

ORDINANCE NO. 4641-N.S.

PROVIDING FOR THE ESTABLISHMENT OF A NEW PLANNING PROCESS TO ACHIEVE THE PRESERVATION AND ENHANCEMENT OF THE NEIGHBORHOODS OF THE CITY OF BERKELEY INCLUDING INTERIM REGULATIONS ON RESIDENTIAL CONSTRUCTION AND DEMOLITION.

The people of the City of Berkeley do ordain as follows:

Section 1. TITLE.

This ordinance shall be called the Neighborhood Preservation Ordinance.

Section 2. PURPOSE.

The purpose of this ordinance is to deal with an emergency situation arising from current development trends in the City of Berkeley.

(a) IMPACT OF CURRENT DEVELOPMENT TRENDS. An increasing number of neighborhoods in Berkeley are threatened by over-construction of dwellings which do not meet the needs of the community. It is essential that the residents of the city determine the processes which regulate the uses of available land. Housing which has not met the needs of underserved people in the community must become a prime priority in any consideration of such land use and must also rectify the problems presented by the concentration of dwellings in certain areas of the city. At all times the environmental impact of housing construction must be a major concern.

New construction in a city as built-up as Berkeley requires demolition, often of attractive low rent older homes, thus actually reducing the stock of decent housing available to those most in need of it -- families, low income and underserved, racial minorities and students. Although charging high rents, most new dwellings have been of uniformly low quality. In addition, the design of new buildings often has disregarded the special needs of the aged and the handicapped.

Residents of Berkeley suffer from the effects of high-density construction which increases traffic, competes for limited recreational space, and experience drastically reduced views, light and air. The city as a whole also suffers. The tax rate has soared as the need for costly public services, such as recreation space, transportation services, police and fire protection, child care, health care, and waste disposal, increase in the affected neighborhoods. Higher taxes are necessitated because such developments fail to pay for the additional services; these increased taxes, therefore, represent an indirect subsidy to developers from the pockets of taxpayers.

(b) DEFICIENCIES IN MASTER PLAN AND ZONING ORDINANCE. These current development trends in Berkeley constitute a serious public emergency which deficiencies in the City's Master Plan and Zoning Ordinance have not been able to control. There has been no substantial reconsideration and revision of the Master Plan since its adoption in 1955, and this plan fails to reflect the current priorities and needs of Berkeley residents.

The Master Plan does not contain a housing element, as required for the City's continuing eligibility to participate in various Federal programs, such as rent and housing subsidy and loan programs. Neither the City's Master Plan or the Zoning Ordinance contain provisions insuring the development of low-income housing to meet the needs of low-income groups residing in the City of Berkeley, or establish procedures to insure the preservation of land space on which low-income housing may be constructed at such time as public or private funds for such housing are made available. The Master Plan also lacks protective provisions for Charter Cities, as required by a recent act of the State Legislature, including conservation, open space, noise abatement, and geological elements.

Major policies included in the Master Plan have not been followed. The Zoning Ordinance does not conform with the population guidelines of the Master Plan. The Zoning Ordinance allows vastly higher densities than recommended as a maximum by the Master Plan. The Ordinance also fails to provide for a public report concerning the environmental impact of proposed developments, as required by a recent decision of the California Supreme Court. Although a new development has its greatest impact on the surrounding neighborhood, the Zoning Ordinance makes little provision for neighborhood consideration of this impact.

Until the above-mentioned deficiencies are corrected, the critical conflict between current development trends and the public welfare will continue.

Section 3. PROCEDURES FOR THE CORRECTION OF DEFICIENCIES ENUMERATED IN SECTION 2.

(a) COMPREHENSIVE REVISION OF BERKELEY MASTER PLAN AND ZONING ORDINANCE. The City Planning Commission shall prepare and submit to the City Council for its consideration a comprehensive revision of the Master Plan and Zoning Ordinance. The Planning Commission shall submit the revised Master Plan and Zoning Ordinance no later than March 31, 1975 or by such later date as the City Council may direct for good cause shown.

(b) RESIDENT PARTICIPATION. A Committee of interested residents shall be formed by the City Council to assist the Planning Commission during the revision of the Master Plan and Zoning Ordinance. Each councilmember shall appoint an equal number of committee members. The City Council shall allocate sufficient funds to meet minor expenses incurred by low-income, handicapped or aged persons who may be serving on this advisory committee (i.e.: child care, transportation).

(c) CORRECTION OF DEFICIENCIES AND RESIDENT REVIEW. The Planning Commission shall include in the revised Master Plan and Zoning Ordinance correction of the deficiencies specified in Section 2 and provision for resident review at the neighborhood level of all proposed developments and changes in land use.

(d) PUBLIC HEARINGS. In order to insure that the City Planning Commission is adequately informed regarding the priorities and the concerns of Berkeley residents and to insure that those residents are appraised from time to time of the status of the Commission's revisory work, the Planning Commission shall hold no fewer than five (5) public hearings throughout the City.

Section 4. INTERIM BUILDING REGULATIONS.

In order to regulate the issuance of building permits during the period between the enactment of the "Neighborhood Preservation Ordinance" and the final acceptance by the Berkeley City Council of the revised Master Plan and Zoning Ordinance, no residential building permits shall be issued except in conformity with the following requirements:

(a) USE PERMITS. Use Permits issued by the Board of Adjustments shall be required for the construction of all new residential construction of one or more units, excepting legal conversions and/or the addition of a single legal unit to an existing structure. The use permit shall be obtained before the issuance of a building permit. Decisions of the Board of Adjustments may be appealed to the City Council by any interested party.

(b) GRANTING OF USE PERMITS. A use permit may be granted if from the facts presented at a duly called public hearing at the Board of Adjustments, or the City Council on appeal finds the following:

(1) That the requirements of the Zoning Ordinance have been met, including those for use permits and variances as specified therein.

(2) That the establishment, maintenance, or operation of the building applied for will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, comfort and general welfare of persons residing or working in the neighborhood of such proposed use or to the general welfare of the city.

(3) That in the case of construction of new buildings with one or more units, the affected neighborhood has received notification as required by Section 7.

(4) That the developer and/or contractor has submitted and will comply with an affirmative action program conforming with Berkeley's affirmative action guidelines.

(5) That the proposed construction of four or more units shall have at least twenty-five percent (25%) low-income housing units as defined in Section 4(c) of this ordinance.

(6) That the environmental impact requirements have been met according to Section 6 of this ordinance.

In addition, for any proposed construction with less than 50% low income units, the Board of Adjustments shall make a finding of whether the proposed construction meets with the general approval of residents of the neighborhood where it is to be located. Neighborhood disapproval may not be based upon discrimination against the characteristics of potential residents. The Board shall consider this finding in determining whether requirements of Section 4(b) (2) has been met. "Neighborhood" shall be defined as provided for in Section 7(a) below.

(c) **LOW-INCOME HOUSING.** Low income housing is housing whose dwelling unit rents and income standards are defined in HUD guidelines for Section 236 housing. For buildings of eight units or larger, at least half of the minimum specified in Section 4(b)(5) must meet rent and income guidelines for Section 23 (Leased Housing).

Section 5. INTERIM BUILDING DEMOLITION REGULATIONS.

In order to protect the stock of older housing during the period between the enactment of the "Neighborhood Preservation Ordinance" and the final acceptance by the Berkeley City Council of the revised Master Plan and Zoning Ordinance, no residential demolition permits shall be issued, except in conformity with the following requirements:

(a) **DEMOLITION PERMITS.** Demolition permits shall be required for the demolition of structures containing one or more residential units. These permits shall be issued by the Board of Adjustments. Decisions of the Board of Adjustments may be appealed to the City Council by any interested party.

(b) **GRANTING OF DEMOLITION PERMITS.** A demolition permit may be granted if, from all facts presented at a duly called public hearing at the Board of Adjustments, or the City Council upon appeal, finds:

(1) That the demolition would not be materially detrimental to the housing needs and public interest of the affected neighborhood and the City of Berkeley, and

(2) That the developer and/or owner of the proposed construction has provided alternative housing for the residents of the structure to be demolished, and further that this relocation housing is consistent with HUD relocation guidelines, including standards for a choice of housing of comparable quality and costs within the same community if the relocatee(s) so desire, and either

(3) That the demolition will remove a hazardous, unusable or unrepairable structure, or

(4) That the demolition is necessary to permit construction approved pursuant to Section 6(c)(5), and with the additional requirement that such construction contain at least the same number of housing units as the demolished structure, and, further, that provisions have been made for persons displaced by the proposed construction to have first choice in the new housing.

Section 6. ENVIRONMENTAL IMPACT REPORT AND FINDING.

(a) **ESTABLISHMENT OF INTERIM ENVIRONMENTAL IMPACT GUIDELINES.** The Planning Commission, as soon as possible after public hearings in which all interested parties are asked to participate, shall prepare for adoption by the City Council a set of interim guidelines to determine which construction and demolition projects may have a significant effect on the environment, and when permits should be issued for such projects.

(b) PREPARATION AND CONSIDERATION OF ENVIRONMENTAL IMPACT REPORT. No permit for construction or demolition which may have a significant effect on the environment shall be granted until:

(1) An Environmental Impact Report has been prepared by the Planning Department at the expense of the applicant. This cost to the applicant may be waived if the Board of Adjustments finds it to be a financial hardship.

(2) The Board of Adjustments has considered such Environmental Impact Report at the duly called public hearing on the granting of a use or demolition permit, and

(3) The Board of Adjustments has made a finding that the project will not have a significantly adverse environmental effect. (Decisions of the Board of Adjustments may be appealed to the City Council by any interested party.)

(c) PRESUMPTION OF ENVIRONMENTAL EFFECT. Until interim guidelines have been prepared by the Planning Commission after public hearings and have been adopted by the City Council, all projects involving construction or demolition of buildings which require approval by the Board of Adjustments shall be deemed to have a significant effect on the environment.

Section 7. REQUIRED PUBLIC NOTICE.

(a) NOTICE TO THE NEIGHBORHOOD. Notice of public hearings provided for in this Ordinance shall be sent at least 21 days before the public hearing date, to all addresses and owners of property within a radius of five hundred (500) feet from the boundaries of the site of the proposed construction or demolition. The Board of Adjustments may decrease this radius to not less than three hundred (300) feet in appropriate cases of small-scale development. The following information shall be included in the notice of public hearing:

- (1) The number of housing units proposed.
- (2) The percentage of low-income units included in the structure.
- (3) A small reproduction of the site plan and perspective rendering of the proposed structure.
- (4) Time and place of public hearing
- (5) City departments to contact for further information.

(b) NOTICE TO THE REGISTRY. The Board of Adjustments shall maintain a registry of all persons and groups requesting notice, to whom notice of all public hearings shall be sent as specified in Section 7(a)(1) through (5) above, and shall be sent at least 21 days before the public hearing date.

(c) NOTICE BY POSTING. A notice of public hearing shall be posted on site of the proposed construction at least 21 days before the public hearing date. This posted notice shall be in lettering sufficiently large to be seen clearly and read easily by passersby, and the posted notice shall contain information as specified in Section 7(a)(1) through (5).

(d) COSTS OF NOTICE. All costs of giving notice shall be paid by the applicant. This cost to the applicant may be waived if the Board of Adjustments finds it to be a financial hardship.

Section 8. DETERMINATION OF RULES AND PROCEDURES.

The Planning Commission shall determine rules and procedures necessary to make operative the Interim Building and Demolition regulations established by this ordinance.

Section 9. RELATIONSHIP TO OTHER ORDINANCES.

It is not the purpose of this Ordinance to repeal the existing Zoning Ordinance, except insofar as its provisions are in conflict with this Ordinance. Where there is no conflict, the Zoning Ordinance shall continue to apply. Wherever the existing Zoning Ordinance or other ordinances are in conflict with this Ordinance, this Ordinance shall apply.

Section 10. SEVERABILITY.

If any provision of this Ordinance or application thereof to any person or circumstance is held invalid, this invalidity shall not affect other provisions of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

In effect: April 17, 1973