



4x4 Joint Task Force Committee on Housing  
City Council and Rent Board

## **4 X 4 JOINT TASK FORCE COMMITTEE ON HOUSING CITY COUNCIL/RENT STABILIZATION BOARD**

**Wednesday, December 14, 2022 – 2:30 p.m.**

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

Pursuant to Government Code Section 54953(e)(3), City Council Resolution 70,030-N.S., and Rent Board Resolution 21-29, this meeting of the City Council and Rent Stabilization Board's **4 x 4 Joint Task Force Committee on Housing** (Committee) will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Resolutions and the findings contained therein that the spread of COVID-19 continues to be a threat to the public health and that holding meetings of City legislative bodies in person would present imminent risks to the health and safety of the public and members of legislative bodies. Therefore, **there will not be a physical meeting location available.**

**To access this meeting remotely:** Join from a PC, Mac, iPad, iPhone, or Android device by clicking on this URL: <https://us06web.zoom.us/j/89280424536?pwd=aWRTQXo5SnBKRnZobVEvL1pkOHlvdz09>. If you do not wish for your name to appear on the screen, then use the drop-down menu and click on "Rename" to rename yourself to be anonymous. To request to speak, use the "Raise hand" icon by rolling over the bottom of the screen.

**To join by phone:** Dial 1-669-900-6833 and enter Webinar ID: 892 8042 4536 and Passcode: 339987. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Committee Chair.

To submit a written communication for the Committee's consideration and inclusion in the public record, email [BTran@cityofberkeley.info](mailto:BTran@cityofberkeley.info) with the Subject line in this format: "PUBLIC COMMENT ITEM FOR 4 X 4 COMMITTEE." Please observe a 150-word limit. **Email comments must be submitted to the email address above by 12:30 p.m. on the day of the Committee meeting in order to be included.**

Please be mindful that this will be a public meeting and all rules of procedure and decorum will apply for meetings conducted by teleconference or videoconference.

This meeting will be conducted in accordance with Government Code Section 54953 and all current state and local requirements allowing public participation in meetings of legislative bodies. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to DéSeana Williams, Executive Director of the Rent Board, at (510) 981-7368 (981-RENT). The Committee may take action related to any subject listed on the Agenda.



4x4 Joint Task Force Committee on Housing  
City Council and Rent Board

## AGENDA

### **4 X 4 JOINT TASK FORCE COMMITTEE ON HOUSING CITY COUNCIL/RENT STABILIZATION BOARD**

**Wednesday, December 14, 2022 – 2:30 p.m.**

1. Roll call
2. Land Acknowledgment Statement: *The Berkeley Rent Stabilization Board recognizes that the rental housing units we regulate are built on the territory of xučyun (Huchiun-(Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's landlords and tenants have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878 and since the Rent Stabilization Board's creation in 1980. As stewards of the laws regulating rental housing, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today.*
3. Approval of the agenda
4. Public comment on non-agenda matters
5. Approval of October 26, 2022 Committee meeting minutes (see attachment)
6. Approval of November 30, 2022 Committee meeting minutes (see attachment)
7. Discussion and possible action on Committee meeting schedule for 2023 (requested by Mayor Arreguín)
8. Discussion and possible action to consider a recommendation to City Council regarding amendments to the Demolition Ordinance (Steve Buckley, Planning Department, see attached staff report)
9. Discussion of possible future agenda items
10. Confirm next meeting date
11. Adjournment

COMMITTEE MEMBERS:

Mayor Jesse Arreguín  
City Councilmember Kate Harrison  
City Councilmember Rigel Robinson  
City Councilmember Terry Taplin

Rent Board Chairperson Leah Simon-Weisberg  
Rent Board Vice-Chairperson Soli Alpert  
Rent Board Commissioner Xavier Johnson  
Rent Board Commissioner Andy Kelley



4x4 Joint Task Force Committee on Housing  
City Council and Rent Board

## 4 X 4 JOINT TASK FORCE COMMITTEE ON HOUSING CITY COUNCIL/RENT STABILIZATION BOARD

**Wednesday, October 26, 2022 – 3:00 p.m.**

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

Pursuant to Government Code Section 54953(e)(3), City Council Resolution 70,030-N.S., and Rent Board Resolution 21-29, this meeting of the City Council and Rent Stabilization Board's **4 x 4 Joint Task Force Committee on Housing** (Committee) will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Resolutions and the findings contained therein that the spread of COVID-19 continues to be a threat to the public health and that holding meetings of City legislative bodies in person would present imminent risks to the health and safety of the public and members of legislative bodies. Therefore, **there will not be a physical meeting location available.**

**To access this meeting remotely:** Join from a PC, Mac, iPad, iPhone, or Android device by clicking on this URL: <https://us06web.zoom.us/j/82899637076?pwd=MIZzdFNDTVIBTFBBZ1NNeDRwbmpWdz09>. If you do not wish for your name to appear on the screen, then use the drop-down menu and click on "Rename" to rename yourself to be anonymous. To request to speak, use the "Raise hand" icon by rolling over the bottom of the screen.

**To join by phone:** Dial 1-669-900-6833 and enter Webinar ID: 828 9963 7076 and Passcode: 272220. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Committee Chair.

To submit an e-mail comment to be read aloud during Public Comment, email [LBursell@berkeleyca.gov](mailto:LBursell@berkeleyca.gov) with the Subject line in this format: "PUBLIC COMMENT ITEM FOR 4 X 4 COMMITTEE". Please observe a 150-word limit. Time limits on public comments will apply. Written comments will be entered into the public record. **Email comments must be submitted to the email address above by 1:00 p.m. on the day of the Committee meeting in order to be included.**

Please be mindful that this will be a public meeting and all rules of procedure and decorum will apply for meetings conducted by teleconference or videoconference.

This meeting will be conducted in accordance with Government Code Section 54953 and all current state and local requirements allowing public participation in meetings of legislative bodies. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to DéSeana Williams, Executive Director of the Rent Board, at (510) 981-7368 (981-RENT). The Committee may take action related to any subject listed on the Agenda.



4x4 Joint Task Force Committee on Housing  
City Council and Rent Board

## 4 X 4 JOINT TASK FORCE COMMITTEE ON HOUSING CITY COUNCIL/RENT STABILIZATION BOARD

Wednesday, October 26, 2022 – 3:00 p.m.

### Minutes to be Approved

- 1. Roll call:** Mayor Arreguín called the meeting to order at 3:05 p.m.  
Present: Mayor Arreguín, CM Harrison, RBC Johnson, RBC Kelley, CM Robinson, RB Chair Simon-Weisberg, CM Taplin (logged off at 4:20 p.m.).  
Absent: RBC Alpert.  
Staff present: Diego Aguilar-Canabal, Matt Brown, Steve Buckley, Lief Bursell, Nate Dahl, Brendan Darrow, Stefan Elgstrand, Margot Ernst, Ollie Ehlinger, Jen Fabish, Hannah Kim, Alene Pearson, Mike Uberti, DéSeana Williams.
- 2. Land Acknowledgment Statement:** *The Berkeley Rent Stabilization Board recognizes that the rental housing units we regulate are built on the territory of xučyun (Huchiun-(Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's landlords and tenants have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878 and since the Rent Stabilization Board's creation in 1980. As stewards of the laws regulating rental housing, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today.*

The Land Acknowledgement Statement was read aloud.
- 3. Approval of the agenda:** M/S/C (Robinson/Harrison) Approve the agenda as written. Roll call vote. YES: Arreguín, Harrison, Johnson, Kelley, Robinson, Simon-Weisberg, Taplin; NO: None; ABSTAIN: None; ABSENT: Alpert. Carried: 7-0-0-1.
- 4. Public comment on non-agenda matters:** There were 3 speakers.
- 5. Approval of September 28, 2022 Committee meeting minutes (see attachment):** M/S/C (Arreguín/Robinson) Approve the minutes with the following correction: for item 12.a., change "November" to "October 19." Roll call vote. YES: Arreguín, Harrison, Johnson, Kelley, Robinson, Simon-Weisberg, Taplin; NO: None; ABSTAIN: None; ABSENT: Alpert. Carried: 7-0-0-1.

6. Discussion and possible action to consider a recommendation to City Council regarding amendments to the Demolition Ordinance (Steve Buckley, Planning Department, see attached October 19, 2022 staff report to the Planning Commission): Steve Buckley of the Planning Department presented, and the committee provided extensive feedback on the proposed amendments. Mayor Arreguín will work with all stakeholders to prepare revised amendments for the committee's review in November, with an eye towards Planning Commission review in either December or January. The committee's aim is for Council to consider Demolition Ordinance amendments before or along with proposed zoning changes currently expected to go before Council in the spring of 2023.

There were two public speakers.

7. Discussion on the enforcement of Short-Term Rentals (Steve Buckley, Planning Department): Steve Buckley of the Planning Department presented on enforcement efforts, and took questions from the committee. The committee discussed, amongst other things, comparing data compiled from the City's third-party vendor to Rent Board data in an effort to identify instances where units claimed as vacant with the Rent Board are listed as short-term rentals.

There were two public speakers.

8. Discussion of possible future agenda items: Demolition Ordinance. Elevator Ordinance (Harrison).
9. Confirm next meeting date: Since the fourth Wednesday (the committee's regular meeting date) is the day before Thanksgiving, committee members will work with the committee staffer to set a new November meeting date.
10. Adjournment: M/S/C (Arreguín/Simon-Weisberg) Adjourn the meeting. Roll call vote. YES: Arreguín, Harrison, Johnson, Kelley, Robinson, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: Alpert, Taplin. Carried: 6-0-0-2.

The meeting adjourned at 5:03 p.m.

COMMITTEE MEMBERS:

Mayor Jesse Arreguín

City Councilmember Kate Harrison

City Councilmember Rigel Robinson

City Councilmember Terry Taplin

Rent Board Chairperson Leah Simon-Weisberg

Rent Board Vice-Chairperson Soli Alpert

Rent Board Commissioner Xavier Johnson

Rent Board Commissioner Andy Kelley



4x4 Joint Task Force Committee on Housing  
City Council and Rent Board

## 4 X 4 JOINT TASK FORCE COMMITTEE ON HOUSING CITY COUNCIL/RENT STABILIZATION BOARD

**Wednesday, November 30, 2022 – 3:00 p.m.**

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

Pursuant to Government Code Section 54953(e)(3), City Council Resolution 70,030-N.S., and Rent Board Resolution 21-29, this meeting of the City Council and Rent Stabilization Board's **4 x 4 Joint Task Force Committee on Housing** (Committee) will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Resolutions and the findings contained therein that the spread of COVID-19 continues to be a threat to the public health and that holding meetings of City legislative bodies in person would present imminent risks to the health and safety of the public and members of legislative bodies. Therefore, **there will not be a physical meeting location available.**

**To access this meeting remotely:** Join from a PC, Mac, iPad, iPhone, or Android device by clicking on this URL: <https://us06web.zoom.us/j/84125201403?pwd=OGoxUzdUWEZ0T0tuaEczcWRqVWc2QT09>. If you do not wish for your name to appear on the screen, then use the drop-down menu and click on "Rename" to rename yourself to be anonymous. To request to speak, use the "Raise hand" icon by rolling over the bottom of the screen.

**To join by phone:** Dial 1-669-900-6833 and enter Webinar ID: 841 2520 1403 and Passcode: 554148. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Committee Chair.

To submit an e-mail comment to be read aloud during Public Comment, email [BTran@cityofberkeley.info](mailto:BTran@cityofberkeley.info) with the Subject line in this format: "PUBLIC COMMENT ITEM FOR 4 X 4 COMMITTEE". Please observe a 150- word limit. Time limits on public comments will apply. Written comments will be entered into the public record. **Email comments must be submitted to the email address above by 1:00 p.m. on the day of the Committee meeting in order to be included.**

Please be mindful that this will be a public meeting and all rules of procedure and decorum will apply for meetings conducted by teleconference or videoconference.

This meeting will be conducted in accordance with Government Code Section 54953 and all current state and local requirements allowing public participation in meetings of legislative bodies. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to DéSeana Williams, Executive Director of the Rent Board, at (510) 981-7368 (981-RENT). The Committee may take action related to any subject listed on the Agenda.



4x4 Joint Task Force Committee on Housing  
City Council and Rent Board

## 4 X 4 JOINT TASK FORCE COMMITTEE ON HOUSING CITY COUNCIL/RENT STABILIZATION BOARD

Wednesday, November 30, 2022 – 3:00 p.m.

### Minutes to be Approved

1. Roll call: Chair Simon-Weisberg called the meeting to order at 3:03 p.m.  
Present: Mayor Arreguín (logged off at 5:34 p.m.), CM Harrison (logged off at 5:47 p.m.), RBC Johnson, RBC Kelley, RB Chair Simon-Weisberg, CM Taplin (logged on at 3:16 p.m.).  
Absent: CM Robinson.  
Staff present: Diego Aguilar-Canabal, Matt Brown, Lief Bursell, Brendan Darrow, Stefan Elgstrand, Ollie Ehlinger, Hannah Kim, DéSeana Williams.
2. Land Acknowledgment Statement: *The Berkeley Rent Stabilization Board recognizes that the rental housing units we regulate are built on the territory of xučyun (Huchiun-(Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's landlords and tenants have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878 and since the Rent Stabilization Board's creation in 1980. As stewards of the laws regulating rental housing, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today.*

The Land Acknowledgement Statement was played aloud.

3. Approval of the agenda: Public comment on non-agenda items was heard prior to the approval of the agenda.

M/S/C (Harrison/Alpert) Approve the agenda with the following changes: discuss the AGA item first, then the Eviction Moratorium, followed by the Elevator Ordinance. Roll call vote. YES: Alpert, Arreguín, Harrison, Johnson, Kelley, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: Robinson, Taplin. Carried: 6-0-0-2.

There were no public speakers.

4. Public comment on non-agenda matters: Public comment on non-agenda items was heard prior to the approval of the agenda. There were 4 speakers.
5. Approval of October 26, 2022 Committee meeting minutes (see attachment): This item was not discussed.



6. Discussion and possible action regarding Council's use of Emergency Powers to limit/reduce the 4.4% Annual General Adjustment rent increase for 2023 for rent-controlled units (requested by Chair Simon-Weisberg): The committee discussed this item and agreed that more legal and procedural research is necessary before the item can be fully considered. The committee also agreed that the research should be presented directly to City Council and the Rent Board rather than having the item return to the committee.

There were 12 public speakers.

7. Discussion and possible action regarding amendments to the Eviction Moratorium (BMC 13.110) proposed by Vice Mayor Harrison and Councilmember Wengraf (requested by Chair Simon-Weisberg, see attached report to the Council Agenda and Rules Committee): Vice Mayor Harrison presented. The committee and City staff discussed the proposed amendments reflected in the report, including proposed changes to definitions. No action was taken.

Staff read aloud 27 emailed comments.

There were 22 public speakers.

8. Discussion and possible action regarding recommendations on signage related to the Elevator Ordinance (requested by Vice Mayor Harrison): This item was not discussed.
9. Discussion of possible future agenda items: This item was not discussed.
10. Confirm next meeting date: Chair Simon-Weisberg mentioned possibly meeting again on December 14.
11. Adjournment: M/S/C (Simon-Weisberg/Alpert) Adjourn the meeting. Roll call vote. YES: Alpert, Johnson, Kelley, Simon-Weisberg, Taplin; NO: None; ABSTAIN: None; ABSENT: Arreguín, Harrison, Robinson. Carried: 5-0-0-3.

The meeting adjourned at 5:57 p.m.

COMMITTEE MEMBERS:

Mayor Jesse Arreguín

City Councilmember Kate Harrison

City Councilmember Rigel Robinson

City Councilmember Terry Taplin

Rent Board Chairperson Leah Simon-Weisberg

Rent Board Vice-Chairperson Soli Alpert

Rent Board Commissioner Xavier Johnson

Rent Board Commissioner Andy Kelley



Planning and Development Department  
Land Use Planning Division

## STAFF REPORT

DATE: December 14, 2022

TO: Members of the 4X4 Joint Committee on Housing

FROM: Steven Buckley, Land Use Planning Manager

SUBJECT: Zoning Ordinance Amendments to Berkeley Municipal Code Chapter 23.326 [Demolition and Dwelling Unit Controls]

### BACKGROUND

On October 19, 2022, the Planning Commission of the City of Berkeley considered draft amendments to BMC Chapter 23.326 [Demolition and Dwelling Unit Controls] (“the Demolition Ordinance”, previously codified as Chapter 23C.08), reflecting the recommendations made by the 4x4 Committee in April 2022. The Commission considered the staff analysis, recommendations of the Committee, and public testimony, and remained concerned about several provisions of the draft ordinance. In particular, the Commission wondered if the ordinance should apply equally to all units including single-family units, wanted to ensure consistency with provisions of SB330 and Density Bonus law, hoped to obtain as many replacement units as possible and ensure that renters were able to return even if they were not income qualified, and asked that the 4x4 Committee review the ordinance once more.

The existing ordinance is presented in Attachment 1. A revised version prepared by staff following the Planning Commission meeting is presented in Attachment 2. A comparison of the two versions is provided in Attachment 3.

### Summary of Existing Demolition Ordinance Provisions

The Demolition Ordinance requires a use permit to be issued prior to the demolition of a dwelling unit. The ordinance also addresses situations where units are combined (for example, when a duplex is converted to a single-family home) and conversions to other uses such as daycare centers and nursing homes. The provisions related to non-residential structures are not addressed in this ordinance revision.

The Zoning Adjustments Board (ZAB) may issue a use permit for the demolition of a dwelling unit for specific enumerated reasons, including in instances where a building is “hazardous or unusable and is infeasible to repair” or “demolition is necessary to permit

construction . . . of at least the same number of dwelling units.” Before permitting the demolition of a dwelling unit, ZAB must also find that “the elimination of the dwelling units would not be materially detrimental to the housing needs and public interest of the affected neighborhood and the City.” In addition, applicants must either provide below market rate replacement units to “qualifying household[s]” or pay an in-lieu fee, but the fee has never been set.

Demolition of dwelling units is prohibited where a building has been removed from the rental market during the preceding five years or where there have been verified cases of harassment or threatened or actual illegal eviction during the immediately preceding three years. Applicants are generally required to provide relocation benefits, including moving expenses and differential rent payments. In addition, displaced tenants are provided a right of first refusal to rent new units.

Most of these provisions are carried forward in the proposed ordinance, though in modified form.

### **Draft Amendments to the Demolition Ordinance**

In 2019, the California state legislature adopted Senate Bill 330 (SB330), “the Housing Crisis Act of 2019”, which established new statewide provisions for housing unit demolition and replacement. The proposed updates to BMC 23.326 are intended to bring Berkeley’s zoning ordinance into alignment with the state provisions, while retaining some local features as well. In particular, the local ordinance applies to units constructed prior to, and therefore subject to, local rent control. The proposed ordinance amendments also respond to feedback provided by the Planning Commission and the 4x4 Committee, who asked that staff craft the ordinance to ensure fair and equitable treatment of tenants and prevent displacement, to the greatest extent allowable by law and without compromising project feasibility. The proposed ordinance also includes amendments to address various technical and administrative issues.

Some of the central provisions of the Demolition Ordinance, and proposed changes, include the following:

- **Replacement units.** SB 330 imposes a requirement that any housing development project that requires the demolition of dwelling units must “create at least as many residential dwelling units as will be demolished.” This provision allows (and requires) the City to condition demolition on the provision of replacement units when units are demolished for the purpose of constructing a new residential development. SB 330 also requires that any “protected units” (including rent control or units occupied by low or very-low income households) must be replaced in kind if a new housing development project is being built. The proposed ordinance amends the City’s existing provisions to also require replacement units in every case, and to specifically require that replacement units meet the City’s affordability requirements.

- **Rights of sitting tenants.** The current ordinance establishes the right of sitting tenants to return to new units by requiring the developer to offer equivalent below-market-rate units at prior rent levels regardless of income. The proposed revision clarifies that tenants who do not qualify for below-market-rate (BMR) units due to income limits must still be provided a market-rate replacement unit at their prior rent, in addition to any required BMR units, and caps rent increases consistent with standard rent control provisions. The ordinance further establishes that tenants shall have until the date that the new units are ready for occupancy to decide whether to move into the newly constructed building.
- **Relocation Assistance.** The current ordinance includes provisions for tenants that may be temporarily displaced during the period when units are demolished and replaced. The ordinance requires that the applicant subsidize the rent differential for a comparable replacement unit, in the same neighborhood if feasible, until new units are ready for occupancy; and that those benefits be guaranteed in a manner acceptable to the City. Those existing provisions are carried forward in the draft ordinance revisions.
- **Applicability to legally established units.** The ordinance as originally written applies to legally established units. There are many units throughout the City that have been created without proper land use or building permits. Many are registered with the Rent Stabilization Board, have addresses, and have sitting tenants. However, they are not recognized in other circumstances, may not comply with zoning standards, and may present some hazards to the tenants. In these unwarranted units tenant protections generally apply. The City provides property owners an opportunity to correct violations rather than remove the units, particularly when there is a sitting tenant. If unpermitted units are ultimately removed to correct the violation or as part of a new development project, then they would not be replaced under this ordinance.
- **Other Housing Types.** The proposed ordinance removes provisions related to single-room-occupancy hotels (SROs) and adds Live/Work units and Group Living Accommodations to the housing types covered by the ordinance.
- **Moving Buildings.** The ordinance has been revised to simplify the review process for moving a residential building within Berkeley to encourage such measures to preserve existing housing stock. So long as the new location can conform to basic zoning requirements, then the building can be moved without further review.
- **Applicable to Single-Family and Housing Units.** The ordinance has been broadened to include all housing units instead of being limited to rent controlled multi-unit buildings, as requested by the Planning Commission. This presents issues around prioritizing by-right infill development on smaller, lower density lots. It may be possible to resolve this issue by removing the Use Permit requirement and simply require the replacement units to be consistent with

inclusionary and/or SB330 and density bonus standards, which apply to “protected units”, i.e. rent-controlled, below-market-rate, and low-income tenant units.

### **Next Steps and Recommendation**

Staff recommends that the Committee discuss the draft Ordinance, provide direction, and forward a recommendation to the Planning Commission and City Council.

The Committee could consider the following issues in formulating its recommendation:

- Should the tenant relocation benefits and rent increase limitation for returning tenants continue indefinitely?
- Should a cap be placed on the rent differential during the period of relocation?
- Should the ordinance apply to single-family units that are not otherwise protected by State law?
- Should the relocation of a residential building be by-right or require a use permit, allowing public review and comment?
- Any other issues raised during public comment and deliberation.

### **ATTACHMENTS**

1. Existing Ordinance
2. Revised Draft Ordinance
3. Comparison Version

Chapter 23.326  
DEMOLITION AND DWELLING UNIT CONTROL

Sections:

23.326.010	Chapter Purpose.
23.326.020	General Requirements.
23.326.030	Eliminating Dwelling Units through Demolition.
23.326.040	Eliminating Dwelling Units through Conversion and Change of Use.
23.326.050	Private Right of Action.
23.326.060	Elimination of Residential Hotel Rooms.
23.326.070	Demolitions of Non-Residential Buildings.
23.326.080	Building Relocations.
23.326.090	Limitations.

23.326.010 Chapter Purpose.

This chapter establishes demolition and dwelling unit control standards that promote the affordable housing, aesthetic, and safety goals of the City. (Ord. 7787-NS § 2 (Exh. A), 2021)

23.326.020 General Requirements.

A. *Applicability.* No dwelling unit or units may be eliminated or demolished except as authorized by this chapter.

B. *Findings.* In addition to the requirements below, the Zoning Adjustments Board (ZAB) may approve a Use Permit to eliminate or demolish a dwelling unit only upon finding that eliminating the dwelling unit would not be materially detrimental to the housing needs and public interest of the affected neighborhood and Berkeley. (Ord. 7787-NS § 2 (Exh. A), 2021)

23.326.030 Eliminating Dwelling Units through Demolition.

A. *Buildings with Two or More Units Constructed Before June 1980.*

1. *Applicability.* This subsection only applies to building with two or more units constructed before June 1980.

2. *Limitation.*

(a) Demolition is not allowed if:

- i. The building was removed from the rental market under the Ellis Act during the preceding five years; or
- ii. There have been verified cases of harassment or threatened or actual illegal eviction during the immediately preceding three years.

(b) Where allegations of harassment or threatened or actual illegal eviction are in dispute, either party may request a hearing before a Rent Board Hearing Examiner. The Rent Board Hearing Examiner will provide an assessment of the evidence and all available documentation to the ZAB. The ZAB shall determine whether harassment or threatened or actual illegal eviction occurred.

3. *Findings.* The ZAB may approve a Use Permit to demolish a building constructed before June 1980 on a property containing two or more dwelling units if any of the following are true:

- (a) The building containing the units is hazardous or unusable and is infeasible to repair.
- (b) The building containing the units will be moved to a different location within Berkeley with no net loss of units and no change in the affordability levels of the units.
- (c) The demolition is necessary to permit construction of special housing needs facilities such as, but not limited to, childcare centers and affordable housing developments that serve the greater good of the entire community.

(d) The demolition is necessary to permit construction approved pursuant to this chapter of at least the same number of dwelling units.

4. *Fee Required.*

(a) The applicant shall pay a fee for each unit demolished to mitigate the impact of the loss of affordable housing in Berkeley.

(b) The amount of the fee shall be set by resolution of the City Council.

(c) *In Lieu of a Fee.*

i. In lieu of paying the impact fee, the applicant may provide a designated unit in the new project at a below market rate to a qualifying household in perpetuity.

ii. The affordability level of the below market rent and the income level of the qualifying household shall be set by resolution of the City Council.

iii. The applicant shall enter into a regulatory agreement with the City of Berkeley to provide the in lieu units.

5. *Occupied Units.*

(a) *Applicability.*

i. The requirements in this subsection apply if units to be demolished are occupied.

ii. These requirements do not apply to tenants who move in after the application for demolition is submitted to the City if the owner informs each prospective tenant about the proposed demolition and that demolition constitutes good cause for eviction.

(b) *Notice.* The applicant shall provide all sitting tenants notice of the application to demolish the building no later than the date it is submitted to the City, including notice of their rights under Municipal Code Section [13.76](#) (Rent Stabilization and Eviction for Good Cause Program).



(c) *General Requirements.*

- i. The applicant shall provide assistance with moving expenses equivalent to in Chapter [13.84](#) (Relocation Services and Payments for Residential Tenant Households).
- ii. The applicant shall subsidize the rent differential for a comparable replacement unit, in the same neighborhood if feasible, until new units are ready for occupancy. Funding for the rent differential shall be guaranteed in a manner approved by the City.
- iii. *Exception.* An applicant who proposes to construct a 100 percent affordable housing project is not required to comply with this subsection but must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended and the California Relocation Act (Government Code sections [7260](#) et seq.).

(d) *Sitting Tenants Rights.*

- i. Sitting tenants who are displaced as a result of demolition shall be provided the right of first refusal to move into the new building.
- ii. Tenants of units that are demolished shall have the right of first refusal to rent new below-market rate units designated to replace the units that were demolished, at the rent that would have applied if they had remained in place, as long as their tenancy continues.
- iii. Income restrictions do not apply to displaced tenants.
- iv. *Exception.*
  - (1) An applicant who proposes to construct a 100 percent affordable housing project is not required to comply with [23.326.030.A.5.a](#), [b](#), and [c](#), but must comply with the following requirement.
  - (2) Sitting tenants who are displaced as a result of demolition and who desire to return to the newly constructed building will be granted a right

of first refusal subject to their ability to meet income qualifications and other applicable eligibility requirements when the new units are ready for occupancy.

**B. *Buildings with a Single Dwelling Unit.***

1. *Applicability.* This subsection only applies to buildings with a single dwelling unit.

2. *Limitation.*

(a) Demolition is not allowed if:

i. The building was removed from the rental market under the Ellis Act during the preceding five years; or

ii. There have been verified cases of harassment or threatened or actual illegal eviction during the immediately preceding three years.

(b) Where allegations of harassment or threatened or actual illegal eviction are in dispute, either party may request a hearing before a Rent Board Hearing Examiner. The Rent Board Hearing Examiner will provide an assessment of the evidence and all available documentation to the ZAB. The ZAB shall determine whether harassment or threatened or actual illegal eviction occurred.

**C. *Accessory Buildings.*** Notwithstanding anything in Municipal Code Title [23](#) (Zoning Ordinance) to the contrary, but subject to any applicable requirements in Municipal Code Section [3.24](#) (Landmarks Preservation Ordinance), accessory buildings of any size, including, but not limited to, garages, carports, and sheds, but not including any structure containing a lawfully established dwelling unit, which serves and is located on the same lot as a lawful residential use, may be demolished by right. (Ord. 7810-NS § 1, 2022; Ord. 7787-NS § 2 (Exh. A), 2021)

23.326.040 Eliminating Dwelling Units through Conversion and Change of Use.

A. *General.* The ZAB may approve a Use Permit for the elimination of a dwelling unit in combination with another dwelling unit used for occupancy by a single household if it finds that:

1. The existing number of dwelling units exceeds maximum residential density in the district where the building is located; and
2. One of the following is true:
  - (a) One of the affected dwelling units has been occupied by the applicant's household as its principal place of residence for no less than two years before the date of the application and none of the affected units are currently occupied by a tenant.
  - (b) All of the affected dwelling units are being sold by an estate and the decedent occupied the units as their principal residence for no less than two years before the date of their death.

B. *Limitations.*

1. Demolition is not allowed if:
  - (a) The building was removed from the rental market under the Ellis Act during the preceding five years; or
  - (b) There have been verified cases of harassment or threatened or actual illegal eviction during the immediately preceding three years.
2. Where allegations of harassment or threatened or actual illegal eviction are in dispute, either party may request a hearing before a Rent Board Hearing Examiner. The Rent Board Hearing Examiner will provide an assessment of the evidence and all available documentation to the ZAB. The ZAB shall determine whether harassment or threatened or actual illegal eviction occurred.

C. *Effect of Noncompliance with the Two-Year Requirement.*

1. If a unit eliminated under Subsection [A](#) (General) is not occupied by the applicant's household for at least two consecutive years from the date of elimination, the affected unit must be restored to separate status.
2. This requirement shall be implemented by a condition of approval and a notice of limitation on the property, acceptable to the City of Berkeley.
3. The condition and notice will provide that if the owner's household does not occupy the unit for at least two years from the date of elimination the affected units must either be restored as separate dwelling units and the vacant unit(s) offered for rent within six months or the owner must pay a fee of \$75,000 in 2013 dollars, adjusted in May of each year according to the Consumer Price Index for the San Francisco Bay Area. The fee shall be deposited into the City of Berkeley's Housing Trust Fund.
4. The City of Berkeley may exempt an applicant from the two-year residency requirement if of an unforeseeable life change that requires relocation.

*D. Effect of Eliminating a Dwelling Unit.*

1. If eliminating a dwelling unit reduces the number of units in a building to four, the applicant shall record a notice of limitation against the subject property that the limitation on eviction of tenants under Chapter [13](#) (Public Peace, Morals and Welfare) shall continue to apply until:
  - (a) The building is demolished; or
  - (b) Sufficient units are added or restored such that the building contains at least five units.
2. The Zoning Officer may issue an AUP for a building conversion which eliminates a dwelling unit upon finding that the conversion will restore or bring the building closer to the original number of dwelling units that was present at the time it was first constructed, provided the conversion meets the requirements [23.326.040.A.1](#) and [2](#) and [23.326.040.B](#) and [C](#).

*E. Exceptions.*

1. The ZAB may approve a Use Permit for a change of use to a community care or a child care facility which eliminates a dwelling unit if it finds that such use is in conformance with the regulations of the district in which it is located.
2. The ZAB may approve a Use Permit to eliminate a dwelling unit through combination with another dwelling unit for the purpose of providing private bathrooms, kitchenettes, accessibility upgrades, and/or seismic safety upgrades to single-residential occupancy rooms in residential developments undergoing a publicly-funded rehabilitation.
3. Notwithstanding the general Use Permit requirement under [23.326.020](#) (General Requirements), a lawfully established accessory dwelling unit that is not a controlled rental unit may be eliminated with a Zoning Certificate if:
  - (a) The re-conversion restores the original single-family use of the main building or lot; and
  - (b) No tenant is evicted. (Ord. 7787-NS § 2 (Exh. A), 2021)

#### 23.326.050 Private Right of Action.

Any affected tenant may bring a private action for injunctive and/or compensatory relief against any applicant and/or owner to prevent or remedy a violation of Sections [23.326.030](#) (Eliminating Dwelling Units through Demolition) and [23.326.040](#) (Eliminating Dwelling Units through Conversion and Change of Use). In any such action a prevailing plaintiff may recover reasonable attorney's fees. (Ord. 7787-NS § 2 (Exh. A), 2021)

#### 23.326.060 Elimination of Residential Hotel Rooms.

A. *General Requirements.* Before removal, the following requirements must be met for the ZAB to approve a Use Permit for the elimination of residential hotel rooms:

1. The residential hotel owner shall provide or cause to be provided standard housing of at least comparable size and quality, at comparable rents and total monthly or weekly charges to each affected tenant.
2. One of the following three requirements shall be met:
  - (a) The residential hotel rooms being removed are replaced by a common use facility, including, but not limited to, a shared kitchen, lounge, or recreation room, that will be available to and primarily of benefit to the existing residents of the residential hotel and that a majority of existing residents give their consent to the removal of the rooms.
  - (b) Before the date on which the residential hotel rooms are removed, one-for-one replacement of each room to be removed is made, with a comparable room, in one of the methods set forth in this section.
  - (c) Residential hotel rooms are removed because of building alterations related to seismic upgrade to the building or to improve access to meet the requirements of the American Disabilities Act (ADA).

B. *Criteria for Replacement Rooms.* For purposes of this section, replacement rooms must be:

1. Substantially comparable in size, location, quality, and amenities;
2. Subject to rent and eviction controls substantially equivalent to those provided by the Rent Stabilization Ordinance or those that applied to the original rooms which are being replaced; and
3. Available at comparable rents and total monthly or weekly charges to those being removed. Comparable rooms may be provided by:
  - (a) Offering the existing tenants of the affected rooms the right of first refusal to occupy the replacement rooms;
  - (b) Making available comparable rooms, which are not already classified as residential hotel rooms to replace each of the rooms to be removed; or

(c) Paying to the City of Berkeley’s Housing Trust Fund an amount sufficient to provide replacement rooms.

i. The amount to be paid to the City of Berkeley shall be the difference between the replacement cost, including land cost, for the rooms and the amount which the City of Berkeley can obtain by getting a mortgage on the anticipated rents from the newly constructed rooms.

ii. The calculations shall assume that rents in the newly constructed rooms shall not exceed the greater of either a level comparable to the weekly or monthly charges for the replaced rooms or the level which would be charged if no current tenant paid more than 30 percent of such tenant’s gross income for rent.

C. *Exception for Non-Profit Ownership.* In a residential hotel owned and operated by a non-profit organization, recognized as tax-exempt by either the Franchise Tax Board and/or the Internal Revenue Service, residential hotel rooms may be changed to non-residential hotel room uses if the average number of residential hotel rooms per day in each calendar year is at least 95 percent of residential hotel rooms established for that particular residential hotel. (Ord. 7787-NS § 2 (Exh. A), 2021)

#### 23.326.070 Demolitions of Non-Residential Buildings.

A. *Main Non-Residential Buildings.* A main building used for non-residential purposes may be demolished with a Use Permit.

B. *Accessory Buildings.*

1. Demolishing an accessory building with less than 300 square feet of floor area is permitted as of right.

2. An accessory building with 300 square feet or more of floor area may be demolished with an AUP.

C. *Landmarks Preservation Commission Review.*

1. Any application for a Use Permit or AUP to demolish a non-residential building or structure which is 40 or more years old shall be forwarded to the Landmarks Preservation Commission (LPC) for review before consideration of the Use Permit or AUP.
2. The LPC may initiate a landmark or structure-of-merit designation or may choose solely to forward to the ZAB its comments on the application.
3. The ZAB shall consider the recommendations of the LPC in when acting on the application.

D. *Findings.* A Use Permit or an AUP for demolition of a non-residential building or structure may be approved only if the ZAB or the Zoning Officer finds that:

1. The demolition will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City of Berkeley; and
2. The demolition:
  - (a) Is required to allow a proposed new building or other proposed new use;
  - (b) Will remove a building which is unusable for activities which are compatible with the purposes of the district in which it is located or which is infeasible to modify for such uses;
  - (c) Will remove a structure which represents an inhabitable attractive nuisance to the public; or
  - (d) Is required for the furtherance of specific plans or projects sponsored by the City of Berkeley or other local district or authority upon a demonstration that it is infeasible to obtain prior or concurrent approval for the new construction or new use which is contemplated by such specific plans or projects and that adhering to such a requirement would threaten the viability of the plan or project. (Ord. 7787-NS § 2 (Exh. A), 2021)



23.326.080 Building Relocations.

A. *Treatment of Building Relocation.*

1. Relocating a building from a lot is considered a demolition for purposes of this chapter.
2. Relocating a building to a lot is considered new construction and is subject to all requirements applicable to new construction.
3. When a building is relocated to a different lot within in Berkeley, the lot from which the building is removed shall be known as the source lot and the lot on which the building is to be sited shall be known as the receiving lot. In such cases all notification requirements apply to both the source and receiving lots.

B. *Findings.* The ZAB may approve a Use Permit to relocate a building upon finding that:

1. The building to be relocated is not in conflict with the architectural character, or the building scale of the neighborhood or area to which it will be relocated; and
2. The receiving lot provides adequate separation of buildings, privacy, yards, and usable open space. (Ord. 7787-NS § 2 (Exh. A), 2021)

23.326.090 Limitations.

A. *Unsafe, Hazard, or Danger.*

1. Notwithstanding anything to the contrary, if a building or structure is unsafe, presents a public hazard, and is not securable and/or is in imminent danger of collapse so as to endanger persons or property, as determined by the city's building official, it may be demolished without a Use Permit.
2. The Building Official's determination in this matter shall be governed by the standards and criteria in the most recent edition of the California Building Code that is in effect in the City of Berkeley.

B. *Ellis Act*. This chapter shall be applied only to the extent permitted by state law as to buildings which have been entirely withdrawn from the rental market pursuant to the Ellis Act (California Government Code Chapter [12.75](#)). (Ord. 7787-NS § 2 (Exh. A), 2021)

**The Berkeley Municipal Code is current through Ordinance 7830-NS, passed July 26, 2022.**

Disclaimer: The City Clerk’s Office has the official version of the Berkeley Municipal Code. Users should contact the City Clerk’s Office for ordinances passed subsequent to the ordinance cited above.

[City Website: www.berkeleyca.gov](http://www.berkeleyca.gov)  
[Code Publishing Company](#)

ORDINANCE NO.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 23.326, DEMOLITION AND  
DWELLING UNIT CONTROLS

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

Section 1. That Berkeley Municipal Code Chapter 23.326 is hereby amended to read as follows:

Chapter 23.326 DEMOLITION AND DWELLING UNIT CONTROLS

Sections:

- 23.326.010 Chapter Purpose.
- 23.326.020 General Requirements.
- 23.326.030 Demolition of Residential Units.
- 23.326.040 Eliminating Dwelling Units through Combination with Other Units.
- 23.326.050 Demolition of Accessory Buildings.
- 23.326.060 Private Right of Action.
- 23.326.070 Demolition of Non-Residential Buildings.
- 23.326.080 Building Relocations.
- 23.326.090 Limitations.

23.326.010 Chapter Purpose.

This chapter establishes demolition and dwelling unit control standards that promote the affordable housing and safety goals of the City.

23.326.020 General Requirements.

A. No Residential Unit or units may be eliminated or demolished except as authorized by this chapter.

1. “Residential Unit” means, for purposes of this Chapter, any Dwelling Unit, any Live-Work Unit, any Residential Hotel unit, or any bedroom of a Group Living Accommodation (GLA) except a GLA in a University-recognized fraternity, sorority or co-op; provided, however, that for purposes of this Chapter,

2. “Residential Unit” shall not include any Accessory Dwelling Unit or Junior Accessory Dwelling Unit.

3. “Residential Unit” shall not include dwelling units created without proper Use Permit(s) or Building Permit(s); provided however that where such units are occupied by a tenant or tenants, the sitting tenant(s) shall be entitled to the protections set forth in subsections 23.326.030.D.2.-3., subject to a total rent differential cap of \$X.

#### 23.326.030 Demolition of Residential Units.

A. *Limitation.* Demolition is not allowed if:

1. The unit (or units) was removed from the rental market through a no-fault eviction during the preceding five years; or

2. There is evidence of harassment or threatened or actual illegal eviction during the immediately preceding three years. Where allegations of harassment or threatened or actual illegal eviction are in dispute, either party may request a hearing before a Rent Board Hearing Examiner. The Rent Board Hearing Examiner will provide an assessment of the evidence and all available documentation to the Zoning Adjustments Board (ZAB). The ZAB shall determine whether harassment or threatened or actual illegal eviction occurred during a public hearing on the matter, conducted according to Use Permit procedures.

B. *Procedure and Findings.* A Use Permit is required to eliminate or demolish one or more Residential Units. The ZAB shall only approve the Use Permit if one of the following is true:

1. The building containing the units is hazardous or unusable and is infeasible to repair.
2. The building containing the unit(s) will be moved to a different location within Berkeley with no net loss of units and no change in the rent levels of the unit(s).
3. The demolition is necessary to permit construction of special needs facilities that serve the greater good of the entire community. Any conversion shall be conditioned on returning the units to residential use if the other use is vacated.
4. The demolition is necessary to permit construction approved pursuant to this chapter of at least the same number of dwelling units.

.C. *Conditions of Approval.* Any Residential Unit(s) that will be demolished shall be replaced with units of equivalent size and comply with applicable affordability requirements in Chapter 23.328 [PENDING – Consolidated Inclusionary/Affordable Housing], and Chapter 23.330 [Density Bonus] as they may be amended from time to time.

D. *Requirements for Occupied Units.*

1. *Applicability.* The following requirements do not apply to tenants who move in after the application for demolition is submitted to the City if the owner informs each prospective tenant about the proposed demolition and that demolition constitutes good cause for eviction.
2. *Notice.* The applicant shall provide all sitting tenants notice of the application to demolish the unit(s) no later than the date the application is submitted to the City, including notice of their rights under Municipal Code Chapter [13.76](#) (Rent Stabilization and Eviction for Good Cause Program).
3. *General Requirements.*

(a) The applicant shall provide assistance with moving and relocation assistance equivalent to the requirements set forth in Municipal Code Chapter [13.84](#) or Government Code section 66300(d)(2)(D)(i), whichever requires greater relocation assistance to displaced tenants, and shall not be subject to the limitations in section 13.84.070.B.3(a). The applicant shall subsidize the rent differential for a comparable replacement unit, in the same neighborhood if feasible, until new units are ready for occupancy. Tenants shall have until the date that the new units are ready for occupancy to decide whether to move into the newly constructed building. Funding for the rent differential shall be guaranteed in a manner approved by the City Council by Resolution; provided, however, that any project that is carried out or funded by the state or federal government shall be subject to applicable provisions of the California Relocation Act (Government Code section 7260 *et seq.*) and/or the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. sections 4601-4655).

(b) *Exception.* An applicant who proposes to construct a 100 percent affordable housing project is not required to comply with this subsection but must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended and the California Relocation Act (Government Code sections [7260](#) *et seq.*).

4. *Sitting Tenants Rights.*

(a) Any tenant of a Residential Unit that is permitted to be demolished under this section shall have the right of first refusal to rent a comparable unit at the same rent in effect at the time the unit was vacated.

(b) In the event that a displaced household is ineligible for Below-Market Rate replacement units, a market rate unit shall be made available to that household at the same rent as had been previously charged.

(c) Where a displaced tenant exercises the right to rent a comparable unit, any increase in rent for the comparable for the duration of their tenancy shall be no greater than 65% of the increase in the Consumer Price Index

for All Urban Consumers (CPI-U) in the San Francisco-Oakland-San Jose region as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics, for the twelve-month period ending the previous December 31 but not to exceed 65% of the corresponding increase in AMI for the same calendar year.

(d) *Exception.*

i. An applicant who proposes to construct a 100 percent affordable housing project is not required to comply with the preceding requirements but must comply with the following requirement.

ii. Sitting tenants who are displaced as a result of demolition and who desire to return to the newly constructed affordable housing project will be granted a right of first refusal subject to their ability to meet income qualifications and other applicable eligibility requirements.

23.326.040 Eliminating Dwelling Units through Combination With Other Units.

A. *Process for Projects Where Density Exceeds Current Allowance.* A Use Permit is required to eliminate one or more Residential Units by combining with another dwelling units when the residential development exceeds currently-allowable density. The ZAB shall approve a Use Permit for the elimination of one or more Residential Units by combining with another dwelling unit only if it finds that:

1. The existing number of dwelling units exceeds the current maximum allowed residential density in the zoning district where the units are located; and

2. One of the following is true:

(a) One of the affected dwelling units has been occupied by the applicant's household as its principal place of residence for no less than two years before the date of the application and none of the affected units are currently occupied by a tenant.

(b) All of the affected dwelling units are being sold by an estate and the decedent occupied the units as their principal residence for no less than two years before the date of their death.

B. *Process for Projects That Restore Original Development Density.* The Zoning Officer may issue an AUP for a building conversion which eliminates a dwelling unit upon finding that the conversion will restore or bring the building closer to the original number of dwelling units that was present at the time it was first constructed.

C. *Limitations.* Combination is not allowed if:

1. The building was removed from the rental market through a no fault eviction during the preceding five years; or
2. There have been verified cases of harassment or threatened or actual illegal eviction during the immediately preceding three years.

Where allegations of harassment or threatened or actual illegal eviction are in dispute, either party may request a hearing before a Rent Board Hearing Examiner. The Rent Board Hearing Examiner will provide an assessment of the evidence and all available documentation to the Zoning Adjustments Board (ZAB). The ZAB shall determine whether harassment or threatened or actual illegal eviction occurred at a public hearing according to Use Permit procedures (Section 23.406.040).

D. *Two-Year Occupancy Requirement Following Elimination*

1. If a unit that is eliminated through combination is not occupied by the applicant's household for at least two consecutive years from the date of elimination, the affected unit must be restored to separate status.
2. This requirement shall be implemented by a condition of approval and a notice of limitation on the property, acceptable to the City of Berkeley.
3. The condition and notice will provide that if the owner's household does not occupy the unit for at least two years from the date of elimination then the affected units must either be restored as separate dwelling units and the vacant unit(s)



offered for rent within six months or the owner must pay a fee of \$75,000 in 2013 dollars, adjusted in May of each year according to the Consumer Price Index for the San Francisco Bay Area. The fee shall be deposited into the City of Berkeley's Housing Trust Fund.

4. The City of Berkeley may exempt an applicant from the two-year residency requirement if there is an unforeseeable life change that requires relocation.

E. *Exceptions.*

1. The ZAB may approve a Use Permit for a change of use to a community care or a child care facility which eliminates a dwelling unit if it finds that such use is in conformance with the regulations of the district in which it is located.

2. The ZAB may approve a Use Permit to eliminate a dwelling unit through combination with another dwelling unit for the purpose of providing private bathrooms, kitchenettes, accessibility upgrades, and/or seismic safety upgrades to single-resident occupancy rooms in residential developments undergoing a publicly-funded rehabilitation.

23.326.050 Demolition of Accessory Buildings.

Notwithstanding anything in Municipal Code Title [23](#) (Zoning Ordinance) to the contrary, but subject to any applicable requirements in Municipal Code Section [3.24](#) (Landmarks Preservation Ordinance), Accessory Buildings of any size, including, but not limited to, garages, carports, and sheds may be demolished by right except where the Accessory Building is occupied by a residential tenant (regardless of whether it is lawfully permitted) or otherwise contains a lawfully established residential unit, which serves and is located on the same lot as a lawful residential use.

23.326.060 Private Right of Action.

Any affected tenant may bring a private action for injunctive and/or compensatory relief against any applicant and/or owner to prevent or remedy a violation of Sections [23.326.030](#) (Eliminating Dwelling Units through Demolition) and [23.326.040](#) (Eliminating

Dwelling Units through Conversion and Change of Use). In any such action a prevailing plaintiff shall recover reasonable attorney's fees.

23.326.070 Demolition of Non-Residential Buildings.

A. *Main Non-Residential Buildings.* A Use Permit is required to demolish a main building used for non-residential purposes on any lot.

B. *Accessory Buildings.* For any lot located in a non-residential zoning district, Accessory Buildings may be demolished as follows:

1. Demolishing an accessory building with less than 300 square feet of floor area is permitted as of right.
2. An accessory building with 300 square feet or more of floor area may be demolished with an AUP.

C. *Landmarks Preservation Commission Review.*

1. Any application for a Use Permit or AUP to demolish a non-residential building or structure which is 40 or more years old shall be forwarded to the Landmarks Preservation Commission (LPC) for review before consideration of the Use Permit or AUP.
2. The LPC may initiate a landmark or structure-of-merit designation or may choose solely to forward to the ZAB or Zoning Officer its comments on the application.
3. The ZAB or Zoning Officer shall consider the recommendations of the LPC when acting on the application.

D. *Findings.* A Use Permit or an AUP for demolition of a main building used for non-residential purposes on any lot or an accessory building located on a lot in a non-residential district may be approved only if the ZAB or the Zoning Officer finds that:

1. The demolition will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City of Berkeley; and
2. The demolition:

- (a) Is required to allow a proposed new building or other proposed new use;
- (b) Will remove a building which is unusable for activities which are compatible with the purposes of the district in which it is located or which is infeasible to modify for such uses;
- (c) Will remove a structure which represents an uninhabitable attractive nuisance to the public; or
- (d) Is required for the furtherance of specific plans or projects sponsored by the City of Berkeley or other local district or authority upon a demonstration that it is infeasible to obtain prior or concurrent approval for the new construction or new use which is contemplated by such specific plans or projects and that adhering to such a requirement would threaten the viability of the plan or project.

23.326.080 Building Relocations.

A. *Treatment of Building Relocation.*

1. Relocating a building from a lot is considered a demolition for purposes of this chapter.
2. Relocating a building to a lot within the city is considered new construction and is subject to all requirements applicable to new construction.
3. When a building is relocated to a different lot within Berkeley, the lot from which the building is removed shall be known as the source lot and the lot on which the building is to be sited shall be known as the receiving lot.

B. *Findings.* The Zoning Officer shall approve Zoning Certificate to relocate a building upon finding that the resulting development on the receiving lot is in conformance with applicable zoning code development standards.

23.326.090 Limitations.

A. *Unsafe, Hazard, or Danger.*

1. Notwithstanding anything to the contrary, if a building or structure is unsafe, presents a public hazard, and is not securable and/or is in imminent danger of collapse so as to endanger persons or property, as determined by the city's building official, it may be demolished without a Use Permit.

2. The Building Official's determination in this matter shall be governed by the standards and criteria in the most recent edition of the California Building Code that is in effect in the City of Berkeley.

B. *Ellis Act*. This chapter shall be applied only to the extent permitted by state law as to buildings which have been entirely withdrawn from the rental market pursuant to the Ellis Act (California Government Code Chapter [12.75](#)).

ORDINANCE NO.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 23.326  
DEMOLITION AND DWELLING UNIT ~~CONTROL~~ CONTROLS

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

Section 1. That Berkeley Municipal Code Chapter 23.326 is hereby amended to read as follows:

Chapter 23.326 DEMOLITION AND DWELLING UNIT CONTROLS

Sections:

~~23.326.010 Chapter Purpose.~~

~~23.326.020 General Requirements.~~

~~23.326.030 Eliminating Dwelling Units through Demolition.~~

~~23.326.040 Eliminating Dwelling Units through Conversion and Change of Use.~~

~~23.326.050 Private Right of Action.~~

~~23.326.060 Elimination of Residential Hotel Rooms.~~

~~23.326.070 Demolitions of Non-Residential Buildings.~~

~~23.326.080 Building Relocations.~~

~~23.326.090 Limitations.~~

23.326.010 Chapter Purpose.

23.326.020 General Requirements.

23.326.030 Demolition of Residential Units.

23.326.040 Eliminating Dwelling Units through Combination with Other Units.

23.326.050 Demolition of Accessory Buildings.

23.326.060 Private Right of Action.

23.326.070 Demolition of Non-Residential Buildings.

23.326.080 Building Relocations.

23.326.090 Limitations.

23.326.010 Chapter Purpose.

This chapter establishes demolition and dwelling unit control standards that promote the affordable housing, ~~aesthetic~~, and safety goals of the City. (~~Ord. 7787-NS § 2 (Exh. A), 2021~~)

23.326.020 General Requirements.

A. ~~Applicability.~~ No ~~dwelling unit~~ Residential Unit or units may be eliminated or demolished except as authorized by this chapter.

1. "Residential Unit" means, for purposes of this Chapter, any Dwelling Unit, any Live-Work Unit, any Residential Hotel unit, or any bedroom of a Group Living Accommodation (GLA) except a GLA in a University-recognized fraternity, sorority or co-op; provided, however, that for purposes of this Chapter,

2. "Residential Unit" shall not include any Accessory Dwelling Unit or Junior Accessory Dwelling Unit.

3. "Residential Unit" shall not include dwelling units created without proper Use Permit(s) or Building Permit(s); provided however that where such units are occupied by a tenant or tenants, the sitting tenant(s) shall be entitled to the protections set forth in subsections 23.326.030.D.2.-3., subject to a total rent differential cap of \$X.

23.326.030 Demolition of Residential Units.

A. ~~B. Findings.~~ In addition to the requirements below, the Zoning Adjustments Board (ZAB) may approve a Use Permit to eliminate or demolish a dwelling unit only

~~upon finding that eliminating the dwelling unit would not be materially detrimental to the housing needs and public interest of the affected neighborhood and Berkeley. (Ord. 7787-NS § 2 (Exh. A), 2021)~~

~~23.326.030 — Eliminating Dwelling Units through Demolition.~~

~~A. — Buildings with Two or More Units Constructed Before June 1980.~~

~~1. — Applicability. This subsection only applies to building with two or more units constructed before June 1980.~~

~~2. — Limitation.~~

~~(a) — Demolition is not allowed if:~~

~~i. — 1. — The building unit (or units) was removed from the rental market under the Ellis Act through a no-fault eviction during the preceding five years; or~~

~~ii. — 2. — There have been verified cases is evidence of harassment or threatened or actual illegal eviction during the immediately preceding three years.~~

~~(b) — Where allegations of harassment or threatened or actual illegal eviction are in dispute, either party may request a hearing before a Rent Board Hearing Examiner. The Rent Board Hearing Examiner will provide an assessment of the evidence and all available documentation to the Zoning Adjustments Board (ZAB). The ZAB shall determine whether harassment or threatened or actual illegal eviction occurred during a public hearing on the matter, conducted according to Use Permit procedures.~~

~~B. 3. — Procedure and Findings. The ZAB may approve a Use Permit is required to eliminate or demolish a building constructed before June 1980 on a property containing two or more dwelling units Residential Units. The ZAB shall only approve the Use Permit if anyone of the following are is true:~~

~~(a)—1.~~ The building containing the units is hazardous or unusable and is infeasible to repair.

~~(b)—2.~~ The building containing the ~~units~~unit(s) will be moved to a different location within Berkeley with no net loss of units and no change in the ~~affordability~~rent levels of the ~~units~~unit(s).

~~(c)—3.~~ The demolition is necessary to permit construction of special ~~housing~~ needs facilities ~~such as, but not limited to, childcare centers and affordable housing developments~~ that serve the greater good of the entire community. Any conversion shall be conditioned on returning the units to residential use if the other use is vacated.

~~(d)—4.~~ The demolition is necessary to permit construction approved pursuant to this chapter of at least the same number of dwelling units.

~~4.—Fee Required.~~

~~(a)—The applicant shall pay a fee for each unit demolished to mitigate the impact of the loss of affordable housing in Berkeley.~~

~~(b)—The amount of the fee shall be set by resolution of the City Council.~~

~~(c)—In Lieu of a Fee.~~

~~i.—In lieu of paying the impact fee, the applicant may provide a designated unit in the new project at a below market rate to a qualifying household in perpetuity.~~

~~ii.—The affordability level of the below market rent and the income level of the qualifying household shall be set by resolution of the City Council.~~

~~iii.—The applicant shall enter into a regulatory agreement with the City of Berkeley to provide the in-lieu units.~~

5.—C. Conditions of Approval. Any Residential Unit(s) that will be demolished shall be replaced with units of equivalent size and comply with applicable affordability requirements in Chapter 23.328 [PENDING – Consolidated Inclusionary/Affordable



Housing], and Chapter 23.330 [Density Bonus] as they may be amended from time to time.

D. Requirements for Occupied Units.

~~(a)~~ 1. Applicability.

~~i. The requirements in this subsection apply if units to be demolished are occupied.~~

~~ii. These~~ The following requirements do not apply to tenants who move in after the application for demolition is submitted to the City if the owner informs each prospective tenant about the proposed demolition and that demolition constitutes good cause for eviction.

~~(b)~~ 2. Notice. The applicant shall provide all sitting tenants notice of the application to demolish the buildingunit(s) no later than the date ~~#the application~~ is submitted to the City, including notice of their rights under Municipal Code ~~Section 13.76~~ Chapter 13.76 (Rent Stabilization and Eviction for Good Cause Program).

~~(c)~~ 3. General Requirements.

~~i. (a)~~ The applicant shall provide assistance with moving ~~expenses and relocation assistance~~ equivalent to the requirements set forth in Chapter 13.84 Municipal Code Chapter 13.84 (Relocation Services and Payments for Residential Tenant Households).

~~ii. or Government Code section 66300(d)(2)(D)(i), whichever requires greater relocation assistance to displaced tenants, and shall not be subject to the limitations in section 13.84.070.B.3(a).~~ The applicant shall subsidize the rent differential for a comparable replacement unit, in the same neighborhood if feasible, until new units are ready for occupancy. Tenants shall have until the date that the new units are ready for occupancy to decide whether to move into the newly constructed building. Funding for the rent differential shall be guaranteed in a manner approved by the City. Council by Resolution; provided, however, that any project that is carried out

or funded by the state or federal government shall be subject to applicable provisions of the California Relocation Act (Government Code section 7260 et seq.) and/or the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. sections 4601-4655).

iii.—(b) Exception. An applicant who proposes to construct a 100 percent affordable housing project is not required to comply with this subsection but must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended and the California Relocation Act (Government Code sections ~~7260~~7260 et seq.).

~~(d)~~ 4. Sitting Tenants Rights.

i.—~~Sitting tenants who are displaced as (a result) Any tenant of demolition shall be provided the right of first refusal to move into the new building.~~

ii.—~~Tenants of units~~a Residential Unit that ~~are~~is permitted to be demolished under this section shall have the right of first refusal to rent ~~new below-~~ market rate units ~~designated to replace the units that were demolished, at the rent that would have applied if they had remained in place, as long as their tenancy continues~~a comparable unit at the same rent in effect at the time the unit was vacated.

iii.—~~Income restrictions do not apply to displaced tenants.~~

iv.—(b) In the event that a displaced household is ineligible for Below-Market Rate replacement units, a market rate unit shall be made available to that household at the same rent as had been previously charged.

(c) Where a displaced tenant exercises the right to rent a comparable unit, any increase in rent for the comparable for the duration of their tenancy shall be no greater than 65% of the increase in the Consumer Price Index for All Urban Consumers (CPI-U) in the San Francisco-Oakland-San Jose region as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics, for the twelve-month period ending the previous

December 31 but not to exceed 65% of the corresponding increase in AMI for the same calendar year.

(d) Exception.

~~(1) i.~~ An applicant who proposes to construct a 100 percent affordable housing project is not required to comply with 23.326.030.A.5.a, b, and e, the preceding requirements but must comply with the following requirement.

~~(2) ii.~~ Sitting tenants who are displaced as a result of demolition and who desire to return to the newly constructed building affordable housing project will be granted a right of first refusal subject to their ability to meet income qualifications and other applicable eligibility requirements ~~when the new units are ready for occupancy.~~

~~B. Buildings with a Single Dwelling Unit.~~

~~1. Applicability. This subsection only applies to buildings with a single dwelling unit.~~

~~2. Limitation.~~

~~(a) Demolition is not allowed if:~~

~~i. The building was removed from the rental market under the Ellis Act during the preceding five years; or~~

~~ii. There have been verified cases of harassment or threatened or actual illegal eviction during the immediately preceding three years.~~

~~(b) Where allegations of harassment or threatened or actual illegal eviction are in dispute, either party may request a hearing before a Rent Board Hearing Examiner. The Rent Board Hearing Examiner will provide an assessment of the evidence and all available documentation to the ZAB. The ZAB shall determine whether harassment or threatened or actual illegal eviction occurred.~~

~~C. Accessory Buildings. Notwithstanding anything in Municipal Code Title 23 (Zoning Ordinance) to the contrary, but subject to any applicable requirements in Municipal~~

~~Code Section 3.24 (Landmarks Preservation Ordinance), accessory buildings of any size, including, but not limited to, garages, carports, and sheds, but not including any structure containing a lawfully established dwelling unit, which serves and is located on the same lot as a lawful residential use, may be demolished by right. (Ord. 7810-NS § 1, 2022; Ord. 7787-NS § 2 (Exh. A), 2021)~~

23.326.040 Eliminating Dwelling Units through ~~Conversion and Change of Use~~Combination With Other Units.

~~A. Process for Projects Where Density Exceeds Current Allowance. A.—General. The ZAB may Use~~ Permit is required to eliminate one or more Residential Units by combining with another dwelling units when the residential development exceeds currently-allowable density. The ZAB shall approve a Use Permit for the elimination of a dwelling unit in combination with another dwelling unit used for occupancy one or more Residential Units by a single household combining with another dwelling unit only if it finds that:

1. -The existing number of dwelling units exceeds the current maximum allowed residential density in the zoning district where the building is units are located; and
2. -One of the following is true:
  - (a) -One of the affected dwelling units has been occupied by the applicant's household as its principal place of residence for no less than two years before the date of the application and none of the affected units are currently occupied by a tenant.
  - (b) -All of the affected dwelling units are being sold by an estate and the decedent occupied the units as their principal residence for no less than two years before the date of their death.

~~B.—Limitations.~~

~~1.—Demolition~~B. Process for Projects That Restore Original Development Density. The Zoning Officer may issue an AUP for a building conversion which eliminates a dwelling

unit upon finding that the conversion will restore or bring the building closer to the original number of dwelling units that was present at the time it was first constructed.

C. Limitations. Combination is not allowed if:

~~(a)~~ 1. The building was removed from the rental market ~~under the Ellis Act~~ through a no fault eviction during the preceding five years; or

~~(b)~~ 2. There have been verified cases of harassment or threatened or actual illegal eviction during the immediately preceding three years.

2.—Where allegations of harassment or threatened or actual illegal eviction are in dispute, either party may request a hearing before a Rent Board Hearing Examiner. The Rent Board Hearing Examiner will provide an assessment of the evidence and all available documentation to the Zoning Adjustments Board (ZAB). The ZAB shall determine whether harassment or threatened or actual illegal eviction occurred at a public hearing according to Use Permit procedures (Section 23.406.040).

~~C. Effect of Noncompliance with the~~ D. Two-Year Occupancy Requirement. Following Elimination

1. -If a unit that is eliminated ~~under Subsection A (General)~~ through combination is not occupied by the applicant's household for at least two consecutive years from the date of elimination, the affected unit must be restored to separate status.

2. -This requirement shall be implemented by a condition of approval and a notice of limitation on the property, acceptable to the City of Berkeley.

3. -The condition and notice will provide that if the owner's household does not occupy the unit for at least two years from the date of elimination then the affected units must either be restored as separate dwelling units and the vacant unit(s) offered for rent within six months or the owner must pay a fee of \$75,000 in 2013 dollars, adjusted in May of each year according to the Consumer Price Index for the San Francisco Bay Area. The fee shall be deposited into the City of Berkeley's Housing Trust Fund.

4. -The City of Berkeley may exempt an applicant from the two-year residency requirement if otherwise is an unforeseeable life change that requires relocation.

~~D. -Effect of Eliminating a Dwelling Unit.~~

~~1. -If eliminating a dwelling unit reduces the number of units in a building to four, the applicant shall record a notice of limitation against the subject property that the limitation on eviction of tenants under Chapter 13 (Public Peace, Morals and Welfare) shall continue to apply until:~~

~~(a) -The building is demolished; or~~

~~(b) -Sufficient units are added or restored such that the building contains at least five units.~~

~~2. -The Zoning Officer may issue an AUP for a building conversion which eliminates a dwelling unit upon finding that the conversion will restore or bring the building closer to the original number of dwelling units that was present at the time it was first constructed, provided the conversion meets the requirements 23.326.040.A.1 and 2 and 23.326.040.B and C.~~

E. -Exceptions.

1. -The ZAB may approve a Use Permit for a change of use to a community care or a child care facility which eliminates a dwelling unit if it finds that such use is in conformance with the regulations of the district in which it is located.

2. -The ZAB may approve a Use Permit to eliminate a dwelling unit through combination with another dwelling unit for the purpose of providing private bathrooms, kitchenettes, accessibility upgrades, and/or seismic safety upgrades to single-~~residential~~resident occupancy rooms in residential developments undergoing a publicly-funded rehabilitation.

~~3. -Notwithstanding the general Use Permit requirement under 23.326.020 (General Requirements), a lawfully established accessory dwelling unit that is not a controlled rental unit may be eliminated with a Zoning Certificate if:~~

~~(a) The re-conversion restores the original single-family use of the main building or lot; and~~

~~(b) No tenant is evicted. (Ord. 7787-NS § 2 (Exh. A), 2021)~~

~~23.326.050~~23.326.050 Demolition of Accessory Buildings.

Notwithstanding anything in Municipal Code Title 23 (Zoning Ordinance) to the contrary, but subject to any applicable requirements in Municipal Code Section 3.24 (Landmarks Preservation Ordinance), Accessory Buildings of any size, including, but not limited to, garages, carports, and sheds may be demolished by right except where the Accessory Building is occupied by a residential tenant (regardless of whether it is lawfully permitted) or otherwise contains a lawfully established residential unit, which serves and is located on the same lot as a lawful residential use.

23.326.060 Private Right of Action.

Any affected tenant may bring a private action for injunctive and/or compensatory relief against any applicant and/or owner to prevent or remedy a violation of Sections ~~23.326.030~~23.326.030 (Eliminating Dwelling Units through Demolition) and ~~23.326.040~~23.326.040 (Eliminating Dwelling Units through Conversion and Change of Use). In any such action a prevailing plaintiff ~~may~~shall recover reasonable attorney's fees. ~~(Ord. 7787-NS § 2 (Exh. A), 2021)~~

~~23.326.060~~—~~Elimination of Residential Hotel Rooms.~~

~~A. General Requirements. Before removal, the following requirements must be met for the ZAB to approve a Use Permit for the elimination of residential hotel rooms:~~

- ~~1. The residential hotel owner shall provide or cause to be provided standard housing of at least comparable size and quality, at comparable rents and total monthly or weekly charges to each affected tenant.~~
- ~~2. One of the following three requirements shall be met:~~

~~(a) The residential hotel rooms being removed are replaced by a common use facility, including, but not limited to, a shared kitchen, lounge, or recreation room, that will be available to and primarily of benefit to the existing residents of the residential hotel and that a majority of existing residents give their consent to the removal of the rooms.~~

~~(b) Before the date on which the residential hotel rooms are removed, one-for-one replacement of each room to be removed is made, with a comparable room, in one of the methods set forth in this section.~~

~~(c) Residential hotel rooms are removed because of building alterations related to seismic upgrade to the building or to improve access to meet the requirements of the American Disabilities Act (ADA).~~

~~B. *Criteria for Replacement Rooms.* For purposes of this section, replacement rooms must be:~~

~~1. Substantially comparable in size, location, quality, and amenities;~~

~~2. Subject to rent and eviction controls substantially equivalent to those provided by the Rent Stabilization Ordinance or those that applied to the original rooms which are being replaced; and~~

~~3. Available at comparable rents and total monthly or weekly charges to those being removed. Comparable rooms may be provided by:~~

~~(a) Offering the existing tenants of the affected rooms the right of first refusal to occupy the replacement rooms;~~

~~(b) Making available comparable rooms, which are not already classified as residential hotel rooms to replace each of the rooms to be removed; or~~

~~(c) Paying to the City of Berkeley's Housing Trust Fund an amount sufficient to provide replacement rooms.~~

~~i. The amount to be paid to the City of Berkeley shall be the difference between the replacement cost, including land cost, for the rooms and the~~



~~amount which the City of Berkeley can obtain by getting a mortgage on the anticipated rents from the newly constructed rooms.~~

~~ii.—The calculations shall assume that rents in the newly constructed rooms shall not exceed the greater of either a level comparable to the weekly or monthly charges for the replaced rooms or the level which would be charged if no current tenant paid more than 30 percent of such tenant's gross income for rent.~~

~~C.—*Exception for Non-Profit Ownership.* In a residential hotel owned and operated by a non-profit organization, recognized as tax-exempt by either the Franchise Tax Board and/or the Internal Revenue Service, residential hotel rooms may be changed to non-residential hotel room uses if the average number of residential hotel rooms per day in each calendar year is at least 95 percent of residential hotel rooms established for that particular residential hotel. (Ord. 7787-NS § 2 (Exh. A), 2021)~~

23.326.070 ~~Demolitions~~Demolition of Non-Residential Buildings.

A. ~~-Main Non-Residential Buildings.~~ A Use Permit is required to demolish a main building used for non-residential purposes may be demolished with a Use Permit on any lot.

B. ~~-Accessory Buildings.~~ For any lot located in a non-residential zoning district, Accessory Buildings may be demolished as follows:

1. ~~-Demolishing an accessory building with less than 300 square feet of floor area is permitted as of right.~~
2. ~~-An accessory building with 300 square feet or more of floor area may be demolished with an AUP.~~

C. ~~-Landmarks Preservation Commission Review.~~

1. ~~-Any application for a Use Permit or AUP to demolish a non-residential building or structure which is 40 or more years old shall be forwarded to the Landmarks Preservation Commission (LPC) for review before consideration of the Use Permit or AUP.~~

2. -The LPC may initiate a landmark or structure-of-merit designation or may choose solely to forward to the ZAB or Zoning Officer its comments on the application.

3. -The ZAB or Zoning Officer shall consider the recommendations of the LPC ~~in~~ when acting on the application.

D. *-Findings.* A Use Permit or an AUP for demolition of a main building used for non-residential purposes on any lot or an accessory building located on a lot in a non-residential district ~~non-residential building or structure~~ may be approved only if the ZAB or the Zoning Officer finds that:

1. -The demolition will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City of Berkeley; and

2. -The demolition:

(a) -Is required to allow a proposed new building or other proposed new use;

(b) -Will remove a building which is unusable for activities which are compatible with the purposes of the district in which it is located or which is infeasible to modify for such uses;

(c) -Will remove a structure which represents an ~~inhabitable~~ uninhabitable attractive nuisance to the public; or

(d) -Is required for the furtherance of specific plans or projects sponsored by the City of Berkeley or other local district or authority upon a demonstration that it is infeasible to obtain prior or concurrent approval for the new construction or new use which is contemplated by such specific plans or projects and that adhering to such a requirement would threaten the viability of the plan or project. (~~Ord. 7787 NS § 2 (Exh. A), 2021~~)

23.326.080 Building Relocations.

A. *-Treatment of Building Relocation.*

1. -Relocating a building from a lot is considered a demolition for purposes of this chapter.
2. -Relocating a building to a lot within the city is considered new construction and is subject to all requirements applicable to new construction.
3. -When a building is relocated to a different lot within ~~in~~ Berkeley, the lot from which the building is removed shall be known as the source lot and the lot on which the building is to be sited shall be known as the receiving lot. ~~In such cases all notification requirements apply to both the source and receiving lots.~~

B. ~~-Findings.~~ The ~~ZAB may~~ Zoning Officer shall approve ~~a Use Permit~~ Zoning Certificate to relocate a building upon finding that:

- ~~1. The building to be relocated is not in conflict with the architectural character, or resulting development on the building scale of the neighborhood or area to which it will be relocated; and~~
- ~~2. The receiving lot provides adequate separation of buildings, privacy, yards, and usable open space. (Ord. 7787-NS § 2 (Exh. A), 2021)~~ is in conformance with applicable zoning code development standards.

23.326.090 Limitations.

A. *-Unsafe, Hazard, or Danger.*

1. -Notwithstanding anything to the contrary, if a building or structure is unsafe, presents a public hazard, and is not securable and/or is in imminent danger of collapse so as to endanger persons or property, as determined by the city's building official, it may be demolished without a Use Permit.
2. -The Building Official's determination in this matter shall be governed by the standards and criteria in the most recent edition of the California Building Code that is in effect in the City of Berkeley.

B. *-Ellis Act.* This chapter shall be applied only to the extent permitted by state law as to buildings which have been entirely withdrawn from the rental market pursuant to the

Ellis Act (California Government Code Chapter ~~12.75~~), (~~Ord. 7787-NS § 2 (Exh. A),~~  
~~2021~~)