



Office of the City Manager

REVISED AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: July 23, 2024

Item Number: 1

Item Description: Zoning Ordinance and General Plan Amendments Related to Middle Housing

Submitted by: Jordan Klein, Director, Planning and Development

Staff recommend delaying action to adopt the Middle Housing Zoning Ordinance Amendments in order to provide time to conduct Tribal Consultation on the proposed General Plan amendments, pursuant to SB-18. The revised agenda materials update staff's recommendation to request direction from the City Council on proposed zoning ordinance amendments.



Office of the City Manager

PUBLIC HEARING

July 23, 2024

To: Honorable Mayor and Members of the City Council

From: LaTanya Bellow, Interim City Manager

Submitted by: Jordan Klein, Director, Planning and Development

Subject: Zoning Ordinance ~~and General Plan~~ Amendments Relating to Middle Housing

RECOMMENDATION

Conduct a public hearing, and upon ~~conclusion~~ of conclusion, provide direction to staff on an ~~Ordinance~~ ordinance amending Berkeley Municipal Code Title 23 (Zoning Ordinance) and the Zoning Map, for the purposes of encouraging development of “middle housing” in areas currently zoned R-1, R-1A, R-2, R-2A and MU-R (“low-density residential districts”); ~~and~~.

~~1. Adopt a Resolution amending the General Plan Designations and Land Use diagram for the same purpose.~~

SUMMARY

The proposed ordinance includes zoning changes to encourage the development of Multi-Family Residential Uses in the R-1, R-1A, R-2, R-2A and MU-R zoning districts. The proposed changes include:

- Permit Single-Family Residential and Multi-Family Residential uses with a Zoning Certificate (ZC).
- Consolidate the R-1A and R-2 zoning districts.
- Revise development standards related to building height, lot coverage and setbacks, to permit larger residential buildings.
- Establish a new minimum density standard.
- Revise requirements related to Residential Additions and additional bedrooms.
- Permit demolition of single-family homes with a ZC if they are part of a project that includes a net increase in units.

The report also includes discussion of Alternative Actions Considered.

FISCAL IMPACTS OF RECOMMENDATION

The proposed zoning changes are intended to increase the development potential of properties in low-density residential districts. This could result in higher property tax revenues. These changes also allow for larger development projects compared to the current zoning regulations, so on average, the City can expect to collect more development fees on a per-project basis. These fees may include those for affordable housing (BMC 23.328), childcare if the projects involve non-residential uses (BMC 22.20), and public art (BMC 6.13). Additionally, the Berkeley Unified School District Facilities Fee could be expected to generate increased revenues.¹ However, the proposed zoning changes also include revisions that would streamline project approvals, which could reduce staff review times and accompanying fees.

CURRENT SITUATION AND ITS EFFECTS

In January 2023, the City Council adopted the 2023-2031 Housing Element Update. The Housing Element Update includes Program 29—Middle Housing, in which the City Council committed to amend the zoning code to allow multi-unit development on single lots in lower density districts.

Planning Commission Recommendation

At its meeting on February 7, 2024, the Planning Commission recommended that the City Council adopt an Ordinance amending Title 23 to facilitate the production of middle housing in low-density residential districts. ~~The proposed ordinance includes changes that require conforming General Plan Amendments, which require adoption via resolution.~~ The staff report for the February 7, 2024 meeting (**Attachment 5**) included staff recommendations that differed from the Planning Commission's ultimate recommendation; see the Alternative Actions Considered section for further detail.

The proposed zoning changes recommended by the Planning Commission are summarized in Table 1, along with the rationale and a summary of any notable Alternative Actions Considered by the Planning Commission. An annotated version of the proposed ordinance, which indicates the rationale for each change in the ordinance itself, is included as **Attachment 2**. The following is a detailed description of the proposed changes:

TABLE 1 SUMMARY OF PROPOSED MIDDLE HOUSING ZONING AMENDMENTS

Ord. Sect.	BMC Section & Title	Description of Changes	Rationale	Alternative Action Considered
Title 23, Division 1 – General Provisions				

¹ April 2023. Berkeley Unified School District (BUSD) School Facility Fees.
<https://www.berkeleyschools.net/wp-content/uploads/2023/04/BUSD-School-Facility-Fee-Notice-7.28.22-002.pdf>

1	23.108.020 Zoning Districts	- R-1A district removed. - R-1, R-2, and R-2A renamed.	Conforming edits.	
Title 23, Division 2 – Zoning Districts				
2	23.202.020 Allowed Land Uses Table	- R-1A district removed; - Two-Family land use type removed. - Multi-Family Residential land use type revised. - Single Family and Multi Family Residential permitted with a ZC in the R-1, R-2, and R-2A zoning district. - Supportive housing and low barrier navigation centers permitted with a ZC in the R-1 zoning district.	Permitting middle housing by-right. Compliance with State law (Gov. Code § 65651)	Permit Multi-Family Residential with a ZC, while Single-family homes would still require a UP(PH).
3	23.202.030 Additional Permit Requirements	All Residential Additions permitted with a ZC in R-1, R-2 and R-2A zoning districts.	Promoting middle housing.	Only allow Residential Additions with a ZC if they include new units.
4	23.202.030 Additional Permit Requirements	- R-1A district removed. - All requirements for additional bedrooms removed.	Conforming edit. Promoting middle housing.	Only allow additional bedrooms with a ZC if they are part of new units.
5, 6	23.202.050 R-1 Title and District Purpose	- R-1 renamed. - District purpose revised.	Clarifying that R-1 is not a single-family only district.	
7	23.202.050 R-1 Development Standards	- Development standards revised: - Height. - Setbacks. - Lot Coverage. - Minimum density. - Open space.	Promoting middle housing.	Include Maximum FAR, Maximum Density, and Lot Coverage that vary by number of units.
8	23.202.060 R-1A District	R-1A district removed.	Merging of R-1A and R-2 zoning districts.	
9, 10	23.202.070	Renumbering.	Renumbering.	

	ES-R District			
11, 12	23.202.080 R-2 Title and District Purpose	• R-2 district renamed. • District purpose revised.	Conforming edit.	
13	23.202.080 R-2 Development Standards	• Development standards revised. ◦ Height. ◦ Setbacks. ◦ Lot Coverage. ◦ Minimum density. ◦ Open space.	Promoting middle housing.	Include Maximum FAR, Maximum Density, and Lot Coverage that vary by number of units.
14, 15	23.202.090 R-2A Title and District Purpose	• R-2A district renamed. • District purpose revised.	Conforming edit.	
16	23.202.090 R-2A Development Standards	• Development standards revised. ◦ Height. ◦ Setbacks. ◦ Lot Coverage. ◦ Minimum density. ◦ Open space.	Promoting middle housing.	Include Maximum FAR, Maximum Density, and Lot Coverage that vary by number of units.
17-34	Various	• Renumbering.	Renumbering.	
35	23.204.020 Allowed Land Uses in the Commercial Districts	• Revising residential use type titles.	Conforming edits.	
36	23.206.020 Allowed Land Use in Manufacturing Districts	• Two-Family land use type removed. • Multi-Family Residential land use type revised. • 100% residential projects permitted with a ZC in the MU-R district.	Permitting middle housing by-right in the MU-R.	Permit Multi-Family Residential with a ZC, while Single-family homes would still require an AUP.
37, 38, 39	23.206.030 MU-R Additional Permit Requirements	• Allow Major Additions with a ZC. • Provisions conditioning residential uses in the MU-R district removed.	Permitting middle housing by-right in the MU-R.	
40	23.206.090	• Development standards revised.	Promoting middle housing.	Include Maximum FAR

	MU-R Development Standards	○ Height. ○ Setbacks. ○ Lot Coverage. ○ Minimum density. ○ Open space.		and Maximum Density.
41	23.210.020 Hillside Overlay Zone	• Prohibition of multiple dwellings on a parcel in the R-2H removed.	Promoting middle housing.	
42	23.210.020 Hillside Overlay Zone Development Standards	• R-1A district removed; • 3 stories maximum removed (maximum height unchanged). • Maximum height for Additions same as for New Buildings.	Conforming edit. Promoting middle housing.	Take no action on Middle Housing provisions for the Hillside Overlay. Establish Lower Maximum Density controls in the Hillside Overlay. Establish Maximum height of 28 feet in the Hillside Overlay.
Title 23, Division 3 – Citywide Provisions				
43	23.304.030 Setbacks	• R-1A district removed.	Conforming edit.	
44	23.304.030 Allowed Setback Reductions	• R-1A district removed. • Revised minimum setback with reduction to 4 feet in the R-2 and R-2A zoning districts.	Conforming edits.	
45	23.304.040 Permits Required for Building Separation	• R-1A district removed.	Conforming edit.	
46-47	23.322.100 On-site Loading Spaces	• R-1A district removed.	Conforming edit	
48	23.326.030	• Demolition of single-family dwellings	Promoting middle housing.	Demolition permitted with

	Eliminating Dwelling Units through Demolition	permitted with a ZC, if project results in increased density.		an AUP, if part of middle housing project and not tenant-occupied.
Title 23, Division 5 – Glossary				
49	23.502.020 Defined Terms	- Revised definition of Multi-family Dwelling from three or more units to two or more units. - Define Multi-Family Residential land use type.	Promote middle housing. Conforming edit.	
50		Remove definition of rear main building.	Conforming edit.	
51		Add Single-Family Residential land use type.	Conforming edit.	
52		Remove definition of Two-Family Dwelling.	Conforming edit.	
Zoning Map				
Att. A	Zoning Map	Replace all R-1A zone labels with R-2.	Conforming edit.	

Consolidation of R-1A and R-2 and Renaming of R-1, R-2, and R-2A Zoning Districts

Planning Commission and City Council each noted to staff that there are negligible regulatory differences between the R-1A and R-2 zoning districts, and questioned whether a continued distinction is warranted. Consistent with this feedback, the proposed ordinance would merge the R-1A and R-2 zoning districts. Parcels that are currently zoned R-1A would be zoned R-2 (***Attachment 1, Exhibit A***). Within the proposed ordinance itself, this change would require the removal of the R-1A section of the zoning ordinance, as well as the deletion of occasional references to the R-1A zoning district throughout the code.

The proposed ordinance includes a revised naming scheme of the R-1, R-2 and R-2A zoning districts. As the R-1 zoning district is no longer a single-family residential district, and as all three districts would permit Multi-Family Residential uses with a Zoning Certificate, the three zoning districts are proposed to be renamed as follows:

- R-1 ~~Single-Family~~ Residential Multi-Unit 1
- R-2 ~~Restricted Two-family~~ Residential Multi-Unit 2

- R-2A ~~Restricted Multiple-Family~~ Residential Multi-Unit 2A

Planning Commission also considered further consolidation of zoning districts, as detailed in the Alternative Actions Considered section.

Permits and Levels of Discretion

Current Policy: Table 2 includes the current permit requirements in low-density residential districts for residential projects that include dwelling units.

TABLE 2 CURRENT PERMIT REQUIREMENTS

	R-1/R-1H	R-1A	R-2	R-2H	R-2A/ R-2AH	MU-R
Single-Family	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	AUP
Two-family	NP	UP(PH)	UP(PH)	NP	UP(PH)	AUP
Multi-Family	NP	NP	UP(PH)	NP	UP(PH)	AUP or UP(PH)
AUP: Administrative Use Permit UP(PH): Use Permit with a Public Hearing NP: Not Permitted						

Proposed Standard: The proposed standards would combine Two-Family and Multi-Family Residential uses into a single Multi-Family Residential use type, which would apply to all projects with two or more units. Single-Family or Multi-Family Residential projects that comply with all objective standards would be permitted with a ZC; no discretionary permit or public hearing would be required. The proposed standards would not change any permit requirements for Group Living Accommodation or Mixed-Use Residential uses in these zones. Table 3 summarizes the recommendation:

TABLE 3 PROPOSED PERMIT REQUIREMENTS

	R-1(H)	R-2(H)	R-2A(H)	MU-R
Single-Family	ZC	ZC	ZC	ZC

Multi-Family Residential	ZC	ZC	ZC	ZC
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Planning Commission also considered preserving the UP(PH) requirement for Single-Family Dwellings, as detailed in the Alternative Actions Considered section.

Residential Additions and Additional Bedrooms

The proposed ordinance includes changes to the regulation of Residential Additions in the R-1, R-2, and R-2A zoning districts. Currently, BMC Section 23.202.030 requires an AUP for a Residential Addition that exceeds a certain size, and the Residential Addition is subject to height limits that are more restrictive than those for new Main Buildings. The proposed ordinance would permit Residential Additions that comply with the development standards for Main Buildings with a Zoning Certificate. The proposed ordinance would also revise the maximum height for Residential Additions. Currently, the maximum height for Residential Additions in the R-1, R-2 and R-2A zoning districts is 14 feet. The proposed ordinance would include the same height limits for Residential Additions as exist for Main Buildings (28-foot average height and 35-foot maximum height. See Maximum Building Height, below).

Planning Commission also considered applying these revised standards only to Residential Additions that include new units, as detailed in the Alternative Actions Considered section.

The proposed ordinance would also remove additional requirements for bedrooms that are added to existing dwellings or lots developed with existing residential uses. Currently, BMC Section 23.202.030 requires an Administrative Use Permit (AUP) when adding a fifth bedroom to a lot, and a UP(PH) for adding any bedroom beyond the fifth to a lot. As the proposed ordinance would permit altogether new Multi-Family Residential buildings ministerially, requiring a discretionary review process for an additional bedroom would discourage the conversion or adaptive reuse of existing buildings.

Planning Commission also considered applying these new provisions for added bedrooms only when they are part of a project that includes new units, as detailed in the Alternative Actions Considered section.

Development Standard Revisions

The following sections summarize changes to the development standards in the proposed R-1, R-2, R-2A and MU-R zoning districts. The proposed development standards reflect the overall goals of City Council's referrals and Program 29-Middle Housing of the Housing Element to a) permit more development on a lot; and b) be based on objective standards that cannot be modified with additional permits or

discretionary processes. Existing and proposed development standards are summarized in tables in **Attachment 4**.

Density Standard

Current Policy: The Berkeley Municipal Code does not include any minimum density standards for low-density residential zones that are expressed in “units per acre”. In the R-1, R-1A, R-2, and R-2A districts, density is limited by requirements for a “minimum lot size per unit” standard and by specific residential land use types (e.g. “Single-Family,” “Two-Family”).

Proposed Standard: Table 4 summarizes the proposed density standards expressed in units per acre, and includes the number of units that may result from that standard on a typical 5,000 square foot lot in each zone. There is no minimum density requirement for lots in the Hillside (H) Overlay district. Minimum densities would apply for new development on a vacant lot or redevelopment and infill of existing nonvacant lots.

TABLE 4 PROPOSED DENSITY STANDARDS

	R-1	R-2	R-2A	MU-R
Minimum Density (DU/acre)	10	10	20	20
Resulting units on a 5,000 sf lot				
Minimum Units	1	1	2	2

The proposed density standards do not include any eligible Accessory Dwelling Units (ADUs).

Planning Commission also considered establishing Maximum Density Standards, as detailed in the Alternative Actions Considered section.

Building Height

Current Policy: The Berkeley Municipal Code generally limits average building heights for Main Buildings in most low-density residential districts to 28 feet and three stories, with a possible increase to 35 feet with an AUP. In the Hillside Overlay, the Zoning Officer may approve an AUP to increase the allowed average height (28 feet) and allowed maximum height (35 feet). In the MU-R, the maximum height is 35 feet and 3 stories without the need for an additional AUP. Current policy also limits the height of Residential Additions to 14 feet, with a possible increase to 35 feet with an AUP.

Proposed Policy: The proposed development standards for maximum building height include:

- The maximum *average* building height in low-density residential districts would be 28 feet.
- The maximum height in low-density residential districts would be 35 feet, but would be reduced to 22 feet within 15 feet of a rear property line.
- The limit on the maximum number of stories would be removed; maximum height would only be measured in feet.
- Height standards for Main Buildings and Residential Additions would be the same.

The proposed development standards largely preserve existing height limits, while providing pathways for slightly taller projects (and more dwelling units) through a nondiscretionary process based on objective standards. The proposed standards also include lower maximum heights near the rear property line, in consideration of potential impacts on neighboring properties and solar access.²

Planning Commission also considered establishing a lower maximum height standard within the Hillside Overlay, as detailed in the Alternative Actions Considered section.

Minimum Required Open Space

Current Policy: Table 5 summarizes current minimum open space requirements in low-density residential zones, on a per unit basis, as well as the proposed standard.

TABLE 5 MINIMUM REQUIRED OPEN SPACE STANDARDS

CURRENT	R-1(H)	R-1A	R-2(H)	R-2A(H)	MU-R
Per dwelling unit (sf)	400			300	150
PROPOSED	R-1(H)	R-2(H)	R-2A	R-2AH	MU-R
Per 1,000 sf of floor area (sf)	150				

Proposed Policy: The proposed development standard would require 150 square feet of open space for every 1,000 square feet of floor area on a project site. Required open space would no longer be based on the number of units, but on a project's total floor area. The proposed open space standard is designed to permit a larger percentage of

² Details of the solar access study conducted by staff in the preparation of these zoning changes can be found in the staff report for the September 20, 2022 City Council Worksession (pg. 13-14).

<https://berkeleyca.gov/sites/default/files/documents/2022-09-20%20WS%20Item%2001%20Residential%20Objective%20Standards.pdf>

total lot area to be dedicated to residential development while also preserving the requirement to provide residents with usable open space.

Maximum Lot Coverage

Current Policy: Table 6 summarizes existing maximum lot coverage requirements. Current requirements distinguish between interior and corner lots, and reduce maximum lot coverage for taller projects.

TABLE 6 CURRENT MAXIMUM LOT COVERAGE STANDARDS

	R-1	R-1H	R-1A	R-2	R-2H	R-2A	R-2AH	MU-R
Interior & Through-Lots								
1 story	40%	40%	45%				100%	
2 stories			40%					
3 stories			35%					
Corner Lots								
1 story	40%	50%	50%				100%	
2 stories			45%	45%				
3 stories		40%						

Proposed Policy: The proposed development standard would be 60% maximum lot coverage on all parcels in the R-1, R-1H, R-2, R-2H, R-2A and R-2AH zoning districts. Distinctions in lot coverage between interior/through lots and corner lots would be eliminated, as well as distinctions in lot coverage based on the number of stories. The Planning Commission recommended this lot coverage standard to increase developable area to facilitate the development of more units, and applied the standard across all zoning districts to eliminate any disparities in development intensity across zoning districts.

Planning Commission also considered establishing maximum lot coverage controls that vary based on the number of units included in a proposed project, as detailed in the Alternative Actions Considered section.

Minimum Setbacks

Current Policy: The Berkeley Municipal Code currently regulates four types of setbacks:

- **Front and Rear Setbacks:** Front and rear setbacks are 20 feet in the R-1, R-1H, R-1A, R-2 and R-2H zoning districts, and 15 feet in the R-2A and the R-2AH districts.

In the MU-R zoning district, lots adjacent to a non-residential district have no rear setback, unless they abut a street, in which case a 5-foot rear setback is required. A lot in the MU-R adjacent to a residential district must provide a rear setback of either 10 feet or 10% of the lot's width, whichever is less.

- Interior Side Setbacks: Interior side setbacks are based on building height. The interior side setback is 4 feet at the first story for all low-density residential districts, except the MU-R. At the second story, the interior setback increases to 6 feet in the R-2, R-2H, R-2A, and R-2H districts. Interior side setbacks can be reduced to 3 feet (or 5 feet) with a ZC.

In the MU-R district, lots adjacent to a residential district must provide an interior side setback of either 10 feet or 10% of the lot's width, whichever is less. There are no other interior side setback requirements in the MU-R.

- Street Side Setbacks: Street side setbacks are 4 feet in the R-1, R-1H, and R-1A districts, 10 feet in the R-2 and R-2H districts, and vary by height in the R-2A and R-2AH districts (6 feet at first story, 8 feet at second story and 10 feet at third story).

In the MU-R district, lots adjacent to a non-residential district must provide a 5-foot street side setback. Lots adjacent to a residential district must provide a street side setback of either 10 feet or 10% of the lot's width, whichever is less. There are no other street side setback requirements in the MU-R.

The Zoning Officer may approve an AUP to reduce the minimum setbacks in the H Overlay.

Proposed Policy: The proposed development standards include the following:

- Front Setbacks: Front setback standards would be reduced by 5 feet in the R-1 and R-2 zoning districts (from 20 feet to 15 feet) and the R-2A zoning district (from 15 feet to 10 feet), but would remain the same in the R-1H, R-2H, R-2A, R-2AH and MU-R zoning districts. Also, a project could provide a smaller setback that is the average of the front setback(s) of adjacent structure(s), if that is less than the required setback.
- Rear Setbacks: The rear setback in the R-1, R-2 and R-2A zoning districts would be 4 feet. The rear setbacks would remain 20 feet in the R-1H and R-2H zoning districts, and 15 feet in the R-2AH zoning district. The MU-R would maintain its existing regulations. The 4-foot rear setback is consistent with the setbacks required for ADUs. As noted above, a building's maximum height would be limited to 22 feet within 15 feet of the rear property line under the proposed ordinance.
- Interior Side Setbacks: The interior side setback in the R-1, R-2 and R-2A zoning districts would be 4 feet, but would be 5 feet in the R-1H, R-2H and R-2AH zoning districts. The MU-R would maintain its existing regulations. This increase reflects State Board of Forestry Zone Zero requirements, which call for an

ember-resistant zone within five feet of a structure in a Very High Fire Hazard Severity Zone. The proposed standards would also remove existing interior setbacks that increase at upper stories. These existing standards not only reduce available square footage for residential uses, but also result in buildings that are designed with a layered “wedding cake” appearance.

- **Street Side Setbacks:** Street side setbacks would be 4 feet in all low-density residential districts. There would be no changes to street side setbacks in the MU-R.

Building Separation~~Error! Reference source not found.~~

Current Policy: Current building separation requirements (that is, the required separation between each building on a single lot) are summarized in Table 7

TABLE 7 CURRENT BUILDING SEPARATION STANDARDS

	R-1(H)	R-1A	R-2(H)	R-2A(H)	MU-R
1 story	No min	8 ft.			No min
2 stories		12 ft.			
3 stories		16 ft.			
Reduce with an AUP	--	Yes			--

Proposed Policy: The proposed development standards would create a 5-foot building separation requirement, regardless of the height of the proposed project, and an 8-foot building separation requirement for parcels in the H overlay. This requirement would be consistent with the separation requirements for ADUs, and would also remove a development standard that has resulted in buildings designed with a layered “wedding cake” appearance.

Demolition of Single-Family Structures

Current Policy: Recent updates to BMC Chapter 23.326 *Demolition and Dwelling Unit Control*, the second reading of which was adopted on July 9, provide for the demolition of single-family structures without sitting tenants via an AUP as long as the proposed project would result in a net increase in the number of dwelling units.

Proposed Policy: Pursuant to the adopted Housing Element, which commits the City Council to consider permitting the demolition of single-family homes with a Zoning Certificate, with provisions to protect existing tenants, in cases where the proposed project would include a net increase in the number of dwelling units, the proposed ordinance includes this provision.

Planning Commission also considered permitting demolition with an AUP, as detailed in the Alternative Actions Considered section.

City Council Referrals

The proposed zoning amendments are prepared in response to several City Council referrals to create objective development standards and promote denser development in low-density residential zones, as shown in Table 8:

TABLE 8 CITY COUNCIL REFERRALS

Housing Accountability Act (7/11/2017)	Requested research into a set of objective zoning standards for new development projects in the following four areas: • Density and/or building intensity • Public health and safety standards • Design review standards • Views, shadows, and other impacts that underlie detriment findings
Missing Middle Housing (4/23/2019)	Examine methods to provide for a broader range of housing types in areas of Berkeley with access to parks, schools, employment, transit, and other services. The Council directed the City Manager to explore opportunities to allow “missing middle” housing types in the R-1, R-1A, R-2, and R-2A zoning districts.
Eliminating Exclusionary Zoning (2/23/2021)	Allow multi-family housing in residential neighborhoods throughout Berkeley, and to allow for small-scale multi-family development in the R-1, R-1A, R-2, and R-2A zoning districts. As part of this effort, the resolution calls for the city to also: • Protect public safety in all neighborhoods • Allow for new housing that reflects the existing mix of multi-family housing types within neighborhoods • Provide strong anti-displacement and tenant protections • Accommodate families in new and rehabilitated multi-family housing developments • Ensure that new development does not demolish any rent-controlled or below market-rate housing • Explore incentives for projects to contribute to the need for affordable housing • Carry out a robust community process when developing zoning changes.
Objective Standards for Density, Design, and Shadows (11/9/2021)	Consider and codify objective zoning standards with the goal of encouraging the creation of additional residential development and affordable homes. Further purposes include: • Address State laws that seek to reduce time involved in permitting processes • Increase certainty for applicants • Reduce administrative costs and burden associated with discretionary review.

Community Engagement to Date

Planning and Development staff conducted significant community engagement, regarding middle housing standards, both as a program within the adopted Housing Element and as a set of policy proposals in their own right. The outreach and engagement plan for the adopted Housing Element included 20 stakeholder interviews, a community-wide survey, 20 small format meetings, three work sessions with the City Council, tabling at community events, three public workshops, and 10 City boards and commission meetings (see Table 9).

While not all of these outreach efforts or events were specifically focused on Middle Housing, redevelopment within existing residential areas was a consistent theme in all of staff's outreach. Consultation with residents and neighborhood groups was a key part of the development of specific standards to encourage multi-unit development, within a framework based on City Council's direction in the Missing Middle Housing and Eliminating Exclusionary Zoning referrals.

The proposed zoning amendments include many elements that were directly informed by community engagement. For example, early in the process, staff heard consistent feedback that permitting larger buildings in existing residential areas may result in shadows that could have an adverse impact on solar power generation and could limit solar access to private open space. As a result of this feedback, staff engaged a consultant to conduct solar studies to ascertain the solar access effects off taller buildings. Based on these studies, staff is recommending a 35-foot average maximum height limit to help minimize impacts to solar access for most neighboring properties in existing residential areas.

Another common concern was the potentially adverse impact of more building mass in existing residential areas. Residents understood the need to provide more housing but did not want development standards to simply result in larger single-family homes. Staff's recommendation reflected this feedback in two ways. First, the development standards include lower maximum heights in the rear 15 feet of a building lot, to limit overall building bulk and to preserve air and light in mid-block open space. Second, staff's recommendation included scaling floor area ratio and lot coverage so that the development of larger buildings was more directly related to the provision of more housing units.

TABLE 9 COMMUNITY, COMMISSION AND COUNCIL MEETINGS

September 21, 2021	City Council Worksession #1 <i>Housing Element Update</i>
November 24, 2021- January 31, 2022	Community Walking Tours <i>West Berkeley Middle Housing Examples</i>

December 7, 2021	Public Workshop #1 <i>Housing Element & Residential Objective Standards</i>
December 9, 2021	City Council Worksession #2 <i>Housing Element Update</i>
December 15, 2021	Planning Commission and Zoning Adjustments Board Subcommittee <i>Residential Objective Standards</i>
January 27, 2022	Public Workshop #2 <i>Housing Element & Residential Objective Standards</i>
February 16, 2022	Planning Commission and Zoning Adjustments Board Subcommittee <i>Residential Objective Standards</i>
March 15, 2022	City Council Worksession #3 <i>Housing Element Update and Residential Objective Standards</i>
June 1, 2022	Planning Commission <i>Objective Standards for Middle Housing</i>
June 29, 2022	Public Workshop #3 <i>Housing Element & Residential Objective Standards</i>
September 20, 2022	City Council Worksession <i>Residential Objective Standards: Middle Housing and Southside</i>
August 2023	City Councilmember Briefings <i>Middle Housing</i>
November 1, 2023	Planning Commission <i>Middle Housing Discussion</i>
February 2, 2024	Planning Commission <i>Public Hearing: Middle Housing Zoning Changes</i>

The proposed zoning amendments are designed to satisfy the requirements of Program 29—Middle Housing in the adopted Housing Element.

Implications for Historic and Cultural Resources

As the Environmental Impact Report for the Housing Element disclosed, “development accommodated by the proposed Housing Element Update [including middle housing and by-right demolition] could adversely affect known and previously unidentified historic period resource.” Currently, the requirement to obtain a Use Permit to demolish a structure requires properties more than 40 years old to be subject to an Historic Resource Evaluation (HRE), which helps establish whether a property is an historic or cultural resource. If demolition were permitted with a ZC, an HRE would not be required. As a result, some properties that have not yet had their historic or cultural resources status evaluated could be subject to demolition without preservation review.

The Housing Element EIR includes the following mitigation measure to address this potential impact:

CUL-1 Historic Context Statement, Cultural Resources Survey and Designations. During the period of this Housing Element, the City should conduct a citywide historic context statement and a cultural resource survey to identify historic resources, with priority given to sites in the EIR Site Inventory, to determine if there are designed built environment features which are over 40 years of age proposed to be altered or demolished. Designation of historic or cultural resources should be conducted by the Landmarks Preservation Commission pursuant to 3.24.260 of the Berkeley Municipal Code.

The development of a citywide historic context statement has been proposed but has not yet been initiated. To reduce the time and cost related to such a study, an historic context statement could also be focused geographically on areas of the city that are either a) particularly rich in potential historic resources, and/or b) are anticipated to experience redevelopment as a result of the proposed ordinance.

Technical Edits

The proposed ordinance includes the following technical edits:

- *Renumbering of BMC Sections.* For ease of review, sections of the proposed ordinance that are exclusively renumbering of existing sections are highlighted in gray in **Attachment 2**.
- *Low-Barrier Navigation Center and Supportive Housing.* Government Code Section 65651 requires supportive housing and low barrier navigation centers to be a use by-right in any zone that permits multifamily uses. As the proposed ordinance would permit Multi-Family Residential uses in the R-1 zoning district, the Residential Allowed Use table would be amended to permit supportive housing and low barrier navigation centers with a ZC in the R-1 zoning district to comply with state law.

General Plan Amendments

~~The proposed zoning changes require conforming General Plan amendments. Attachment 3 is a resolution that includes the text of these amendments. The amendments are summarized below:~~

- ~~• *Removal of R-1A Zoning District:* The proposed zoning changes include consolidating parcels currently zoned as R-1A and R-2 into a single R-2 zoning~~

~~district. The proposed General Plan amendments include removal of references to the R-1A zoning district.~~

- ~~• *Land Use Classification Descriptions:* Currently, there are three different land use classifications that characterize the R-1, R-1A, R-2, and R-2A zoning districts:~~
 - ~~1. Low Density Residential for the R-1 and Environmental Safety Residential (ES-R) zoning districts.~~
 - ~~2. Low Medium Density Residential for the R-1A and R-2 zoning districts.~~
 - ~~3. Medium Density Residential for the R-2A and R-3 zoning districts.~~

~~Staff proposes reducing the number of land use classifications that apply to these districts to two. This is consistent with the Planning Commission's recommendation to consolidate the R-1A and R-2 zoning districts and to adopt development standards that are largely consistent across these low-density residential zoning districts. Specifically, staff recommends:~~

- ~~1. Renaming the Low Residential classification to Lower Density Residential.~~
- ~~2. Assigning the Medium Density Residential classification to the R-2, R-2A and R-3 zoning districts.~~
- ~~3. Including technical edits that reflect the Planning Commission's recommendation with respect to the names of zoning districts and the proposed development standards.~~

~~The proposed General Plan amendments also include minor changes to the Mixed-Use Residential land use classification to accurately state the zoning district's Floor Area Ratio and height regulations.~~

- ~~• *General Plan Map Amendments:* Consistent with the recommended General Plan text changes, the General Plan Map would be amended to a) rename the Low Density Residential classification; and b) expand the Medium Density Residential classification to include the R-2 and R-2A zoning districts.~~

BACKGROUND

City Council and Planning Commission Review

The City Council has held four Worksessions to discuss middle housing and residential objective standards. During these sessions, City Council considered issues such as how best to encourage a diversity of housing types, differentiation of standards in the Very High Fire Hazard Severity Zones, affirmatively furthering fair housing, and solar access.

Beginning in late 2021, the full Planning Commission and its Housing Element Subcommittee discussed middle housing on five occasions, and conducted a public

hearing on February 7, 2024 to recommend the proposed ordinance. The following list summarizes notable discussion points from each of those meetings, and feedback that the Commission provided to staff to inform the development of the ordinance:

December 15, 2021 and February 16, 2022: Planning Commission and Zoning Adjustments Board Subcommittees

- Encourage smaller units that are “affordable by design.”
- Permit more density while discouraging financial speculation.
- Balance the environmental trade-offs between protecting rooftop solar access and higher densities.

June 1, 2022: Planning Commission Discussion: Objective Standards for Middle Housing³

- Encourage smaller unit sizes and consider eliminating minimum lot size requirements.
- Reduce the minimum dimensions for required open space.

November 1, 2023: Planning Commission Discussion: Middle Housing⁴

- Prepare zoning ordinance amendments to encourage middle housing:
 - Include parcels located in the Hillside Overlay zone.
 - Remove the Floor Area Ratio (FAR) Maximum standard, as building bulk is sufficiently regulated through height and setback standards.
 - Remove the Maximum Residential Density standard, as regulating building size is the goal of the development standards, not limiting the number of units.
 - Increase Maximum Lot Coverage on all parcels to 60%, regardless of the number of units included in a proposed project.
- Prepare zoning amendments to permit demolition of single-family dwellings with a zoning certificate if associated with a middle housing project.

³ Agenda: https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2022-06-01%20PC%20Agenda%20Packet_Final.pdf

⁴ Agenda: https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2023-11-01_PC_Agenda_Packet_Paginated.pdf

Relevant State Laws

Senate Bill 9 (SB 9) requires jurisdictions to ministerially approve two residential units on a parcel within a single-unit residential zone if the development meets specific objective criteria. The bill also requires ministerial review of projects proposing to subdivide one lot into two lots, each with a minimum area of 1,200 square feet, within a single-unit residential zone. It permits up to two units on each parcel (four total dwelling units on what was formerly a single-unit lot) and the new units can be achieved through new construction or conversions/ additions to existing structures. SB 9 applies to all single-family residential parcels not within historic districts, ecologically sensitive zones and other protected areas. In Berkeley, SB 9 applies to the R-1 and R-1H zoning districts.

The proposed ordinance includes provisions which permit Multi-Family Residential uses in the R-1 zoning district. Consequently, the R-1 zoning district would no longer be a single-family residential zone under State law, and SB 9 would no longer apply to parcels in that district.

Senate Bill 35 (SB 35) allows qualified multifamily infill projects to go through a ministerial housing approval process. Eligible projects must provide a minimum share of affordable units, follow certain labor provisions, and be consistent with objective standards. Qualifying projects are not subject to discretionary processes, such as CEQA environmental review and public hearings. Eligible projects with 150 units or fewer (such as middle housing projects) must be approved within 90 days and projects with more than 150 units must be approved within 180 days.

The proposed ordinance includes the codification of objective development standards for residential projects in the low-density residential zones. Middle housing projects located in low-density residential districts could be eligible for SB 35's streamlining provisions.

Senate Bill 478 (SB 478) prohibits a local agency from imposing an FAR less than 1.0 on a housing project with three to seven units, or less than 1.25 on a housing project with eight to 10 units.

State Density Bonus Law grants certain allowances for projects that include a stipulated amount of affordable housing. Such projects are permitted to include more units and to waive certain development standards, including maximum height, lot coverage, and open space requirements. Projects that utilize State Density Bonus are typically larger than the projects that are encouraged by the proposed zoning changes,⁵ but a project

⁵ The smallest project that has utilized State Density Bonus in the past two years in Berkeley included 11 units.

could not be prevented from using the State Density Bonus under the proposed zoning changes.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Housing Element Update EIR

Development projections for this project and all reasonably foreseeable growth resulting from development contemplated by the City's updated Housing Element were analyzed in the Environmental Impact Report (EIR) for the 2023-2031 Housing Element Update ("Housing Element Update EIR"), which was certified by the City Council on January 18, 2023.⁶

The Housing Element EIR identified one significant and unavoidable environmental impact related to Cultural Resources (impacts to historic-period resources), one significant and unavoidable impact related to Noise (temporary construction noise) and four significant and unavoidable impacts related to Wildfire (emergency evacuation and response, wildfire risk and pollutant exposure, terrain and slope impacts, and infrastructure). All other environmental effects of the proposed Project can be reduced to less than significant levels through implementation of Standard Condition(s) of Approval and/or recommended mitigation measures. The adoption of the Housing Element EIR included a statement of overriding consideration that provides reasons the Housing Element could be adopted even though those impacts could occur.

RATIONALE FOR RECOMMENDATION

The proposed ordinance includes the Planning Commission's recommended zoning ordinance amendments to encourage the development of middle housing in low density residential districts, consistent with Housing Element Program 29—Middle Housing and City Council referrals. The Alternative Actions Considered section, below, includes discussion of some policy alternatives that the City Council may also consider.

ALTERNATIVE ACTIONS CONSIDERED

In the course of developing its recommendation, the Planning Commission considered a number of other ordinance amendments recommended by staff.

Permit Requirements, Maximum Floor Area Ratio and Lot Coverage

During the middle housing policy development process, staff received feedback from both the City Council and the Planning Commission that the middle housing standards should promote the creation of more housing units, and should not simply allow larger unit sizes at low densities. The key trade-off within middle housing is that larger

⁶ Housing Element Update 2023-2031 Final EIR.

https://berkeleyca.gov/sites/default/files/documents/ATT%20%20FEIR_RTC.pdf

development projects are permitted, with the understanding that these projects contribute to addressing the city's housing shortage by providing more housing units. In response, staff proposed development standards that would scale based on the number of units included in a proposed project; that is, if a project includes more units, it can be larger.

While the proposed ordinance includes development standards that would permit Multi-Family Residential uses that include more units, they would also streamline the approval of larger Single-Family Residential uses. By treating all housing types similarly, the proposed ordinance does less to incentivize projects that include more units as compared to single-family dwellings. The Planning Commission generally did not support development standards that scaled up with the number of units, preferring instead a set of standards that incentivized all types of new housing while maximizing flexibility in the project design process.

Staff had recommended three specific provisions that were designed specifically to incentivize Multi-Family Residential uses that were not recommended by the Planning commission, and are therefore not included in the proposed Ordinance:

1. **Permit Approvals:** Consistent with Program 29-Middle Housing in the adopted Housing Element Update, staff had proposed permitting Multi-Family Residential uses with a Zoning Certificate, while still requiring a Use Permit for a Single-Family Residential use. The lower permit threshold for Multi-Family Residential would provide an incentive for a project sponsor to consider a Multi-Family Residential project.
2. **Maximum Floor Area Ratio (FAR):** While an effective maximum FAR can be calculated based on existing standards for lot coverage and maximum height, the Berkeley Municipal Code does not include a specific FAR standard in the R-1, R-1H, R-1A, R-2, R-2H, R-2A, and R-2AH districts. The City Council had provided feedback to staff to consider scaling an FAR standard to increase as the number of units increase on a site, and previous Zoning Adjustments Board and Planning Commission subcommittees have supported standards that encourage the development of smaller or medium-sized, cost-efficient units.

The proposed ordinance does not include Maximum FAR. The Planning Commission felt that building size was sufficiently regulated by height, setback and lot coverage standards, and that an additional development standard would complicate the project design process and was unnecessary.

Table 10 includes the Maximum FAR standards staff recommended to the Planning Commission:

TABLE 10 PROPOSED MAXIMUM FAR STANDARDS

	R-1(H)	R-2(H)	R-2A(H)	MU-R
1 unit and nonresidential	1.2	1.2	1.2	1.5
2 units	0.5	0.6	0.6	1.5
3-7 units	1.2	1.2	1.5	1.5
8 + units	1.5	1.25	1.75	1.75

3. **Maximum Lot Coverage:** Similar to the rationale for scaling FAR by project size, staff had originally proposed scaling Maximum Lot Coverage by unit count. Staff received feedback that the middle housing standards should be designed to encourage projects that included more units, not to simply allow larger single-family dwellings. Staff's recommendation also preserved some of the distinctions between the R-1, R-2, and R-2A districts that permitted less lot coverage in traditionally lower-density zones.

The proposed ordinance includes a single Maximum Lot Coverage standard of 60% in the R-1(H), R-2(H) and R-2A(H) zones. The Planning Commission identified that the existing lot coverage standards were the most limiting development standard with respect to the promotion of middle housing projects, and so proposed a single, more expansive standard. The Planning Commission also noted that a single standard for all R-districts was more geographically equitable.

Table 11 shows the Maximum Lot Coverage Standards staff recommended to the Planning Commission:

TABLE 11 PROPOSED MAXIMUM LOT COVERAGE STANDARDS

	R-1	R-2	R-2A	MU-R
1-2 units & non-residential	40%	50%	50%	100%
3-7 units	50%	55%	55%	100%
8+ units	55%	55%	60%	100%

Without provisions to scale allowed density based on the number of units proposed, Middle Housing zoning amendments could incentivize larger single-family homes rather than Multi-Family Residential Uses. For example, under the proposed ordinance, a single-family home with 60% lot coverage would be permitted with a ZC in the R-1 zoning district. Currently, a Use Permit is required, and the maximum lot coverage is 40%.

Maximum Density

Staff recommended both Minimum and Maximum Density standards to the Planning Commission. The recommendation was based on feedback that while the standards should encourage the development of more housing, middle housing projects should reflect the existing mix of multi-family housing types within neighborhoods. A Maximum Density standard would provide that, as well as a degree of predictability for existing residents as to what proposed projects may include.

The proposed ordinance does not include a Maximum Density Standard. The Planning Commission felt that the height, setback and lot coverage standards were sufficient to regulate project size, and that allowable project size would naturally limit densities to reasonable levels without the need to explicitly prohibit more than a certain number of units.

Error! Reference source not found. Table 12 shows the Minimum Density Standard recommended by Planning Commission alongside the Maximum Density Standard staff recommended to the Planning Commission, as well as the number of units that would result from the standards on a typical 5,000 square foot lot.

TABLE 12 DENSITY STANDARDS

	R-1	R-1H	R-1A	R-2	R-2H	R-2A	R-2AH	MU-R
Minimum Density (DU/acre)	10	No min.	10	10	No min.	20	No min.	20
Maximum Density (DU/acre)	25	20	35	35	20	55	55	55
Resulting units on a 5,000 sf lot								
Minimum Units	1	No min.	1	1	No min.	2	No min.	2
Maximum Units	3	2	4	4	2	6	6	6

Hillside Overlay

The City is currently undertaking a study of emergency evacuations of the Very High Fire Hazard Severity Zones and is also updating its Safety Element. Staff recommended to the Planning Commission that the middle housing zoning standards should not be applied to parcels in the Hillside Overlay zone until this study is completed. This would allow the policymakers to use the study to inform any zoning change that would result in

density increases in the Very High Fire Hazard Severity Zones. Opportunities to increase density in most of the Hillside Overlay (areas zoned R-1H) would still be available, pursuant to SB 9, to encourage middle housing.

The proposed ordinance includes parcels in the Hillside Overlay. The Planning Commission noted that it is important to ensure geographical equity in the accommodation of new housing units. The Planning Commission also recognized that recommendations could arise from the evacuation study and the preparation of the Safety Element and suggested that any needed changes to the standards could be introduced at a later date.

At its September 20, 2022 worksession, the City Council reviewed a proposed height standard that would reduce the Maximum Building Height within the Hillside Overlay to 28 feet (as opposed to 35 feet outside of the Hillside Overlay). The City Council also reviewed lower minimum and maximum density standards in the Hillside Overlay, as shown in Table 12 above. These standards were proposed to address concerns for both wildfire mitigation (e.g., less fire fuel in the form of building materials), structural fireground operations (e.g., ground ladder placement for access to windows and roof), and view preservation.

Residential Additions and Added Bedrooms

The proposed ordinance includes permitting Residential Additions with a ZC if they comply with the development standards for a Main Building, and revises the maximum height for Residential Additions to match those for Main Buildings. The proposed ordinance also includes a revision which removes additional requirements for bedrooms that are added to existing dwellings or lots developed with existing residential uses.

Staff recommended that these changes only apply in cases where a Residential Addition, or any additional bedrooms, are associated with the provision of new units. Staff thought it was inconsistent to allow new units with a ZC if they were included in a new development project, but to maintain a discretionary process for new units that happen to be part of an existing building. This approach was also consistent with feedback that the middle housing standards were to promote the development of Multi-Family Residential uses, not just the expansion of existing or proposed Single-Family Uses, as well as promote the adaptive reuse of existing buildings.

The proposed ordinance expanded these changes to apply to any Residential Addition and any new bedroom, even if the new Residential Addition or new bedroom did not result in a new unit, but only expanded an existing unit. The Planning Commission felt that the development standards should be more flexible to accommodate what it felt were shifting trends in household configurations and sizes, including cohousing and multi-generational households.

Administrative Use Permit for Demolition

The proposed ordinance includes a provision that permits demolition of a single-family home with a Zoning Certificate as long as the demolition is part of a project that results in a net increase in units. Program 29—Middle Housing in the adopted Housing Element included a requirement that the City Council consider this specific policy.

At its meeting of June 25, 2024, the City Council held a public hearing on proposed changes to BMC Chapter 23.326 (Demolition and Dwelling Unit Controls), which included permitting demolition of a single-family home with an AUP, as long as the demolition would be part of a project that included a net increase in units and the single-family home was not occupied by tenants.

At its meeting of February 7, 2024, the Planning Commission held a public hearing on the proposed middle housing ordinance. Accordingly, the proposed ordinance now includes permitting the demolition of single-family homes with a ZC.

Parking Maximums

BMC Section 23.322.070—Off-Street Parking Maximums for Residential Development limits the amount of off-street parking that can be provided for new residential projects of two or more units within 0.25 miles of a major transit stop or transit corridor to one space for every two units. The parking maximum can be exceeded with an AUP.

Since 2021, when residential parking requirements were modified to incorporate parking maximums, many smaller, middle housing-scale projects have requested AUPs to exceed the parking maximum, usually to a ratio of one space per unit. Project sponsors, as well as the middle housing architects interviewed as part of community outreach, note that the maximum parking standard discourages middle housing production as builders are concerned about selling or renting units, particularly those that are marketed to first-time homebuyers and families with children. The ZAB has been sympathetic to these concerns for middle housing-scale projects and has regularly issued AUPs to permit more parking.

Staff had asked the Planning Commission to consider possible revisions to parking maximums. Feedback from community outreach included the following suggestions:

- Eliminating parking maximums for projects of 9 units or less; or
- Adjusting the parking maximum to one space per unit for middle housing projects, with an added requirement that the spaces have chargers for electric vehicles.

While the Planning Commission acknowledged that parking maximums may make the marketing of middle housing projects more difficult, it indicated that existing policies related to greenhouse gas reduction and promoting alternatives to private vehicle travel continue to justify this policy and declined to recommend revisions to parking maximums.

Consolidation of Residential Zoning Districts

The proposed ordinance includes the elimination of the R-1A zoning district, merging it with the R-2 zoning district, as the two districts would be regulated similarly under the proposed ordinance.

Staff's recommendation to Planning Commission at its February 7, 2024 meeting included a number of development standards which the Commission did not ultimately include in its recommendation, specifically for Maximum FAR, Maximum Density and Maximum Lot Coverage. While these standards included distinctions across the zoning districts, their removal left only two development standards that differed across the districts: the Minimum Density Standard (10 du/acre in the R-1 and R-2; 20 du/acre in the R-2A and MU-R), and the minimum front setback standard (15 feet in the R-1/R-2, 10 feet in the R-2A, and between 5 feet and 10 feet in the MU-R). Accordingly, the Planning Commission discussed, but did not propose, that additional consolidations may be warranted.

Staff notes that although the development standards may be similar across the districts, there are distinctions in allowed land uses that can justify maintaining distinct zones. Mixed-Use Residential projects, for example, would still not be permitted in the R-1, and the MU-R district would continue to permit a wider range of residential and non-residential uses than the R-prefix districts.

CONTACT PERSON

Justin Horner, Principal Planner, Planning and Development, 510-981-7476

Attachments:

- 1: Ordinance
 - Exhibit A: Parcels Rezoned from R-1A and R-2
- 2: Proposed Ordinance, Annotated
- 3: Resolution: General Plan Amendments
- 4: Development Standards Tables
- 5: Planning Commission Report: February 7, 2024
- 6: Public Hearing Notice