

Office of the City Manager

ACTION CALENDAR July 16, 2013

To: Honorable Mayor and Members of the City Council

From: ( Christine Daniel, City Manager

Submitted by: Eric Angstadt, Director, Planning and Development

Subject: Regulate the Addition of Bedrooms in Certain Residential Districts to

Reduce the Likelihood of Creating Mini-Dorms; Amending BMC Sub-Title

23D

#### RECOMMENDATION

1. Adopt first reading of an Ordinance amending the Zoning ordinance to control the addition of bedrooms to existing parcels in the R-1, R-1A, R-2 and R-2A districts.

2. Refer to the City Manager modification of Chapter 13.42 (Mini-Dorms) of the Berkeley Municipal Code. The modifications should include a clarification of the definition of Mini-Dorm, and potentially additional operating standards and enforcement mechanisms.

### FISCAL IMPACTS OF RECOMMENDATION

The proposed Zoning Ordinance amendments would require new discretionary permits under certain circumstances. The staff costs would be recovered through the permit fees for the discretionary approval processes.

### **CURRENT SITUATION AND ITS EFFECTS**

The Planning Staff recommendation differs from the Planning Commission recommendation in three specific instances:

- The R-3 District is removed from the Attachment 1 because staff does not agree that it should include the new bedroom addition regulations.
- Remove from each of the proposed zoning districts (R-1, R-1A, R-2, R-2A)
  changes Section .050.A.1, because a blanket prohibition on renting individual
  bedrooms raises legal issue. This provision has been deleted from this staff
  report Attachment 1.
- Refer modification of BMC 13.42 (Mini-dorms) to the City Manager, rather than back to the Planning Commission.

Removing the R-3 District - In staff's view, the R-3 District should not be included in the proposal because doing so conflicts with Section 23D.36.020 D of the R-3 District regulations which states that a purpose of the R-3 District is to:

Permit the construction of residential structures, such as dormitories, fraternity and sorority houses, boarding and rooming houses, which will meet the City requirements for this type of housing; and

Remove from each of the proposed zoning districts (R-1, R-1A, R-2, R-2A) the blanket prohibition on renting individual bedrooms (subdivision.050.A.1). A blanket prohibition such as this could in some cases interfere with personal choices regarding the formation or maintenance of a household, which is protected by the constitutional right of privacy. (E.g., Tom v. City and County of San Francisco (2004) 120 Cal.App.4th 674 [overturning San Francisco's ban of tenancies in common].)

BMC 13.42 Referral - Staff believes that moving regulations governing the *operation* of mini-dorms into the Zoning Ordinance is contrary to the fundamental the zoning ordinance function, which is to regulate new land uses, not impose new regulations of preexisting uses. By definition, Mini-dorms would only become apparent once they are developed and functioning.

Moving operating standards from Chapter 13.42 to the Zoning Ordinance would not increase or improve enforcement, since in either case it would involve the same personnel and resources. Staff's recommendation is to refer the existing Mini-dorm Ordinance to the City Manager to return with amendments to make it more broadly applicable to Mini dorms and reevaluate the existing operating standards.

Staff has researched similar ordinances in several jurisdictions including San Luis Obispo, Santa Clarita and San Diego. Information from other cities' staff did not show regular use of the ordinances to regulate Mini-dorms. In fact, some city staff believed that Mini-dorm owners were aware of and avoided the zoning ordinances.

The management of Mini-dorms, once in operation, is best executed through enforcement activities, which are based on complaints and carried out through the Office of the City Manager.

### RATIONALE FOR RECOMMENDATION

The addition of bedrooms to parcels increases the possibility that residential units could be turned into Mini-dorms, which have negative impacts to the surrounding neighborhoods. Increased levels of discretion for the addition of bedrooms to parcels, along with modifications to the Mini-dorms regulations should address the concerns voiced by the community and discussed by the Planning Commission.

### **CONTACT PERSON**

Eric Angstadt, Director, Planning and Development, 981-7410

### Attachments:

- 1: Ordinance Strike Out Format
- 2: Ordinance Clean Text Format

### ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE SECTIONS 23D.16.030, 23D.16.050, 23D.20.030, 23D.20.050, 23D.28.030, 23D.28.050, 23D.32.030, AND 23D.32.050 TO CONTROL THE ADDITION OF BEDROOMS TO EXISTING PARCELS IN THE R-1, R-1A, R-2 AND R-2A ZONING DISTRICTS

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

<u>Section 1.</u> That Berkeley Municipal Code Section 23D.16.030 Uses Permitted, Table 23D.16.030, Uses Permitted subsection of the table is amended to read as follows:

Table 23D.16.030  Use and Required Permits		
Uses Permitted		
Child Care Centers	UP(PH)	
Clubs, Lodges	UP(PH)	
Community Care Facilities/Homes Changes of Use New Construction	ZC UP(PH)	Subject to parking requirements. See Section 23D.16.080.A
Community Centers	UP(PH)	
Dwelling Units, Single-family, subject to R-1 Standards	UP(PH)	
Residential Additions (up to 15% of lot area or 600 square feet, whichever is more restrictive)	ZC	See Section 23D.16.070 for restrictions.
Major Residential Additions	AUP	See definition in Sub-title F. Denial subject to Section 23D.16.090.B.
Libraries	UP(PH)	Subject to parking requirements. See Section 23D.16.080.A
Parks and Playgrounds	ZC	
Parking Lots	UP(PH)	Subject to Section 23D.12.090
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Addition of bedrooms to parcels	<u>AUP</u> <u>UP(PH)</u>	Subject to Section 23D.12.050

<u>Section 2.</u> That Berkeley Municipal Code Section 23D.16.050 is amended to read as follows:

# Section 23D.16.050 Special Provisions: Addition of Bedrooms to Parcels Reserved

A. For the addition of a fifth bedroom to a parcel, an Administrative Use Permit (AUP) shall be required. For the addition of any bedroom beyond the fifth, a Use Permit with Public Hearing (UPPH) shall be required.

- 1. Serial/Cumulative Addition of Bedrooms: Serial addition of bedrooms to a parcel over time shall be considered cumulative and subject to these regulations.
- 2. The definition of "Bedroom" for the Special Provisions: Addition of Bedrooms to Parcels is from City of Berkeley Municipal Code Section 13.42.020.B "Operating Standards for Mini-Dorms".

<u>Section 3.</u> That Berkeley Municipal Code Section 23D.20.030 Uses Permitted, Table23D.20.030, Uses Permitted subsection of the table is amended to read as follows:

Table 23D.20.030  Use and Required Permits		
Uses Permitted		
Child Care Centers	UP(PH)	
Clubs, Lodges	UP(PH)	
Community Care Facilities/Homes		-
Changes of Use New Construction	ZC UP(PH)	Subject to parking requirements. See Section 23D.20.080.A
Community Centers	UP(PH)	
Dwelling Units, Single-family or Duplex, subject to R-1A Standards	UP(PH)	
	ZC	See Section 23D.20.070 for restrictions
Residential Additions (up to 15% of lot area or 600 square feet, whichever is more restrictive) Major Residential Additions	AUP	See definition in Sub-title F. Denial subject to Section 23D.20.090.B.
Libraries	UP(PH)	Subject to parking requirements. See Section 23D.20.080.A
Parks and Playgrounds	ZC	
Parking Lots	UP(PH)	Subject to Section 23D.12.090
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Addition of bedrooms to parcels	<u>AUP</u> <u>UP(PH)</u>	Subject to Section 23D.20.050

<u>Section 4.</u> That Berkeley Municipal Code Section 23D.20.050 is amended to read as follows:

# Section 23D.20.050 Special Provisions: Addition of Bedrooms to Parcels Reserved

- A. For the addition of a fifth bedroom to a parcel, an Administrative Use Permit (AUP) shall be required. For the addition of any bedroom beyond the fifth, a Use Permit with Public Hearing (UPPH) shall be required.
- 1. Serial/Cumulative Addition of Bedrooms: Serial addition of bedrooms to a parcel over time shall be considered cumulative and subject to these regulations.
- 2. The definition of "Bedroom" for the Special Provisions: Addition of Bedrooms to Parcels is from City of Berkeley Municipal Code Section 13.42.020.B "Operating Standards for Mini-Dorms".

<u>Section 5.</u> That Berkeley Municipal Code Section 23D.28.030 Uses Permitted, Table23D.28.030, Uses Permitted subsection of the table is amended to read as follows:

Table 23D.28.030		
	Use and Required Permits	
Use	Classification	Special Requirements (if any)
Uses Permitted		
Child Care Centers	UP(PH)	
Clubs, Lodges	UP(PH)	
Community Care Facilities/Homes Changes of Use New Construction	ZC UP(PH)	Subject to parking requirements under Section 23D.28.080.A
Community Centers	UP(PH)	
Dwelling Units, Single-family, Duplex, or Multi-family, subject to R-2 Standards	UP(PH)	No Multiple Dwelling Use is allowed in the (H) overlay
Residential Additions (up to 15% of lot area or 600 square feet,	ZC	See Section 23D.28.070 for restrictions
whichever is more restrictive) Major Residential Additions	AUP	See definition in Sub-title F. Denial subject to Section 23D.28.090.B.
Libraries	UP(PH)	Subject to parking requirements under Section 23D.28.080.A
Parks and Playgrounds	ZC	
Parking Lots	UP(PH)	Subject to requirements of Section 23D.12.090
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Addition of bedrooms to parcels	AUP UP(PH)	Subject to Section 23D.28.050

<u>Section 6.</u> That Berkeley Municipal Code Section 23D.28.050 is amended to read as follows:

# Section 23D.28.050 Special Provisions: Addition of Bedrooms to Parcels Reserved

- A. For the addition of a fifth bedroom to a parcel, an Administrative Use Permit (AUP) shall be required. For the addition of any bedroom beyond the fifth, a Use Permit with Public Hearing (UPPH) shall be required.
- 1. Serial/Cumulative Addition of Bedrooms: Serial addition of bedrooms to a parcel over time shall be considered cumulative and subject to these regulations.
- 2. The definition of "Bedroom" for the Special Provisions: Addition of Bedrooms to Parcels is from City of Berkeley Municipal Code Section 13.42.020.B "Operating Standards for Mini-Dorms".

<u>Section 7.</u> That Berkeley Municipal Code Section 23D.32.030 Uses Permitted, Table23D.32.030, Uses Permitted subsection of the table is amended to read as follows:

	Table 23D.32.030	
	Use and Required Permits	
Use	Classification	Special Requirements (if any)
Uses Permitted		
Child Care Centers	UP(PH)	
Clubs, Lodges	UP(PH)	
Community Care Facilities/Homes Changes of Use New Construction	ZC UP(PH)	Subject to parking requirements under 23D.32.080.A
Community Centers	UP(PH)	
Dwelling Units, Single Family, Duplex or Multi-family, subject to R-2A stds	UP(PH)	
	ZC	See Section 23D.32.070 for restrictions.
Residential Additions (up to 15% of lot area or 600 square feet, whichever is more restrictive) Major Residential Additions	AUP	See definition in Sub-title F. Denial subject to Section 23D.32.090.B.
Libraries	UP(PH)	Subject to parking requirements under Section 23D.32.080.A
Nursing Homes	UP(PH)	Subject to parking requirements under Section 23D.32.080.A
Parking Lots	UP(PH)	Subject to requirements of Section 23D.12.090
Parks and Playgrounds	ZC	
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Senior Congregate Housing Six or fewer persons Seven or more persons	ZC AUP UP(PH)	Changes of use from an existing dwelling unit

	Table 23D.32.030	
Use and Required Permits		
Use	Classification	Special Requirements (if any)
New Construction		
Addition of bedrooms to parcels	<u>AUP</u> UP(PH)	Subject to Section 23D.32.050

<u>Section 8.</u> That Berkeley Municipal Code Section 23D.32.050 is amended to read as follows:

Section 23D.32.050 Special Provisions: Addition of Bedrooms to Parcels Reserved

- A. For the addition of a fifth bedroom to a parcel, an Administrative Use Permit (AUP) shall be required. For the addition of any bedroom beyond the fifth, a Use Permit with Public Hearing (UPPH) shall be required.
- 1. Serial/Cumulative Addition of Bedrooms: Serial addition of bedrooms to a parcel over time shall be considered cumulative and subject to these regulations.
- 2. The definition of "Bedroom" for the Special Provisions: Addition of Bedrooms to Parcels is from City of Berkeley Municipal Code Section 13.42.020.B "Operating Standards for Mini-Dorms".

<u>Section 9.</u> Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

### ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE SECTIONS 23D.16.030, 23D.16.050, 23D.20.030, 23D.20.050, 23D.28.030, 23D.28.050, 23D.32.030, AND 23D.32.050 TO CONTROL THE ADDITION OF BEDROOMS TO EXISTING PARCELS IN THE R-1, R-1A, R-2 AND R-2A ZONING DISTRICTS

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<u>Section 1.</u> That Berkeley Municipal Code Section 23D.16.030 Uses Permitted, Table 23D.16.030, Uses Permitted subsection of the table is amended to read as follows:

Table 23D.16.030  Use and Required Permits		
Uses Permitted		
Child Care Centers	UP(PH)	
Clubs, Lodges	UP(PH)	
Community Care Facilities/Homes Changes of Use New Construction	ZC UP(PH)	Subject to parking requirements. See Section 23D.16.080.A
Community Centers	UP(PH)	
Dwelling Units, Single-family, subject to R-1 Standards	UP(PH)	
Residential Additions (up to 15% of lot area or 600 square feet, whichever is more restrictive)	ZC	See Section 23D.16.070 for restrictions.
Major Residential Additions	AUP	See definition in Sub-title F. Denial subject to Section 23D.16.090.B.
Libraries	UP(PH)	Subject to parking requirements. See Section 23D.16.080.A
Parks and Playgrounds	ZC	
Parking Lots	UP(PH)	Subject to Section 23D.12.090
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Addition of bedrooms to parcels	AUP UP(PH)	Subject to Section 23D.12.050

<u>Section 2.</u> That Berkeley Municipal Code Section 23D.16.050 is amended to read as follows:

## Section 23D.16.050 Special Provisions: Addition of Bedrooms to Parcels

- A. For the addition of a fifth bedroom to a parcel, an Administrative Use Permit (AUP) shall be required. For the addition of any bedroom beyond the fifth, a Use Permit with Public Hearing (UPPH) shall be required.
- 1. Serial/Cumulative Addition of Bedrooms: Serial addition of bedrooms to a parcel over time shall be considered cumulative and subject to these regulations.
- 2. The definition of "Bedroom" for the Special Provisions: Addition of Bedrooms to Parcels is from City of Berkeley Municipal Code Section 13.42.020.B "Operating Standards for Mini-Dorms".

<u>Section 3.</u> That Berkeley Municipal Code Section 23D.20.030 Uses Permitted, Table23D.20.030, Uses Permitted subsection of the table is amended to read as follows:

Table 23D.20.030  Use and Required Permits		
Uses Permitted		
Child Care Centers	UP(PH)	
Clubs, Lodges	UP(PH)	
Community Care Facilities/Homes		,
Changes of Use New Construction	ZC UP(PH)	Subject to parking requirements. See Section 23D.20.080.A
Community Centers	UP(PH)	
Dwelling Units, Single-family or Duplex, subject to R-1A Standards	UP(PH)	
	ZC	See Section 23D.20.070 for restriction
Residential Additions (up to 15% of lot area or 600 square feet, whichever is more restrictive) Major Residential Additions	AUP	See definition in Sub-title F. Denial subject to Section 23D.20.090.B.
Libraries	UP(PH)	Subject to parking requirements. See Section 23D.20.080.A
Parks and Playgrounds	ZC	
Parking Lots	UP(PH)	Subject to Section 23D.12.090
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Addition of bedrooms to parcels	AUP UP(PH)	Subject to Section 23D.20.050

<u>Section 4.</u> That Berkeley Municipal Code Section 23D.20.050 is amended to read as follows:

**Section 23D.20.050 Special Provisions: Addition of Bedrooms to Parcels**A. For the addition of a fifth bedroom to a parcel, an Administrative Use Permit (AUP) shall be required. For the addition of any bedroom beyond the fifth, a Use Permit with Public Hearing (UPPH) shall be required.

- 1. Serial/Cumulative Addition of Bedrooms: Serial addition of bedrooms to a parcel over time shall be considered cumulative and subject to these regulations.
- 2. The definition of "Bedroom" for the Special Provisions: Addition of Bedrooms to Parcels is from City of Berkeley Municipal Code Section 13.42.020.B "Operating Standards for Mini-Dorms".

<u>Section 5.</u> That Berkeley Municipal Code Section 23D.28.030 Uses Permitted, Table23D.28.030, Uses Permitted subsection of the table is amended to read as follows:

Table 23D.28.030		
	Use and Required Permits	
Use	Classification	Special Requirements (if any)
Uses Permitted		
Child Care Centers	UP(PH)	
Clubs, Lodges	UP(PH)	
Community Care Facilities/Homes Changes of Use New Construction	ZC UP(PH)	Subject to parking requirements under Section 23D.28.080.A
Community Centers	UP(PH)	
Dwelling Units, Single-family, Duplex, or Multi-family, subject to R-2 Standards	UP(PH)	No Multiple Dwelling Use is allowed in the (H) overlay
Residential Additions (up to 15% of lot area or 600 square feet,	ZC	See Section 23D.28.070 for restrictions.
whichever is more restrictive) Major Residential Additions	AUP	See definition in Sub-title F. Denial subject to Section 23D.28.090.B.
Libraries	UP(PH)	Subject to parking requirements under Section 23D.28.080.A
Parks and Playgrounds	ZC	
Parking Lots	UP(PH)	Subject to requirements of Section 23D.12.090
Public Safety and Emergency Services	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private	UP(PH)	
Addition of bedrooms to parcels	AUP UP(PH)	Subject to Section 23D.28.050

<u>Section 6.</u> That Berkeley Municipal Code Section 23D.28.050 is amended to read as follows:

**Section 23D.28.050 Special Provisions: Addition of Bedrooms to Parcels**A. For the addition of a fifth bedroom to a parcel, an Administrative Use Permit (AUP) shall be required. For the addition of any bedroom beyond the fifth, a Use Permit with Public Hearing (UPPH) shall be required.

- 1. Serial/Cumulative Addition of Bedrooms: Serial addition of bedrooms to a parcel over time shall be considered cumulative and subject to these regulations.
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	T. I.I. 00D 00 000		
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Use	Classification	Special Requirements (if any)	
Uses Permitted			
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Clubs, Lodges	UP(PH)		
Community Care Facilities/Homes Changes of Use New Construction	ZC UP(PH)	Subject to parking requirements under 23D.32.080.A	
Community Centers	UP(PH)		
Dwelling Units, Single Family, Duplex or Multi-family, subject to R-2A stds	UP(PH)		
	ZC	See Section 23D.32.070 for restrictions.	
Residential Additions (up to 15% of lot area or 600 square feet, whichever is more restrictive) Major Residential Additions	AUP	See definition in Sub-title F. Denial subject to Section 23D.32.090.B.	
Libraries	UP(PH)	Subject to parking requirements under Section 23D.32.080.A	
Nursing Homes	UP(PH)	Subject to parking requirements under Section 23D.32.080.A	
Parking Lots	UP(PH)	Subject to requirements of Section 23D.12.090	
Parks and Playgrounds	ZC		
Public Safety and Emergency Services	UP(PH)		
Religious Assembly Uses	UP(PH)		
Schools, Public or Private	UP(PH)		
Senior Congregate Housing Six or fewer persons Seven or more persons New Construction	ZC AUP UP(PH)	Changes of use from an existing dwelling unit	

Table 23D.32.030		
Use and Required Permits		
Use Classification Special Requirements (if any)		
Addition of bedrooms to parcels	AUP UP(PH)	Subject to Section 23D.32.050

<u>Section 8.</u> That Berkeley Municipal Code Section 23D.32.050 is amended to read as follows:

## Section 23D.32.050 Special Provisions: Addition of Bedrooms to Parcels

- A. For the addition of a fifth bedroom to a parcel, an Administrative Use Permit (AUP) shall be required. For the addition of any bedroom beyond the fifth, a Use Permit with Public Hearing (UPPH) shall be required.
- 1. Serial/Cumulative Addition of Bedrooms: Serial addition of bedrooms to a parcel over time shall be considered cumulative and subject to these regulations.
- 2. The definition of "Bedroom" for the Special Provisions: Addition of Bedrooms to Parcels is from City of Berkeley Municipal Code Section 13.42.020.B "Operating Standards for Mini-Dorms".

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