

ORDINANCE NO. 7,830-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 23.202.140 Figure 23.202-2 is amended as follows:

Figure 23.202-2. R-SMU SUBAREAS



↑ N
  Residential Mixed Use (R-SMU)
  Height Sub Area One
  Height Sub Area Two
 Parcel boundaries as of [adoption date]

Section 2. That Berkeley Municipal Code Section 23.204.020 Table 23.204-1 is amended 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 23.204.020(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 23.306—Accessory Dwelling Units											
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)	23.204.060.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)	23.204.060.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)	23.204.060.B.3
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)	23.204.060.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)	23.204.060.B.3
Mixed-Use Residential	UP(PH)	UP(PH)*	UP(PH)	UP(PH)	UP(PH)	UP(PH)*	UP(PH)	UP(PH)	UP(PH)	See Table 23.204-41	UP(PH)	23.204.060.B.3; 23.204.100.B.4
Senior Congregate Housing	See 23.302.070.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 23.302.070.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 0		--	--	See 0							
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)*	23.204.060.B.2; 23.310
Cannabis Retailer	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	23.320; 12.21; and 12.22
Cannabis Retailer, Delivery Only	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	--	23.320; 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)*	23.302.070.D
Industrial and Mining Products	--	--	--	--	--	--	--	--	--	--	--	

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	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
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*	23.204.040.E (for department stores) 23.204.040.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.I
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]	23.204.110.B.6
Banks and Financial Services, Retail	AUP	AUP	UP(PH)	UP(PH)	UP(PH)	ZC [1]	AUP*	UP(PH)	ZC*	AUP	ZC	23.204.110.B.6; 23.204.130.B.3; 23.204.130.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]	23.204.040.D;23.204.110.B.6; 23.204.130.D.3
Medical Practitioners	ZC [1]	ZC [1]	AUP	NP	UP(PH)	ZC [1]	AUP*	UP(PH)	ZC*	ZC [5]	ZC [6]	23.204.040.D; 23.204.110.B.6; 23.204.130.D.3
Non-Chartered Financial Institutions	UP(PH)*	UP(PH)*	NP	NP	NP	UP(PH)*	UP(PH)*	NP	NP	UP(PH)*	UP(PH)	23.302.070.F 23.204.110.B.6
Office, Business and Professional	ZC [1]	ZC [1]	AUP*	AUP*	AUP*	ZC [1]	AUP*	AUP*	ZC*	ZC [5]	ZC [6]	23.204.040.B; 23.204.110.B.6; 23.204.130.D.3
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	23.302.070.A
Amusement Device Arcade	UP(PH)*	UP(PH)*	NP	NP	NP	UP(PH)*	NP	NP	UP(PH)*	UP(PH)*	UP(PH)	23.302.070.B
Bar/Cocktail Lounge/Tavern	UP(PH)*	UP(PH)*	UP(PH)*	-	NP	UP(PH)*	UP(PH)*	NP	UP(PH)*	UP(PH)*	UP(PH)	23.204.100.B.3; 23.204.110.B.2; 23.310
Commercial Recreation Center	See 23.204.040.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 23.204.040.E											
Group Class Instruction	ZC [1]	ZC [1]	AUP	AUP	AUP*	ZC [1]	ZC*	AUP	ZC*	ZC	ZC	23.204.040.B
Gym/Health Club	See 23.204.040.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)	23.204.110.B.4;

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	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC		
													23.204.140.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)		23.204.140.B.3
Large Vehicle Sales and Rental	AUP	NP	NP	NP	NP	NP	NP	NP	NP	AUP* [8]	NP		23.204.140.B.3
Small Vehicle Sales and Service	AUP	NP	NP	NP	NP	UP(PH)*	NP	NP	UP(PH)	UP(PH)*	NP		23.204.100.B.5; 23.204.140.B.3
Tire Sales and Service	UP(PH)	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH)*	NP		23.204.140.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		23.204.140.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		23.204.100.B.5 23.204.140.B.3
Vehicle Sales, Used	AUP	NP	NP	NP	NP	UP(PH)*	NP	NP	UP(PH)	UP(PH)*	NP		23.204.100.B.5; 23.204.140.B.3; 23.204.140.D.4
Vehicle Wash	UP(PH)	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH)*	NP		23.204.140.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)		23.204.130.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	--	--	--	--	--	--	--	--	--	--	--		
Services to Buildings and Dwellings	--	--	--	--	--	--	--	--	--	AUP	--		
Warehouse	UP(PH)	NP	NP	NP	NP	NP	NP	--	UP(PH)	NP	NP		
Warehouse-Based Non-Store Retailer	--	--	--	--	--	--	--	--	--	--	--		

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	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC		
Wholesale Trade	-	-	-	-	-	-	-	-	-	-	AUP [8]	-	
Incidental Uses													
Amusement Devices	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	UP(PH)	23.302.070.B
Alcoholic Beverage Service	See 23.310												
Cafeteria, On-Site	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	AUP	UP(PH)	
Columbaria	See 23.302.070.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 23.302.020.D												
Manufacturing	AUP	AUP	UP(PH)	UP(PH)	NP	UP(PH)	AUP	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*	AUP	23.302.020.C
Wholesale Activities	AUP*	AUP*	UP(PH)*	UP(PH)*	NP	AUP*	AUP*	AUP*	AUP*	AUP*	AUP	AUP	23.204.080.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	AUP	23.204.120.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)	UP(PH)	23.204.130.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)	UP(PH)	
Drive-in Uses	UP(PH)	NP	NP	NP	UP(PH)	UP(PH)	NP	UP(PH)	NP	NP	UP(PH)		
Home Occupations	See 23.302.040												
Live/Work	See 23.312												
Parking Lot/Structure	See 23.302.070.G												
Public Market, Open Air	AUP	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	AUP [9]	AUP	
Short-Term Rental	See 23.314			NP	See 23.314			NP	See 23.314			NP	
Urban Agriculture, Low-Impact	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC	ZC	ZC	23.318
Urban Agriculture, High-Impact	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP	AUP	AUP	23.318
Wireless Telecommunication Facility	See 23.332—Wireless Communication Facilities												
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 23.204.030 is hereby amended as follows:

23.204.030 Additional Permit Requirements.

A. *New Floor Area.*

1. *When Permit is Required.* A project that creates new floor area for any use requires permits as shown in Table 23.204-2: New Floor Area Permit Requirements. Creation of new floor area includes:

- (a) Construction of new main buildings or accessory buildings;
- (b) Additions to existing buildings; or
- (c) The installation of new floor or mezzanine levels within or onto existing buildings.

Table 23.204-2. NEW FLOOR AREA PERMIT REQUIREMENTS

DISTRICT/NEW GROSS FLOOR AREA	PERMIT REQUIRED FOR NEW FLOOR AREA
C-C, C-U	
Less than 5,000 sq. ft.	ZC
5,000 sq. ft. or more	UP(PH)
C-N, C-E, C-SO (any amount of new floor area)	UP(PH)
C-NS	
Less than 2,000 sq. ft.	ZC
2,000 sq. ft. or more	UP(PH)
C-SA	
Less than 3,000 sq. ft.	ZC
3,000 sq. ft. or more	UP(PH)
C-T	--
Less than 1,500 sq. ft.	AUP
1,500 sq. ft. or more	UP(PH)
C-DMU	
Less than 10,000 sq. ft.	ZC

DISTRICT/NEW GROSS FLOOR AREA	PERMIT REQUIRED FOR NEW FLOOR AREA
10,000 sq. ft. or more	UP(PH)
C-W	
5,000 sq. ft. or more except when an AUP is required below	UP(PH)
7,500 sq. ft. or less in a building containing only retail uses	AUP
20,000 sq. ft. or less in a building with residential and retail space that is more than 15% and less than 33% of the floor area being created	AUP
C-AC	
New Main Building or New Dwelling Unit	UP(PH)
Addition of 5,000 sq ft or more	UP(PH)

2. *C-DMU Findings.* To approve a Use Permit for new floor area in the C-DMU district, the ZAB must find that:

- (a) The addition or new building is compatible with the visual character and form of the district; and
- (b) No designated landmark structure, structure of merit, or historic district in the vicinity would be adversely affected by the appearance or design of the proposed addition.

3. *C-W Findings.* To approve an AUP or Use Permit for new floor area in the C-W district, the review authority must find that the new use or structure provides an intensity of development which does not underutilize the property.

4. *C-AC Findings.* To approve a Use Permit for new floor area in the C-AC district, the review authority must find that the proposed use or structure will:

- (a) Be compatible with the purposes of the District;
- (b) Be compatible with the design and character within the District and the adjacent residential neighborhoods;
- (c) Encourage utilization of public transit and off-street parking facilities in the area of the proposed building; and

(d) If a new residential development, that the proposed use or structure facilitates construction of affordable housing as defined by the US Department of Housing and Urban Development (HUD) Guidelines.

B. Tenant Space Reconfiguration.

1. Reconfiguration of tenant space in an existing building requires a permit as listed in Table 23.204-3: Tenant Space Reconfiguration Permit Requirements.
2. As used in this section, tenant reconfiguration means any physical change to an existing building’s walls separating leased spaces so as to change:
 - (a) The number of lease spaces for commercial businesses; or
 - (b) The square footage of leasable floor area of an existing commercial lease space.

Table 23.204-3. TENANT SPACE RECONFIGURATION PERMIT REQUIREMENTS

District	Permit Required for Tenant Space Reconfiguration Project
C-C, C-U	
Less than 5,000 sq. ft.	ZC
5,000 sq. ft. or greater	AUP
C-N, C-E, C-NS, C-SO (All reconfiguration projects)	AUP
C-SA, C-DMU, C-AC	No additional permit required
C-T	
Increasing the number of individual tenant spaces	ZC
5,000 sq. ft. or greater	AUP
Creating a tenant space less than 1,000 sq. ft.	AUP
C-W	
Less than 5,000 sq. ft	ZC
In existing buildings in a designated node affecting 5,000 sq. ft. or greater	AUP

C. *Major Residential Additions.*

1. *Where Allowed/Required Permits.*

(a) Major residential additions in the C-W district require an AUP.

(b) No additional permits are required for major residential additions in all other C districts.

2. *Findings.* To deny an AUP for a major residential addition in the C-W district, the review authority must find that although the proposed major residential addition satisfies all other standards of the Zoning Ordinance, the addition would unreasonably obstruct sunlight, air, or views.

D. *Changes to Nonconforming Structures.* See Section [23.324.050](#)--Nonconforming Structures and Buildings for permits required to modify structures that do not conform to setback, height, and other development standards.

E. *Accessory Structures.* For accessory structure permit requirements, see the following:

1. Section [23.304.060](#)--Accessory Buildings and Enclosed Accessory Structures.
2. Section [23.304.070](#)--Unenclosed Accessory Structures in Residential Districts.
3. Section [23.304.080](#)--Fences. (Ord. 7787-NS § 2 (Exh. A), 2021)

Section 4. That the Berkeley Municipal Code 23.204.130.E.6 is hereby amended as follows:

6. *Open Space Alternatives.*

- a. In lieu of providing the open space required by this section on-site, an applicant may either:
 - i. Pay an in-lieu fee to help fund the Streets and Open Space Improvement Plan (SOSIP); and/or
 - ii. Construct public improvement consistent with the SOSIP.
- b. Payment of a fee in lieu of providing publicly accessible open space requires a Use Permit. To allow payment of an in-lieu fee, the ZAB must find that the payment will support timely development of open space improvements that will serve the needs of project residents and other people living in and using the downtown.

- c. Construction of public improvements consistent with the SOSIP in lieu of open space requires a Use Permit. To allow construction of public improvements, the ZAB must find that the public improvements:
 - i. Will be located within the vicinity of the project and are consistent with the SOSIP;
 - ii. Will be coordinated with other ongoing or approved SOSIP or other right-of-way improvements in the vicinity, and will not create a hazardous situation or an unusual appearance in the downtown; and
 - iii. Will be finished before issuance of a certificate of occupancy for the project, unless otherwise allowed by the project conditions of approval.

Section 5. That Berkeley Municipal Code 23.206.202 Figure 23.206-6 is hereby amended as follows:

TABLE 23.206-6: PERMITS REQUIRED FOR CHANGES TO PROTECTED LAND USES

Zoning District	Change to Protected Use	Permit Required
MM	Change any amount of ground-floor protected use to a non-protected use	UP(PH)
MU-LI	Change less than or equal to 20,000 sq. ft. or less than or equal to 25% of protected use to a non-protected use	AUP
	Change over 20,000 sq. ft. or over 25% of protected use to a non-protected use	UP(PH)

Section 6. That Berkeley Municipal Code Section 23.302.030.D.3.d is amended to read as follows:

- (d) Permits issued pursuant to this subsection must be posted in plain view within the commercial establishment for which the permit has been issued

Section 7. That Berkeley Municipal Code Section 23.302.070.E.3 is amended as follows:

- 3. *Notification of Decision.* Food service establishments requiring an AUP in the C-N, C-E, C-NS, C-SA, C-T, C-SO districts must provide public notification of decision (NOD) within a 300-foot radius of the subject property.

Section 8. That Berkeley Municipal Code Section 23.404.040.C is amended as follows:

C. Public Notice for Zoning Ordinance Amendments.

1. **When Required.** Public notice shall be given as required by this section for Planning Commission and City Council hearings on proposed Zoning Ordinance Amendments.
2. **Content of Notice.** Notice of a public hearing shall contain the following information:
 - a. The date, location, and time of the hearing.
 - b. A written description of the proposed amendment.
 - c. A map showing the location of a proposed Zoning Map amendment, if applicable.
 - d. The environmental review status under the California Environmental Quality Act (CEQA).
 - e. Directions on how to obtain further information about the proposed amendment or hearing.
 - f. Instructions to submit written comments on the proposed amendment.
3. **Timing of Notice.** Notice shall be provided at least 10 days before the hearing unless a longer notice period is required by state law. The Planning Commission or City Council may require an extended notice period for applications of major significance.
4. **All Zoning Ordinance Amendments.** The following notice requirements apply to all Zoning Ordinance Amendments.
 - a. Notice shall be posted at the Civic Center (Old City Hall) and in the lobby of the Permit Service Center.
 - b. Notice shall be mailed to:
 - i.* Neighborhood and community organizations with a registered interest in receiving notice of the proposed amendment. See Section 23.404.040.E (Public Notice).
 - ii.* The City of Berkeley Central Library; and
 - iii.* Any person who has filed a written request for notice.
5. **Zoning Ordinance Text Amendments.** In addition to requirements in Paragraph 4 (All Zoning Ordinance Amendments) above, notice of a Zoning Ordinance Text Amendment shall be published in a newspaper of general circulation in the city at least 7 days before the hearing.

6. **Zoning Ordinance Map Amendments.** The following notice requirements apply to Zoning Ordinance Map Amendments in addition to requirements in Paragraph 4 (All Zoning Ordinance Amendments) above.
 - a. **Less the 5 Acres.** For Zoning Map Amendments affecting an area less than 5 acres, public notice shall be:
 - i. Posted at three visible locations in the vicinity of the subject property; and
 - ii. Mailed to subject property owners, residents and tenants of the subject property, and all property owners, residents, and tenants within 300 feet of any part of the subject property.
 - b. **5 Acres or More.** For Zoning Map Amendments affecting an area 5 acres or more, public notice shall be:
 - i. Posted on each street frontage adjacent to the subject property.
 - ii. Mailed to all property owners, residents, and tenants within the subject property.
 - iii. Published twice in a newspaper of general circulation in the city at least 14 days before the hearing, and then again at least 7 days before the hearing.
7. **Additional Notice.** The Zoning Officer, Planning Commission, and City Council may require additional public notice as determined necessary or desirable.
8. **Failure to Receive Notice.** The validity of the hearing shall not be affected by the failure of any property owner, resident, tenant, or neighborhood or community organization to receive a mailed notice.

Section 9. That Berkeley Municipal Code Section 23.502.020.F.3 is hereby amended to read as follows:

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 and must be operated in the dwelling unit or accessory building where the family day care operator resides.
 - 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.

Section 10: 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.

At a regular meeting of the Council of the City of Berkeley held on July 12, 2022, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Hahn, Harrison, Kesarwani, Robinson, Taplin, Wengraf, and Arreguin.

Noes: None.

Absent: Droste.

