitions where they are adjacent to a residential zoning district and increase the City’s control over building size and shape.
PROJECT LOCATION: The proposed amendments could change the development standards in all of the commercially zoned districts in the City of Berkeley (C-1, C-2, C-E, C-N, C-NS, C-SA, C-SO, C-T, and C-W). See attached map of commercial districts.

ENVIRONMENTAL REVIEW STATUS: The amendments are exempt from the California Environmental Quality Act pursuant to Gov. Code Sec. 15061(b)(3) because it can be seen with certainty that the amendments would not have a significant effect on the environment because they would result in reductions in the size of development projects in commercial districts. As a result, the intensity of use for individual and cumulative development projects will be reduced.

FURTHER INFORMATION: Questions about the project should be directed to the project planner, Jordan Harrison, at (510) 981-7416 or jharrison@ci.berkeley.ca.us.

Staff reports and other information are available on the following website: http://www.ci.berkeley.ca.us/contentdisplay.aspx?id=804

PUBLIC COMMENT
Comments may be made verbally at the public hearing and in writing before the hearing. Those wishing to speak at the hearing must submit a speaker card. Written comments concerning this project should be directed to:

Planning Commission
Jordan Harrison
Land Use Planning Division
2120 Milvia Street
Berkeley, CA 94704

Fax: (510) 981-7490
E-mail: jharrison@ci.berkeley.ca.us

To assure distribution to Commission members prior to the meeting, correspondence must be received by 12:00 noon, seven (7) days before the meeting. 15 copies must be submitted of any correspondence with more than ten (10) pages or any item submitted less than seven days before the meeting.

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) 981-7480 (voice) or 981-6903 (TDD). Notice of at least five (5) business days will ensure availability. Agendas are also available on the Internet at: www.ci.berkeley.ca.us.