

Chapter 23C.08: Demolition and Dwelling Unit Controls

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Chapter 23C.08

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DEMOLITION AND DWELLING UNIT CONTROLS

OFFICE OF THE CITY CLERK
CITY OF BERKELEY

Sections:

- 23C.08.010 Demolition or Elimination of Dwelling Units--General Requirement
- 23C.08.020 Demolitions of Buildings with Residential Uses
- 23C.08.030 Elimination of Dwelling Units and Accessory Dwelling Units (Conversions and Changes of Use)
- 23C.08.040 Elimination of Residential Hotel Rooms
- 23C.08.050 Demolitions of Buildings Used for Commercial, Manufacturing or Community, Institutional or Other Non-residential Uses
- 23C.08.060 Building Relocations
- 23C.08.070 Limitations

Section 23C.08.010 Demolition or Elimination of Dwelling Units--General Requirement

- A. No Dwelling Unit or units may be eliminated or demolished except as authorized by the provisions of this chapter.
- B. The Board may approve a Use Permit for the elimination or demolition of dwelling units only if, in addition to any other findings required by this Ordinance, it finds 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. (Ord. 6848-NS § 1 (part), 2005; Ord. 6478-NS § 4 (part), 1999)

Section 23C.08.020 Demolitions of Buildings with Residential Uses

- A. The Board may approve a Use Permit to demolish a building containing one or more dwelling units if it makes the findings required by the foregoing section, and that:
 - 1. The demolition will remove a structure that is hazardous, unusable or is infeasible to repair; or
 - 2. The demolition is necessary to permit construction approved pursuant to this Ordinance, of at least the same number of dwelling units as the demolished structure.
- B. Notwithstanding anything to the contrary, but subject to any applicable requirements of the Landmarks Preservation Ordinance (BMC Chapter 3.24), 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. 6908-NS §§ 1-2 (part), 2006; Ord. 6478-NS § 4 (part), 1999)

Section 23C.08.030 Elimination of Dwelling Units and Accessory Dwelling Units (Conversions and Changes of Use)

- A. The Board may approve a Use Permit for the elimination of a dwelling unit resulting from a residential conversion or a change of use if it finds that:
 - 1. The number of dwelling units to be eliminated, at the time of the application, exceeds the number permitted by the maximum residential density applicable to the District where the subject building is

Chapter 23C.08: Demolition and Dwelling Unit Controls

located; or

2. The conversion will create common space for residents of a co-housing community, as defined in Section 21.28.030 and is in conformance with the regulations of the District in which it is located; or
3. The proposed changes would not result in a reduction of housing supply essential to the well-being or housing needs of the City or of persons residing in the neighborhood in the vicinity of the building involved; or
4. Each dwelling unit affected is situated in an environment unsuitable for residential occupancy and suitable housing will be made available to the present occupants.

B. Alternatively, the Zoning Officer may issue an AUP for a conversion which eliminates a dwelling unit if he/she finds that the conversion of the building will restore or brings the building closer to the original number of dwelling units that was present at the time it was first constructed.

C. The Board 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.

D. Notwithstanding the general Use Permit requirement under 23C.08.010, a lawfully established accessory dwelling unit that is not a controlled rental unit may be eliminated subject to the issuance of a Zoning Certificate when the re-conversion restores the original single family use of the main building or lot, provided that no tenant is evicted.

E. The Board may approve a Use Permit to eliminate a controlled rental unit if it makes all of the following findings:

1. The dwelling unit to be eliminated is neither occupied nor has a rent set at a level that is affordable by a person or a family of very low income, low income or moderate income, as defined by HUD Section 8 program guidelines;
2. The elimination of the dwelling unit will not adversely affect the supply of housing in the City;
3. The applicant cannot make a fair return on investment by maintaining the dwelling unit as a part of the rental housing market;

F. Notwithstanding the above, the Board shall approve a Use Permit to eliminate a controlled rental unit only when it finds that:

1. The dwelling unit is in a building that is seriously deteriorated beyond the conditions which might reasonably be expected due to normal use in the written determination of the Building Official and will be rehabilitated to meet City housing code requirements;
2. The replacement dwelling unit shall be available for occupancy to Households for Lower Income or Very Low Income Households;
3. The elimination of the dwelling unit will not cause displacement of any tenant against that tenant's will; and
4. A signed statement supporting the application has been filed from of all of the tenants whose units will be physically modified and from all tenants who may be required to move temporarily. (Ord. 6908-NS

Chapter 23C.08: Demolition and Dwelling Unit Controls

§§ 3-4 (part), 2006: Ord. 6848-NS § 2 (part), 2005: Ord. 6478-NS § 4 (part), 1999)

Section 23C.08.040 Elimination of Residential Hotel Rooms

- A. The Board may approve a Use Permit to remove a Residential Hotel Room if it finds that, prior to the removal of any Residential Hotel Rooms, the Residential Hotel owner will 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; and
1. 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;
 2. Prior to 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; or
 3. Residential Hotel Rooms being 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. For purposes of this section, replacement rooms must be substantially comparable in size, location, quality and amenities, and available at comparable rents and total monthly or weekly charges to those being removed. The replacement rooms must also be 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. Comparable rooms may be provided by:
1. Offering the existing tenants of the affected rooms the right-of-first-refusal to occupy the replacement rooms;
 2. Making available comparable rooms, which are not already classified as Residential Hotel Rooms to replace each of the rooms to be removed; or
 3. Paying to the City's Housing Trust Fund an amount sufficient to provide replacement rooms. The amount to be paid to the City shall be the difference between the replacement cost, including land cost, for the rooms and the amount which the City can obtain by getting a mortgage on the anticipated rents from the newly constructed rooms. 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% of such tenant's gross income for rent.
- C. 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 providing that the average number of Residential Hotel Rooms per day in each calendar year is at least 95% of Residential Hotel Rooms established for that particular Residential Hotel. (Ord. 6478-NS § 4 (part), 1999)

Section 23C.08.050 Demolitions of Buildings Used for Commercial, Manufacturing or Community, Institutional or Other Non-residential Uses

- A. A main building used for non-residential purposes may be demolished subject to issuance of a Use

Chapter 23C.08: Demolition and Dwelling Unit Controls

Permit.

- B. A demolition of an accessory building containing less than 300 square feet of floor area is permitted as of right; an accessory building containing 300 square feet or more of floor area may be demolished subject to an AUP.
- C. 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 prior to consideration of the Use Permit or AUP. The LPC may initiate a landmark or structure-of-merit designation or may choose solely to forward to the Board its comments on the application. The Board shall consider the recommendations of the LPC in considering its action on the application.
- D. A Use Permit or an AUP for demolition of a non-residential building or structure may be approved only if the Board or Zoning Officer finds that the demolition will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City, and one of the following findings that the demolition:
 - 1. Is required to allow a proposed new building or other proposed new Use;
 - 2. 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;
 - 3. Will remove a structure which represents an unabatable attractive nuisance to the public; or
 - 4. Is required for the furtherance of specific plans or projects sponsored by the City or other local district or authority. In such cases, it shall be demonstrated 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. 6478-NS § 4 (part), 1999)

Section 23C.08.060 Building Relocations

- A. The relocation of a building from a lot is considered a demolition for purposes of this Ordinance.
- B. The relocation of a building to a lot is considered new construction and shall be subject to all requirements applicable to new construction.
- C. When a building is relocated to a different lot within the City, the lot from which the building is being 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.
- D. The Board may approve a Use Permit for relocation to a lot if it finds that the building proposed to be relocated is not in conflict with the architectural character, or the building scale of the neighborhood or area in which such building is to be located, and the receiving lot provides adequate separation of buildings, privacy, yards and Usable Open Space. (Ord. 6478-NS §.4 (part), 1999)

Section 23C.08.070 Limitations

- A. 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 the City's Building Official, it may be demolished without a Use Permit. The Building Official's

Chapter 23C.08: Demolition and Dwelling Unit Controls

determination in this matter shall be governed by the standards and criteria set forth in the most recent edition of the California Building Code that is in effect in the City.

- B. 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 state statute known as the Ellis Act. (Ord. 6478-NS § 4 (part), 1999)