

BNC Special Summary Report

JSISHL meeting July 22, 2020

Joint Sub-committee for Implementation of State Housing Laws (**JSISHL**)

Sub-committee Members:

Clarke, Teresa, appointed by Councilmember Kesarwani, District 1

Lord, Thomas, appointed by Councilmember Davila, District 2

Kim, Dohee, appointed by Councilmember Bartlett, District 3

Wrenn, Rob, appointed by Councilmember Harrison, District 4

O'Keefe, Shoshana, Vice Chair, appointed by Councilmember Hahn, District 5

Wolfe, Marian, appointed by Councilmember Wengraf, District 6

Wright, Amir, (Alfred Twu, alternate), appointed by Councilmember Robinson, District 7

Vincent, Jeff, appointed by Councilmember Droste, District 8

Tregub, Igor, Chair, appointed by Mayor Arreguin

Mission:

Advises Council regarding issues around density bonuses, the Housing Accountability Act, inclusionary zoning, and permit streamlining to attain compliance with state law and take advantage of new opportunities for the development of affordable housing. Members to be appointed from the members of the Zoning Adjustments Board, Planning Commission, and Housing Advisory Commission, with at least one appointee from each, in accordance with the Fair Representation Act. The Committee shall complete its work by July 2020.

Here is a short summary of the three items that were voted on at the July 22, 2020 JSISHL meeting. Please feel free to distribute this to interested members.

1. Density Standards

JSISHL commissioners voted (5-4-0-0) to recommend that the Council request Planning Staff to use Form-Based Design Standards and Floor Area Ratio (FAR) as the two measures of building density. The recommendation from Commissioner Rob Wrenn to use Dwelling Units Per Acre (DU/acre) as is used by many Bay Area cities did not pass. According to Commissioner Wrenn, neither Form-based Design standards or FAR would limit the density of a housing development project that applied under State housing bills like SB35 or the Housing Accountability Act (HAA). If this recommendation makes it through Council as is, Berkeley would not be able to limit the density of such projects.

2. Design Standards

JSISHL commissioners voted (7-0-2-0) to recommend to Council the use of the design standards outlined by Planning Staff in their Dec. 11, 2019 meeting.

Staff has created an extensive table of objective design standards that if incorporated into the Zoning Code would be used during Design Review to assess whether a project met objective design standards. That could ultimately determine whether a development project applying under a State Housing mandate such as SB35 would meet the objective standard criteria for design.

The Staff recommendations cover four areas: City-wide design standards, the Downtown, University Avenue Strategic Plan, Southside Strategic Plan. Design standards are categorized by eleven basic categories such as Harmony, Adjacencies, Articulation, and so forth. Each category is then broken down into individual design elements. For example, adjacencies would include standards for setbacks, height, and roofline.

The link to the whole staff recommendations for design standards can be found at the following link:

https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Commissions/JSISHL/2019-12-11_JSISHL_Item%2010.pdf

3. Shadowing Standards

The proposal from Commissioner Rob Wrenn which supported an ordinance protecting rooftop solar panels, use of an objective standard to prevent the shadowing of residential buildings, and the protection of public open spaces such as parks and schoolyards was one vote shy of passing. It received 4 Yes votes, 1 No, 3 Abstain, and 1 Absent (left the meeting).

Commissioner Rob Wrenn's proposal:

Yes: Tregub	No: Lord	Absent (left the meeting): Wolfe
Wren	Twu	
O'Keefe	Kim	
Vincent	Ciarke	

JSISHL commissioners were split in voting to recommend the use of shadowing standards with major restrictions based on a late submission from Commissioner Teresa Clarke. Commissioner Clarke's communication and submission can be found beginning on p.9 of the Supplemental Communication 2 packet (Note: The submission was filed at 4pm on the night before the meeting so it is unlikely that the public knew of its existence and likely had no way to comment on it).

Commissioner Teresa Clarke's proposal:

Yes: Twu	Clarke	Vincent	No: Wren	Abstain: Tregub
Kim	O'Keefe		Lord	Absent: Wolfe

Following is the Teresa Clark proposal that was submitted (as per the Draft of the Meeting Minutes):

To: JSISHL Committee July 21, 2020 meeting

From: Teresa Clarke, Committee member Re: Proposed Objective standards to mitigate shadow impacts:

1. Applicability of Shadow Impacts:
 - a. Shadow impacts would not be considered when a proposed new building or new construction meets all base development standards.
 - b. Shadow impacts on an adjacent property would only be considered when a side or rear yard setback reduction or an increase in height is requested by use permit or by state density

bonus over the allowable standard. Shadow impacts for Front or Street yard setback reductions would not be included or considered.

- c. The shadow impact would only be calculated on the increase in shadow caused by the additional height or reduced setback portion of the project, not the cumulative.
- d. Adjustments would seek to limit reductions in overall building envelope and could compensate with increases in height in another portion of the building, or reduced setback in another portion of the site, or some other mutually agreed adjustment to a development standard or mitigation. Adjustments may require, if no other solution can be proposed to mitigate the impact, a reduction in the overall total building envelope proposed. However, for state density bonus projects, adjustments to a proposed new residential construction shall not require a reduction in the overall total building envelope, habitable area, or cause the number of bedrooms or units to be reduced.
- e. If the adjacent building being affected has a reduced building setback on the adjacent side or rear yard, a light and air impact would not be applicable, except in those cases where the building has a historic designation or was built prior to the implementation of the zoning code.

2. Elements of consideration for Shadow Impact:

- a. Light & Air for Building Openings of Applicable adjacent buildings: The light and air shadow impact shall consider impact to light and air access only of the existing windows and door openings of the applicable adjacent buildings. The new construction would be required to adjust its setback such that a minimum 3 foot perpendicular distance was achieved and a 6 foot width, with minimum 1 foot on either side of the window or door for 2 stories (min. 6 foot for courts with openings on both sides) and 1 foot additional setback for each additional story up to 14 stories, or a total maximum setback of 15 feet from the adjacent building. For instance, if the building is 3 feet away from the property line, a 12 foot maximum from the property line for the new building.
- b. Minimum Required Open Space of Adjacent properties: An increase in shadow impact caused by the additional height or reduced setback on the minimum required open space of the adjacent impacted property shall not be more than a 50% increase in direct shade averaged over the entire year. If the affected property has more than the required open space, the calculation would be made on the open space that is least impacted by the shadow. The setback or height shall be adjusted to result in a net shadow increase of no more than 50% (or suggest alternate per staff research) as limited in Section 1 above. The shadow impact Late Communications Joint Subcommittee for Implementation of State Housing Laws (JSISHL) July 22, 2020 11 of 12 would only be calculated on the increase in shadow caused by the additional height or reduced setback portion of the project, not the cumulative.
- c. Solar Access: An increase for the additional impact only of more than 50% of direct shading on existing solar panels averaged over the entire year and over the entire area of solar array would require that an adjustment to the requested height or setback be made, or other mutually agreed adjustment to a development standard or mitigation be made. If a mitigation such as moving the solar panels or re-orienting the solar panels has been mutually agreed upon in lieu of a development standard adjustment, this mitigation should

be completed prior to building permit issuance, if possible. The shadow impact would only be calculated on the increase in shadow caused by the additional height or reduced setback portion of the project, not the cumulative.

https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Commissions/JSISHL/2020-07-22_PC_JSISHL_Supplemental%20Communication%202.pdf

The proposal that passed does not specifically recommend the use of a common standard like the Daylight Plane, and severely limits the protection of roof-mounted solar panels and open yard spaces to those instances where the blockage is more than 50% of the total sunlight received during the year.

All three recommendations will be presented at Council later this year (possibly September). There will be an opportunity for public comment when the item comes up for Council vote.

According to the JSISHL Secretary, Council will likely refer these recommendations for review to the Design Review Committee (DRC) and the Planning Commission. The Planning Commission will then likely be charged with developing the wording for the final changes to the Zoning Ordinance. Council must approve the final change to the zoning ordinance.

In summary, **the existing JSISHL recommendations do not provide enough local control over State-mandated housing projects.** More work is needed to refine the language to require specific objective standards needed to ensure the proper local control over density and shadowing effects.

BNC will continue to follow these standards through the legislative process and alert members when these specific items come up for public comment or a vote.

Submitted by David Ushijima