



Office of the City Manager

PUBLIC HEARING
April 26, 2022

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Jordan Klein, Director, Planning and Development Department
 Subject: Zoning Ordinance Amendments that Address Technical Edits and Corrections to Berkeley Municipal Code (BMC) Title 23

RECOMMENDATION

Conduct a public hearing and, upon conclusion, adopt first reading of an Ordinance containing technical edits, corrections and other non-substantive amendments to the following sections of the new Zoning Ordinance:

- BMC Section 23.326.030 (Eliminating Dwelling Units through Demolition)
- BMC Section 23.204.020 (Allowed Land Uses)
- BMC Section 23.204.100 (C-SA Zoning District)
- BMC Section 23.204.110 (C-T Zoning District)
- BMC Section 23.204.130 (C-DMU District)
- BMC Section 23.204.140 (C-W Zoning District)
- BMC Section 23.206 (Manufacturing Districts)
- BMC Section 23.302.040 (Home Occupations)
- BMC Section 23.304.060 (Accessory Buildings and Enclosed Accessory Structures)
- BMC Section 23.322.030 (Required Parking Spaces)
- BMC Section 23.502.020 (Glossary)

FISCAL IMPACTS OF RECOMMENDATION

Adoption of the recommended amendments will not result in any costs to the City.

CURRENT SITUATION AND ITS EFFECTS

Ensuring an accurate Zoning Ordinance is a Strategic Plan Project, advancing our goal to be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community.

On October 12, 2021, the City Council adopted a new Zoning Ordinance (Title 23 – Berkeley Municipal Code). This action was the culmination of the first comprehensive review of the Zoning Ordinance since 1999. The intent of the new Zoning Ordinance was to reword and reformat the Zoning Ordinance to make Berkeley's land use

regulations easier to understand and administer. Accordingly, staff advised the Council that aside from a specific list of “consent changes” developed and adopted as part of the Zoning Ordinance Revision Project to maintain consistency with State law and codify departmental practices, the new Zoning Ordinance was not intended to contain any substantive policy changes.

The new Zoning Ordinance became effective December 1, 2021. As anticipated, the introduction of the new Zoning Ordinance has revealed some inconsistencies and inadvertent changes that need to be corrected to ensure that the new Zoning Ordinance accurately states City Council policy, as contained in the old Zoning Ordinance, and does not inadvertently make changes beyond those the Council has authorized.

Because the new Zoning Ordinance contained some inadvertent changes / errors, there are a total of 15 amendments / corrections to the new Zoning Ordinance included in this report, which are summarized below in **Table 1**. At its meeting of March 2, 2022, the Planning Commission reviewed and discussed these amendments and voted to send this recommendation to the City Council by a vote of 8-0-0-1 [Moved Twu, Second Vincent. Ayes: Hauser, Kapla, Mikiten, Moore, Oatfield, Twu, Vincent, and Wiblin. Noes: None. Abstain: None. Absent: Ghosh].

Table 1. Recommended Zoning Ordinance Amendments

Subject/Section	Issue	Amendment
Sec 23.326.030: Elimination of Dwelling Units through Demolition	The Demolition Ordinance is missing language that prohibits the demolition of buildings with 2 or more dwelling units that have been subject to the Ellis Act in the past 5 years.	Adds missing language.
Sec 23.204.020: Allowed Uses in Commercial Districts <i>Table—Legend</i>	The Allowed Uses Table legend has a misnumbered reference to the AUP code section.	Provides correct cross-reference.
Sec 23.204.020: Allowed Uses in Commercial Districts <i>Short-Term Rentals</i>	The Allowed Uses Table misstates that Short-Term Rentals (STR) are permitted in the C-E, C-SO and C-AC Districts.	Corrects the Allowed Use Table to clarify that STRs are not permitted in the C-E, C-SO and C-AC Districts.
Sec 23.204.100: C-SA Dealership Overlay Area	The code contains an outdated reference to the C-SA Dealership Overlay Area.	Removes the C-SA Dealership Overlay Map and regulations.

Subject/Section	Issue	Amendment
Sec 23.204.100: C-SA Height Districts <i>Height Districts Map</i>	The C-SA Height Districts map and regulations include parcels that are within the C-AC District.	Removes the C-AC designated parcels from the C-SA Height Districts map and renumbers Height Districts as appropriate.
Sec 23.204.110: C-T Zoning District <i>Maximum Height</i>	The Maximum Height Table in the C-T District north of Dwight Way incorrectly includes a limit on the number of stories.	Removes the limit on the number of stories.
Sec 23.204.130: C-DMU Zoning District <i>Setbacks</i>	The C-DMU District incorrectly includes a street side setback.	Removes the street side setback requirement.
Sec 23.204.141: C-W Zoning District <i>Minimum Lot Area</i>	The C-W District incorrectly includes a minimum lot area for Group Living Accommodations (GLAs).	Removes the minimum lot requirement for GLAs.
Sec 23.206.020: M District <i>ADUs</i>	The Allowed Use Table incorrectly indicates that ADUs are permitted in the M District.	Changes "P" (permitted) to "NP" (not permitted).
Sec 23.302.040: Home Occupations <i>Definition</i>	The Zoning Ordinance defines Home Occupations twice.	Removes the definition in the Home Occupations Chapter and maintains the definition in the Glossary.
Sec 23.304.060: Accessory Buildings and Enclosed Accessory Structures <i>List Numbering</i>	The list is misnumbered.	Corrects list numbering.
Sec 23.322.030: Required Parking Spaces <i>ES-R District</i>	Minimum parking requirements for the ES-R District were not included in the new Zoning Ordinance.	Adds ES-R residential parking requirements.
Sec 23.502.020: Glossary <i>Family Day Care Home</i>	Incorrect grammar in definition.	Grammar corrected to ensure subject/verb agreement.
Sec 23.502.020: Glossary <i>Nurseries</i>	Glossary definition of "Retail, General" excludes Nurseries.	Removes Nurseries from list of uses excluded from "Retail, General" definition.

BACKGROUND

At its meeting of March 2, 2022, the Planning Commission held a public hearing on the proposed amendments.¹ The Planning Commission recommended adoption of the proposed amendments by a vote of 8-0-0-1 (Moved: Twu; Seconded: Mikiten; Ayes: Hauser, Kapla, Mikiten, Oatfield, Twu, Vincent and Wiblin; Noes: None; Abstentions: None; Absent: Ghosh).

When the new Zoning Ordinance was presented to the City Council, staff had indicated that routine updates to the Zoning Ordinance would regularly come before the City Council to correct unintended errors and make text edits. This is the first such package of amendments. A second, smaller package will be presented to the City Council before the 2022 summer recess.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental and climate impacts or opportunities associated with the adoption of the proposed amendments.

RATIONALE FOR RECOMMENDATION

The proposed Zoning Ordinance amendments are required to ensure that the new Zoning Ordinance accurately reflects the prior ordinance and City Council policy, and does not contain any changes from the old Zoning Ordinance that were not specifically authorized by City Council.

ALTERNATIVE ACTIONS CONSIDERED

No alternatives were considered.

CONTACT PERSON

Jordan Klein, Director of Planning & Development, 510-981-7410

Justin Horner, Associate Planner, Planning and Development, 510-981-7476

Attachments:

1: Ordinance

Exhibit A: C-SA Building Height Subarea Map, amended

2: Consent Changes Matrix

3: Report to Planning Commission, March 2, 2022

4: Public Hearing Notice

¹ Agenda-related materials for the March 2, 2022 Planning Commission meeting can be found here: https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2022-03-02%20PC%20Agenda_linked.pdf

ORDINANCE NO. -N.S.

AMENDING TITLE 23 OF THE BERKELEY MUNICIPAL CODE TO CORRECT ERRORS AND MAKE NON-SUBSTANTIVE, TECHNICAL EDITS TO THE ZONING ORDINANCE

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

Section 1. That Berkeley Municipal Code Section 23.326.030 is amended to read as follows:

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.

23. 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.

34. 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.

45. 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.4.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.

Section 2. That Berkeley Municipal Code Section 23.204.020 Table 23.204-1 is amended to read as follows:

Table 23.204-1: Allowed Uses in the Commercial Districts

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.030 Error! Reference source not found.(B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	COMMERCIAL DISTRICTS											USE-SPECIFIC REGULATIONS
	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
Residential Uses												
Accessory Dwelling Unit	See Error! Reference source not found.—Error! Reference source not found.											
Dwellings												
Single-Family	UP(H)	UP(PH)*	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	Error! Reference source not found..B.3
Two-Family	UP(PH)	UP(PH)*	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	Error! Reference source not found..B.3
Multi-Family	UP(PH)	UP(PH)*	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	Error! Reference source not found..B.3

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23-204.030 Error! Reference source not found. (B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	COMMERCIAL DISTRICTS											USE-SPECIFIC REGULATIONS
	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
Group Living Accommodation	UP(PH)	UP(PH)*	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	Error! Reference source not found. B.3
Hotel, Residential	UP(PH)	UP(PH)*	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	Error! Reference source not found. B.3
Mixed-Use Residential	UP(PH)	UP(PH)*	UP(PH)	UP(PH)	UP(PH)	UP(PH)*	UP(PH)	UP(PH)	UP(PH)	See Error! Reference source not found.	UP(PH)	Error! Reference source not found. B.3; Error! Reference source not found. B.4
Senior Congregate Housing	See Error! Reference source not found. H											
Public and Quasi-Public Uses												
Child Care Center	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Cemetery/Crematory/Mausoleum	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	
Club/Lodge	UP(PH)	UP(PH)	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	UP(PH)	
Columbaria	See Error! Reference source not found. C											
Community Care Facility	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	ZC	AUP	
Community Center	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Emergency Shelter	See Error! Reference source not found.		-	-	See Error! Reference source not found.							
Family Day Care Home, Large	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	
Family Day Care Home, Small	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	
Hospital	UP(PH)	UP(PH)	NP	NP	NP	NP	NP	NP	UP(PH)	UP(PH)	NP	
Library	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Mortuaries and Crematories	UP(PH)	UP(PH)	NP	NP	NP	NP	NP	NP	NP	UP(PH)	NP	
Municipal Animal Shelter	-	-	-	-	-	-	-	-	-	-	-	
Nursing Home	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Park/Playground	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	AUP	ZC	
Public Safety and Emergency Service	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Public Utility Substation/Tank	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Religious Assembly	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	AUP	UP(PH)	
School	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
School, Vocational	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	UP(PH)	AUP	
Retail Uses												
Alcoholic Beverage Retail Sale	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	NP	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	Error! Reference source not found. B.2; Error! Reference source not found.
Cannabis Retailer	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	Error! Reference source not found. ; 12.21; and 12.22
Cannabis Retailer, Delivery Only	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	-	Error! Reference source not found. ; 12.21; and 12.22
Firearm/Munitions Business	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	NP	UP(PH)	UP(PH)*	Error! Reference source not found. D

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23-204.030 Error! Reference source not found. (B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	COMMERCIAL DISTRICTS											USE-SPECIFIC REGULATIONS
	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
Industrial and Mining Products	--	--	--	--	--	--	--	--	--	--	--	
Pawn Shop/Auction House	UP(PH)	--	NP	NP	NP	NP	NP	NP	UP(PH)	UP(PH)	NP	
Pet Store	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	ZC [3]	UP(PH)	
Retail, General	ZC [1]	ZC [1]	ZC* [2]	ZC* [2]	ZC* [2]	ZC [1]	ZC	ZC* [2]	ZC	ZC* [3]	ZC*	Error! Reference source not found..E (for department stores) Error! Reference source not found..F (for drug stores)
Smoke Shop	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	NP	UP(PH)*	UP(PH)*	23.302.070.1
Personal and Household Service Uses												
Personal and Household Services, General	ZC [1]	ZC [1]	ZC [2]	ZC [2]	ZC [2]	ZC [1]	ZC	ZC [2]	ZC	ZC [5]	ZC	
Kennels and Pet Boarding	NP	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH)	NP	
Laundromats and Cleaners	AUP	AUP	UP(PH)	UP(PH)	UP(PH)	AUP	AUP	UP(PH)	UP(PH)	AUP [4]	AUP	
Veterinary Clinic	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Video Tape/Disk Rental	ZC [1]	ZC [1]	ZC [2]	AUP	ZC [2]	-	ZC	ZC [2]	ZC	ZC [5]	NP	
Office Uses												
Business Support Services	ZC [1]	ZC [1]	ZC [2]	ZC [2]	ZC [2]	ZC [1]	ZC*	ZC [2]	ZC	ZC [5]	ZC [6]	Error! Reference source not found..B.6
Banks and Financial Services, Retail	AUP	AUP	UP(PH)	UP(PH)	UP(PH)	ZC [1]	AUP*	UP(PH)	ZC*	AUP	ZC	Error! Reference source not found..B.6; Error! Reference source not found..B.3; Error! Reference source not found..D.3
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents	ZC [1]	ZC [1]	ZC* [2]	ZC* [2]	ZC* [2]	ZC [1]	ZC*	ZC* [2]	ZC*	ZC [5]	ZC [6]	Error! Reference source not found..D; Error! Reference source not found..B.6; Error! Reference source not found..D.3
Medical Practitioners	ZC [1]	ZC [1]	AUP	NP	UP(PH)	ZC [1]	AUP*	UP(PH)	ZC*	ZC [5]	ZC [6]	Error! Reference source not found..D; Error! Reference source not found..B.6; Error! Reference source not found..D.3
Non-Chartered Financial Institutions	UP(PH)*	UP(PH)*	NP	NP	NP	UP(PH)*	UP(PH)*	NP	NP	UP(PH)*	UP(PH)	Error! Reference source not found..F Error! Reference source not found..B.6
Office, Business and Professional	ZC [1]	ZC [1]	AUP*	AUP*	AUP*	ZC [1]	AUP*	AUP*	ZC*	ZC [5]	ZC [6]	Error! Reference source not found..B; Error! Reference source not found..B.6; Error! Reference source not found..D.3

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23-204.030 Error! Reference source not found. (B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	COMMERCIAL DISTRICTS											USE-SPECIFIC REGULATIONS
	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses												
Adult-oriented Business	UP(PH)*	UP(PH)*	NP	NP	NP	NP	NP	NP	UP(PH)*	UP(PH)*	NP	Error! Reference source not found..A
Amusement Device Arcade	UP(PH)*	UP(PH)*	NP	NP	NP	UP(PH)*	NP	NP	UP(PH)*	UP(PH)*	UP(PH)	Error! Reference source not found..B
Bar/Cocktail Lounge/Tavern	UP(PH)*	UP(PH)*	UP(PH)*	-	NP	UP(PH)*	UP(PH)*	NP	UP(PH)*	UP(PH)*	UP(PH)	Error! Reference source not found..B.3; Error! Reference source not found..B.2; Error! Reference source not found.
Commercial Recreation Center	See Error! Reference source not found..A											
Dance/Exercise/Martial Arts/Music Studio	ZC [1]	ZC [1]	ZC [2]	AUP	AUP [4]	ZC [1]	ZC	AUP	ZC	ZC [7]	ZC	
Entertainment Establishment	UP(PH)	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Food Service Establishment	See Error! Reference source not found..E											
Group Class Instruction	ZC [1]	ZC [1]	AUP	AUP	AUP*	ZC [1]	ZC*	AUP	ZC*	ZC	ZC	Error! Reference source not found..B
Gym/Health Club	See Error! Reference source not found..C											
Hotels, Tourist	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Motels, Tourist	UP(PH)	UP(PH)	NP	NP	NP	NP	NP	NP	UP(PH)	UP(PH)	NP	
Theater	UP(PH)	UP(PH)	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	NP	AUP	UP(PH)	UP(PH)	
Vehicle Service and Sales Uses												
Alternative Fuel Station	UP(PH)	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	NP*	UP(PH)	NP	AUP*	UP(PH)	Error! Reference source not found..B.4; Error! Reference source not found..B.3
Electric Vehicle Charging Station	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP*	AUP	
Gasoline Fuel Stations	UP(PH)	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	NP*	UP(PH)	NP	UP(PH)*	UP(PH)	Error! Reference source not found..B.3
Large Vehicle Sales and Rental	AUP	NP	NP	NP	NP	NP	NP	NP	NP	AUP* [8]	NP	Error! Reference source not found..B.3
Small Vehicle Sales and Service	AUP	NP	NP	NP	NP	UP(PH)*	NP	NP	UP(PH)	UP(PH)*	NP	Error! Reference source not found..B.5; Error! Reference source not found..B.3
Tire Sales and Service	UP(PH)	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH)*	NP	Error! Reference source not found..B.3
Vehicle Parts Store	ZC [1]	NP	ZC [2]	ZC [2]	ZC [2]	ZC [1]	ZC	ZC [2]	NP	AUP* [8]	ZC	
Vehicle Rentals	AUP	NP	NP	NP	NP	NP	NP	NP	UP(PH)	AUP* [8]	NP	Error! Reference source not found..B.3
Vehicle Repair and Service	AUP	NP	NP	NP	NP	NP	NP	NP	NP	AUP* [8]	NP	
Vehicle Sales, New	AUP	NP	NP	NP	NP	UP(PH)*	NP	NP	UP(PH)	AUP* [8]	NP	Error! Reference source not

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23-204.030 Error! Reference source not found. (B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	COMMERCIAL DISTRICTS											USE-SPECIFIC REGULATIONS	
	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC		
													found..B.5 Error! Reference source not found..B.3
Vehicle Sales, Used	AUP	NP	NP	NP	NP	UP(PH)*	NP	NP	UP(PH)	UP(PH)*	NP		Error! Reference source not found..B.5; Error! Reference source not found..B.3; Error! Reference source not found..D.4
Vehicle Wash	UP(PH)	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH)*	NP		Error! Reference source not found..B.3
Vehicle Wrecking	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP		
Industrial and Heavy Commercial Uses													
Bus/Cab/Truck/Public Utility Depot	--	--	--	--	--	--	--	--	--	--	--	--	
Commercial Excavation	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	--	NP	UP(PH)		
Contractors Yard	--	--	--	--	--	--	--	--	--	AUP	--		
Dry Cleaning and Laundry Plant	UP(PH)	UP(PH)	NP	--	UP(PH)	NP	NP	NP	UP(PH)	NP	NP		
Laboratory													
Commercial Physical or Biological	AUP	AUP	NP	NP	NP	NP	NP	NP	AUP	NP	NP		
Cannabis Testing	AUP	AUP	NP	NP	NP	NP	NP	NP	AUP	AUP [9]	NP		
Manufacturing													
Construction Products	--	--	--	--	--	--	--	--	--	UP(PH)	--		
Light Manufacturing	--	--	--	--	--	--	--	--	--	AUP [8]	--		
Pesticides/Herbicides/Fertilizers	--	--	--	--	--	--	--	--	--	UP(PH)	--		
Petroleum Refining and Products	--	--	--	--	--	--	--	--	--	UP(PH)	--		
Pharmaceuticals	--	--	--	--	--	--	--	--	--	UP(PH)	--		
Primary Production Manufacturing	--	--	--	--	NP	--	--	--	--	UP(PH)	--		
Semiconductors	--	--	--	--	NP	--	--	--	--	UP(PH)	--		
Material Recovery Enterprise	--	--	--	--	--	--	--	--	--	--	--		
Media Production	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)*	AUP	UP(PH)		Error! Reference source not found..B.4
Mini-storage	UP(PH)	NP	NP	NP	NP	NP	NP	--	UP(PH)	NP	NP		
Recycled Materials Processing	--	--	--	--	--	--	--	--	--	--	--		
Recycling Redemption Center	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP		
Repair Service, Non-Vehicle	--	--	--	--	--	--	--	--	--	AUP	--		
Research and Development	--	--	--	--	--	--	--	--	--	AUP	--		
Services to Buildings and Dwellings	--	--	--	--	--	--	--	--	--	AUP	--		
Warehouse	UP(PH)	NP	NP	NP	NP	NP	NP	--	UP(PH)	NP	NP		
Warehouse-Based Non-Store Retailer	--	--	--	--	--	--	--	--	--	--	--		
Wholesale Trade	--	--	--	--	--	--	--	--	--	AUP [8]	--		
Incidental Uses													

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23-204.030 Error! Reference source not found. (B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	COMMERCIAL DISTRICTS											USE-SPECIFIC REGULATIONS
	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
Amusement Devices	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	UP(PH)	Error! Reference source not found..B
Alcoholic Beverage Service	See Error! Reference source not found.											
Cafeteria, On-Site	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	AUP	UP(PH)	
Columbaria	See Error! Reference source not found..C											
Food and Beverage for Immediate Consumption	ZC	ZC	AUP	UP(PH)	UP(PH)	ZC	AUP	UP(PH)	ZC	ZC	ZC	
Food Service Establishment	See 23.302.070.E											
Live Entertainment	See Error! Reference source not found..D											
Manufacturing	AUP	AUP	UP(PH)	UP(PH)	NP	UP(PH)	AUP	AUP	AUP	AUP	AUP	
Retail Sale of Goods Manufactured On-Site	ZC [1]	ZC [1]	ZC [2]	ZC [2]	ZC [2]	ZC [1]	ZC	ZC [2]	ZC	AUP	ZC	
Storage of Goods (>25% gross floor area)	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP	Error! Reference source not found..C
Wholesale Activities	AUP*	AUP*	UP(PH)*	UP(PH)*	NP	AUP*	AUP*	AUP*	AUP*	AUP	AUP	Error! Reference source not found..B.3
Other Miscellaneous Uses												
Art/Craft Studio	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	ZC [6]
ATM, Exterior and Attached to Bank	AUP	AUP	AUP	UP(PH)	AUP	AUP	AUP	AUP*	AUP	AUP	AUP	Error! Reference source not found..B.2
ATM, Interior or Exterior and Not With Bank	UP(PH)	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	UP(PH)	NP	UP(PH)*	AUP	UP(PH)	Error! Reference source not found..B.2
Circus/Carnival	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Drive-in Uses	UP(PH)	NP	NP	NP	UP(PH)	UP(PH)	NP	UP(PH)	NP	NP	UP(PH)	
Home Occupations	See Error! Reference source not found.											
Live/Work	See Error! Reference source not found.											
Parking Lot/Structure	See Error! Reference source not found..G											
Public Market, Open Air	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	UP(PH)	AUP	
Public Market, Enclosed	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP [9]	AUP	
Short-Term Rental	See Error! Reference source not found.			NP	See Error! Reference source not found.			NP	See Error! Reference source not found.		NP	
Urban Agriculture, Low-Impact	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC	ZC	Error! Reference source not found.
Urban Agriculture, High-Impact	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP	AUP	Error! Reference source not found.
Wireless Telecommunication Facility	See Error! Reference source not found.—Error! Reference source not found.											
Notes: [1] Change of use of floor area over 3,000 square feet requires an AUP. Change of use of floor area over 2,000 square feet requires an AUP. Requires an AUP for uses 3,500 sq. ft. to 7,500 square feet. Requires a Use Permit for uses more than 7,500 sq. ft. Requires a Use Permit if 5,000 sq. ft. or more. Requires an AUP for uses 3,000 sq. ft. to 5,000 square feet. Requires a Use Permit for uses more than 5,000 sq. ft. Requires an AUP for uses 2,500 sq. ft. or greater or 50 ft. wide or greater on Shattuck, between Ward and Russell; Adeline between Russell and the City boundary; on Ashby, east of Adeline; or on the north side of Ashby, west of Adeline. Requires a Use Permit if 7,500 square feet or more. Require a Use Permit if either 5,000 sq. ft. or more of floor area or 10,000 square feet or more of lot area. Requires a Use Permit if more than 10,000 sq. ft.												

Section 3. That Berkeley Municipal Code 23.204.100.B.5 is hereby amended to read:

5. ~~Automobile/Motorcycle Vehicle~~ Sales.

a. **Applicability.**

- i.* In the C-SA district, small vehicle service is not permitted. Small vehicle sales that are exclusively indoor operations are permitted with a Zoning Certificate. Otherwise, a Use Permit is required.
- ii.* All new or relocated ~~automobile or motorcycle vehicle~~ sales in the C-SA district shall comply with the requirements of this subsection.
- iii.* Expansions or modifications of existing ~~automobile or motorcycle vehicle~~ sales are:
 - 1. Encouraged to comply with standards in Paragraph c (Standards) below where feasible; and
 - 2. Shall not increase or exacerbate a non-conformity with these standards.

- b. **~~Where Allowed Sales with Outdoor Activities.~~** New or relocated ~~automobile or motorcycle vehicle~~ sales uses with outdoor activities, including but not limited to storage and display of vehicle inventory, ~~are limited to the Dealership Overlay Area as shown in Figure 23.204-2: C-SA Dealership Overlay Area. are not permitted. Vehicle sales uses must be exclusively indoor operations.~~

~~FIGURE 23.204 2: C-SA DEALERSHIP OVERLAY AREA~~



c. **Standards.**

- ~~i. **Street Frontage.** Outdoor vehicle display is permitted only along Shattuck Avenue and Adeline Street and is limited to 30 percent of the lot frontage on those streets.~~
- ~~ii. **Area for Outdoor Uses.** A maximum of 40 percent of the lot area may be used for outdoor uses, including but not limited to vehicle display and storage. Adequate landscaping and/or fencing shall be used to filter the view of outdoor uses from the adjacent right-of-way and abutting properties, with the exception of outdoor vehicle display;~~
- ~~iii.i. **Service Entries.** Vehicle and repair service entries may not exceed 20 percent of the primary lot frontage, no entrance may exceed a width of 20 feet. The primary street frontage is the frontage towards which the primary building entrance is oriented.~~

iv-ii. **Transparency.** At least 60 percent of any new building shall be within 10 feet of the right-of-way along the primary street frontage and 60 percent of the street-facing facade shall be comprised of clear glass.

v-iii. **Repair Activities.** All vehicle repair activities shall be conducted indoors.

vi-iv. **Noise.** All noise-generating equipment and activities, such as vehicle repair, shall be shielded by noise-attenuating materials. Outdoor amplification is not permitted.

vii-v. **Lighting.** Exterior light standards and fixtures shall not be taller than 20 feet, shall achieve uniform light coverage and minimize glare, shall use light cutoffs to control light spillover onto adjacent properties and urban sky glow, and shall use low energy light fixtures consistent with the City’s goals for energy efficiency.

viii-vi. **Vehicle Storage.** No vehicles shall be stored in the public right-of-way.

d. **Modification of Standards.** The Zoning Officer may allow modification to standards in Paragraph c (Standards) above with an AUP upon finding that the modification:

- i. Is necessary to facilitate incorporation of an existing structure;
- ii. Achieve greater consistency with the surrounding street pattern;
- iii. Buffers impacts to an adjacent residential district; or
- iv. Is needed to accommodate dealership operations.

Section 4. That the Berkeley Municipal Code 23.204.100 Table 23.204-28 is hereby amended to read:

Table 23.204-28: C-SA Maximum Building Heights

Building Land Use	Maximum Height		
	Subarea 1	Subarea 2	Subarea 32
Non-Residential Uses	36 ft and 3 stories	24 ft and 2 stories	24 ft and 2 stories
Mixed Use and Residential Only	60 ft and 5 stories [1]	50 feet and 4 stories [1]	36 ft and 3 stories [1]
[1] In mixed-use buildings, the third story and above must be used for residential purposes entirely.			

Section 5. That Berkeley Municipal Code 23.204.100 Figure 23.204-3 is hereby amended to read:





Section 6. That Berkeley Municipal Code Section 23.204.110 Table 23.204-33 is amended to read as follows:

Table 23.204-33: C-T Allowed Heights and FAR Increases

Project Location	Allowed Increase	
	Height	FAR
South of Dwight Way	65 ft. and 5 stories	No increase allowed
North of Dwight Way	75 ft. and 6 stories	6.0

Section 7. That Berkeley Municipal Code Section 23.204.130 Table 23.204-39 is amended to read as follows:

Table 23.204-39: C-DMU Setback Standards

PORTION OF BUILDING AT HEIGHT OF:	FRONT OR STREET SIDE	MINIMUM INTERIOR SIDE		MINIMUM REAR
		65' AND LESS FROM LOT FRONTAGE	OVER 65' FROM LOT FRONTAGE	
Zero to 20 feet	No minimum. 5 ft. max.	No minimum		
21 feet to 75 feet	No minimum.	No minimum		5 ft.
76 feet to 120 feet	15 ft. min.	5 ft.		15 ft.
Over 120 feet	15 ft. min.	15 ft.		

Section 8. That Berkeley Municipal Code Section 23.204.140 Table 23.204-42 is amended to read as follows:

Table 23.204-42: C-W Development Standards

BASIC STANDARDS		SUPPLEMENTAL STANDARDS
Lot Area Minimum		Error! Reference source not found. Error! Reference source not found.
New Lots	No minimum 350-sq.-ft.	
Per Group Living Accommodation Resident		
Usable Open Space, Minimum		Error! Reference source not found. Error! Reference source not found.
Per Dwelling Unit or Live/Work Unit	40 sq. ft.	
Per Group Living Accommodation Resident	No minimum	
Floor Area Ratio, Maximum	3.0	
Main Building Height, Minimum	No minimum	
Main Building Height, Maximum	40 ft. and 3 stories [1,2]	Error! Reference source not found. Error! Reference source not found.
Lot Line Setbacks, Minimum		Error! Reference source not found. Error! Reference source not found.
Abutting/Confronting a Non-residential District	No minimum	
Abutting/Confronting a Residential District	See Error! Reference source not found. .C.2	
Building Separation, Minimum	No minimum	

Lot Coverage, Maximum	100%	Error! Reference source not found. Error! Reference source not found.
<p>Notes:</p> <p>[1] 50 ft. and 4 stories allowed for mixed-use projects. The fourth floor must be used for residential or live/work purposes.</p> <p>[2] On Assessor Parcel Numbers 054-1763-001-03, 054-1763-010-00 and 054-1763-003-03 the maximum height is 50 feet and 4 stories.</p>		

Section 9. That Berkeley Municipal Code Section 23.206.020 Table 23.206-1 is amended to read:

Table 23.206-1 Allowed Uses in Manufacturing Districts

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply	MANUFACTURING DISTRICTS				Use-Specific Standards Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	M	MM	MU-LI	MU-R	
Residential Uses					
Accessory Dwelling Unit	NP	NP	NP	See Error! Reference source not found.	
Dwellings					
Single-Family	NP	NP	NP	AUP*	Error! Reference source not found..B.8
Two Family	NP	NP	NP	AUP*	Error! Reference source not found..B.8
Multi-Family	NP	NP	NP	UP(PH)*	Error! Reference source not found..B.7&8
Group Living Accommodation	NP	NP	NP	UP(PH)*	Error! Reference source not found..B.8
Hotel, Residential	NP	NP	NP	NP	
Mixed-Use Residential	NP	NP	NP	UP(PH)*	Error! Reference source not found..B.8&9
Senior Congregate Housing	NP	NP	NP	See Error! Reference source not found..H	
Public and Quasi-Public Uses					
Child Care Center	NP	NP	AUP*	UP(PH)*	Error! Reference source not found..B&C
Cemetery/Crematory/Mausoleum	NP	NP	NP	NP	
Club/Lodge	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)	Error! Reference source not found..E
Columbaria	NP	NP	NP	–	
Community Care Facility	NP	NP	NP	ZC*	Error! Reference source not found..B.3

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply	MANUFACTURING DISTRICTS				Use-Specific Standards Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	M	MM	MU-LI	MU-R	
Community Center	NP	NP	NP	UP(PH)	
Emergency Shelter	NP	NP	NP	–	
Family Day Care Home, Large	NP	NP	ZC*	AUP*	Error! Reference source not found..C
Family Day Care Home, Small	NP	NP	ZC*	ZC*	Error! Reference source not found..C
Hospital	NP	NP	NP	NP	
Library	NP	NP	NP	UP(PH)	
Mortuaries and Crematories	NP	NP	NP	UP(PH)*	Error! Reference source not found..B.6
Municipal Animal Shelter	UP(PH)	UP(PH)	UP(PH)	–	
Nursing Home	NP	NP	NP	UP(PH)	
Park/Playground	NP	NP	NP	UP(PH)*	Error! Reference source not found..C
Public Safety and Emergency Service	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Public Utility Substation/Tank	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Religious Assembly	NP	NP	NP	UP(PH)	
School	NP	NP	NP	UP(PH)*	Error! Reference source not found..C
School, Vocational	NP	NP	ZC* [1]	UP(PH)	Error! Reference source not found..B.12
Retail Uses					
Alcoholic Beverage Retail Sale	NP	NP	UP(PH)* [2]	NP *	Error! Reference source not found..B.3; Error! Reference source not found..B.2; Error! Reference source not found.
Firearm/Munitions Business	NP	NP	NP	NP	
Industrial and Mining Products	AUP [2]	AUP [2]	AUP [4]	NP	
Pawn Shop/Auction House	NP	NP	NP	NP	
Pet Store	NP	NP –	NP	NP	
Retail, General	NP	NP	AUP* [5]	AUP* [3]	Error! Reference source not found..B.6; Error! Reference source not found..B.4
Smoke Shop	NP	NP	NP	NP	
Personal and Household Service Uses					
Personal and Household Services, General	NP	NP	NP	AUP	
Kennels and Pet Boarding	NP	NP	NP	UP(PH)	
Laundromats and Cleaners	NP	NP	NP	AUP	
Veterinary Clinic	NP	NP	NP	UP(PH)	
Video Tape/Disk Rental	NP	NP	NP	NP	
Office Uses					

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply	MANUFACTURING DISTRICTS				Use-Specific Standards Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	M	MM	MU-LI	MU-R	
Business Support Services	NP	NP	AUP [6]	AUP [3]	
Banks and Financial Services, Retail	NP	NP	–	NP	
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents	NP	NP	–	–	
Medical Practitioners	NP	NP	NP	AUP [3]	
Non-Chartered Financial Institutions	NP	NP	–	–	
Office, Business and Professional	NP	ZC* [4]	AUP [4]	AUP [3]	Error! Reference source not found..B.2
Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses					
Adult-oriented Business	-	-	NP	NP	
Amusement Device Arcade	NP	NP	–	NP	
Bar/Cocktail Lounge/Tavern	NP	NP	–	–	
Commercial Recreation Center	NP	NP	–	NP	
Dance/Exercise/Martial Arts/Music Studio	NP	NP	–	UP(PH)	
Entertainment Establishment	NP	NP	–	UP(PH)	
Food Service Establishment	See Error! Reference source not found..E				
Group Class Instruction	NP	NP	–	UP(PH)	
Gym/Health Club	NP	NP	–	NP	
Hotel, Tourist	NP	NP	NP	NP	
Motel, Tourist	NP	NP	NP	NP	
Theater	NP	NP	UP(PH)*	NP	Error! Reference source not found..B.10
Vehicle Service and Sale Uses					
Alternative Fuel Station	AUP [4]	AUP [4]	AUP [4]	AUP	
Gasoline/Vehicle Fuel Station	NP	NP	NP	NP	
Large Vehicle Sales and Rental	–	NP	AUP [4]	NP	
Small Vehicle Sales and Rental	–	NP	NP	NP	
Tire Sales and Service	–	–	–	NP	
Vehicle Parts Store	NP	NP	NP	UP(PH)	
Vehicle Repair and Service	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Vehicle Rentals	NP	–	–	NP	
Vehicle Sales, New	AUP* [7]	NP	NP	NP	Error! Reference source not found..B.3
Vehicle Sales, Used	AUP* [7]	NP	NP	NP	Error! Reference source not found..B.3
Vehicle Wash	NP	NP	NP	NP	
Vehicle Wrecking	AUP [7]	AUP [4]	AUP* [4]	NP	Error! Reference source not found..B.11
Industrial and Heavy Commercial Uses					
Bus/Cab/Truck/Public Utility Depot	AUP [8]	AUP [8]	AUP* [4]	UP(PH)	Error! Reference source not found..B.4
Commercial Excavation	UP(PH)	UP(PH)	UP(PH)	NP	
Contractors Yard	AUP [7]	AUP [7]	AUP [4]	UP(PH)	

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply	MANUFACTURING DISTRICTS				Use-Specific Standards Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	M	MM	MU-LI	MU-R	
Dry Cleaning and Laundry Plant	ZC* [9]	ZC [9]	ZC [1]	UP(PH)	Error! Reference source not found..B.2
Laboratory					
Commercial Physical or Biological	NP	AUP [4]	UP(PH)*	NP	Error! Reference source not found..B.5
Cannabis Testing	NP	AUP [4]	UP(PH)	NP	
Manufacturing					
Construction Products	ZC* [9]	ZC* [9]	UP(PH)*	NP	
Light Manufacturing	ZC* [7]	ZC* [7]	ZC* [1]	AUP* [3]	Error! Reference source not found..B.5
Pesticides/Herbicides/Fertilizers	NP	NP	NP	–	
Petroleum Refining and Products	NP	NP	NP	–	
Pharmaceuticals	AUP [4]	AUP [4]	AUP* [4]	–	Error! Reference source not found..B.7
Primary Production Manufacturing	AUP [4]	AUP [4]	NP	NP	
Semiconductors	UP(PH)	UP(PH)	NP	–	
Material Recovery Enterprise	-	-	UP(PH)	-	
Media Production	ZC [10]	ZC [10]	ZC [10]	AUP [11]	
Mini-storage	NP	NP	NP	NP	
Recycled Materials Processing	ZC* [9]	ZC* [9]	UP(PH)*	–	Error! Reference source not found..H; Error! Reference source not found..B.9
Recycling Redemption Center	AUP [7]	ZC [9]	UP(PH)*	AUP	Error! Reference source not found..B.9
Repair Service, Non-Vehicle	ZC* [9]	ZC* [9]	ZC* [1]	AUP	Error! Reference source not found..G
Research and Development	-	ZC [12]	ZC [12]	–	
Services to Buildings and Dwellings	AUP	AUP	AUP	AUP	
Warehouse	ZC [9]	ZC [9]	ZC [1]	UP(PH)	
Warehouse-Based Non-Store Retailer	ZC [9]	ZC [9]	ZC [1]	–	
Wholesale Trade	ZC [9]	ZC [9]	ZC* [1]	AUP [3]	Error! Reference source not found..B.13
Incidental Uses					
Amusement Devices	NP	NP	AUP	AUP	
Alcoholic Beverage Service	See Error! Reference source not found.				
Cafeteria, On-Site	ZC [2]	AUP [2]	ZC [2]	AUP	
Child Care Center	NP	NP	See Error! Reference source not found..B		
Columbaria	–	–	–	–	
Food and Beverage for Immediate Consumption	–	AUP [2]	–	–	
Food Service Establishment	AUP [2]	-	AUP [2]	AUP	
Home Occupations	NP	NP	NP	See Error! Reference source not found.	

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply	MANUFACTURING DISTRICTS				Use-Specific Standards Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	M	MM	MU-LI	MU-R	
Live Entertainment	NP	NP	UP(PH)*	UP(PH)*	Error! Reference source not found..D
Retail Sales of Goods Manufactured On-Site	AUP* [13]	AUP* [14]	AUP* [14]	AUP*	Error! Reference source not found..I
Storage of Goods Manufactured On-Site (>25% gross floor area)	ZC	ZC	ZC	AUP	
Wholesale Activities	ZC	ZC	ZC	AUP	
Other Miscellaneous Uses					
Art/Craft Studio	ZC* [10]	ZC [10]	ZC* [10]	AUP [11]	Error! Reference source not found..A
ATM, Exterior and Attached to Bank	AUP	AUP	-	AUP	
ATM, Interior or Exterior and Not With Bank	AUP	AUP	AUP	AUP	
Circus/Carnival	NP	NP	UP(PH)*	UP(PH)	Error! Reference source not found..D
Drive-in Uses	NP	NP	NP	NP	
Live/Work	NP	NP	See Error! Reference source not found.		
Parking Lot/Structure	See Error! Reference source not found..G				
Public Market, Open Air	-	-	UP(PH)* [15]	-	Error! Reference source not found..B.8
Public Market, Enclosed	-	-	AUP [5]	-	
Short-Term Rental	-	-	-	ZC*	Error! Reference source not found.
Urban Agriculture, Low-Impact	ZC	ZC	ZC	ZC	
Urban Agriculture, High-Impact	AUP	AUP	AUP	AUP	
Notes: [1] Requires an AUP for uses 20,000 sq. ft. to 30,000 square feet. Requires a Use Permit for uses more than 30,000 sq. ft. [2] Not permitted 20,000 sq. ft. or more. [3] Requires a Use Permit if 5,000 sq. ft. or more [4] Requires a Use Permit for uses more than 20,000 sq. ft. [5] Not permitted over 2,000 sq. ft. [6] Not permitted over 3,000 sq. ft. [7] Requires a Use Permit for uses more than 40,000 sq. ft. [8] Requires a Use Permit for uses 20,000 sq. ft. to 40,000 square feet. [9] Requires an AUP for uses 20,000 sq. ft. to 40,000 square feet. Requires a Use Permit for uses more than 40,000 sq. ft. [10] Requires an AUP for uses 10,000 sq. ft. to 20,000 square feet. Requires a Use Permit for uses more than 20,000 sq. ft. [11] Allowed with Zoning Certificate if under 1,000 sq. ft.. Requires Use Permit if over 20,000 sq. ft. [12] Requires an AUP for uses more than 20,000 sq. ft. [13] Not permitted 1,500 sq. ft. or more. [14] Requires a Use Permit for sales area 1,501 to 3,000 sq. ft. Not permitted over 3,000 sq. ft. [15] Requires Use Permit for markets over 5,000 sq. ft.					

Section 10. That Berkeley Municipal Code Section 23.302.040.A is hereby amended to read as follows:

23.302.040 – Home Occupations

A. Definitions.

1. ~~**Home Occupation.** A home occupation is a business use conducted on property developed with Residential use, which is incidental and secondary to the residential use, does not change the residential character of the residential use, is limited so as not to substantially reduce the residential use of the legally established dwelling, accessory dwelling unit, accessory building, or group living accommodation room and is operated only by the residents of the subject residence. There are three classifications of Home Occupations. For the purposes of this section, a “customer” is considered a single paying customer, but may include more than one person receiving the services at the same time:

 - a. ~~**Class I Home Occupations.** A Class I home occupation involves no more than five customer visits per day, with no more than four persons receiving services at a time. This class does not allow shipping of goods directly from the subject residence.~~
 - b. ~~**Class II Home Occupations.** A Class II home occupation involves no more than ten customer visits per day, with no more than four persons receiving services at a time and no more than one non-resident engaging in business-related activities on-site. This class does not allow shipping of goods directly from the subject residence.~~
 - c. ~~**Class III Home Occupation.** A Class III home occupation involves one or both of the following:

 - i. ~~More than ten customer visits per day, with no more than four persons receiving services at a time and no more than one non-resident engaging in business-related activities on-site.~~
 - ii. ~~Shipping of goods directly from the subject residence regardless of the number of customer visits per day.~~~~~~

2.1. Permits Required. Table 23.302-1 shows permits required for home occupations.

TABLE ERROR! NO TEXT OF SPECIFIED STYLE IN DOCUMENT.-1: PERMIT REQUIREMENTS FOR HOME OCCUPATIONS

HOME OCCUPATION	PERMIT REQUIRED
Class I	ZC
Class II	AUP
In the Hillside Overlay	Not Permitted
ES-R District	Not Permitted
Class III	
All Commercial Districts and MU-R District	UP (PH)

All other Districts, and in the Hillside Overlay	Not Permitted
--------------------------------------------------	---------------

3.2. Additional Findings -- Class II and Class III Home Occupations. To approve an AUP for a Class II home occupation or a Use Permit for a Class III home occupation, the Zoning Officer or the ZAB must make the permit findings in Section **Error! Reference source not found.** (Specific Permit Requirements) and find that, based on the circumstances of the specific use and property:

- a. The degree of customer visits will not cause a significant detrimental impact on the availability of parking spaces in the immediate vicinity of the home occupation; and
- b. The degree of shipping and delivery activity to and from the subject residence will be compatible with surrounding residential uses and will not cause a significant detrimental impact on pedestrian and bicyclist safety or the availability of parking spaces in the immediate vicinity of the home occupation; and
- c. If the proposed home occupation will require a loading space on a regular basis, such loading space will be available on the subject property or the use of an on-street loading space will not cause a significant detrimental impact on pedestrian and bicyclist safety or the availability of parking spaces in the immediate vicinity of the home occupation; and
- d. The degree of customer visits and shipping and delivery activities shall not cause a detrimental impact to public safety, as determined by the Fire Marshall.

Section 11. That Berkeley Municipal Code Section 23.304.060 is amended to read as follows:

23.304.060 – Accessory Buildings and Enclosed Accessory Structures

- A. **Applicability.** This section applies to accessory buildings and enclosed accessory structures as defined in **Error! Reference source not found.** (Glossary). See Section **Error! Reference source not found.** (Unenclosed Accessory Structures in Residential Districts) and Section **Error! Reference source not found.** (Fences) and for requirements that apply to other unenclosed accessory structures and fences.
- B. **All Districts.**
 1. **Attached or Close to Main Building.** An accessory building or enclosed accessory structure, other than a subterranean structure, that is attached to or within 3 feet of a wall of a main building, is considered a part of the main building for the purposes of setback requirements.

2. **Demolition.** See **Error! Reference source not found..C** (Accessory Buildings) and **Error! Reference source not found..B** (Accessory Buildings) for permits required to demolish accessory buildings.

C. Residential Districts.

1. **Permits Required.** Table 23.304-2 shows permits required for accessory buildings and accessory structures in Residential Districts.

TABLE ERROR! NO TEXT OF SPECIFIED STYLE IN DOCUMENT.-2: PERMIT REQUIREMENTS FOR ACCESSORY BUILDINGS AND ENCLOSED ACCESSORY STRUCTURES

District Location and Building/Structure Type	Permit Required
All Residential Districts Except ES-R	
New accessory buildings	AUP
Alterations to existing accessory buildings	ZC
Enclosed accessory structures on a lot with a main building	ZC
Enclosed accessory structures on a vacant lot without a main building	AUP
Horse stables	AUP [1]
Accessory buildings and structures with Urban Agriculture	ZC
ES-R District	
Under 100 sq. ft.	ZC
100 sq. ft. or more	UP(PH)
On a vacant lot without a main building	UP(PH)
<u>Notes:</u>	
[1] Horse stables are not permitted in the R-S and R-SMU districts	

2. Development and Use Standards.

- a. **Development Standards.** Table 23.304-3 shows development standards for accessory buildings and enclosed accessory structures in Residential Districts.

TABLE ERROR! NO TEXT OF SPECIFIED STYLE IN DOCUMENT.-3: ACCESSORY BUILDING AND ENCLOSED ACCESSORY STRUCTURE STANDARDS IN RESIDENTIAL DISTRICTS

Building/Structure Feature	Standards
Average Height, Maximum	
Less than 4 ft. from lot line	10 ft.

4 ft. to less than 10 ft. from lot line	12 ft.
10 ft. or more from lot line	24 ft.
Setbacks, Minimum	
Front of Interior Lot	50% of lot dept
Front of Through Lot	25% of lot dept
Front of Corner Lot	The setback existing or required on the adjacent lot, whichever is smaller, <u>and</u> the existing setback of main building on the lot
Street Side, Corner Lot	The existing setback of main building on the lot
Interior Side	4 ft. for building/structures within 75 feet of front lot line; as required by Berkeley Building Code for buildings/structures 75 feet or more from front lot line
Edge of Alley	5 ft.
Building Length [1]	24 ft.
Notes:	
[1] Applies to building walls generally parallel to a side lot line.	

b. Deviation from Standards.

- i.* In all Residential Districts except for the ES-R district, the Zoning Officer may approve an AUP to allow an accessory building or enclosed accessory structure to deviate from the standards in Table Error! **No text of specified style in document.**-3. In the ES-R district, deviations require ZAB approval of a Use Permit.
- ii.* To approve the deviation, the review authority must find that the proposed building or structure will not be detrimental to the light, air, privacy, and view of adjacent properties.

- c. Bathroom and Kitchen Facilities.** An accessory building may contain a full bathroom, including handwashing sink, toilet, and tub or shower, as well as cooking facilities, as long as the cooking facilities do not constitute a kitchen.
- d. Rentals.** An accessory building may be rented only as a short-term rental as allowed in Section Error! **Reference source not found.**—Error! **Reference source not found.**.

3. Rebuilding and Replacement.

- a.** Notwithstanding the setback standards in this section and the coverage area standards in Chapter Error! **Reference source not found.**—Error! **Reference source not found.**, an accessory building or enclosed accessory structure may be constructed to replace a pre-existing lawful accessory

building or enclosed accessory structure, if the replacement building or structure is in the same location and has the same or smaller footprint as the previous structure. However, any such replacement structure may not exceed the average height as the previous building or structure; otherwise an AUP is required.

- b. Such replacement buildings and structures are permitted as of right only if an application for a building permit for their construction is submitted at the same time as an application for a building permit for the demolition of the pre-existing building or structure.
- c. The demolition of any accessory building proposed for replacement under this section is subject to Municipal Code Chapter 3.24 (Landmark Preservation Commission

Section 12. That Berkeley Municipal Code Section 23.322.030 Table 23.322-1 is amended to read as follows:

Table 23.322-1 Required Off-Street Parking in Residential Districts

Land Use	Number of Required Off-street Parking Spaces
Residential Uses	
Accessory Dwelling Unit	See Chapter Error! Reference source not found.
Dwellings, including Group Living Accommodations	R-3, R-4, and R-5 Districts (1-9 units): If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per unit. R-3, R-4, and R-5 District (10 or more units): If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per 1,000 sq ft of gross floor area. ES-R: 1 per 1,000 sq ft of gross floor area or one per bedroom, whichever is greater. All Other Districts: If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per unit All Other Locations: None required
Dormitories, Fraternity and Sorority Houses, Rooming & Boarding Houses, Senior Congregate Housing	If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per each 5 residents, plus 1 for manager. All Other Locations: None required.
Rental of Rooms	ES-R: 1 per each roomer or boarder, in addition to any required parking for Dwellings. All Other Districts: If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per each two roomers. All Other Locations: None required
Non-Residential Uses	
All non-residential uses except uses listed below	R-SMU District: 1 per 1,000 sq. ft. All Other Residential Districts: See Error! Reference source not found. .A.2
Community Care Facility	One per two non-resident employees

Land Use	Number of Required Off-street Parking Spaces
Food Service Establishment	1 per 300 sq. ft.
Hospital	R-SMU District: 1 per 1,000 sq. ft. All Other Residential Districts: 1 per each 4 beds plus 1 per each 3 employees
Library	1 per 500 sq. ft. of publicly accessible floor area
Nursing Home	1 per 3 employees
Medical Practitioners	1 per 300 sq. ft.
Non-Medical Offices	R-SMU District: 1 per 1,000 sq. ft. All Other Residential Districts: 1 per 400 sq. ft.
Hotels, Tourist	1 per 3 guest/sleeping rooms or suites plus 1 per 3 employees

Section 13. That Berkeley Municipal Code Section 23.502.020.F is amended to read as follows:

F. “F” Terms.

1. **Facade.** Those portions of a building, including exterior walls, porches, chimneys, balconies, parapets and roof portions, which are visible from a public right-of-way or an adjacent building.
2. **Family.** See Household.
3. **Family Day Care Home.** An establishment providing day care for 14 or fewer children in a dwelling unit as licensed by the California Department of Social Services. A family day care homes must be incidental to a residential use. The day care operator must live in the primary dwelling on the lot.
 - a. **Small Family Day Care Home.** A family day care homes for eight or fewer children, including children who live at the home.
 - b. **Large Family Day Care Home.** A family day care homes for nine to fourteen children, including children who live at the home.
4. **Fence.** A structure made of wood, metal, masonry or other material forming a physical barrier which supports no load other than its own weight, or a hedge, which is designed to delineate, screen or enclose a lot, yard, open space area or other land area.
5. **Firearm/Munitions Businesses.** Any establishment which sells, transfers, leases or offers for sale, transfer or lease any gun, ammunition, munitions, gun powder, bullets, ordnance, or other firearm or firearm parts or supplies.
6. **Floor Area, Gross.** See **Error! Reference source not found.****Error! Reference source not found.**

7. **Floor Area, Leasable.** See **Error! Reference source not found.****Error! Reference source not found.**
8. **Floor Area Ratio (FAR).** See **Error! Reference source not found.****Error! Reference source not found.**
9. **Food Product Store.** A retail products store selling foods primarily intended to be taken to another location to be prepared and consumed, and the incidental preparation of food or beverages for immediate consumption off the premises.
10. **Food and Beverage for Immediate Consumption.** The sale of food or non-alcoholic beverages for immediate consumption not on the premises.
11. **Food Service Establishments.** An establishment which in whole or in part prepares food or beverages for immediate consumption on or off the premises.
 - a. **Carry Out Food Store:** A store which serves food or non-alcoholic beverages for immediate consumption not on the premises, but usually in the vicinity of the store. This use is usually characterized as an establishment which serves food altered in texture and/or temperature on a customer-demand basis, puts such food in non-sealed packages or edible containers, requires payment for such food before consumption, and provides no seating or other physical accommodations for on- premises dining. Examples of this use include delicatessens and other stores without seating which sell doughnuts, croissants, ice cream, frozen yogurt, cookies, whole pizzas and sandwiches. This use excludes bakeries and food products stores.
 - b. **Quick Service Restaurant:** An establishment which serves food or beverages for immediate consumption either on the premises, or to be taken out for consumption elsewhere. This use is usually characterized as an establishment in which food is cooked on a customer-demand basis, payment is required before consumption, limited or no able service is provided (no waiters), and seating or other physical accommodations for on- premises customer dining is provided. Examples of this use include establishments selling primarily hamburgers or other hot or cold sandwiches, hot dogs, tacos and burritos, pizza slices, fried chicken, or fish and chips.
 - c. **Full-Service Restaurant:** An establishment which serves food or beverages for immediate consumption primarily on the premises, with only a minor portion, if any, of the food being taken out of the establishment. This use is characterized as an establishment in which food is cooked or prepared on the premises on a customer-demand basis, which requires payment after consumption, and provides seating and tables for on-premises customer dining with table service (waiters).

12. **Fraternity House.** A building used for group living accommodations by an organization recognized by the University of California at Berkeley or other institution of higher learning.
13. **Front Wall.** The wall of the building nearest the front lot line.

Section 14. That Berkeley Municipal Code Section 23.502.020.R is amended to read as follows:

R. "R" Terms.

1. **Rear Main Building.** A main building situated behind another main building existing or proposed on a parcel located in the R-1A district.
2. **Receiving Lot.** See Lot, Receiving.
3. **Recycled Materials Processing.** A facility that receives and processes recyclable materials. Processing means preparation of material for efficient shipment, or to an end-user's specifications, by such means as baling, briquetting, compacting, flattening, grinding, crushing, mechanical sorting, shredding, cleaning, and remanufacturing.
4. **Recycling Redemption Center.** A facility, use, or structure for the collection of recyclable goods, including beverage containers and newspapers.
5. **Related Equipment.** All equipment necessary for or related to the provision of personal wireless services. Such equipment may include, but is not limited to, cable, conduit and connectors, equipment pads, equipment shelters, cabinets, buildings and access ladders.
6. **Religious Assembly.** A building or space primarily used for an assembly of persons to conduct worship or other religious ceremonies, including, but not limited to, churches, synagogues, temples, mosques or shrines.
7. **Repair Service, Non-Vehicle.** An establishment that provides repair and maintenance services for household appliance, home electronics, office equipment, furniture and other similar items. Excludes vehicle repair.
8. **Research and Development.** An establishment comprised of laboratory or other non-office space, which is engaged in one or more of the following activities: industrial, biological or scientific research; product design; development and testing; and limited manufacturing necessary for the production of prototypes.
9. **Resident.** A person whose primary residence is in Berkeley.
10. **Residential Care Facility.** See Community Care Facility.
11. **Residential Hotel.** See Hotel, Residential.
12. **Residential Addition.** See Addition, Residential.

13. **Residential Districts.** The districts listed under the Residential Districts heading in **Error! Reference source not found.**
14. **Residential Hotel Room.** A room which is:
- a. Used, designed, or intended to be used for sleeping for a period of 14 consecutive days or more;
 - b. Not a complete dwelling unit, as defined in this chapter; and
 - c. Not a Tourist Hotel Room, as defined in this chapter.
15. **Residential Use.** Any legal use of a property as a place of residence, including but not limited to dwelling units, group living accommodations, and residential hotels.
16. **Retail, General.** A retail establishment engaged in the sales of personal, consumer, or household items to the customers who will use such items. This use includes antique stores, art galleries, arts and crafts supply stores, bicycle shops, building materials and garden supplies stores, clothing stores, computer stores, cosmetic/personal care items, department stores, drug paraphernalia stores, drug stores, fabric, textile and sewing supply shops, flower and plant stores, food product stores, furniture stores, garden supply stores, nurseries, gift/novelty shops, household hardware and housewares stores, household electronics/electrical stores, jewelry/watch shops, linen shops includes bedding, musical instruments and materials stores, office supply stores, paint stores, photography equipment supply stores, secondhand stores, sporting goods stores, stationery, cards and paper goods stores toy stores and variety stores. This use excludes video rental stores, service of vehicle parts, ~~nurseries,~~ and firearm/munition sales.
17. **Retaining Wall.** A wall designed to contain and resist the lateral displacement of soil and of which such soil is at a higher elevation on one side of the wall.
18. **Review Authority.** The City official or body responsible for approving or denying a permit application or other form of requested approval under the Zoning Ordinance.
19. **Rooming House.** A building used for residential purposes, other than a hotel, where lodging for 5 or more persons, who are not living as a single household, is provided for compensation, whether direct or indirect. In determining the number of persons lodging in a rooming house, all residents shall be counted, including those acting as manager, landlord, landlady or building superintendent. See also Boarding House.

Section 15: Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 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.

BASELINE ZONING ORDINANCE CONSENT CHANGES MATRIX

Topic	Description	BZO Location	Existing Location	Rationale for Change
23.102 – Introductory Provisions				
Effective Date	Statement of when the Ordinance becomes effective	23.102.020	NEW	Provide effective date
Authority	States that if state law referenced in Zoning Ordinance is amended, the Zoning Ordinance is deemed amended to reference the amended state law	23.102.030	NEW	Added for clarity
Laws of Other Agencies	Removes statement that uses and structures must comply with regulations and laws of other governmental agencies.	N/A	23B.56.040	It is unnecessary to state that uses and structures must comply with the law. Removed for clarity
Approvals Required	Describes approvals required for land uses and development	23.102.050 D	NEW	Expands on existing Section 23A.12.010 to reflect current practice
Conflict with State or Federal Regulations	Explains how to handle conflicts with State and Fed law	23.102.070	NEW	Consistent with the Supremacy Clause of the United States Constitution and Article XI, Section 5(a) of the California Constitution
Conflicts with Other City Regulations	New language: “Where the Zoning Ordinance conflicts with other ordinances, resolutions, or regulations of the City of Berkeley, the more restrictive controls.”	23.102.070.B	NEW	Clarity needed on how to handle conflicting requirements. The Zoning Ordinance does not supersede other City regulations.

Topic	Description	BZO Location	Existing Location	Rationale for Change
Conflicts with Private Agreements	Adds statement that the City is not responsible for monitoring or enforcing private agreements.	23.102.070.C	NEW	Clarifies City role in neighbor disputes involving private agreements
Pending Applications	Clarifies status of applications submitted during transition from ZO to BZO	23.102.080 C	NEW	Necessary to inform status of applications submitted during transition to BZO
Nonconformities	Defines what is considered nonconforming at the time of BZO adoption	23.102.080 E	NEW	Adds up-front reference to nonconformity chapter alongside other transitional provisions
23.104 – Interpreting the Zoning Ordinance				
Purpose	States purpose of chapter	23.104.010	NEW	BZO standard includes purpose statement for each chapter
Authority	Clarifies existing Zoning Officer authority	23.104.020	NEW see 23B.12.020	More accurately state ZO's authority
Rules of Interpretation	New rules of interpretation relating to: meaning and intent; harmonious construction; lists and examples; references to other regulations, publications, and documents; technical and non-technical terms; terms not defined; public officials and agencies; tenses and plurals. New harmonious construction language replaces existing language: "In case of conflict between any of the provisions of this Ordinance, the most restrictive shall apply."	23.104.030	23A.080.010	Provides for consistent application of rules

Topic	Description	BZO Location	Existing Location	Rationale for Change
Zoning Map	Clarifies intention to follow city limits	23.104.050 A 3	NEW	Greater clarity to resolve uncertainty in zoning district boundaries
23.106 Rules and Measurement				
Chapter Purpose	States chapter purpose	23.106.010	NEW	BZO standard includes purpose statement for each chapter
Building Separation	Defines method of building separation measurement (outer wall to outer wall)	23.106.080 A	NEW	Codifies existing practice and increases clarity
23.108 –Zoning Districts and Map				
Chapter Purpose	States chapter purpose	23.108.010	NEW	BZO standard includes purpose statement for each chapter
C-C and C-U Districts	C-1 zone split into two zones: Corridor Commercial (C-C) and University Avenue Commercial (C-U) district. C-U includes University Avenue Strategic Plan Overlay standards.	23.108.020.A	23A.16.020.A	Simplifies and clarifies C-1 rules inside and outside of University Avenue Strategic Plan area
Purpose of Overlay Zones	Explains purpose of overlay zones	23.108.020.C.1	NEW	Provide definition; explains that Overlay Zone regulations are in addition to regulations of underlying zone (not a replacement)

Topic	Description	BZO Location	Existing Location	Rationale for Change
Applicability of Overlay Zone Standards	<p><u>Existing language</u>: “the height, coverage, parking and usable open space shall comply with the provisions of the underlying district.”</p> <p><u>BZO language</u>: “If the overlay zone applies a standard to a property that conflicts with the underlying district, the overlay zone standard governs. If the overlay zone is silent on a standard in the underlying district, the underlying district standard applies.”</p>	23.108.020.C.3	23A.16.030.C	Corrects statement inconsistent with existing use of overlay zones
23.202 – Residential Districts				
Allowed Land Uses	In Residential Districts, unlisted uses are prohibited	23.202.020.B	NEW	Codifies existing practice, making explicit that if a use is not listed in the Allowed Uses Table for Residential Districts, the use is prohibited.
Open Space for ADUs in R-1 District	Removes requirement for ADUs to include usable open space. All standards for ADUs will be addressed in updated ADU chapter.	Table 23.202-2	23D.16.070.F	Codifies existing practice consistent with Gov’t Code Section 65852.2
23.206 – Manufacturing Districts				
Industrial Performance Standards	Removes statements allowing City Manager to establish industrial performance standards.	23.206.040.F	23E.64.070.E 23E.72.070.E 23E.76.070.E 23E.80.D 23E.84.070.H	Language is unnecessary and implies authorization is required for other similar requirements.

Topic	Description	BZO Location	Existing Location	Rationale for Change
23.302 – Supplemental Use Regulations				
Warehouse Storage for Retail Use	Allows on-site storage of goods as an accessory use to a primary retail use in all districts where retail is permitted	23.302.070.J	NEW	Codifies existing practice of allowing retail establishments to store their goods on-site if retail is permitted.
23.304 – General Development Standards				
Setback Projections – Disabled Access	Allows projections into setbacks to accommodate the disabled with a reasonable accommodations request.	23.304.030.B.4	23D.04.030.A2	Confirm with The Americans with Disabilities Act, and the California Fair Employment and Housing Act
Building Height Projections – Public Buildings in Residential Districts	Deletes “the height limit for schools, buildings for religious assembly use, hospitals and other public buildings shall not exceed the height limit permitted for that district. This is true for all uses.”	23.304.050.A	23D.04.020.A; 23E.04.020.A	Removal of extraneous language. Calling out these uses implies other uses may exceed height limit, which is not true.
Adeline Corridor Plan	States that projects in the Adeline Plan Area are subject to mitigation measures in the Adeline Plan FEIR	23.304.140.D	NEW	Adds Adeline Corridor Plan to list of existing plans

Topic	Description	BZO Location	Existing Location	Rationale for Change
23.310 – Alcohol Beverage Sales and Service				
Chapter Purpose	States purpose of chapter	23.310.010	NEW	BZO standard includes purpose statement for each chapter
23.320 – Cannabis Uses				
Chapter Purpose	States purpose of chapter	23.320.010	NEW	BZO standard includes purpose statement for each chapter
23.324 – Nonconforming Uses, Structures and Buildings				
Chapter Purpose	States purpose of chapter	23.324.010	NEW	BZO standard includes purpose statement for each chapter
23.326 – Demolition and Dwelling Unit Control				
Chapter Purpose	States purpose of chapter	23.326.010	NEW	BZO standard includes purpose statement for each chapter
23.328 – Inclusionary Housing				
Required Inclusionary Units in Avenues Plan Area	Deletes “Except as provided in this chapter” from 23C.12.080E, which conflicts with 23C.12.080B: “Within this area, the provisions of this section superseded any inconsistent provisions of this chapter.”	23.328.070.D.1	23C.12.080.E	Maintain internal consistency
23.402 – Administrative Responsibility				
Chapter Purpose	States purpose of chapter	23.402.010	NEW	BZO standard includes purpose statement for each chapter

Topic	Description	BZO Location	Existing Location	Rationale for Change
Review and Decision-Making Authority	Describes purpose of summary table	23.402.020.A	NEW	Description of table
Review and Decision-Making Authority	Defines authority roles (Recommend, Decision, Appeal)	23.402.020.B	NEW	Explains notation meaning
Planning and Development Department	Defines duties of Planning and Development Department	23.402.030	NEW	Codifies existing role and summarizes responsibilities
Landmarks Preservation Commission	Refers reader to BMC Chapter 3.24 for roles and responsibilities of Landmarks Preservation Commission	23.402.050.B	NEW	Provides clarity on LPC role
ZAB Responsibilities and Powers	Provides that City Council may assign additional responsibilities to ZAB	23.402.070.C.2	NEW	Codifies existing Council authority
City Council	Provides that City Council has authority to take actions related to the Zoning Ordinance consistent with existing law	23.402.090.C	NEW	Codifies existing Council authority
23.404 – Common Permit Requirements				
Purpose and Applicability	States purpose of chapter; clarifies that the chapter applies to all discretionary permits, not just use permits and variances	23.404.010	NEW	BZO standard includes purpose statement for each chapter. Clarifies existing practice
Multiple Permit Applications	Clarifies how applications are handled when they require more than one discretionary permit	23.402.020.F	NEW	Codifies existing practice
Review Timeline	Adds statement that City will abide by Permit Streamlining Act	23.404.030.A.3	NEW	Codifies existing practice. Recognizes

Topic	Description	BZO Location	Existing Location	Rationale for Change
				compliance with state law is required
Project Evaluation and Staff Reports	Describes role of staff in reviewing, analyzing and presenting project applications	23.404.030.D	NEW	Codifies existing practice
CEQA	Add statement that City will review projects for CEQA compliance	23.404.030.E	NEW	Codifies existing practice. Recognizes that compliance with state law is required
Timing of Notice	Permits PC or CC to extend notice periods for applications of major significance	23.404.040.C.3	NEW	Best practice in compliance with Gov't Code Section 65091
Zoning Ordinance Amendment Noticing	Adds notice requirements for Zoning Ordinance Amendments	23.404.040.C.4	NEW	Adds notice requirement for Zoning Ordinance Amendments. New requirement here is the same as for discretionary permits
Additional Notice	Adds "The Zoning Officer, Planning Commission or City Council may require additional public notice as determined necessary or desirable."	23.404.040.C.7	NEW	Codifies existing practice
Public Notice for Design Review	States that there is no requirement to mail or post notices in advance of a Design Review Committee meeting	23.404.040.D.2.b	NEW	Codifies existing practice
Public Hearings	Clarifies that hearings will be conducted consistent with procedures developed by the review authority	23.404.050.A	NEW	Codifies existing practice and recognizes that review authorities are empowered to create their own procedures.

Topic	Description	BZO Location	Existing Location	Rationale for Change
Time and Place of Hearings	Clarifies that meetings will be held at time and place for which notice was given unless there is not a quorum	23.404.050.B	NEW	Codifies legal requirement consistent with Gov't Code Section 65091
CEQA Action	Adds that action on a permit's CEQA determination must be taken before a permit is approved	23.404.050.G	NEW	Codifies CEQA Guidelines Sections 15074 and 15090
Exceptions to Protect Constitutional Rights	Allows the City Council as well as ZAB to make exceptions to protect constitutional rights and clarifies that the exception can be made when acting on any permit and is not tied to a Variance	23.404.050.I	23B.44.050	Best practice. Council needs this ability in addition to ZAB to protect City from legal challenge
Payment for Service	Adds that applicant shall pay for mediation or conflict resolution services	23.040.050.J.7	NEW	Codifies existing practice
Effective Dates	Adds effective dates of Council actions on Zoning Ordinance amendments and legislative matters, and permits, appeals and non-legislative matters. Adds effective dates of actions by the Zoning Officer, Design Review Committee or ZAB	23.404.060.A	NEW	Codifies current practice and legal requirements consistent with Gov't Code Section 65853-65857
Expiration of Permit	Adds that if a permit is not exercised after one year, it will not lapse if the applicant has made a substantial good faith effort to obtain a building permit and begin construction.	23.404.060.C.2. b	23B.56.100.C &D	Best practice
Expiration of Permit	Defines a lapsed permit as "void and of no further force and effect," and that a new permit application must be submitted to establish a use or structure.	23.404.060.C.3	NEW	Provides explicit definition of what a lapsed permit means and makes explicit the

Topic	Description	BZO Location	Existing Location	Rationale for Change
				requirement to reapply.
Permit Revocation - City Council Hearing	Removes requirement for the City Council hearing must occur within 30 days after the ZAB issued its recommendation.	23.404.080.D.2	23B.60.050.B	CC hearing within 30 days of ZAB decision is frequently infeasible. Council can hold hearing “at its discretion.”
23.406 – Specific Permit Requirements				
Variances - Eligibility	<p><u>Existing Language:</u> “The Board may grant Variances to vary or modify the strict application of any of the regulations or provisions of this Ordinance with reference to the use of property, the height of buildings, the yard setbacks of buildings, the percentage of lot coverage, the lot area requirements, or the parking space requirements of this Ordinance.”</p> <p><u>BZO Language:</u> “The ZAB may grant a Variance to allow for deviation from any provision in the Zoning Ordinance related allowed land uses, use-related standards, and development standards.”</p>	23.406.050.B.1	23B.44.010	ZAB should have authority to grant a variance to any use or development-related standard, not just uses, heights, yard setbacks, lot coverage, lot area, or parking
Variances – Not Allowed	Adds: “A Variance may not be granted to allow deviation from a requirement of the General Plan.”	23.406.050.C	N/A	Codifies state law consistent with Gov’t Code Section 65906 .
Design Review – Changes to Approved Projects	Describes features of minor changes to approved projects that may be approved administratively: “A change that does not involve a feature of the project that was: 1) a specific consideration by the review authority in granting the approval; 2) a condition of approval; or 3) a basis for a finding in the project CEQA determination.	23.406.070.N	N/A	Codifies current practice
Reasonable Accommodations – Review Procedure	<u>Existing Language:</u> “If an application under this chapter is filed without any accompanying application for another approval, permit or entitlement under this title or Title 21, it shall be heard and acted upon at the same time and in the	23.406.090.E.1	23B.52.040.B	The Americans with Disabilities Act, and the California Fair

Topic	Description	BZO Location	Existing Location	Rationale for Change
	<p>same manner, and be subject to the same procedures, as the application that would normally be required to modify the provision which is the application seeks to modify, as determined by the Zoning Officer.”</p> <p><u>BZO Language</u>: “For a Reasonable Accommodation application submitted independently from any other planning permit application, the Zoning Officer shall take action within 45 days of receiving the application.”</p>			<p>Employment and Housing Act</p> <p>Existing language requires the application to be reviewed in the same manner as a Variance. This conflicts with state and federal law.</p>
23.410 – Appeals				
Appeals – Remanded Matters	Removes option for prior review authority to reconsider application without a public hearing.	23.410.040.G	23B.32.060.D	Remanded matters require public hearing
23.412 – Zoning Ordinance Amendments				
Zoning Ordinance Amendments – Initiation	Deletes language to allow for amendments initiated without a public hearing.	23.412.020	23A.20.020.C	Existing language conflicts with Gov’t Code Section 65853-65857
Zoning Ordinance Amendments – Planning Commission Hearing	Removes requirement to hold Planning Commission hearing within 30 days of initiation.	23.412.040.A	23A.20.030.A	CC hearing within 30 days of PC decision is frequently infeasible. Council can hold hearing consistent with Public Notice section.
Zoning Ordinance Amendments – Effect of Planning	Deletes language that uses or structures not yet established must conform to Planning Commission recommendation before Council approval, when amendments become effective only after Council adoption.	23.412.040.C	23A.20.050.B	New regulations can only take effect after Council adoption.

Topic	Description	BZO Location	Existing Location	Rationale for Change
Commission Recommendation				
Zoning Ordinance Amendments – City Council Hearing	Removes language requiring the Planning Commission recommendation to be forwarded to the Council within 30 days and consideration by Council within 60 days for Commission decision.	23.412.050.A	23A.20.040	CC hearing within 60 days of PC decision is frequently -infeasible. Council can hold hearing consistent with Public Hearings and Decision section.
Zoning Ordinance Amendments – City Council Action	Removes option for Council to act on amendment without a public hearing.	23.412.050.A	23A.20.060.A &B	Conflicts with Gov't Code Section 65853-65857
Zoning Ordinance Amendments – Effective Date	Removes language about “more restrictive” amendments going into effective immediately upon adoption of ordinance.	23.412.050.C	23A.20.070	Conflicts with Gov't Code Section 65853-65857
Zoning Ordinance Amendments – Findings	Adds findings for Zoning Ordinance amendments	23.412.060	N/A	Best Practice.
23.502 – Glossary				
Defined Terms	Adds definitions to undefined terms in existing Zoning Ordinance	23.502	23F.04	Best practice.



Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: March 2, 2022

TO: Members of the Planning Commission

FROM: Justin Horner, Associate Planner

SUBJECT: Public Hearing on Zoning Ordinance Amendments that Address Technical Edits and Corrections to Berkeley Municipal Code (BMC) Title 23 – Package #1

RECOMMENDATION:

Conduct a public hearing to discuss amendments to the following sections of the Berkeley Municipal (BMC) and make a recommendation to City Council.

- BMC Section 23.326.030 (Eliminating Dwelling Units through Demolition)
- BMC Section 23.204.020 (Allowed Land Uses)
- BMC Section 23.204.100 (C-SA Zoning District)
- BMC Section 23.204.110 (C-T Zoning District)
- BMC Section 23.204.130 (C-DMU District)
- BMC Section 23.204.140 (C-W Zoning District)
- BMC Section 23.206 (Manufacturing Districts)
- BMC Section 23.302.040 (Home Occupations)
- BMC Section 23.304.060 (Accessory Buildings and Enclosed Accessory Structures)
- BMC Section 23.322.030 (Required Parking Spaces)
- BMC Section 23.502.020 (Glossary)

BACKGROUND

On October 12, 2021, the City Council passed Ordinance No. 7,787-NS, which repealed the then-existing Title 23 of the Berkeley Municipal Code and zoning maps (“the old Zoning Ordinance”) and adopted a new Title 23 of the Berkeley Municipal Code and zoning maps (“the new Zoning Ordinance”). The new Zoning Ordinance became effective December 1, 2021.

The new Zoning Ordinance was created as a customer service improvement and was limited in scope to changes that reorganized and reformatted Title 23 to make the City’s zoning code easier to understand and administer. Minor “consent changes” were approved by City Council where changes were needed to bring the Ordinance into compliance with State law or to codify zoning interpretations (*Attachment 2*). Other than the “consent changes”, no substantive changes were intended by City Council.

As part of City Council's approval action, staff was directed to regularly return to the City Council with amendments necessary to maintain the integrity of the new Zoning Ordinance. Amendments presented under this direction should be for the purposes of clarifying the new Zoning Ordinance, fixing mistakes in transcription and correcting unintentional errors. Substantive changes in planning policy are not to be included in this set of routine amendments, but should be presented as separate Zoning Ordinance amendments, consistent with BMC Chapter 23.412 (Zoning Ordinance Amendments).

PROPOSED ZONING ORDINANCE AMENDMENTS

Since the new Zoning Ordinance came into effect on December 1, 2021, a number of clean-up amendments have been identified. The project team anticipated technical edits and corrections during the roll-out of the new Zoning Ordinance and was prepared with an efficient process and schedule for addressing these requests. This report is the product of that process and is labeled "Package #1" because we expect a few more of these reports will come before Planning Commission over the course of the next year.

The proposed Zoning Ordinance amendments are presented in two categories. The first category includes nine amendments that require an explanation or justification. These amendments are presented below with information on what was in the old Zoning Ordinance, what is in the new Zoning Ordinance, and why amendments are necessary. The second category includes technical edits such as simple spelling, punctuation or grammatical errors. These amendments are summarized in *Table 1: Text Edits and Other Routine Amendments*.

Category One Zoning Ordinance Amendments

1. BMC Section 23.326.030.A (Eliminating Dwelling Units through Demolition)

Old Zoning Ordinance: Pursuant to Section 23C.08.020.B of the old Zoning Ordinance, demolition of a building constructed prior to June 1980 containing two or more units....

"will not be allowed if the building was removed from the rental market under the Ellis Act during the preceding five (5) years or there have been verified cases of harassment or threatened or actual illegal eviction during the immediately preceding three years."

New Zoning Ordinance: The above provision was not carried over into Section 23.326.030.A of the new Zoning Ordinance, which governs elimination of Buildings with Two or More Units Constructed Before June 1980.

Proposed Amendment: Add the following to [Section 23.326.030.A](#) (Eliminating Dwelling Units through Demolition – Buildings with Two or More Units Constructed Before June 1980). This language is identical to language currently in the new Zoning Ordinance for buildings with a single dwelling unit.

23.326.030.A.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.

2. BMC Section 23.204.020 (Allowed Land Uses)

Old Zoning Ordinance: Pursuant to Section 23C.22.020 of the old Zoning Ordinance, Short-Term Rentals were only permitted in residential uses in the following zoning districts: R-1, R-1A, R-2, R2A, R-3, R-4, R-5, R-S, R-SMU, C-DMU, C-1, C-NS, C-SA, C-T, C-W, and MU-R.

New Zoning Ordinance: This provision was not accurately carried over into [Table 23.204-1: Allowed Land Uses in the Commercial Districts](#) in the new Zoning Ordinance. Table 23.204-1 does not reflect that Short-Term Rentals are not permitted in the C-E, C-SO and C-AC districts.

Proposed Amendment: Amend [Table 23.204-1: Allowed Uses in Commercial Districts](#) to read:

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.030(B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	COMMERCIAL DISTRICTS											USE-SPECIFIC REGULATIONS
	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
Short-Term Rental	See 23.314			NP	See 23.314			NP	See 23.314		NP	

3. BMC Section 23.204.100 (C-SA Zoning District)

Old Zoning Ordinance: Section 23E.52.060.E of the old Zoning Ordinance includes provisions regulating automobile and motorcycle sales that include outdoor activities in the C-SA district. These regulations apply to a Dealership Overlay Area, which the old Zoning Ordinance describes with text.

New Zoning Ordinance: The new Zoning Ordinance replaced the text description of the C-SA Dealership Overlay Area with a map ([Figure 23.204-2 C-SA Dealership Overlay Area](#)). However, all of the parcels located in the Overlay Area have since been rezoned to C-AC. Therefore, there is no need for the map or the Dealership Overlay. Text changes to the C-SA are necessary to clarify that vehicle sales with outdoor activities

are not permitted anywhere in the C-SA district, and to remove standards related to vehicle sales with outdoor activities. Additional text changes are necessary to replace “automobile and motorcycle” with “vehicle,” to be consistent with usage throughout the new Zoning Ordinance and the terms in the Glossary.

Proposed Amendment: Amend [Section 23.204.100.B.5](#) to read:

5. ~~Automobile/Motorcycle~~ Vehicle Sales.
 - a. **Applicability.**
 - i. In the C-SA district, small vehicle service is not permitted. Small vehicle sales that are exclusively indoor operations are permitted with a Zoning Certificate. Otherwise, a Use Permit is required.
 - ii. All new or relocated ~~automobile or motorcycle~~ vehicle sales in the C-SA district shall comply with the requirements of this subsection.
 - iii. Expansions or modifications of existing ~~automobile or motorcycle~~ vehicle sales are:
 1. Encouraged to comply with standards in Paragraph c (Standards) below where feasible; and
 2. Shall not increase or exacerbate a non-conformity with these standards.
 - b. ~~Where Allowed Sales with Outdoor Activities.~~ Where Allowed Sales with Outdoor Activities. New or relocated ~~automobile or motorcycle~~ vehicle sales uses with outdoor activities, including but not limited to storage and display of vehicle inventory, ~~are limited to the Dealership Overlay Area as shown in Figure 23.204-2: C-SA Dealership Overlay Area. are not permitted. Vehicle sales uses must be exclusively indoor operations.~~

[delete Figure 23.204-2: C-SA Dealership Overlay Area]

 - c. **Standards.**
 - ~~i. **Street Frontage.** Outdoor vehicle display is permitted only along Shattuck Avenue and Adeline Street and is limited to 30 percent of the lot frontage on these streets.~~
 - ~~ii. **Area for Outdoor Uses.** A maximum of 40 percent of the lot area may be used for outdoor uses, including but not limited to vehicle display and storage. Adequate landscaping and/or fencing shall be used to filter the view of outdoor uses from the adjacent right-of-way and abutting properties, with the exception of outdoor vehicle display;~~
 - i. **Service Entries.** Vehicle and repair service entries may not exceed 20 percent of the primary lot frontage, no entrance may exceed a width of 20 feet. The primary street frontage is the frontage towards which the primary building entrance is oriented.

- ii. Transparency.** At least 60 percent of any new building shall be within 10 feet of the right-of-way along the primary street frontage and 60 percent of the street-facing facade shall be comprised of clear glass.
- iii. Repair Activities.** All vehicle repair activities shall be conducted indoors.
- iv. Noise.** All noise-generating equipment and activities, such as vehicle repair, shall be shielded by noise-attenuating materials. Outdoor amplification is not permitted.
- v. Lighting.** Exterior light standards and fixtures shall not be taller than 20 feet, shall achieve uniform light coverage and minimize glare, shall use light cutoffs to control light spillover onto adjacent properties and urban sky glow, and shall use low energy light fixtures consistent with the City’s goals for energy efficiency.
- vi. Vehicle Storage.** No vehicles shall be stored in the public right-of-way.

4. BMC Section 23.204.100 (C-SA Zoning District)

Old Zoning Ordinance: Section 23E.52.070.B of the old Zoning Ordinance includes provisions regulating maximum heights for Main Buildings in the C-SA. Maximum height limits vary in the C-SA depending upon the location of properties in three subareas within the district.

New Zoning Ordinance: [Section 23.204.100.D](#) of the new Zoning Ordinance includes development standards for the C-SA district. These development standards include maximum heights, which are detailed in Table 23.204-28 C-SA Maximum Building Heights and a map, Figure 23.204-3 C-SA Building Height Subareas.

Both the Table and the Figure refer to parcels that have since been rezoned to C-AC. Therefore, the map, Figure 23.204-3 C-SA Building Height Subareas, must be amended to exclude those parcels that are no longer in the C-SA district. The amended map has no parcels in Subarea 2. The map’s legend requires a change to reflect that.

Similarly, [Table 23.204-28 C-SA Maximum Building Heights](#) must be amended to remove Subarea 2 and renumber the remaining height subareas.

Proposed Amendment: Amend [Table 23.204-28: C-SA Maximum Building Heights](#) to read:

Building Land Use	Maximum Height		
	Subarea 1	Subarea 2	Subarea 2 3
Non-Residential Uses	36 ft and 3 stories	24 ft and 2 stories	24 ft and 2 stories
Mixed Use and Residential Only	60 ft and 5 stories [1]	50 feet and 4 stories [1]	36 ft and 3 stories [1]
[1] In mixed-use buildings, the third story and above must be used for residential purposes entirely.			

The amended map, Figure 23.204-3 C-SA Building Height Subareas is included as *Attachment 4*.

5. BMC Section 23.204.110 (C-T Zoning District)

Old Zoning Ordinance: Pursuant to Section 23E.56.070 of the old Zoning Ordinance, the Zoning Adjustments Board may approve a Use Permit for a project located in the C-T district, north of Dwight Avenue, to increase a project’s maximum height to 75 feet if at least 50% of the total building floor area is for residential use. The old Zoning Ordinance did not include a maximum number of stories for such a project.

New Zoning Ordinance: In the new Zoning Ordinance, [Table 23.204-33: C-T Allowed Heights and FAR Increases](#) includes a maximum height of “75 ft and 6 stories” for a project located North of Dwight Way, adding the stories limitation where none previously existed.

Proposed Amendment: Amend [Table 23.204-33: C-T Allowed Heights and FAR Increases](#) to read:

Project Location	Allowed Increase	
	Height	FAR
South of Dwight Way	65 ft. and 5 stories	No increase allowed
North of Dwight Way	75 ft. and 6 stories	6.0

6. BMC Section 23.204.130 (C-DMU District)

Old Zoning Ordinance: Section 23E.68.070.C of the old Zoning Ordinance sets forth minimum setbacks for projects in the C-DMU district. Setback requirements are included for a property’s Front Lot Line, Interior Side Lot Line and Rear Lot Line. There are no additional setback requirements for a property’s “street side” lot line.

New Zoning Ordinance: [Table 23.204-39: C-DMU Setback Standards](#) of the new Zoning Ordinance includes setback requirements for a property’s street side lot line that are equivalent for those on a property’s front lot line.

Proposed Amendment: Amend the column headings of [Table 23.204-39: C-DMU Setback Standards](#) to read:

Portion of Building at Height of:	Front or Street Side	Minimum Interior Side		Minimum Rear
		65’ and less from lot frontage	Over 65’ from lot frontage	

7. BMC Section 23.204.140 (C-W Zoning District)

Old Zoning Ordinance: Table 23E.64.030 of the old Zoning Ordinance permits Group Living Accommodations in the C-W District with a Use Permit. Although Section 23.64 does include development standards, it includes no minimum lot area requirement per Group Living Accommodation Resident.

New Zoning Ordinance: [Table 23.204-42: C-W Development Standards](#) in the new Zoning Ordinance includes a minimum lot area requirement per Group Living Accommodation Resident of 350 square feet.

Proposed Amendment: Amend the Lot Area Minimum section of [Table 23.204-42: C-W Development Standards](#) to read:

Basic Standards		Supplemental Standards
Lot Area Minimum		23.304.020 --Lot Requirements
New Lots	No minimum	
Per Group Living Accommodation Resident	350 sq. ft. No minimum	

8. BMC Section.206.020 (Manufacturing Districts)

Old Zoning Ordinance: Table 23E.72.030 of the old Zoning Ordinance indicates that all residential uses are Prohibited in the M district. Accessory Dwelling Units are residential uses.

New Zoning Ordinance: [Table 23.206-1 Allowed Land Uses in Manufacturing Districts](#) in the new Zoning Ordinance indicates that Accessory Dwelling Units are Permitted in the M district.

Proposed Amendment: Amend [Table 23.206-1 Allowed Land Uses in Manufacturing Districts](#) to read:

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply	MANUFACTURING DISTRICTS				Use-Specific Standards Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	M	MM	MU-LI	MU-R	
Residential Uses					
Accessory Dwelling Unit	NP	NP	NP	See 23.306	

9. BMC Section 23.322.030 (Required Parking Spaces)

Old Zoning Ordinance: Section 23D.24.080 of the old Zoning Ordinance included required off-street parking for projects located in the ES-R (Environmental Safety-Residential) district.

New Zoning Ordinance: [Table 23.322-1 Required Off-Street Parking in Residential Districts](#) does not include the off-street parking requirements for projects in the ES-R district.

Proposed Amendment: Amend [Table 23.322-1 Required Off-Street Parking in Residential Districts](#) to read:

Land Use	Number of Required Off-street Parking Spaces
Residential Uses	
Accessory Dwelling Unit	See Chapter 23.306
Dwellings, including Group Living Accommodations	R-3, R-4, and R-5 Districts (1-9 units): If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per unit. R-3, R-4, and R-5 District (10 or more units): If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per 1,000 sq ft of gross floor area. ES-R: 1 per 1,000 sq ft of gross floor area or one per bedroom, whichever is greater. All Other Districts: If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per unit All Other Locations: None required
Dormitories, Fraternity and Sorority Houses, Rooming & Boarding Houses, Senior Congregate Housing	If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per each 5 residents, plus 1 for manager. All Other Locations: None required.
Rental of Rooms	ES-R: 1 per each roomer or boarder, in addition to any required parking for Dwellings. All Other Districts: If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per each two roomers. All Other Locations: None required
Non-Residential Uses	
All non-residential uses except uses listed below	R-SMU District: 1 per 1,000 sq. ft. All Other Residential Districts: See 23.322.030.A.2
Community Care Facility	One per two non-resident employees
Food Service Establishment	1 per 300 sq. ft.
Hospital	R-SMU District: 1 per 1,000 sq. ft. All Other Residential Districts: 1 per each 4 beds plus 1 per each 3 employees
Library	1 per 500 sq. ft. of publicly accessible floor area
Nursing Home	1 per 3 employees
Medical Practitioners	1 per 300 sq. ft.

Land Use	Number of Required Off-street Parking Spaces
Non-Medical Offices	<u>R-SMU District</u> : 1 per 1,000 sq. ft. <u>All Other Residential Districts</u> : 1 per 400 sq. ft.
Hotels, Tourist	1 per 3 guest/sleeping rooms or suites plus 1 per 3 employees

10. BMC Section 23.502.020 (Glossary)

Old Zoning Ordinance: Section 23F.04 of the old Zoning Ordinance consisted of definitions of terms used in the old Zoning Ordinance, similar to the Glossary that is now Section 23.502.020 of the new Zoning Ordinance.

Section 23F.04 of the old Zoning Ordinance included a definition of Retail Products Store, which included a list of examples of types of Retail Products Stores. One type of Retail Product Store, “Flower and Plant Stores” included a note that this type “excludes nurseries.” Nurseries were instead captured under another Retail Product Store type, “Garden Supply Stores, Nurseries.”

New Zoning Ordinance: Section 23.502.020.R of the new Zoning Ordinance includes a new definition, “Retail, General,” which was compiled from the list of Retail Product Store types from the old Zoning Ordinance, but which eliminated some of the subtypes of retail stores. The definition of Retail, General in the new Zoning Ordinance correctly includes nurseries. However, the definition also mistakenly excludes nurseries in its last sentence, as the exclusion of nurseries from one *type* of Retail Produce Store in the old Zoning Ordinance was inadvertently carried as an exclusion from the *entire* Retail, General definition in the new Zoning Ordinance.

Proposed Amendment: Amend the definition of Retail, General in Section 23.502.020.R to read:

Retail, General. A retail establishment engaged in the sales of personal, consumer, or household items to the customers who will use such items. This use includes antique stores, art galleries, arts and crafts supply stores, bicycle shops, building materials and garden supplies stores, clothing stores, computer stores, cosmetic/personal care items, department stores, drug paraphernalia stores, drug stores, fabric, textile and sewing supply shops, flower and plant stores, food product stores, furniture stores, garden supply stores, nurseries, gift/novelty shops, household hardware and housewares stores, household electronics/electrical stores, jewelry/watch shops, linen shops includes bedding, musical instruments and materials stores, office supply stores, paint stores, photography equipment supply stores, secondhand stores, sporting goods stores, stationery, cards and paper goods stores toy stores and variety stores. This use excludes video rental stores, service of vehicle parts, ~~nurseries~~, and firearm/munition sales.

Category Two Zoning Ordinance Amendments

The following table includes minor text edits, along with a rationale for each edit.

Table 1: Text Edits and Other Routine Amendments

Zoning Ordinance Section	Proposed Amendment	Rationale
23.204.020 Table 23.204-1 (Allowed Uses in the Commercial Districts)	ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204. 030 020(B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	Correcting an inaccurate internal reference
23.302.040.A (Home Occupations – Definitions)	Remove entire section	Glossary already contains exact same definition language. Stating it twice raises the opportunity for discrepancies in future updates. One location for definitions is best practice.
23.304.060.C.2 (Accessory Buildings and Enclosed Accessory Structures)	2-3 . Rebuilding and Replacement	Section misnumbered
23.502.020.F.3.A (Glossary: Family Day Care Home)	(a) <i>Small Family Day Care Home</i> . A family day care home s for eight or fewer children, including children who live at the home.	Grammatical correction
23.502.020.F.3.B (Glossary: Family Day Care Home)	(b) <i>Large Family Day Care Home</i> . A family day care home s for nine to fourteen children, including children who live at the home.	Grammatical correction

NEXT STEPS

Staff recommends that the Planning Commission hold a public hearing, receive public testimony, and recommend to City Council adoption of the proposed Zoning Ordinance amendments.

ATTACHMENTS

1. Ordinance – Zoning Ordinance Amendments
2. Consent Changes Matrix
3. Public Hearing Notice
4. Amended Figure 23.204-3 C-SA Building Height Subareas

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL**

Zoning Ordinance Amendments that Address Technical Edits and Corrections to the Berkeley Municipal Code Sections 23.326.030 (Eliminating Dwelling Units through Demolition); 23.204.020 (Allowed Land Uses); 23.204.100 (C-SA Zoning District); 23.204.110 (C-T Zoning District); 23.204.130 (C-DMU District); 23.204.140 (C-W Zoning District); 23.206 (Manufacturing Districts); 23.302.040 (Home Occupations); 23.304.060 (Accessory Buildings and Enclosed Accessory Structures); 23.322.030 (Required Parking Spaces); 23.502.020 (Glossary)

The Department of Planning and Development is proposing amendments to the Zoning Ordinance. On October 12, 2021, the City Council passed Ordinance No. 7,787-NS, which repealed the then-existing Title 23 of the Berkeley Municipal Code and zoning maps (“the old Zoning Ordinance”) and adopted a new Title 23 of the Berkeley Municipal Code and zoning maps (“the new Zoning Ordinance”). The new Zoning Ordinance became effective December 1, 2021.

As part of City Council’s approval action, staff was directed to regularly return to City Council with any required amendments to the new Zoning Ordinance to aid in clarity, fix mistakes in transcription, or correct unintentional errors discovered as part of the transition from the old to the new Zoning Ordinance. The public hearing will consider a set of amendments to the new Zoning Ordinance that address these errors. No substantive changes to planning policy are included in this set of amendments.

The hearing will be held on, **Tuesday, April 26, 2022 at 6:00 PM**. The hearing will be held via videoconference pursuant to Government Code Section 54953(e) and the state declared emergency.

A copy of the agenda material for this hearing will be available on the City’s website at www.CityofBerkeley.info as of **April 14, 2022**. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology.**

For further information, please contact Justin Horner, Associate Planner, at 510-981-7476.

Written comments should be mailed directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, or emailed to council@cityofberkeley.info in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City’s electronic records, which are accessible through the City’s website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact

information to be made public, you may deliver communications via U.S. Postal Service. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or clerk@cityofberkeley.info for further information.

Published: April 15, 2022 per California Government Code Sections 65856(a) and 65090.

~~~~~

I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on April 14, 2022.

\_\_\_\_\_  
Mark Numainville, City Clerk

