



PLANNING COMMISSION

NOTICE OF PUBLIC HEARING

MARCH 21, 2018

Consider a Density Bonus Ordinance that Complies with State Density Bonus Law: Modify Existing City of Berkeley Ordinances to Repeal Section 23C.12.050 (State of California Density Bonus Requirements) and Adopt Chapter 23C.14 (Density Bonus)

The Planning Commission, of the City of Berkeley, will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 23A.20.30, on **Wednesday, March 21, 2018**, at the North Berkeley Senior Center, 1901 Hearst Ave. (at Martin Luther King, Jr. Way), Berkeley (wheelchair accessible). The meeting starts at 7:00 p.m.

PROJECT DESCRIPTION: The proposed amendments to the City's Zoning Ordinance (Title 23): 1. Remove outdated State Density Bonus Law (SDBL) references from the Inclusionary Housing Requirements (Chapter 23C.12), and, 2. Create a Density Bonus Ordinance (Chapter 23C.14) that is in compliance with SDBL and codifies current practices.

Full text of Density Bonus Ordinance amendments can be found on the Planning Commission's homepage:

https://www.cityofberkeley.info/Clerk/Commissions/Commissions_Planning_Commission_Homepage.aspx.

Changes to be considered are summarized as follows:

- Repeal Section 23C.12.050 (State of California Density Bonus Requirements)
Berkeley's Density Bonus language, currently found in Section 23C.12.050, explicitly lists Density Bonus percentages and affordable housing requirements from SDBL adopted in 2005. These values are no longer valid, as the SDBL has since been amended multiple times.
- Adopt Chapter 23C.14 (Density Bonus)
Proposed Chapter 23C.14 will:
 1. Create a Density Bonus Ordinance that is organized logically and is easy to read and understand.
 2. Reference compliance with SDBL in order to maintain flexibility as State law evolves.
 3. Refer to Administrative Regulations that document Berkeley's method for base project calculation.

LOCATION: Citywide

ENVIRONMENTAL REVIEW STATUS: The proposed Zoning Ordinance Amendment is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3), in that the proposed amendment does not have the potential for causing a significant effect on the environment and is not subject to CEQA review.

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
Alex Amoroso, Secretary
Land Use Planning Division
1947 Center Street
Berkeley, CA 94704

Fax: (510) 981-7520
E-mail: aamoroso@cityofberkeley.info

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

COMMUNICATION ACCESS

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

FURTHER INFORMATION

Questions should be directed to **Alex Amoroso**, at (510) 981-7520, or aamoroso@cityofberkeley.info. Past and future agendas are also available on the Internet at: www.ci.berkeley.ca.us.

1 **Chapter 23C.12**
2 **INCLUSIONARY HOUSING REQUIREMENTS***

3 Sections:

- 4 [23C.12.010](#) Purpose
5 [23C.12.020](#) Applicability of Regulations
6 [23C.12.030](#) General Inclusionary Requirement: 20% of Units
7 [23C.12.035](#) Payment of In-Lieu Fees as an Alternative to Providing Inclusionary Units within a Project
8 [23C.12.040](#) Requirements Applicable to all Inclusionary Units
9 ~~[23C.12.050](#) State of California Density Bonus Requirements~~
10 [23C.12.060](#) Inclusionary Unit Requirements for Rental Housing Projects
11 [23C.12.070](#) Inclusionary Unit Requirements for Ownership Projects*
12 [23C.12.080](#) Special Requirements for Avenues Plan Area
13 [23C.12.090](#) Administrative Regulations*
14 [23C.12.100](#) Fees

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

19 **23C.12.010 Purpose**

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

25 **23C.12.020 Applicability of Regulations**

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

- 27 1. Residential housing projects for the construction of five or more Dwelling Units;
- 28 2. Residential housing projects for the construction of one to four new Dwelling Units, when such Units
29 are added to an existing one to four unit property, which has been developed after August 14, 1986, and

30 the resulting number of units totals five or more. All Units in such a property are subject to the
31 requirements of this chapter;

32 3. Residential housing projects proposed on lots whose size and zoning designation is such to allow
33 construction of five or more Dwelling Units.

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

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

39 **23C.12.030 General Inclusionary Requirement: 20% of Units**

40 A. Any project subject to this chapter is required to include at least 20% of the total number of Dwelling Units
41 within the project as Inclusionary Units, except that Limited Equity Cooperatives are required to include at least
42 51% of their units as Inclusionary Units.

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

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

48 **23C.12.035 Payment of In-Lieu Fees as an Alternative to Providing Inclusionary Units** 49 **within a Project**

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

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

55 C. Amount of Fee.

56 1. The in-lieu fee shall be sixty two and a half percent (62.5%) of the difference between the permitted
57 sale price for inclusionary units and the amounts for which those units are actually sold by the applicant.

58 2. This fee shall be calculated and collected based on the sales prices of all of the units in a project to
59 which the inclusionary requirement applies, such that the fee as charged shall be a percentage of the
60 difference between the actual sales price for each unit, and the sales price that would have been
61 permitted had that unit been an inclusionary unit. The percentage shall be determined using the
62 following formula: the number of units for which an in-lieu fee is substituted for an inclusionary unit
63 divided by the total number of units to which the inclusionary ordinance applies, multiplied by 62.5%.

64 3. This fee shall only be applicable to units in a project that are counted in determining the required
65 number of inclusionary units in a project and shall not be applicable to any units provided as a density
66 bonus.

67 4. In the event that the City Manager makes a determination that an actual sales price does not reflect
68 the fair market value of a unit, the City Manager shall propose an alternate price based on the fair
69 market value of the unit. In the event that the developer and the City Manager cannot agree on a fair
70 market value the City Manager shall select an appraiser to carry out an appraisal of the unit and the
71 appraised value shall be used as the market value.

72 D. Calculation of Inclusionary Sales Price.

73 1. The allowable inclusionary sales price for the purpose of calculating the in-lieu fee pursuant to this
74 section shall be three (3) times eighty percent (80%) of the Area Median Income (AMI) last reported as
75 of the closing date of the sale of the unit, with the exception that if the developer has already been
76 authorized to charge an inclusionary sale price based on development costs pursuant to Ordinance
77 6,790-N.S. (adopted January 27, 2004, sunsetted February 19, 2006) the allowable inclusionary sale
78 price for the purposes of this section shall be the price permitted under that ordinance.

79 2. Area median income (AMI) shall be calculated in accordance with the affordability regulations
80 established by the City Manager pursuant to Section [23C.12.090](#).

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

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

86 **23C.12.040 Requirements Applicable to all Inclusionary Units**

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

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

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

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

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

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

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

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

116 1. Reduction of the floor area or in the interior amenities of the Inclusionary Units, provided that such
117 units conform to applicable building and housing codes;

118 2. An increase in the number of bedrooms in the Inclusionary Units;

119 3. In a home ownership project, construction of rental units in a number required to meet the
120 inclusionary provisions of this chapter applicable to rental housing projects;

121 4. Waiving of the in-lieu participation fees for fractions of units. (Ord. 6676-NS § 2, 2002; Ord. 6478-NS
122 § 4 (part), 1999)

123 **~~23C.12.050 State of California Density Bonus Requirements~~**

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

133 ~~1.—Twenty percent of the total units of a housing development for lower income Households, as defined~~
134 ~~in Health and Safety Code Section 50079.5; or~~

135 ~~2.—Ten percent of the total units of a housing development for very low income Households, as defined~~
136 ~~in Health and Safety Code Section 50105; or~~

137 ~~3.—Fifty percent of the total Dwelling Units of a housing development for qualifying residents, as defined~~
138 ~~in Civil Code Section 51.3.~~

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

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

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

147 **23C.12.060 Inclusionary Unit Requirements for Rental Housing Projects**

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

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

151 C. In projects requiring more than one Inclusionary Unit, at least 50% of those units shall be rented at a price
152 that is affordable to Low or Lower Income Households, provided that the City can make available rental
153 subsidies through the federal Section 8 Existing Housing Program or an equivalent program. When there is an
154 uneven number of Inclusionary Units, the majority of units shall be priced to be affordable to a Household at
155 50% of median income if subsidies are available. If no rental subsidies are available, all Inclusionary Unit prices
156 shall be affordable to Households at 81% income of the Oakland PMSA median.

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

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

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

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

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

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

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

174 **23C.12.070 Inclusionary Unit Requirements for Ownership Projects***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

230 F. The City or its designee may monitor resale of Inclusionary Units in Limited Equity Cooperatives. The City
231 or its designee shall monitor the resale of ownership Inclusionary Units. The owners of any Inclusionary Units
232 shall attach, lawfully reference in the Grant Deed conveying title of any such inclusionary ownership unit, and
233 record with the County Recorder a Declaration of Restrictions provided by the City, stating the restrictions
234 imposed pursuant to this chapter. Violators of any of the terms thereof may be prosecuted by the City. (Ord.
235 6920-NS § 1-2 (part), 2006: Ord. 6478-NS § 4 (part), 1999)

236 *Specific text which previously amended Berkeley Municipal Code Sections 23C.12.070A, 23C.12.070D, and
237 23C.12.090 for the period January 27, 2004 through February 19, 2006 was repealed on February 19, 2006 as
238 stated in the sunset provision of Ordinance 6,790-N.S. These specific text amendments were reinstated by
239 Ordinance 6,920-N.S., adopted on May 23, 2006.

240 **23C.12.080 Special Requirements for Avenues Plan Area**

241 A. The City Council finds and determines that:

242 1. The Avenues Plan process identified a number of regional and Berkeley-specific barriers to housing
243 development;

244 2. Among the Berkeley-specific barriers were high land prices; lengthy, difficult and uncertain permit
245 processes; and insufficient financing, especially for affordable housing projects;

246 3. The Avenues Plan area represents a core area of the City where it is particularly appropriate to
247 encourage housing development because of the area's generally good access to workplaces, transit
248 service, senior services and retail stores;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

303 100 percent of the PMSA median and subsequent Inclusionary Units shall be sold alternately at these price
304 levels.

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

312 K. The resale price of Inclusionary Units within the Avenues Plan Area may increase at the rate of increase of
313 the Consumer Price Index for All Urban Consumers (CPI-U) applicable to the metropolitan area. (Ord. 6478-NS
314 § 4 (part), 1999)

315 **23C.12.090 Administrative Regulations***

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

321 *Specific text which previously amended Berkeley Municipal Code Sections 23C.12.070A, 23C.12.070D, and
322 23C.12.090 for the period January 27, 2004 through February 19, 2006 was repealed on February 19, 2006 as
323 stated in the sunset provision of Ordinance 6,790-N.S. These specific text amendments were reinstated by
324 Ordinance 6,920-N.S., adopted on May 23, 2006.

325 **23C.12.100 Fees**

326 The City Council, by resolution, may establish fees for the administration of this chapter. (Ord. 6887-NS § 1,
327 2005)

328

1
2 **Chapter 23C.14 Density Bonus**
3

4 **23C.14.010 Purpose**
5 **23C.14.020 Definitions**
6 **23C.14.030 Application Requirements**
7 **23C.14.040 Density Bonus Calculations and Procedures**
8 **23C.14.050 Waivers and Reductions**
9 **23C.14.060 Incentives and Concessions**
10 **23C.14.070 Qualifying Units**
11 **23C.14.080 Special Provisions**
12 **23C.14.090 Regulatory Agreements**
13
14

15 **23C.14.010 Purpose**
16

17 The purpose of this Chapter is to establish procedures and local standards for
18 the implementation of California Government Code Section 65915 consistent
19 with local zoning regulations and development standards, and to provide
20 special provisions consistent with the intent of State and local law.
21

22 **23C.14.020 Definitions**
23

24 Whenever the following terms are used in this Chapter, they have the meaning
25 established by this Section. Other capitalized terms have the meaning set forth
26 in Berkeley Municipal Code Chapter 23A.08 and/or Chapter 23F.04, or in
27 California Government Code Section 65915, as applicable.
28

- 29 A. "Administrative Regulations" means guidelines and procedures promulgated by the
30 Planning Director that may be modified from time to time to effectively implement
31 this ordinance.
32
- 33 B. "Base Project" means the maximum allowable residential density (number and type
34 of units) on a housing development site pursuant to the applicable zoning district or,
35 where no density standard is provided, as set forth in the Administrative Regulations
36 before applying the density bonus.
37
- 38 C. "Density Bonus Units" means those residential units added to the Base Project
39 pursuant to the provisions of Section 65915 and this Chapter.
40
- 41 D. "Housing Development" has the meaning set forth in Section 65915.
42
- 43 E. "Incentive and Concession" means an incentive or a concession as the terms are
44 used in Section 65915 and in particular as defined in subdivision (k) thereof.
45

- 46 F. "Qualifying Unit" means a unit that is provided at a below market-rate rent or sales
47 price as set forth in Section 65915 in order to receive a Density Bonus and/or
48 Waivers and Reductions and/or Incentives and Concessions.
49
- 50 G. "Section 65915" means California Government Code Section 65915, as it may be
51 amended from time to time.
52
- 53 H. "Waiver and Reduction" means a waiver or a reduction as the terms are used in
54 Section 65915 and in particular in subdivision (e) thereof, and means any and all
55 changes to or exemptions from physical lot development standards that are required
56 to avoid precluding the construction of a Housing Development with Density Bonus
57 Units, as set forth in Section 65915(e).
58

59 **23C.14.030 Application Requirements**

60
61 In addition to any other information required by this Title, an application for a Density
62 Bonus must include the following information:
63

- 64 A. How the proposed project will satisfy the eligibility requirements of Section 65915;
65
- 66 B. For those districts without density standards, a density bonus schematic as set forth
67 in the administrative regulations;
68
- 69 C. The proposed size of the Density Bonus pursuant to Section 23C.14.040;
70
- 71 D. Any Waivers and Reductions that are sought under Section 65915(e) that would be
72 required to accommodate the Housing Development including the Density Bonus
73 Units.
74
- 75 E. Any Incentives and Concessions that are sought under Section 65915(d); and
76
- 77 F. An applicant may elect in writing to receive a Density Bonus that is less
78 than that mandated by Section 65915, including a Density Bonus of 0
79 (zero). In such cases, the applicant will retain their entitlement to Incentives
80 and Concessions.
81

82 **23C.14.040 Density Bonus Calculations and Procedures**

- 83
84 A. Density Bonuses must be calculated as set forth in Section 65915 and
85 pursuant to the Administrative Regulations.
86
- 87 B. Density Bonus requests must accompany Housing Development
88 applications and will be decided upon by the highest governing body.
89

90 **23C.14.050 Waivers and Reductions**

91

- 92 A. For purposes of this Chapter, the number of Waivers and Reductions are counted as
93 follows:
94
- 95 1. Any Waiver and Reduction that would otherwise require discretionary approval
96 by the Zoning Officer or Zoning Adjustments Board of any single dimensional lot
97 development standard, such as height or setbacks, or any single quantitative lot
98 development standard, such as parking or open space, counts as one.
99
 - 100 2. A proposed Waiver and Reduction that would involve exceedance of a single
101 physical lot development standard counts as a one even if that exceedance
102 would otherwise require more than one Permit (e.g., extra height may require
103 Permits for height, FAR, and/or number of stories but would count as one Waiver
104 or Reduction for height).
105
 - 106 3. Where it is ambiguous as to whether a proposed Waiver and Reduction involves
107 one or more dimensional or quantitative lot development standards, the stricter
108 interpretation shall apply as determined by the Zoning Officer.
109
- 110 B. In determining whether it can make the finding set forth in Section 65915(d)(1), the
111 City will base its determination and any finding on a comparison of the project
112 including the Density Bonus and requested Waiver and Reduction to the Base
113 Project.
114
- 115 C. The City is not required to deny a proposed Waiver and Reduction solely because it
116 is able to make a finding under Section 65915(d)(1).
117
- 118 D. Unless denied under Section 65915, Waivers and Reductions will be exempt from
119 discretionary review or Permits under this Title, other than design review.
120

121 **23C.14.060 Incentives and Concessions**

122
123 Incentives and concessions must be justified based on the financial needs of the
124 project, including reduced costs and increased revenue, to provide for the affordable
125 housing costs of the qualifying units and for the project overall.
126

127 **23C.14.070 Qualifying Units**

128
129 Qualifying Units must be reasonably dispersed throughout the Housing Development,
130 be of the same size and contain, on average, the same number of bedrooms as the
131 non-Qualifying Units in the project, and must be comparable to the non-Qualifying Units
132 in terms of design, use, appearance, materials and finish quality. In determining whether
133 dispersal of Qualifying Units is reasonable, the Zoning Adjustments Board may consider
134 special benefits provided by, as well as special constraints on, the project.
135

136 **23C.14.080 Special Provisions**

137

138 In addition to requirements set forth in Section 65915 and this Chapter, the following
139 Special Provisions apply to Density Bonuses in the City of Berkeley. Special Provisions
140 are considered Incentives and Concessions may be requested at the discretion of the
141 applicant.

142
143 A. [placeholder]

144
145 B. [placeholder]

146
147 C. In addition to other required findings, Special Provisions may be awarded only when
148 the City finds that the Density Bonus project complies with the purposes of the
149 district in which the project is located.

150
151 **23C.14.090 Regulatory Agreements**

152
153 Prior to issuance of a Certificate of Occupancy for a Housing Development that has
154 received a Density Bonus, the applicant must enter into a regulatory agreement in a
155 form provided by the City that implements Section 65915 and this Chapter.

156
157