

AGENDA



BERKELEY CITY COUNCIL MEETING

Tuesday, September 28, 2021

6:00 PM

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI

DISTRICT 2 – TERRY TAPLIN

DISTRICT 3 – BEN BARTLETT

DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN

DISTRICT 6 – SUSAN WENGRAF

DISTRICT 7 – RIGEL ROBINSON

DISTRICT 8 – LORI DROSTE

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

Live audio is available on KPFB Radio 89.3. Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at <http://www.cityofberkeley.info/CalendarEventWebcastMain.aspx>.

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/82143975247>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.

*To join by phone: Dial 1-669-900-9128 or 1-877-853-5257 (Toll Free) and enter Meeting ID: 821 4397 5247. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

Please be mindful that the teleconference will be recorded as any Council meeting is recorded, and all other rules of procedure and decorum will apply for Council meetings conducted by teleconference or videoconference.

To submit a written communication for the City Council's consideration and inclusion in the public record, email council@cityofberkeley.info.

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900. The City Council may take action related to any subject listed on the Agenda. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.

Preliminary Matters

Roll Call:

Ceremonial Matters: *In addition to those items listed on the agenda, the Mayor may add additional ceremonial matters.*

1. Adjournment in Memory of Professor Leon Litwack, UC Berkeley Professor

City Manager Comments: *The City Manager may make announcements or provide information to the City Council in the form of an oral report. The Council will not take action on such items but may request the City Manager place a report on a future agenda for discussion.*

Public Comment on Non-Agenda Matters: *Persons will be selected to address matters not on the Council agenda. If five or fewer persons wish to speak, each person selected will be allotted two minutes each. If more than five persons wish to speak, up to ten persons will be selected to address matters not on the Council agenda and each person selected will be allotted one minute each. The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda.*

Consent Calendar

The Council will first determine whether to move items on the agenda for "Action" or "Information" to the "Consent Calendar", or move "Consent Calendar" items to "Action." Three members of the City Council must agree to pull an item from the Consent Calendar for it to move to Action. Items that remain on the "Consent Calendar" are voted on in one motion as a group. "Information" items are not discussed or acted upon at the Council meeting unless they are moved to "Action" or "Consent".

No additional items can be moved onto the Consent Calendar once public comment has commenced. At any time during, or immediately after, public comment on Information and Consent items, any Councilmember may move any Information or Consent item to "Action." Following this, the Council will vote on the items remaining on the Consent Calendar in one motion.

For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again at the time the matter is taken up during the Action Calendar.

Public Comment on Consent Calendar and Information Items Only: *The Council will take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. Speakers will be entitled to two minutes each to speak in opposition to or support of Consent Calendar and Information Items. A speaker may only speak once during the period for public comment on Consent Calendar and Information items.*

Additional information regarding public comment by City of Berkeley employees and interns: Employees and interns of the City of Berkeley, although not required, are encouraged to identify themselves as such, the department in which they work and state whether they are speaking as an individual or in their official capacity when addressing the Council in open session or workshops.

Recess Items

- Contract No. 32100192 Amendment: California Constructores for Construction of Pedestrian Improvements at California Street/Dwight Way Intersection**
From: City Manager
Recommendation: Adopt a Resolution ratifying the action taken by the City Manager during recess to amend Contract No. 32100192 with California Constructores for work on the Fiscal Year 2020 Sidewalk Repairs Project, Specification No. 20-11409-C, to perform safety-related pedestrian improvements at the California Street/Dwight Way intersection, increasing the current contract amount by up to \$175,900, for a total amount not to exceed \$2,175,900.
Financial Implications: General Fund - \$175,900
Contact: Liam Garland, Public Works, (510) 981-6300

Consent Calendar

- Amendments to Berkeley Municipal Code Section 19.44.020 (Housing Advisory Commission)**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,782–N.S. amending Berkeley Municipal Code Chapter 19.44.020 to include oversight of Measure O bond-funded housing initiatives as established by Resolution No. 68,703-N.S. and future voter-approved bonds and measures dedicated to affordable housing.
First Reading Vote: All Ayes.
Financial Implications: See report
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- Transfer of Two Property Parcels to the State of California for the Ashby-San Pablo Intersection Improvements Project**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,783-N.S. authorizing the City Manager to execute the attached Grant Deed for Parcel No. 63719 and Quitclaim Deed for easement on Parcel No. 63720-1 with the State of California, Department of Transportation (“Caltrans”) and any associated documents as necessary for the transfer of the property interests in these two parcels of property to Caltrans, for the Ashby-San Pablo Intersection Improvements Project (“Project”), Specification No. 18-11182-C.
First Reading Vote: All Ayes.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300

Consent Calendar

- 4. Contract No. 9712A Amendment: QuickCaption, Inc. for Real-Time Closed Captioning Stenography Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 9712A with QuickCaption, Inc. for the provision of real-time closed captioning stenography services, including captioning virtual meetings, at all work sessions, regular and special meetings of the City Council and Successor Agency to the former Redevelopment Agency, increasing the contract by \$120,000 for a total not to exceed amount of \$321,900.
Financial Implications: General Fund - \$120,000
Contact: Mark Numainville, City Clerk, (510) 981-6900
- 5. Grant from the William and Flora Hewlett Foundation**
From: City Manager
Recommendation: Adopt a Resolution accepting a \$10,525 grant from the William and Flora Hewlett Foundation, which augments a prior grant of \$20,000 awarded and accepted in 2019 for an assessment of arts space affordability challenges, displacement risks and possible strategies to protect affordable spaces for arts organizations, artists and cultural workers in Berkeley.
Financial Implications: \$10,525 (Grant)
Contact: Dave White, City Manager's Office, (510) 981-7000
- 6. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on September 28, 2021**
From: City Manager
Recommendation: Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.
Financial Implications: Various Funds - \$6,675,000
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 7. Contract: Genasys for Citywide Outdoor Warning System**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to enter into a contract with Genasys, Inc. for consulting, planning, construction, installation, software hosting, and implementation of a Citywide Outdoor Warning System (OWS), for a total amount not to exceed \$1,974,457.
Financial Implications: Measure FF - \$1,974,457
Contact: Abe Roman, Fire, (510) 981-3473

Consent Calendar

- 8. Grant Application: Funding from FEMA’s Assistance to Firefighters Grant to Support a Regional Fire Service Leadership Development Academy**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to apply for and accept a grant, and any amendments, from the Federal Emergency Management Agency (FEMA) Assistance to Firefighters Grant Program in the amount of \$168,272 to fund a Regional Fire Service Leadership Development Academy (LDA), and to accept grant funds and execute resulting grant agreements.
Financial Implications: See report
Contact: Abe Roman, Fire, (510) 981-3473
- 9. Contract No. 31900132 Amendment: Building Opportunities for Self-Sufficiency for Representative Payee Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute a contract amendment with vendor Building Opportunities for Self-Sufficiency (BOSS) to provide Representative Payee services. The amendment will add \$100,000 to the current contract and extend it through June 30, 2022 for a total contract not to exceed amount of \$300,000.
Financial Implications: Mental Health Service Act Fund - \$100,000
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 10. Contract: Berkeley Free Clinic for Laboratory Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute a contract and any amendments or extensions with the Berkeley Free Clinic (BFC) for laboratory services, in an amount not to exceed \$150,000 for the period July 1, 2021 through June 30, 2024.
Financial Implications: General Fund - \$150,000
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 11. Memorandum of Understanding with Alameda County Behavioral Health Care Services for Wellness Center Operations**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to adopt a Memorandum of Understanding between the City of Berkeley and Alameda County Behavioral Health Care Services for the term July 1, 2021 through June 30, 2023 for an expenditure of up to \$491,933 to fund the operational costs of a Mental Health Wellness Center located in Berkeley.
Financial Implications: Mental Health Service Act Fund - \$491,933
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

Consent Calendar

- 12. Donation: Memorial Bench at Cesar Chavez Park in Memory of Nancy Park**
From: City Manager
Recommendation: Adopt a Resolution accepting a cash donation in the amount of \$3,400 for a memorial bench to be placed at Cesar Chavez Park in memory of Nancy Park.
Financial Implications: \$3,400 (donation)
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 13. Donation: Memorial Bench at Greg Brown Park in memory of Michael, Anna, and John Wyman**
From: City Manager
Recommendation: Adopt a Resolution accepting a cash donation in the amount of \$3,400 for a memorial bench to be placed at Greg Brown Park in memory of Michael, Anna, and John Wyman.
Financial Implications: \$3,400 (donation)
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 14. Donation: Memorial Bench at the Jane Hammond Softball Field at Corodonicos Park in memory of Dixie Lewis**
From: City Manager
Recommendation: Adopt a Resolution accepting a cash donation in the amount of \$3,400 for a memorial bench to be placed at the Jane Hammond Softball Field at Codornices Park in memory of Dixie Lewis.
Financial Implications: \$3,400 (donation)
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 15. Donation: Memorial Bench at Shorebird Park at the Berkeley Marina in Memory of Shay M. Finnegan**
From: City Manager
Recommendation: Adopt a Resolution accepting a cash donation in the amount of \$3,400 for a memorial bench to be placed at Shorebird Park in memory of Shay M. Finnegan.
Financial Implications: \$3,400 (donation)
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 16. Exclusive Negotiating Agreement with Innovation Properties Group for 199 Seawall Drive**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute an Exclusive Negotiating Agreement with Innovation Properties Group to develop a pre-development agreement that could lead to a long-term lease of City property at 199 Seawall Drive and a short-term license for a portion of the adjacent parking lot.
Financial Implications: None
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

Consent Calendar

- 17. Contract No. 10508 Amendment: Ben Noble, City and Regional Planning for Zoning Ordinance Revision Project (ZORP)**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 10508 with Ben Noble, City and Regional Planning, to develop objective standards in the Zoning Ordinance as ZORP Phase 2, increasing the contract amount by \$125,000 to a new total not-to-exceed contract amount of \$425,000, and extending the contract period to December 31, 2023.
Financial Implications: General Fund - \$125,000
Contact: Jordan Klein, Planning and Development, (510) 981-7400
- 18. Lease Agreement with Motorola Solutions for Public Safety Radios**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to enter into an initial seven-year lease and any future amendments with seven annual payments estimated at \$920,000 and not to exceed \$6.5 million dollars total for public safety radios with Motorola Solutions.
Financial Implications: See report
Contact: Jennifer Louis, Police, (510) 981-5900, Abe Roman, Fire, (510) 981-3473
- 19. Purchase Orders: Bruce's Tire, Inc. for New Automobile and Truck Tires**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute yearly purchase orders for new tires for City owned vehicles and equipment with Bruce's Tire, Inc. in an amount not to exceed \$2,900,000 for FY 2022 through FY 2026.
Financial Implications: Equipment Maintenance Fund - \$2,900,000
Contact: Liam Garland, Public Works, (510) 981-6300
- 20. Extending the Requirements for Telestaff Time Reporting**
From: Disaster and Fire Safety Commission
Recommendation: The Disaster and Fire Safety Commission (DFSC) recommends that the Berkeley Fire Department require that all overtime recorded for Fire Suppression be coded properly in the Telestaff application to show the reason for the overtime. Further, to assist determining what overtime is eligible to be charged to Measure GG as "Minimum Staffing" that overtime must be properly coded as supporting minimum staffing. (Currently, this would be code 00FS10 and 00FS11). This would not affect charges for Measure GG approved time or overtime. In addition, we recommend that in any future reports to the DFSC on Measure GG budget that the report include a breakdown of the time by labor purpose of both regular and overtime.
Financial Implications: See report
Contact: Keith May, Commission Secretary, (510) 981-3473

Consent Calendar

21. **Appointment of Tommy Escarcega to Mental Health Commission**

From: Mental Health Commission

Recommendation: Adopt a Resolution appointing: Tommy Escarcega as a representative of the Special Public Interest, Consumer Category, to complete her first 3-year term beginning September 29, 2021 and ending September 28, 2024.

Financial Implications: None

Contact: Jamie Works-Wright, Commission Secretary, (510) 981-5400

Council Consent Items

22. **Referral to Strengthen Public Health and Environmental Impact Mitigation for Industrial Facilities in the Manufacturing Zone**

From: Councilmember Kesarwani (Author), Councilmember Taplin (Co-Sponsor), Councilmember Droste (Co-Sponsor), Councilmember Wengraf (Co-Sponsor)

Recommendation: Refer to the City Manager to: Establish a procedure for enhanced review of use permits in the manufacturing zone for industrial facilities—upon initial submission or upon submission of an amended use permit—in order to ensure public health and environmental impacts are appropriately mitigated as a condition of the use permit. Further, if appropriate, consider mitigation that includes the use-permit applicant contracting with a certified third-party to install air quality monitoring device(s) that can enable periodic reporting on pollutants relevant to the particular industrial process proposed in the initial or amended use permit. Explore feasibility of increasing penalty fee schedule as a deterrence for use-permit violations related to public health and environmental impacts, such as air, noise, and water pollution.

Financial Implications: Staff time

Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110

Council Consent Items

23. Amending BMC Section 14.56.070 for 3-Ton Commercial Truck Weight Limit on Berkeley's Bicycle Boulevards and on At-Risk West Berkeley Residential Streets

From: Councilmember Taplin (Author), Councilmember Kesarwani (Co-Sponsor), Councilmember Wengraf (Co-Sponsor)

Recommendation: Adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) Section 14.56.070 to add 3-ton commercial truck weight limits on:

1. Ninth Street between Dwight Way and Heinz Avenue
2. Addison Street between San Pablo Avenue and Sixth Street;
3. Allston Way between San Pablo Avenue and Sixth Street;
4. Bancroft Way between San Pablo Avenue and Sixth Street;
5. Channing Way between San Pablo Avenue and Fourth Street;
6. Dwight Way between San Pablo Avenue and Sixth Street;
7. Camelia Street between Eighth Street and Ninth Street;
8. Eighth Street between Jackson Street and Camelia Street;
9. Ninth Street between Camelia Street and Cedar Street;
10. Virginia Street between Sacramento Street and Martin Luther King Jr. Way;
11. Virginia Street between Shattuck Avenue and Euclid Avenue;
12. Channing Way between Martin Luther King Jr. Way and Piedmont Avenue;
13. Heinz Avenue between Ninth Street and San Pablo Avenue;
14. Russell Street between San Pablo Avenue and Shattuck Avenue;
15. Russell Street between Telegraph Avenue and Claremont Avenue;
16. California Street between Hopkins Street and University Avenue;
17. California Street between Dwight Way and Russell Street;
18. King Street between Russell Street and Stanford Avenue;
19. Milvia Street from Dwight Way to Russell Street;
20. Bowditch Street from Bancroft Way to Dwight Way;
21. Hillegass Avenue from Dwight Way to Woolsey Street

Financial Implications: See report

Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

24. Resolution in Support of Afghan Refugees

From: Councilmember Taplin (Author), Mayor Arreguin (Author), Councilmember Hahn (Co-Sponsor)

Recommendation: Adopt a Resolution in support of refugees from Afghanistan.

Financial Implications: None

Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

Council Consent Items

- 25. Accessible Recreation Center for Ashby BART East Parking Lot** *(Item contains revised materials)*
From: Councilmember Bartlett (Author), Mayor Arreguin (Co-Sponsor), Councilmember Taplin (Co-Sponsor), Councilmember Harrison (Co-Sponsor)
Recommendation: Refer to the City Manager to explore the feasibility of incorporating an accessible recreation center as part of the development of the Ashby BART East Parking Lot.
Financial Implications: See report
Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130
- 26. Adopt a Resolution Renewing and Re-Affirming Wildfire Prevention and Safety**
From: Councilmember Wengraf (Author), Councilmember Harrison (Co-Sponsor), Councilmember Hahn (Co-Sponsor)
Recommendation: Request that the Berkeley City Council adopt a resolution re-affirming that wildfire prevention and safety is a top priority in the City of Berkeley.
Financial Implications: None
Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160
- 27. Amending BMC Section 14.56.040 to Reduce the Commercial Weight Limit on Marin Ave**
From: Councilmember Wengraf (Author), Councilmember Hahn (Co-Sponsor), Councilmember Taplin (Co-Sponsor), Councilmember Droste (Co-Sponsor)
Recommendation: Adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) Section 14.56.040 to reduce the commercial vehicle weight limit from four tons gross weight to three tons gross weight on Marin Avenue between Grizzly Peak Boulevard and The Marin Fountain Circle.
Financial Implications: See report
Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160

Action Calendar

The public may comment on each item listed on the agenda for action as the item is taken up. For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again at the time the matter is taken up during the Action Calendar.

The Presiding Officer will request that persons wishing to speak use the "raise hand" function to determine the number of persons interested in speaking at that time. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue.

Action items may be reordered at the discretion of the Chair with the consent of Council.

Action Calendar – Public Hearings

Staff shall introduce the public hearing item and present their comments. This is followed by five-minute presentations each by the appellant and applicant. The Presiding Officer will request that persons wishing to speak use the "raise hand" function to be recognized and to determine the number of persons interested in speaking at that time.

Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. The Presiding Officer may with the consent of persons representing both sides of an issue allocate a block of time to each side to present their issue.

Each member of the City Council shall verbally disclose all ex parte contacts concerning the subject of the hearing. Councilmembers shall also submit a report of such contacts in writing prior to the commencement of the hearing. Written reports shall be available for public review in the office of the City Clerk.

28. **ZAB Appeal: 2943 Pine Avenue, Use Permit #ZP2020-0107**

From: City Manager

Recommendation: Conduct a public hearing, and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP2020-0107 to construct a 729 square-foot, second-story addition to an existing one-story 1,822 square-foot single-family dwelling, with an average height of 23 feet 1 inch, add a fifth bedroom, and legalize an existing 10-foot fence at the rear and left side, on a lot that is existing non-conforming for lot coverage, and dismiss the appeal.

Financial Implications: None

Contact: Jordan Klein, Planning and Development, (510) 981-7400

29. **Response to Short Term Referral for Amendments to Accessory Dwelling Unit (ADU) Ordinance to Address Public Safety Concerns; Amending BMC Chapters 23C.24 and 23F.04 (Continued from July 13, 2021)**

From: City Manager

Recommendation: Conduct a public hearing and, upon conclusion, adopt the first reading of a local Accessory Dwelling Unit (ADU) Ordinance [Berkeley Municipal Code (BMC) Chapter 23C.24] and amendments to relevant Definitions [BMC Chapter 23F.04] in the Zoning Ordinance.

Financial Implications: None

Contact: Jordan Klein, Planning and Development, (510) 981-7400

30. **Adopt a Resolution and Ordinance for a Shared Electric Micromobility Permit Program**

From: City Manager

Recommendation: Conduct a public hearing and upon its conclusion:

1. Adopt a Resolution approving a Shared Electric Micromobility Permit Program, establishing fees for the program, and designating the City Manager as custodian of the program; and
2. Adopt the first reading of an Ordinance adding Berkeley Municipal Code Chapter 14.63 and amending Chapter 14.68 to establish the Shared Electric Micromobility Permit Program and related parking regulations.

Financial Implications: See report

Contact: Liam Garland, Public Works, (510) 981-6300

Action Calendar

31. **Approval of Interim Regulations for the Police Accountability Board and Office of the Director of Police Accountability for Handling Complaints Against Sworn Officers of the Police Department**

From: Police Accountability Board and Director of Police Accountability

Recommendation: Approve Interim Regulations to be used by the Police Accountability Board and Director of Police Accountability for Handling Complaints Against Sworn Officers of the Police Department under City Charter Article XVIII, Section 125 (Measure II). The City Council is asked to choose between the Board's modified proposal, conditioned upon City Attorney approval, or the Interim Director's preferred version.

Financial Implications: None

Contact: Katherine Lee, Interim Director of Police Accountability, (510) 981-4950

Action Calendar – Public Hearing

32. **Adoption of the Baseline Zoning Ordinance (BZO)** *(Continued from September 14, 2021) (Item contains supplemental material)*

From: City Manager

Recommendation: Conduct a public hearing and, upon conclusion, adopt the first reading of an Ordinance rescinding the current Berkeley Municipal Code (BMC) Title 23 and adopting the new Baseline Zoning Ordinance (BZO) as BMC Title 23 with an effective date of December 1, 2021.

Financial Implications: See report

Contact: Jordan Klein, Planning and Development, (510) 981-7400

Action Calendar

33. **Objective Standards Recommendations for Density, Design and Shadows**

From: Joint Subcommittee for the Implementation of State Housing Laws

(Continued from September 14, 2021) (Item contains supplemental material)

Recommendation: Refer to the Planning Commission and Design Review Committee to review the recommendations from the Joint Subcommittee for the Implementation of State Housing Laws (JSISHL) for objective standards for density, design and shadows and draft Zoning Ordinance amendments for City Council consideration.

Financial Implications: See report

Contact: Alene Pearson, Commission Secretary, (510) 981-7400

Information Reports

34. **Sanctuary City Contracting Compliance Report for FY 2020**

From: City Manager

Contact: Henry Oyekanmi, Finance, (510) 981-7300

Information Reports

- 35. Financial First Aid Kit: A Guide to Emergency Financial Preparedness for Berkeley Residents**
From: Auditor
Contact: Jenny Wong, Auditor, (510) 981-6750

Public Comment – Items Not Listed on the Agenda

Adjournment

NOTICE CONCERNING YOUR LEGAL RIGHTS: *If you object to a decision by the City Council to approve or deny a use permit or variance for a project the following requirements and restrictions apply: 1) No lawsuit challenging a City decision to deny (Code Civ. Proc. §1094.6(b)) or approve (Gov. Code 65009(c)(5)) a use permit or variance may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a use permit or variance, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.*

Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33), via internet accessible video stream at <http://www.cityofberkeley.info/CalendarEventWebcastMain.aspx> and KPFB Radio 89.3.

Archived indexed video streams are available at <http://www.cityofberkeley.info/citycouncil>. Channel 33 rebroadcasts the following Wednesday at 9:00 a.m. and Sunday at 9:00 a.m.

Communications to the 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 to the City Clerk Department at 2180 Milvia Street.

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 Department for further information.

Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be posted on the City's website at <http://www.cityofberkeley.info>.

Agendas and agenda reports may be accessed via the Internet at <http://www.cityofberkeley.info/citycouncil>

COMMUNICATION ACCESS INFORMATION:

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date.



Captioning services are provided at the meeting, on B-TV, and on the Internet.

~~~~~

*I hereby certify that the agenda for this meeting 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 Thursday, September 16, 2021.*



Mark Numainville, City Clerk

## **Communications**

*Council rules limit action on Communications to referral to the City Manager and/or Boards and Commissions for investigation and/or recommendations. All communications submitted to Council are public record. Copies of individual communications are available for viewing through [Records Online](#).*

### **Item #26: ZAB Appeal: 2943 Pine Avenue, Use Permit #ZP2020-0107**

1. Anne Nachtwey
2. Everett and Shannon Hartwell

### **Tent Encampments - Homelessness**

3. Jae Wheeler, oh behalf of Music Lovers, Inc. (2)
4. Charles Clarke
5. Jed Waldman

### **BART Housing**

6. Ann Einkelstein
7. Theo Posselt
8. Serena Lim
9. Elliot Parrish
10. Matthew Wadlund
11. Tyson Miklebost
12. Forest Kaser
13. Laura Stevens
14. Jane Scantlebury
15. Ariella Granett
16. Betsy Thagard
17. Donna Graves
18. Sean Kennedy
19. Laura Klein
20. Marcia Freedman

### **Masks – Vaccines – COVID-19**

21. Wise Queen
22. Alfred Manning
23. Snowsu2t3@
24. Vivian Warkentin

### **Satellite Affordable Housing Associates (SAHA)**

25. Sabina McMurtry

## **UA Homes**

26. Benjamin Hubbell

## **Drinking Water in Berkeley**

27. David Lerman

## **East Bay Community Energy**

28. EBCE

## **1740 San Pablo Ave New Construction – Funding Application**

29. Kate Traynor, on behalf of BRIDGE

## **Support for Affordable Housing Overlay**

30. BNHCA Steering Committee

## **Free Speech at Council Meetings**

31. Barbara Gilbert

32. Eric Friedman

## **Ashby Garden at 1376 Ashby - Land Purchase Proposal**

33. Bonnie Borucki

## **Supplemental Communications and Reports**

*Items received by the deadlines for submission will be compiled and distributed as follows. If no items are received by the deadline, no supplemental packet will be compiled for said deadline.*

- **Supplemental Communications and Reports 1**  
Available by 5:00 p.m. five days prior to the meeting.
- **Supplemental Communications and Reports 2**  
Available by 5:00 p.m. the day before the meeting.
- **Supplemental Communications and Reports 3**  
Available by 5:00 p.m. two days following the meeting.







Office of the City Manager

**RECESS ITEM**  
**CONSENT CALENDAR**  
**September 28, 2021**

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Liam Garland, Director, Public Works  
Subject: Contract No. 32100192 Amendment: California Constructores for Construction of Pedestrian Improvements at California Street/Dwight Way Intersection

**RECOMMENDATION**

Adopt a Resolution ratifying the action taken by the City Manager during recess to amend Contract No. 32100192 with California Constructores for work on the Fiscal Year 2020 Sidewalk Repairs Project, Specification No. 20-11409-C, to perform safety-related pedestrian improvements at the California Street/Dwight Way intersection, increasing the current contract amount by up to \$175,900, for a total amount not to exceed \$2,175,900.

**NEGATIVE EFFECT IF ACTION IS DELAYED UNTIL AFTER COUNCIL RECESS**

If action is delayed until after Council recess, the proposed safety-related pedestrian improvements at the California Street/Dwight Way intersection will be delayed. The proposed Work is in response to councilmembers' recent requests to expedite safety-related improvements since California Street is a designated Bicycle Boulevard and a well-traveled route by children to nearby Longfellow Middle School.

**FISCAL IMPACTS OF RECOMMENDATION**

Funding for this contract amendment will be appropriated in FY 2022 via the First Amendment to the Annual Appropriations Ordinance from the General Fund (011).

No other funding is required and no other projects will be delayed due to this expenditure.

|                         |             |
|-------------------------|-------------|
| Original Contract. .... | \$2,000,000 |
| This Amendment .....    | \$175,900   |
| Amended Contract Amount | \$2,175,900 |

The amount of this increase to the contract, \$175,900, includes a 20% construction contingency.

**CURRENT SITUATION AND ITS EFFECTS**

This contract amendment is necessary to replenish the construction contract contingency for the identified contract indicated above, which will be depleted to cover construction costs for the California Street/Dwight Way intersection Work.

Public Works staff requested informal bids from three contractors, each with an ongoing construction project with the City's Public Works Department that closely resembles the proposed Work, based on a pre-established set of design documents. Staff selected the contractor that provided the lowest price, California Constructores.

The proposed pedestrian improvements constitute the first phase to improve pedestrian and bicycle crossing safety across Dwight Way. This first phase will include relocating an existing crosswalk to normalize the intersection and improve sight lines, associated sidewalk extensions to reduce the crossing distance of the relocated crosswalk, and installing sidewalk curb ramps to provide an accessible route for pedestrians.

A future second phase would involve installing traffic calming feature(s) to aid pedestrians and bicyclists crossing Dwight Way at this intersection. If the traffic calming feature(s) include diverting traffic off of California Street, City traffic engineering staff would perform associated analyses of pre- and post-construction measurements of vehicle volumes, turning movements, and speeds, along with pedestrian and bicycle counts, to evaluate whether additional traffic calming measures are necessary on nearby streets. The scope and cost of a second phase is not included in this contract amendment.

### BACKGROUND

The evaluation of traffic controls at the California Street/Dwight Way intersection originated as a Council referral in October 2017, as a result of public concern about safety, particularly with children, as California Street is a well-traveled route to nearby Longfellow Middle School. The California Street/Dwight Way intersection improvements became a capital project in 2018.

Safety issues and proposed work at this intersection were discussed at events with the public and nearby residents and in Transportation Commission meetings, the most recent being a community meeting in May 2021. Design concepts were developed by City traffic engineering staff in 2019 but stopped shy of detailed design due to staffing shortages. In response to requests to advance this safety improvement project in an expedited manner, City staff restarted the designs in April 2021 by utilizing a limited window of staff availability and by reprioritizing project commitments.

City staff plans to begin construction work for the Phase 1 pedestrian improvements in late summer/early fall 2021. City staff have evaluated various project delivery methods and have concluded that the best way to accomplish the work on an expedited schedule is to perform the work as an amendment to an existing construction contract with a similar scope. Because the work is below \$200,000, a formal invitation for bid is not required.

The provided services will support the Strategic Plan goals of creating a resilient, safe, connected, and prepared city and providing state-of-the-art, well-maintained facilities.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The proposed pedestrian improvements at the California Street/Dwight Way intersection promote walking, which is a clean transportation option.

The proposed improvements comply with the 2020 Berkeley Vision Zero Action Plan, which indicates that safety is the City's highest priority and that the City will create safer transportation options for people who walk, bike, and take transit.

Creating safety improvements for pedestrians is expected to result in an increase in walking. An increase in this activity would help the City achieve the 2009 Berkeley Climate Action Plan Policy 5.a that calls for expanding and improving Berkeley's bicycle and pedestrian infrastructure. The Plan sets targets of reducing transportation emissions 33 percent below year 2000 levels by 2020, and 80 percent below year 2000 levels by 2050. The Plan further states that transportation modes such as public transit, walking, and bicycling must become the primary means of fulfilling the City's mobility needs in order to meet these targets.

#### RATIONALE FOR RECOMMENDATION

Contracted services are required for the proposed pedestrian improvement work, as the City does not have the in-house expertise to complete this specialized work.

#### ALTERNATIVE ACTIONS CONSIDERED

City staff explored other project delivery methods, including publicly bidding the work, but these methods could not achieve the desired goal to complete the construction in an expedited timeframe.

#### CONTACT PERSON

Farid Javandel, Transportation Manager, (510) 981-7061  
Kenneth Jung, Associate Civil Engineer, (510) 981-7028

Attachment:  
1: Resolution

RESOLUTION NO. ##,###-N.S.

RECESS ITEM: CONTRACT NO. 32100192 AMENDMENT:  
CONSTRUCTION OF PEDESTRIAN IMPROVEMENTS AT THE CALIFORNIA  
STREET/DWIGHT WAY INTERSECTION

WHEREAS, the need for safety-related improvements at the California Street/Dwight Way intersection was identified in a City of Berkeley Council referral; and

WHEREAS, Public Works staff have engaged the community and performed public outreach regarding proposed safety-related improvements at this intersection, and detailed engineering plans for the proposed work have been prepared; and

WHEREAS, members of the public and Councilmembers have expressed strong interest in expediting the construction of the proposed pedestrian improvements; and

WHEREAS, The City has neither the labor nor the equipment necessary to undertake the proposed construction work; and

WHEREAS, Public Works staff have identified a project delivery method that can expedite the construction work, which involves amending an existing construction contract with similar types of work; and

WHEREAS, three contractors, each with an ongoing construction project with the City's Public Works Department that closely resembles the proposed work, were given an opportunity to provide a price to perform the proposed work as an amendment to their existing contract; and

WHEREAS, on April 27, 2021 by Resolution No. 69,821-N.S., the City Council authorized Contract No. 32100192 with California Constructores in an amount not to exceed \$2,000,000 for work on the Fiscal Year 2020 Sidewalk Repairs Project, Specification No. 20-11409-C; and

WHEREAS, City staff selected the contractor that provided the lowest price for the proposed work: California Constructores, under Contract No. 32100192; and

WHEREAS, an amendment for a not-to-exceed amount of \$175,900, which includes a 20 percent construction contingency, is needed to replenish the construction contract contingency for Contract No. 32100192, which will be depleted to cover construction costs for the proposed work; and

WHEREAS, sufficient funding will be appropriated in FY 2022 via the first amendment to the annual appropriations ordinance (AAO#1) from the General Fund (011).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute an amendment to Contract No. 32100192 with California Constructores for work on the Fiscal Year 2020 Sidewalk Repairs Project, Specification No. 20-11409-C, to perform safety-related pedestrian improvements at the California Street/Dwight Way intersection, increasing the current contract amount by up to \$175,900, for a total amount not to exceed \$2,175,900. A record signature copy of the agreement and any amendments will be on file in the Office of the City Clerk.



## ORDINANCE NO. 7,782–N.S.

AMENDING BERKELEY MUNICIPAL CODE SECTION 19.44.020 HOUSING  
ADVISORY COMMISSION

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

Section 1. That Berkeley Municipal Code Section 19.44.020, Paragraph B is amended to read as follows:

**Berkeley Municipal Code Section 19.44.020.B. Jurisdiction.**

B. Jurisdiction. The jurisdiction of the Commission shall extend the following manners and proceedings, as well as to any other matter made subject to its jurisdiction by any other chapter of this code, or by the Zoning Ordinance.

1. The Commission shall hear and determine appeals of all matters respecting the abatement of substandard or deficient buildings pursuant to the provisions of Chapter 19.40 of this code.
2. The Commission shall review and advise the Council on matters respecting the Community Development Block Grant and Emergency Shelter Grant Programs.
3. The Commission shall serve as a General Appeals Board for tenants and landlords regarding the correction of code violations as provided in Chapter 12.48 of this code, providing for periodic inspection of residential rentals and hotels.
4. The Commission shall make recommendations to the Council defining hardship categories and shall hear appeals concerning the designation of the hardship category. The Commission may grant time extensions for compliance in hardship cases, excepting those violations which pose a clear and present danger to human life, health and safety.
5. The Commission shall make recommendations to the City Council regarding code enforcement priorities.
6. The Commission shall monitor code enforcement procedures to ensure adherence to Council policies and shall make recommendations for changes in such procedures to the City Council.
7. The Commission shall be the Board of Appeals for the Uniform Housing Code. In order to determine the suitability of alternative materials and methods of construction and to provide for reasonable interpretations of the provisions of this Code, the City's Code Review Task Force shall serve as the Technical Advisory Committee to the Commission. When serving in this capacity, the

Technical Advisory Committee shall render all recommendations in writing to the Commission with a duplicate copy to the Building Official and the appellant and may recommend such new legislation as is consistent therein.

8. The Commission shall be the Relocation Appeals Board for purposes of Chapter 13.84.
9. The Commission shall hear appeals brought by any person regarding actions taken by the Building Official pursuant to Division 13, Page 5.5 of the California Health and Safety Code, beginning with Section 19950 (Disabled Access).
10. The Housing Advisory Commission shall review and advise the City Council on housing policy, housing programs, and related issues. In particular, the Commission shall make recommendations on how and to what extent the City should establish and fund programs to increase the supply of affordable housing and protect residents of Berkeley from homelessness. This includes and is not limited to oversight and recommendations for all voter-approved bonds and ballot measures dedicated to affordable housing to ensure that expenditures are consistent with the intent of the measures. The City Manager shall provide the Commission with copies of all reporting requirements required by measures under the Commission's purview. These recommendations may be made annually or biannually, as the Commission deems appropriate in light of the City's budget cycle and other relevant funding cycles. The Commission's recommendations shall be promptly published on the City's website and transmitted to the City Council. The City Council shall consider, but need not follow, the Commission's recommendations, and shall annually inform the Commission as to the extent to which it has implemented the recommendations.

Section 2. 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 September 14, 2021, this Ordinance was passed to print and ordered published by posting by the following vote:

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

Noes: None.

Absent: None.



ORDINANCE NO.7,783-N.S.

TRANSFER OF TWO PARCELS TO THE STATE OF CALIFORNIA FOR THE ASHBY-SAN PABLO INTERSECTION IMPROVEMENTS PROJECT

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

Section 1. That the City Manager and City Clerk or their designees are authorized and directed to make, execute, and deliver for and on behalf of the City of Berkeley, as its corporate act and under its corporate name and seal, a transfer of property interests in two parcels of property to the State of California, Department of Transportation ("Caltrans") via a grant deed for Parcel No. 63719 and a quitclaim deed for the easement over Parcel No. 63720-1, a map and copies of which are attached hereto as Exhibits A, B, and C.

Section 2. That the City Clerk or his designee is authorized and directed to deliver the signed grant deed and quitclaim deed to Caltrans for execution and recording.

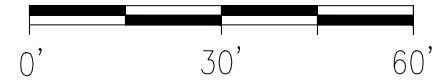
Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley 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 September 14, 2021, this Ordinance was passed to print and ordered published by posting by the following vote:

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

Noes: None.

Absent: None.



SCALE: 1" = 30'

**SAN PABLO AVENUE  
(ROUTE 123)  
100' WIDE**

CENTERLINE

MONUMENT LINE  
TO CITY MONUMENT  
N13°13'35"W 318.04' (R1)  
EX. STATE R/W

**LOT 44**  
EASEMENT  
CITY OF BERKELEY  
DOC 92243673, ORAC  
FUTURE STATE R/W

**LOT 42**

12.00'

EX. STATE R/W

23.00'

EX. STATE R/W

N76°43'15"E 75.87' (R1)

MONUMENT LINE

N76°43'15"E 851.26' (R1)

TO CITY MONUMENT

N13°14'39"W  
3.33' (R1)

CENTERLINE

30.00'

30.00'

**ASHBY AVENUE (ROUTE 13)  
60' WIDE**

EX. STATE R/W

50.00'

38.00'

12.00'

EX. STATE R/W

FUTURE STATE R/W

N76°43'15"E 125.00' (R1)

TO CITY MONUMENT  
S13°13'35"E 302.07' (R1)  
EX. STATE R/W

S76°43'15"W 125.00' (R1)

N13°13'35"W  
5.00' (R1)

**PARCEL 1  
125 PM 60-61  
ORAC**

**63719  
FEE**

625 SQ FT +/-  
OFFER OF DEDICATION  
CITY OF BERKELEY  
DOC 2013300424, ORAC

DOC 2016166940  
ORAC

S13°13'35"E  
5.00' (R1)

**LEGEND**

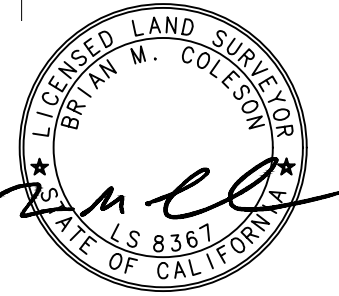
- = AREA TO BE CONVEYED
- DOC = DOCUMENT
- EX. = EXISTING
- ORAC = OFFICIAL RECORDS OF ALAMEDA COUNTY
- POB = POINT OF BEGINNING
- R/W = RIGHT OF WAY
- = CITY MONUMENT

**DOC REFERENCE**

- (R1) = DOC 2013300424, ORAC
- (R2) = DOC 92243673, ORAC

**EXHIBIT "A"**

**RIGHT OF WAY ACQUISITION  
CERTIFICATE OF SUFFICIENCY  
EXHIBIT - PARCEL 63719**



Aug 02, 2018 - 6:34pm c:\survey2\2018\2018-25 San Pablo Ashby COB\5000 Technical\5200 CAD\5230 DWG\Boundary\2018-25 San Pablo Ashby COB.dwg

|                                                                             |            |                  |           |                      |     |     |        |          |               |         |              |                 |            |           |       |
|-----------------------------------------------------------------------------|------------|------------------|-----------|----------------------|-----|-----|--------|----------|---------------|---------|--------------|-----------------|------------|-----------|-------|
| <p>2300 Clayton Road, Ste 1400<br/>Concord, CA 94520<br/>(925) 446-3800</p> | PARCEL NO. | GRANTOR          | ACQ. CODE | AREAS IN SQUARE FEET |     |     |        |          | EASEMENT TYPE | REMARKS | DR. BY: BMC  | DATE: 8/2/2018  |            |           |       |
|                                                                             | 63719      | CITY OF BERKELEY | F         | TOTAL                | R/W | REM | EXCESS | EASEMENT |               |         | CHK. BY: BMC | SCALE: 1" = 30' |            |           |       |
|                                                                             |            |                  |           | 625                  | 625 | 0   |        |          |               |         | DIST.        | CO.             | RTE.       | POST MILE | SHEET |
|                                                                             |            |                  |           |                      |     |     |        |          |               | 04      | ALA          | 13/123          | 13.18/1.93 | 1         | 26    |

**SAN PABLO AVENUE  
(ROUTE 123)  
100' WIDE**

CENTERLINE

MONUMENT LINE

TO CITY MONUMENT  
N13°13'35"W 318.04' (R1)  
EX. STATE R/W

LOT 44

**63720**

DOC 2004511819  
ORAC

**63720-1**

EASEMENT

1,000 SQ FT +/-  
CITY OF BERKELEY  
DOC 92243673, ORAC

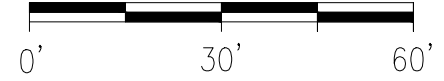
LOT 43, BLOCK B  
22 M 8, ORAC

LOT 42

N76°43'15"E 100.03' (R2)

FUTURE STATE R/W

S13°14'35"E  
10.00' (R2)



SCALE: 1" = 30'



N13°14'51"W  
10.00' (R2)

POB

S76°43'15"W 100.03' (R2)

EX. STATE R/W

EX. STATE R/W

N76°43'15"E 75.87' (R1)

MONUMENT LINE

N76°43'15"E 851.26' (R1)

TO CITY MONUMENT

CENTERLINE

N13°14'39"W  
3.33' (R1)

**ASHBY AVENUE (ROUTE 13)  
60' WIDE**

EX. STATE R/W

50.00'

38.00'

12.00'

EX. STATE R/W

FUTURE STATE R/W

PARCEL 1  
125 PM 60-61  
ORAC

OFFER OF DEDICATION  
CITY OF BERKELEY  
DOC 2013300424, ORAC

**LEGEND**



= AREA TO BE CONVEYED

DOC = DOCUMENT

EX. = EXISTING

ORAC = OFFICIAL RECORDS OF ALAMEDA COUNTY

POB = POINT OF BEGINNING

R/W = RIGHT OF WAY

● = CITY MONUMENT

**DOC REFERENCE**

(R1) = DOC 2013300424, ORAC

(R2) = DOC 92243673, ORAC

**EXHIBIT "A"**

**RIGHT OF WAY ACQUISITION  
CERTIFICATE OF SUFFICIENCY  
EXHIBIT - PARCEL 63720-1**



**AECOM**

2300 Clayton Road, Ste 1400  
Concord, CA 94520  
(925) 446-3800

| PARCEL NO. | GRANTOR          | ACQ. CODE | AREAS IN SQUARE FEET |     |     |        |          | EASEMENT TYPE | REMARKS |
|------------|------------------|-----------|----------------------|-----|-----|--------|----------|---------------|---------|
|            |                  |           | TOTAL                | R/W | REM | EXCESS | EASEMENT |               |         |
| 63720-1    | CITY OF BERKELEY | E         |                      |     |     |        | 1,000    | PUBLIC R/W    |         |

|              |     |        |            |                 |       |  |
|--------------|-----|--------|------------|-----------------|-------|--|
| DR. BY: BMC  |     |        |            | DATE: 8/2/2018  |       |  |
| CHK. BY: BMC |     |        |            | SCALE: 1" = 30' |       |  |
| DIST.        | CO. | RTE.   | POST MILE  | SHEET           | TOTAL |  |
| 04           | ALA | 13/123 | 13.18/1.93 | 2               | 2     |  |

**RECORDING REQUESTED BY**  
STATE OF CALIFORNIA

-----

**WHEN RECORDED RETURN TO**  
DEPARTMENT OF TRANSPORTATION  
PO BOX 23440, MS-11A  
OAKLAND, CA 94623-0440  
Attn: Qin Phu

Space above this line for Recorder's Use

**GRANT DEED**

| District | County | Route | Postmile | Number |
|----------|--------|-------|----------|--------|
| 04       | ALA    | 13    | 13.16    | 63719  |

City of Berkeley, Alameda County, a political subdivision of the State of California, hereinafter called GRANTOR, hereby grants to the State of California, Department of Transportation, hereinafter called STATE, all that real property in the City of Berkeley, County of Alameda, State of California, described as follows:

See Exhibits "A", attached hereto.

Transfer Tax Not Applicable: R & T Code 11922

STATE BUSINESS: Free

This is to certify that this document is presented for recordation by the State of California under Government Code 27383 and is necessary to complete the chain of title of the State to property acquired by the State of California.

DISTRICT DIRECTOR

BY \_\_\_\_\_  
MARK L. WEAVER  
Deputy District Director  
Right of Way and Land Surveys

|               |
|---------------|
| <b>Number</b> |
| 63719         |

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 202\_\_

CITY OF BERKELEY

Date: \_\_\_\_\_

By \_\_\_\_\_  
DEE WILLIAMS-RIDLEY  
City Manager

---

This is to certify that the State of California, acting by and through the Department of Transportation (according to Section 27281 of the Government Code), accepts for public purposes the real property described in this deed and consents to its recordation.

Dated \_\_\_\_\_

ADETOKUNBO OMISHAKIN  
Director of Transportation

By \_\_\_\_\_  
MARK L. WEAVER, Attorney in Fact  
Deputy District Director  
Right of Way and Land Surveys

|               |
|---------------|
| <b>Number</b> |
| 63719         |

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }  
 County of \_\_\_\_\_ } SS

On \_\_\_\_\_ before me, \_\_\_\_\_ ,  
*Here insert Name and Title of the Officer*

personally appeared \_\_\_\_\_ ,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

|               |
|---------------|
| <b>Number</b> |
| 63719         |

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }  
 County of \_\_\_\_\_ } SS

On \_\_\_\_\_ before me, \_\_\_\_\_ ,  
*Here insert Name and Title of the Officer*

personally appeared \_\_\_\_\_ ,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

|        |
|--------|
| Number |
| 63719  |

EXHIBIT "A"

**Parcel 63719**

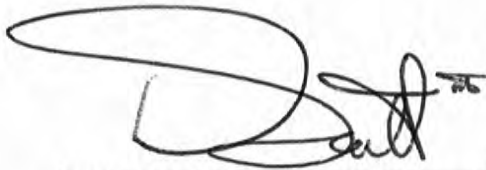
The parcel of land described in the Corrective Offer of Dedication to the City of Berkeley, Alameda County, a political subdivision of California, recorded September 6, 2013 as Document Number 2013300424, Official Records of Alameda County, California, described as follows:

"Real property in the City of Berkeley, Alameda County, California.

Being the northern 5 feet of Parcel 1, Parcel Map 3423, filed on March 30, 1981, Map Book 125, Pages 60-61, in the Office of the County Recorder of Alameda County, more particularly described as follows:

Beginning at the northwest corner of said Parcel 1; thence along the northern line of said Parcel 1, said line also being the southern line of Ashby Avenue, North 76° 43' 15" East, 125.00 feet, to the northeast corner of said Parcel 1; thence along the eastern line of said Parcel 1, South 13° 13' 35" East, 5.00 feet, thence along a line parallel to the northern line of said Parcel 1, South 76° 43' 15" West, 125.00 feet, to the western line of said Parcel 1, said line also being the eastern line of San Pablo Avenue; thence along said line, North 13° 13' 35" West, 5.00 feet to the Point of Beginning."

CONTAINING an area of 625 square feet, more or less.



Dan S. Scott III, PLS 7840

December 8, 2020

Date





**RECORDING REQUESTED BY**  
STATE OF CALIFORNIA

-----

**WHEN RECORDED RETURN TO**  
DEPARTMENT OF TRANSPORTATION  
PO BOX 23440, MS-11A  
OAKLAND, CA 94623-0440  
Attn: Qin Phu

Space above this line for Recorder's Use

# QUITCLAIM DEED

| District | County | Route | Postmile | Number  |
|----------|--------|-------|----------|---------|
| 04       | ALA    | 13    | 13.16    | 63720-1 |

City of Berkeley, Alameda County, a political subdivision of the State of California, hereinafter called GRANTOR, hereby releases and quitclaims to the State of California, Department of Transportation, hereinafter called STATE, all right, title and interest in and to that real property in the City of Berkeley, County of Alameda, State of California, described as follows:

See Exhibits "A", attached hereto.

Transfer Tax Not Applicable: R & T Code 11922

STATE BUSINESS: Free

This is to certify that this document is presented for recordation by the State of California under Government Code 27383 and is necessary to complete the chain of title of the State to property acquired by the State of California.

DISTRICT DIRECTOR

BY \_\_\_\_\_  
MARK L. WEAVER  
Deputy District Director  
Right of Way and Land Surveys

|               |
|---------------|
| <b>Number</b> |
| 63720-1       |

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 202\_\_

CITY OF BERKELEY

Date: \_\_\_\_\_

By \_\_\_\_\_  
DEE WILLIAMS-RIDLEY  
City Manager

---

This is to certify that the State of California, acting by and through the Department of Transportation (according to Section 27281 of the Government Code), accepts for public purposes the real property described in this deed and consents to its recordation.

Dated \_\_\_\_\_

ADETOKUNBO OMISHAKIN  
Director of Transportation

By \_\_\_\_\_  
MARK L. WEAVER, Attorney in Fact  
Deputy District Director  
Right of Way and Land Surveys

|               |
|---------------|
| <b>Number</b> |
| 63720-1       |

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }  
 County of \_\_\_\_\_ } SS

On \_\_\_\_\_ before me, \_\_\_\_\_ ,  
*Here insert Name and Title of the Officer*

personally appeared \_\_\_\_\_ ,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

|               |
|---------------|
| <b>Number</b> |
| 63720-1       |

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }  
 County of \_\_\_\_\_ } SS

On \_\_\_\_\_ before me, \_\_\_\_\_ ,  
*Here insert Name and Title of the Officer*

personally appeared \_\_\_\_\_ ,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

|         |
|---------|
| Number  |
| 63720-1 |

EXHIBIT "A"

**Parcel 63720-1**

An easement for public right of way purposes described in the Grant of Easement to the City of Berkeley, a political subdivision of California, recorded July 28, 1992 as Document Number 92243673, Official Records of Alameda County, California, described as follows:

"All that certain real property situated in the City of BERKELEY, County of Alameda, State of California described as follows:

THE SOUTH 10 FEET OF LOT 43 OF BLOCK B, MAP NO. 2 "SAN PABLO PARK" FILED DECEMBER 4, 1906, IN BOOK 22 OF MAPS AT PAGE 8, DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF ASHBY AVENUE (60 FEET WIDE) AND THE EASTERLY LINE OF SAN PABLO AVENUE (100 FEET WIDE); THENCE FROM SAID POINT OF BEGINNING NORTH 13° 14' 51" WEST, 10.00 FEET ALONG SAID EASTERLY LINE OF SAN PABLO AVENUE; THENCE NORTH 76° 43' 15" E 100.03' TO THE EASTERLY LINE OF SAID LOT 43 (22 M 8); THENCE SOUTH 13° 14' 35" EAST 10.00 FEET ALONG THE EASTERLY LINE OF SAID LOT 43 TO THE NORTHERLY LINE OF SAID ASHBY AVENUE; THENCE SOUTH 76° 43' 15" WEST, 100.03 FEET ALONG SAID NORTHERLY LINE OF ASHBY AVENUE TO THE POINT OF BEGINNING.

CONTAINING 1,000 SQUARE FEET MORE OR LESS."



December 8, 2020

Dan S. Scott III, PLS 7840

Date







Office of the City Manager

CONSENT CALENDAR  
September 28, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Mark Numainville, City Clerk  
 Subject: Contract No. 9712A Amendment: QuickCaption, Inc. for Real-Time Closed Captioning Stenography Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to amend Contract No. 9712A with QuickCaption, Inc. for the provision of real-time closed captioning stenography services, including captioning virtual meetings, at all work sessions, regular and special meetings of the City Council and Successor Agency to the former Redevelopment Agency, increasing the contract by \$120,000 for a total not to exceed amount of \$321,900.

FISCAL IMPACTS OF RECOMMENDATION

This amendment will add \$120,000 to the City's existing contract for real-time closed captioning stenography services, including new built-in costs for captioning virtual meetings in Zoom. Funds are allocated in the General Fund budget in the amount of \$40,000 for the final three years of the contract (011-32-312-000-0000-000-411-612990).

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley currently provides real-time closed captioning stenography services for all work sessions, regular and special meetings of the City Council and Successor Agency to the former Redevelopment Agency.

On March 17, 2020, Governor Newsom issued Executive Order N-29-20, which transitioned public meetings to being conducted exclusively through teleconference or videoconference. With this transition, QuickCaption had to adjust their services to accommodate dual stream captioning to provide captioning to both the Zoom stream and BCM live stream. Additionally, there has been an increase of QuickCaption use by other departments under this contract for EOC-related meetings. These additional costs have depleted the funds allocated for QuickCaption at an accelerated rate, thus necessitating this amendment to increase the not-to-exceed amount for the remaining three years of the original contract term.

BACKGROUND

Real-time closed captioning stenography services have consistently been provided to Berkeley's hearing-impaired community for roughly the past 19 years. In 2014, staff reviewed proposals for real-time captioning services. QuickCaption Inc. was selected and has provided the City with a high level of customer service since.

On October 30, 2018, the City Council adopted Resolution No. 68,637-N.S., which increased the amount of the contract for a total not to exceed amount of \$201,900 and extended the term of the contract to July 31, 2024. The amendment provided continuity of service for the next five years to ensure that funding is available.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

QuickCaption Inc. utilizes equipment that allows their staff to provide real-time closed captioning stenography services remotely. This eliminates the need for the captioner(s) to travel to the location of the City Council meetings for each assignment.

RATIONALE FOR RECOMMENDATION

This contract amendment is needed to account for increased captioning costs incurred by the City Clerk Department during the pandemic and to allow the City to continue providing real-time closed captioning stenography services for hearing impaired viewers of City Council and Successor Agency to the former Redevelopment Agency meetings.

ALTERNATIVE ACTIONS CONSIDERED

Staff does not recommend any alternative actions at this time, however Council could consider reducing or discontinuing the provision of real-time closed captioning stenography services.

CONTACT PERSON

Mark Numainville, City Clerk, (510) 981-6900

Attachments:

1: Resolution



RESOLUTION NO. ##,###-N.S.

CONTRACT NO. 9712A AMENDMENT: QUICKCAPTION, INC. FOR REAL-TIME  
CLOSED CAPTIONING STENOGRAPHY SERVICES

WHEREAS, real-time closed captioning stenography services have consistently been provided to Berkeley's hearing impaired for approximately 19 years; and

WHEREAS, a Request for Proposals (Specification No. 14-10833-C) was issued in February 2014, for real-time closed captioning stenography services for the City Council and Successor Agency to the former Redevelopment Agency meetings, and QuickCaption Inc. was selected based on their ability to best meet the selection criteria, resulting in the execution of Contract No. 9712; and

WHEREAS, QuickCaption Inc. continues to provide the City with a high level of customer service and competitive pricing; and

WHEREAS, funds in the amount of \$120,000 are allocated in the General Fund budget in the amount of \$20,000 per year for six years (011-32-312-000-0000-000-411-612990), and this contract amendment has been entered into the City's contract management database and assigned CMS No. IGD26; and

WHEREAS, on October 30, 2018, the City Council adopted Resolution No. 68,637-N.S., which increased the total not to exceed amount of the contract to \$201,900 and extended the contract to July 31, 2021; and

WHEREAS, due to the COVID-19 pandemic, there are new built-in costs for expanded use of captioning directly to Live Stream and Zoom meetings, which will continue indefinitely if the City adopts a hybrid meeting platform; and

WHEREAS, use of QuickCaption services by the Emergency Operations Center under this contract has depleted the available funds at an accelerated rate.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute an amendment to Contract No. 9712A with QuickCaption, Inc. to provide real-time closed captioning stenography services, increasing the contract by \$120,000 for a total not to exceed amount of \$321,900.





Office of the City Manager

CONSENT CALENDAR  
September 28, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Eleanor Hollander, Acting Manager, Office of Economic Development  
 Subject: Grant from the William and Flora Hewlett Foundation

RECOMMENDATION

Adopt a Resolution accepting a \$10,525 grant from the William and Flora Hewlett Foundation, which augments a prior grant of \$20,000 awarded and accepted in 2019 for an assessment of arts space affordability challenges, displacement risks and possible strategies to protect affordable spaces for arts organizations, artists and cultural workers in Berkeley.

FISCAL IMPACTS OF RECOMMENDATION

There are no immediate fiscal impacts because the grant covers the total cost of the assessment and does not require matching funds. The grant funds will be deposited into the One-Time Grant Fund and put into revenue account code 336-21-208-252-0000-000-000-434110. An appropriation for the additional amount received will be included in the First Amendment to the FY 2022 Annual Appropriations Ordinance (anticipated November 2021). If the grant is not accepted in a timely manner, the Office of Economic Development will not be able to make timely payment to a contracted consultant on an invoice for activities already underway.

CURRENT SITUATION AND ITS EFFECTS

The William and Flora Hewlett Foundation has awarded the City of Berkeley a supplemental grant of \$10,525, which augments a prior grant of \$20,000 awarded to the City and accepted in 2019. The supplemental grant amount will be used entirely to amend the contract with the project consultant who was hired by the City of Berkeley through a competitive process. The grant funds an assessment of affordability challenges, displacement risks and possible strategies to protect and increase affordable housing for artists and cultural workers in the City of Berkeley. Originally the study was intended to take one year to complete, but the project was halted due to COVID-19. In agreement with the Hewlett Foundation, the supplemental funding will allow the project to resume, however the study's scope will be narrowed to focus solely on housing affordability for artists and cultural workers, eliminating from the study an analysis of commercial art space affordability. Given the challenges of conducting this research during a pandemic, the change in scope of this study is intended to support its completion by the end of this calendar year (2021).

Under the supervision of Berkeley Civic Arts Program staff, the consultant has been working with an ad-hoc, multi-disciplinary advisory group comprised of artists, arts organization leaders, experts on affordable housing, and City staff. This group has informed the development of a survey to be distributed to Berkeley-based artists and cultural workers. Throughout the study period, the consultant will continue to convene the advisory group so that they may provide input on the analysis of the survey results and be engaged in vetting strategies for creating and preserving affordable housing for artists and cultural workers in Berkeley. The final deliverable will be a report, which outlines the survey findings, provides analysis, and lists the strategies for solutions in prioritized order, indicating the steps and resources needed for implementation.

This assessment supports the City's Strategic Plan Priorities by advancing our goal to:

- Create affordable housing and housing support service for our most vulnerable community members.

### BACKGROUND

The William and Flora Hewlett Foundation supported the 2018 *Arts and Cultural Plan Update* for the City of Berkeley, which originated in 2015 partially in response to economic conditions that were (and continue to) to affect affordability for Berkeley's arts community. This cultural planning initiative allowed the Civic Arts Program and the Civic Arts Commission to take a leap forward in identifying and clarifying a common vision for the arts in Berkeley and to build consensus and community support around the specific policy priorities to achieve it. Through the planning process, issues of housing affordability and art space affordability were identified as central concerns for artists and arts organizations in Berkeley. The plan identified as its first goal to increase access to affordable housing and affordable spaces for artists and arts organizations. It also specified a number of action steps towards that goal, while acknowledging that the resources to undertake many of these action steps did not currently exist.

In order to support Berkeley's arts and culture ecosystem, the William and Flora Hewlett Foundation has awarded the City of Berkeley additional funding to conduct an assessment of current housing affordability challenges and displacement risks within Berkeley specifically for artists and cultural workers, and based upon those findings, develop strategies to protect and create additional affordable housing in Berkeley for artists and cultural workers.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no environmental sustainability effects or climate impacts.

### RATIONALE FOR RECOMMENDATION

Berkeley's artists and cultural workers make enormous creative contributions to our city and keep diverse cultural and artistic traditions alive. Along with the cultural vibrancy that the arts infuse into the community, the arts sector is also a significant economic

driver, generating an estimated \$165 million annually in total economic activity in Berkeley, according to the economic impact analysis completed as part of the 2018 Culture Plan. To lose any part of our arts sector due to rising housing costs, is a loss to our city and our varied artistic and cultural legacies.

ALTERNATIVE ACTIONS CONSIDERED

No alternatives were considered.

CONTACT PERSON

Jennifer Lovvorn, Chief Cultural Affairs Officer, 981-7533

Attachments:

- 1: Resolution
- 2: Grant Award Letter from the William and Flora Hewlett Foundation

RESOLUTION NO. ##,###-N.S.

GRANT FROM THE WILLIAM AND FLORA HEWLETT FOUNDATION FOR AN ASSESSMENT OF AFFORDABLE HOUSING FOR ARTISTS AND CULTURAL WORKERS IN THE CITY OF BERKELEY

WHEREAS, Berkeley's artists and cultural workers make enormous creative contributions to the livability of our city and keep diverse cultural traditions alive; and

WHEREAS, Along with the cultural vibrancy that the arts infuse into the community, the arts sector is also a significant economic driver, generating an estimated \$165 million annually in total economic activity in Berkeley; and

WHEREAS, The William and Flora Hewlett Foundation supported the 2018 Arts and Cultural Plan Update for the City of Berkeley; and

WHEREAS, The 2018 Cultural Plan identified as its first goal to increase access to affordable housing and affordable spaces for artists and arts organizations; and

WHEREAS, Whereas the Civic Arts Program applied for a grant from the William and Flora Hewlett Foundation to conduct an assessment of current art space affordability challenges and displacement risks within Berkeley, and based upon those findings, develop strategies to protect affordable spaces for arts organizations, artists, and cultural workers in Berkeley; and

WHEREAS, the Hewlett Foundation awarded the City a \$20,000 grant in 2019 for this purpose and the City hired a consultant to commence the study, which was halted by the COVID-19 pandemic in 2020; and

WHEREAS, the Hewlett Foundation has awarded a supplemental grant of \$10,525 to resume the study and narrow its focus to housing affordability for artists and cultural workers, eliminating from the study an analysis of commercial art space affordability in order to support the study's completion by the end of this calendar year (2021); and

WHEREAS, these funds will be put into revenue account code 336-21-208-252-0000-000-000-434110.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council ratifies the action taken by the City Manager or her designee to accept a \$10,525 grant from the William and Flora Hewlett Foundation for an assessment of affordability challenges, displacement risks and possible strategies to protect and increase affordable housing for artists and cultural workers in Berkeley.

THE WILLIAM AND FLORA HEWLETT FOUNDATION

Office of the President

Jennifer Lovvorn  
Chief Cultural Affairs Officer  
City of Berkeley  
2180 Milvia Street, Fifth floor  
Berkeley, CA, 94704

Reference: Grant # 2021-00228-PRO

Dear Ms. Lovvorn:

I am pleased to inform you that The William and Flora Hewlett Foundation (the “Foundation”) has authorized a grant of \$10,525 over 5 months to City of Berkeley (“Grantee”) for an assessment of arts space affordability challenges, displacement risks, and possible strategies. The grant will be paid in 1 installment. This grant is for an assessment of arts space affordability challenges, displacement risks, and possible strategies.

In order for the Foundation to make payment, Grantee must accept the terms of the grant as set forth in the following paragraphs. The terms of this award letter constitute the entire agreement between the Foundation and the Grantee and supersede any prior oral or written understandings or communications between them. Please note that the Foundation reserves the right to cancel this grant if a signed copy of this Agreement is not received by the Foundation within 60 days of the date first written above.

**Tax Status.** Grantee confirms that it is a governmental unit referred to in Section 170(c)(1) of the Internal Revenue Code, or a Federal, state, local, or foreign government body, agency, or instrumentality that is treated as an organization described in Code Sections 501(c)(3) and 509(a)(1).

**Use of Grant Funds.** Grantee agrees that the grant funds will be used exclusively for charitable purposes as described in Section 501(c)(3) or Section 170(c)(1) of the Internal Revenue Code, and only in support of the activities described in Grantee's proposal of 07/14/2021 and the budget attached thereto. Funds not used during the term of the grant (July 21, 2021 to December 31, 2021) must be returned to the Foundation unless an extension is approved at Grantee's request and in the Foundation's discretion.

Grantee agrees to repay to the Foundation any portion of the grant funds expended in violation of this Agreement.

City of Berkeley

Page 2 of 6

**Prohibited Use of Funds.** Grantee agrees to not use any portion of the grant funds to any extent for any of the following:

- a. To participate in any political campaign on behalf of or in opposition to any candidate for public office or to otherwise influence the outcome of any specific public election as described in Section 4945(d)(2) of the Internal Revenue Code; or
- b. For any non-charitable purposes.

**Prohibition on Lobbying Activity.** No grant funds may be used for the carrying on of propaganda or attempting to influence legislation within the meaning of Internal Revenue Code Sections 501(h), 4945(d)(1) and 4945(e) and related regulations (these provisions include local, state, federal, and foreign legislation), and neither Grantee nor the Foundation has entered into any agreement, oral or written, to the contrary.

Please note that in the event Grantee uses any of the grant funds to influence governmental action in ways permissible under the Internal Revenue Code and the terms of this Agreement, Grantee may have lobby reporting or other disclosure requirements under the laws of a particular state or other jurisdiction; note further, that state law may include influencing state administrative agencies within the definition of lobbying. Grantee acknowledges that Grantee is solely responsible for complying with any and all applicable lobby reporting or other disclosures.

*Special Limitations for Ballot Questions.* The Foundation intends that the grant funds shall not be used to influence the qualification or passage of any ballot question or similar legislative decision put to voters. As an essential condition for receiving the grant funds, Grantee shall not use any portion of the grant funds in any manner that would cause the Foundation to be identified as funding reportable lobbying, or require the Foundation to register under any applicable state or local disclosure law, except as may otherwise be provided in this Agreement.

**Human Subject Research.** Safeguarding the rights and welfare of human subjects involved in research is principally the responsibility of the Grantee. However, while the Foundation does not micromanage or seek to interfere in the implementation of grants, Grantees conducting human subject research must have appropriate standards to ensure compliance with generally accepted research ethics. If grant funds will be used in whole or in part for research involving human subjects, Grantee represents that it has such rules and review processes in place and that these rules and processes will be followed. (Such processes may include: obtaining and maintaining institutional review board (or a research ethics review committee) approval, and informed consent of participating research subjects.) Grantee agrees that any subgrant or subcontract awarded by Grantee in its performance of the activities under this grant shall include similar rules and processes in regards to human subject research.



City of Berkeley

Page 3 of 6

**Grantee Control of Funds.** Grantee acknowledges that there is no agreement, oral or written, whereby the Foundation has designated or earmarked any part of the grant funds for any specific named organization or individual. Furthermore, Grantee retains full authority and control over the selection process of any re-grants contemplated under the proposal. Specifically, any re-grants will be approved by the Grantee's Board of Directors or its designee. The Foundation may not select re-grantees.

**Reporting.** Grantee agrees to submit a narrative and financial report on use of the grant funds during the grant period. Reports should be submitted according to the following schedule:

| Reporting requirements | Due date   |
|------------------------|------------|
| Final Report           | 01/30/2022 |

*Please use the grant reference number located on the first page of this letter in all reports and correspondence."*

**Grant Payment.** The Foundation's disbursement of payments is contingent upon the Foundation's determination, in its sole discretion, that satisfactory performance of the grant purpose has occurred and is likely to continue to occur. Funding may be modified or discontinued, and any grant funds must be repaid, if at any time the Foundation determines that the conditions of this Agreement are not being met or that satisfactory performance has not occurred.

Payment will be made as follows, subject to the contingencies provided in this grant agreement letter:

| Projected date                                       | Amount   | Contingency                              |
|------------------------------------------------------|----------|------------------------------------------|
| Within 30 days of receipt of signed letter agreement | \$10,525 | Receipt of signed grant agreement letter |

Grant payments will be made by wire transfer into the Grantee's bank account in accordance with the instructions on the signed wire transfer form, which is incorporated herein by reference.

**Grant Conditions (Financial Accounting Treatment Only).** While grant funds are restricted and intended for use for the purposes described in this Agreement, for financial accounting treatment, the grant funds shall not be deemed to be conditioned upon the accomplishment of any particular, measurable goal or metric, unless that condition is specifically identified in the space below:

City of Berkeley

Page 4 of 6

| <b>Projected date of payment</b> | <b>Amount</b>  | <b>Financial accounting condition</b> |
|----------------------------------|----------------|---------------------------------------|
| Not Applicable                   | Not Applicable | Not Applicable                        |

**Compliance with Laws; Government Officials.** Grantee represents to the Foundation that Grantee is legally authorized to enter into this Agreement and that Grantee has complied with and will continue to comply with all applicable local, state, federal and international laws or requirements, including laws governing contacts with government officials (e.g., anti-bribery laws such as the Foreign Corrupt Practices Act) and anti-terrorism laws and sanctions, in connection with the performance of the activities under this grant.

Grantee further represents, except as otherwise set forth in this Agreement, that there is no agreement, written or oral, between the Foundation and the Grantee whereby the Foundation may direct the activities of the Grantee, including, if applicable, causing the selection of any government official to attend or participate in any event or activity of the Grantee. The Grantee exercises control over that selection process and makes the selection completely independent of the Foundation. Grantee acknowledges that the Foundation is relying upon the representations made by the Grantee in this section in determining that there is no legal impediment to the Foundation’s making a grant to the Grantee.

**Anti-Terrorism.** You will not use funds provided under this Grant Agreement, directly or indirectly, in support of activities (a) prohibited by U.S. laws related to combatting terrorism; (b) with or related to parties on the List of Specially Designated Nationals ([www.treasury.gov/sdn](http://www.treasury.gov/sdn)); or (c) with or related to countries against which the U.S. maintains a comprehensive embargo (currently, Cuba, Iran, Syria, North Korea, and the Crimea Region of Ukraine), unless such activities are fully authorized by the U.S. government under applicable law and specifically approved by the Foundation in its sole discretion. Further, you represent that Grantee is not the target of economic or trade sanctions, and Grantee will immediately inform the Foundation if Grantee becomes the target of economic or trade sanctions, including any ownership or control of Grantee by one or more persons on the List of Specially Designated Nationals.

**Intellectual Property.** Grantee will retain all rights, including intellectual property rights, in and to final works resulting from projects supported by Foundation grant funds (the “Work Product”), and nothing in this Agreement will be deemed or interpreted to transfer ownership of any such rights to the Foundation. Nevertheless, to ensure that Foundation’s grants have as broad an impact as possible, the Foundation requires grantees to license Work Product through an open license. Accordingly, Grantee agrees to make Work Product available to the public in a readily accessible format (e.g., on Grantee’s public website) under the most recent version of the Creative Commons Attribution license (CC BY). In addition, the Foundation

City of Berkeley

Page 5 of 6

acknowledges that Grantee retains the right to also make the Work Product available under separate license terms, in its discretion.

Full legal text of the above referenced license is available at the following URL and Grantee should take the time to read and understand the license terms and conditions:

- <http://creativecommons.org/licenses/by/4.0/legalcode> (a summary may be found at <http://creativecommons.org/licenses/by/4.0/>)

The Foundation respects the intellectual property rights of others. Accordingly, the Foundation requires, and Grantee represents to the Foundation, that the Work Product produced hereunder are the original work of Grantee, or that Grantee has obtained sufficient rights, licenses, and permissions to distribute and license Work Product under CC BY, except and solely with respect to any particular item in the Work Product that is expressly identified in writing as owned by a third party not licensed under CC BY.

**Notification.** Grantee agrees to notify the Foundation promptly of any organizational changes during the term of the grant, including, but not limited to, changes in key personnel and changes in tax status, and changes in the project timing or goals. Any such notification shall be provided in writing, which may be by electronic mail to the Program Officer or other Foundation representative responsible for overseeing this grant.

**Evaluation.** The Foundation may choose to conduct an evaluation of the effectiveness of this grant (the “Evaluation”) either individually or as part of a broader Foundation strategy. Grantee agrees to cooperate in the Evaluation and provide such information to the Foundation or its representatives as is reasonably requested.

Grantee further agrees that the Foundation can disseminate to the public the results of the Evaluation, including any data created in connection with the Evaluation. In such cases, the Foundation agrees to first share the results of the Evaluation with the Grantee and provide an opportunity for the Grantee to comment.

**Grant Disclosure and Acknowledgement.** The Foundation supports transparency and will disclose its grants as required by law and through its own digital content, principally its website ([www.hewlett.org](http://www.hewlett.org)) and automated feeds to other data sources in the foundation sector. This data generally includes grantee name, grant amount, duration, award date and purpose. No additional permission from the Foundation is required for a grantee to share this information. The Foundation encourages, but does not require, grantees to include the Foundation in lists of funders and annual reports as a matter of transparency and accountability. Similarly, the Foundation encourages, but does not require, that Grantees that use our funds specifically for nonpartisan research and analysis should disclose us as a funder, as a matter of sound research practice. When it serves an organization’s charitable

City of Berkeley

Page 6 of 6

goals and strategies, grantees are also welcome to acknowledge the Foundation's support in other ways. To ensure that the Foundation's grantmaking programs are portrayed accurately, any other use of the Foundation's brand, such as its name, logo or names of its staffers, in cases including but not limited to titles of programs, research reports, paid advertisements, press releases, in meeting materials and digital content, must be reviewed and preapproved by the Foundation. Grantees receiving project support should acknowledge Foundation support only in relation to the relevant project being funded. All requests for approval should be directed to the appropriate Communications Officer.

(<http://www.hewlett.org/communicating-about-your-grant/>) The Communications

Department endeavors to review and respond to requests within five business days.

Upon the expiration of this Agreement (including any Foundation-approved extensions) or the termination of this Agreement, or at the request of the Foundation at any time, Grantee shall promptly discontinue the use of the Foundation's name and logo in electronic materials and shall discontinue use within a reasonable period of time for printed materials. All uses beyond this period must be pre-approved in writing by the Foundation, which may be granted or withheld in the sole and absolute discretion of the Foundation.

**Signature.** Please have a corporate officer authorized to sign on behalf of the Grantee **sign and return** a copy of this grant agreement letter in its entirety to the Foundation to indicate the Grantee's acceptance of the terms of the grant. Grantee will return a signed copy of the entire grant agreement letter to the Foundation electronically through DocuSign CLM, which will ensure faster processing of your grant payment. The parties agree that this grant agreement may be electronically signed, and that electronic signatures appearing on this agreement are the same as handwritten signatures for purposes of validity, enforceability and admissibility. Alternatively, Grantee may return an original signed copy of the grant agreement letter by mail to the Foundation's offices at 2121 Sand Hill Road, Menlo Park, CA 94025, Attention: Grants Management. This grant agreement may be executed by Grantee and the Foundation in one or more counterparts, each of which will be deemed an original and all of which will constitute one and the same agreement.

**Foundation Contact.** Should you have any questions related to this grant, please contact Adam Fong, Program Officer for Performing Arts. We are pleased to be able to assist you.

ACCEPTANCE: On behalf of City of Berkeley, I hereby accept and agree to be legally bound by the terms of the grant as set forth herein.



Office of the City Manager

CONSENT CALENDAR  
September 28, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Henry Oyekanmi, Director, Finance

Subject: Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on September 28, 2021

**RECOMMENDATION**

Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.

Total estimated cost of items included in this report is \$6,675,000.

| <b><u>PROJECT</u></b>                           | <b><u>Fund</u></b>       | <b><u>Source</u></b>                                                       | <b><u>Amount</u></b> |
|-------------------------------------------------|--------------------------|----------------------------------------------------------------------------|----------------------|
| Street Rehabilitation FY2022                    | 127<br>133<br>134<br>501 | State Transportation Tax<br>Measure F<br>Measure BB<br>Capital Improvement | \$4,600,000          |
| Community Crisis Response                       |                          | ARPA – HHCS – Community Crisis Response Funds                              | \$1,200,000          |
| Prop 64 Cannabis Education Program              |                          | HHPP642201                                                                 | \$490,000            |
| Prop 64 Funded Violence Prevention              |                          | HHPP642201                                                                 | \$135,000            |
| Citywide Portable Toilet & Handwashing Stations | 354<br>138               | Local Fiscal Recovery Parks Tax                                            | \$250,000            |
| <b>Total:</b>                                   |                          |                                                                            | <b>\$6,675,000</b>   |

### CURRENT SITUATION AND ITS EFFECTS

On May, 6, 2008, Council adopted Ordinance No. 7,035-N.S. effective June 6, 2008, which increased the City Manager's purchasing authority for services to \$50,000. As a result, this required report submitted by the City Manager to Council is now for those purchases in excess of \$100,000 for goods; and \$200,000 for playgrounds and construction; and \$50,000 for services. If Council does not object to these items being sent out for bid or proposal within one week of them appearing on the agenda, and upon final notice to proceed from the requesting department, the IFB (Invitation for Bid) or RFP (Request for Proposal) may be released to the public and notices sent to the potential bidder/respondent list.

### BACKGROUND

On May 6, 2008, Council adopted Ordinance No. 7,035-N.S., amending the City Manager's purchasing authority for services.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The Finance Department reviews all formal bid and proposal solicitations to ensure that they include provisions for compliance with the City's environmental policies. For each contract that is subject to City Council authorization, staff will address environmental sustainability considerations in the associated staff report to City Council.

### RATIONALE FOR RECOMMENDATION

Need for the services.

### ALTERNATIVE ACTIONS CONSIDERED

None.

### CONTACT PERSON

Darryl Sweet, General Services Manager, Finance, 510-981-7329

### Attachments:

- 1: Formal Bid Solicitations and Request for Proposals Scheduled For Possible Issuance After Council Approval on September 28, 2021
  - a) Street Rehabilitation FY2022
  - b) Community Crisis Response
  - c) Prop 64 Cannabis Education Program
  - d) Prop 64 Funded Violence Prevention
  - e) Citywide Portable Toilet & Handwashing Station

Note: Original of this attachment with live signature of authorizing personnel is on file in General Services.

DATE SUBMITTED: September 28, 2021

| SPECIFICATION NO. | DESCRIPTION OF GOODS / SERVICES BEING PURCHASED | APPROX. RELEASE DATE | APPROX. BID OPENING DATE | INTENDED USE                                                                                                                               | ESTIMATED COST | BUDGET CODE TO BE CHARGED                                                                                                                                                                                                                                   | DEPT. / DIVISION             | CONTACT NAME & PHONE                               |
|-------------------|-------------------------------------------------|----------------------|--------------------------|--------------------------------------------------------------------------------------------------------------------------------------------|----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|----------------------------------------------------|
| 22-11470-C        | Street Rehabilitation FY2022                    | 10/1/2021            | 11/1/2021                | Pavement rehabilitation of various streets                                                                                                 | \$4,600,000    | 127-54-623-673-0000-000-431-665110<br>- \$1,745,000<br><br>133-54-623-673-0000-000-431-665110<br>- \$155,000<br><br>134-54-623-673-0000-000-431-665110<br>- \$2,000,000<br><br>501-54-623-673-0000-000-431-665110<br>- \$700,000<br><br>Total – \$4,600,000 | Public Works/<br>Engineering | Joe Enke<br>981-6411<br><br>Wendy Wong<br>981-6428 |
| <b>Dept TOTAL</b> |                                                 |                      |                          |                                                                                                                                            | \$4,600,000    |                                                                                                                                                                                                                                                             |                              |                                                    |
| 22-11472-C        | Community Crisis Response                       | 9/29/2021            | 10/19/2021               | Community services to respond to behavioral health and other crises on an interim basis while the Specialized Care Unit is being designed. | \$1,200,000    | ARPA – HHCS – Community Crisis Response Funds                                                                                                                                                                                                               | HHCS                         | Amy Davidson<br>981-5406                           |

DATE SUBMITTED: September 28, 2021

| SPECIFICATION NO. | DESCRIPTION OF GOODS / SERVICES BEING PURCHASED | APPROX. RELEASE DATE | APPROX. BID OPENING DATE | INTENDED USE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | ESTIMATED COST                                           | BUDGET CODE TO BE CHARGED | DEPT. / DIVISION   | CONTACT NAME & PHONE      |
|-------------------|-------------------------------------------------|----------------------|--------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------|---------------------------|--------------------|---------------------------|
| 22-11474-C        | Prop 64 Cannabis Education Program              | 9/29/2021            | 10/29/2021               | <p>Professional Services: media consultant</p> <p>Non-Governmental Organization (NGO): Staffing, equipment and content development to support and implement training and supervision of youth peer educators, outreach and wrap-around support and services. Increase services capacity for up to 50 youth (and their families) who are at higher risk of school failure, incarceration, and substance use providing wrap-around support services. Services would be focused on prescribed risk factors per City of Berkeley guidance. Services will be provided per needs assessment</p> | <p>\$40,000</p> <p>\$450,000</p> <p>Total: \$490,000</p> | HHPP642201                | HHCS/Public Health | Sheilani Alix<br>981-4978 |



DATE SUBMITTED: September 28, 2021

| SPECIFICATION NO. | DESCRIPTION OF GOODS / SERVICES BEING PURCHASED | APPROX. RELEASE DATE | APPROX. BID OPENING DATE | INTENDED USE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | ESTIMATED COST | BUDGET CODE TO BE CHARGED | DEPT. / DIVISION   | CONTACT NAME & PHONE      |
|-------------------|-------------------------------------------------|----------------------|--------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|---------------------------|--------------------|---------------------------|
| 22-11475-C        | Prop 64 Funded Violence Prevention              | 9/29/2021            | 10/29/2021               | Non-Governmental Organization (NGO): Staffing, equipment and content development to support, convene and manage community task force between City of Berkeley departments, social services and community stakeholders to address growing rates of gun violence in the Berkeley communities; increased capacity services for up to 15 middle- and high school students who are past offenders with risk of re-offending in South and West Berkeley neighborhoods. Focused interventions and services including but not limited to: 1) Initial Risk/Needs Assessment, 2) Client case management | \$135,000      | HHPP642201                | HHCS/Public Health | Sheilani Alix<br>981-4978 |
| <b>Dept TOTAL</b> |                                                 |                      |                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | \$1,825,000    |                           |                    |                           |

DATE SUBMITTED: September 28, 2021

| SPECIFICATION NO.  | DESCRIPTION OF GOODS / SERVICES BEING PURCHASED  | APPROX. RELEASE DATE | APPROX. BID OPENING DATE | INTENDED USE                                                                                                 | ESTIMATED COST                                   | BUDGET CODE TO BE CHARGED                                                                     | DEPT. / DIVISION   | CONTACT NAME & PHONE |
|--------------------|--------------------------------------------------|----------------------|--------------------------|--------------------------------------------------------------------------------------------------------------|--------------------------------------------------|-----------------------------------------------------------------------------------------------|--------------------|----------------------|
| 22-11473-C         | Citywide Portable Toilets & Handwashing Stations | 9/29/2021            | 10/20/2021               | Rental and servicing of Standard and ADA compliant portable sanitary toilets, and handwashing stations<br>FY | \$160,000 / yr<br><br>\$90,000 / yr<br>\$250,000 | ARPA<br>354-52-542-567-0000-000-461-612990-<br><br>PRW<br>138-52-542-567-0000-000-461-612990- | EOC<br><br><br>PRW |                      |
| <b>Dept TOTAL</b>  |                                                  |                      |                          |                                                                                                              | \$250,000                                        |                                                                                               |                    |                      |
| <b>DEPT. TOTAL</b> |                                                  |                      |                          |                                                                                                              | <b>\$6,675,000</b>                               |                                                                                               |                    |                      |

DATE SUBMITTED: November 3, 2015

|  |  |  |  |  |  |  |  |  |
|--|--|--|--|--|--|--|--|--|
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |





Office of the City Manager

CONSENT CALENDAR  
September 28, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Abe Roman, Interim Fire Chief, Fire Department  
 Subject: Contract: Genasys for Citywide Outdoor Warning System

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to enter into contract with Genasys, Inc. for consulting, planning, construction, installation, software hosting, and implementation of a Citywide Outdoor Warning System (OWS), for a total amount not to exceed \$1,974,457.

FISCAL IMPACTS OF RECOMMENDATION

The contract covers system installation, including permits and fees and three years of operations, includes two elements:

1. Purchase and installation of OWS speaker arrays and related accessories at fifteen (15) sites, including State and local sales taxes and projected permit fees.
2. System operational and maintenance support for three (3) years.

The FY 2022 Adopted Budget included \$2 million in funds from Measure FF for the OWS.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley uses a suite of alerting systems to provide information and instructions to the community:

- AC Alert and Everbridge App
- Zonehaven
- Radio: 1610 AM, KQED 88.5 FM, or KCBS 740 AM
- Nixle
- Social media Twitter
- City Webpage
- Media partners

These systems are powerful and provide multiple options for community members to receive emergency alerts. However, many of these systems require users to “opt in” to receive alerts, and/or to “tune in” during an emergency.

The OWS will supplement these systems by providing acoustic alerts to people who are outdoors. For wildfire in particular, officials will activate the OWS to alert threatened community members of evacuation warnings and orders. Like the Wireless Emergency Alerts that Alameda county will use, this type of public warning does not require the community to ‘sign up’ to receive emergency messages from emergency officials. These systems together will help to target people in danger based on their real-time locations. Because the OWS does not require signup, it will also be beneficial to Berkeley visitors.

The OWS is a Strategic Plan Priority Project, advancing the City’s goals to:

- Provide state-of-the-art, well-maintained infrastructure, amenities, and facilities;
- Create a resilient, safe, connected, and prepared city; and
- Be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community.

## BACKGROUND

In May 2019, the Disaster and Fire Safety Commission and the Fire Department-Office of Emergency Services jointly submitted a “Recommendation to Install an Outdoor Public Warning System (Sirens) and Incorporate it into a Holistic Emergency Alerting Plan.” The item was referred to the City’s budget process.

In November 2020, Berkeley voters approved Measure FF. This measure, supplemented by internal budget neutral plans, will substantially improve fire, emergency medical, rescue, disaster preparedness and fire prevention service delivery to the Berkeley community. A key element of Measure FF was funding for research into and installation of an OWS.

In an effort to streamline Berkeley’s OWS project implementation, staff recommends selecting Genasys, Inc. based on its response to another California city’s OWS contract. Established guidelines allow the City to award a contract to a vendor based on its response in another California city’s Request for Proposal (RFP) process (“piggybacking”).

The City of Laguna Beach, California released an RFP for consulting, planning, construction, installation, software hosting, and implementation of a Citywide OWS. The solicitation closed on August 14, 2019 and four proposals were submitted. Upon review the City of Laguna Beach selected Long Range Acoustic Device as the best most responsive proposer to meet the specifications, thusly awarding the firm with Contract

Number Agreement No. 19-132. Long Range Acoustic Device has since been acquired by Genasys, Inc. There is no fee for the City of Berkeley to utilize the contract.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The OWS does not create environmental sustainability or climate change impacts.

RATIONALE FOR RECOMMENDATION

Existing emergency alerting systems generally require community members to opt-in or tune in during an emergency. The OWS will increase responders' ability to reach community members who are outside based on their real-time location. "Piggybacking" on the City of Laguna Beach's procurement process will reduce staff time and fast-track OWS implementation.

ALTERNATIVE ACTIONS CONSIDERED

- 1: Use additional staff time to undergo a Berkeley-specific RFP process, creating project delays and likely resulting in a similar contract and cost.
- 2: Take no action; rely on existing emergency alerting systems and leave community members without an OWS.

CONTACT PERSON

Keith May, Assistant Chief, Special Operations, Fire Department, (510) 981-5508

Attachments:

- 1: Resolution: Contract: Genasys for Community Outdoor Warning System

RESOLUTION NO. ##,###-N.S.

CONTRACT: GENASYS FOR COMMUNITY OUTDOOR WARNING SYSTEM

WHEREAS, the City of Berkeley uses a suite of alerting systems to provide information and instructions to the community, many of which require users to “opt in” to receive alerts, and/or to “tune in” during an emergency; and

WHEREAS, an Outdoor Warning System (OWS) will supplement these systems by providing acoustic alerts to people who are outdoors; and

WHEREAS; in May 2019, the Disaster and Fire Safety Commission and the Fire Department-Office of Emergency Services jointly submitted a “Recommendation to Install an Outdoor Public Warning System (Sirens) and Incorporate it into a Holistic Emergency Alerting Plan”; and

WHEREAS, Berkeley voters approved Measure FF in November of 2020; and

WHEREAS, Measure FF, supplemented by internal budget neutral plans will result in a substantial change and improvement to the way that fire, emergency medical, rescue, disaster preparedness and fire prevention services are delivered to the community; and

WHEREAS, the OWS is factored into the FY 2022 Adopted Budget; and

WHEREAS, the City of Laguna Beach, California released a request for proposals (RFP) for consulting, planning, construction, installation, software hosting, and implementation of a Citywide OWS and selected Long Range Acoustic Device as the best most responsive proposer to meet the specifications; and

WHEREAS, Long Range Acoustic Device has since been acquired by Genasys, Inc.; and

WHEREAS, in an effort to streamline Berkeley’s OWS project implementation, staff recommends selecting Genasys, Inc. based on its response to the City of Laguna Beach’s RFP process.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract and any amendments with Genasys, Inc. to provide the consulting, planning, construction, installation, software hosting, and implementation of a Citywide OWS, for a total amount not to exceed \$1,974,457, funded by Measure FF.





Office of the City Manager

CONSENT CALENDAR  
September 28, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Abraham Roman, Interim Chief, Fire Department

Subject: Grant Application: Funding from FEMA's Assistance to Firefighters Grant to Support a Regional Fire Service Leadership Development Academy

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to apply for and accept a grant, and any amendments, from the Federal Emergency Management Agency (FEMA) Assistance to Firefighters Grant Program in the amount of \$168,272.73 to fund a Regional Fire Service Leadership Development Academy (LDA), and to accept grant funds and execute resulting grant agreements.

FISCAL IMPACTS OF RECOMMENDATION

Total cost for the LDA is \$185,100. The grant award would be for \$168,272.73, or 90% of the total cost. The City will receive the required 10% matching funds from the Alameda County Fire Chiefs Training Officers Association in the amount of \$16,827.27. The match for this grant will be provided from a designated fund (to be determined).

CURRENT SITUATION AND ITS EFFECTS

The Berkeley Fire Department (BFD) is taking the lead role in applying for a grant to fund a regional LDA on behalf of eight fire departments in Alameda County to establish a leadership development program for aspiring and promoting company and chief officers.

In support of one of the City's Strategic Plan Goals to create a resilient, safe, connected, and prepared city", the objectives for this project are: to coordinate the leadership and management training needs of fire service leaders from departments within Alameda County, deliver curriculum aligned with and evaluated using National Fire Protection Association (NFPA) standards, and to design and implement a sustainable program that will continue over the years.

The grant must be accepted by October 3, 2021 or the funds will be lost.

BACKGROUND

In performing a risk analysis for this project, it was determined that company and chief officers in all eight fire departments that respond to the 1.7 million residents of Alameda County must be well prepared in order to mount a competent response. As field supervisors they are primarily responsible and dictate to what degree of efficiency and professionalism their fire companies respond and mitigate risk. The LDA will help ensure that company and chief officers in the County have the knowledge and skills necessary to make sound emergency and non-emergency decisions that uphold the protection of life, property and the environment.

ENVIRONMENTAL SUSTAINABILITY

Providing fire service leaders with on-going training and education provides them the knowledge, skills and abilities to move quickly while mitigating emergency incidents; thereby causing less impact to the environment.

RATIONALE FOR RECOMMENDATION

The AFG Grant is a welcomed funding opportunity given the City's fiscal constraints. Allowing these grant applications, agreements, and receipt of the associated funding will help to improve the fire and emergency medical services response within Alameda County.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Abraham Roman, Interim Fire Chief, Fire, 510-981-3473

Attachments:

1: Resolution

RESOLUTION NO. ##,###-N.S.

GRANT APPLICATION: FUNDING FROM BAY AREA URBAN AREAS SECURITY INITIATIVE (UASI) TO SUPPORT EMERGENCY MEDICAL TRAINING EQUIPMENT PURCHASE

WHEREAS, fire service company and chief officers are primarily responsible on emergency scenes and often dictate to what degree of efficiency and professionalism their fire companies respond and mitigate risk; and

WHEREAS, the Leadership Development Academy (LDA) will help ensure that company and chief officers in the County have the knowledge and skills necessary to make sound emergency and non-emergency decisions that uphold the protection of life, property and the environment; and

WHEREAS, the Berkeley Fire Department (BFD) has taken the lead role in applying for the Assistance Firefighter's Grant (AFG) on behalf of all fire departments in Alameda County; and

WHEREAS, BFD has received an award offer from the AFG program; and

WHEREAS, the grant provides an opportunity to support the City's Strategic Plan goal to create a resilient, safe, connected and prepared city by creating and developing leadership and management trainings that will endure.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is authorized to apply for and accept a grant, and any amendments, from the Federal Emergency Management Agency (FEMA) Assistance to Firefighters Grant Program in the amount of \$168,272.73 to fund a Regional Fire Service Leadership Development Academy (LDA), and to accept grant funds and execute resulting grant agreements.





Office of the City Manager

CONSENT CALENDAR  
September 28, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Lisa Warhuus, Director, Health, Housing & Community Services  
 Subject: Contract No. 31900132 Amendment: Building Opportunities for Self-Sufficiency (BOSS) for Representative Payee Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to execute a contract amendment with vendor Building Opportunities for Self-Sufficiency (BOSS) to provide Representative Payee services. The amendment will add \$100,000 to the current contract and extend it through June 30, 2022 for a total contract not to exceed amount of \$300,000.

FISCAL IMPACTS OF RECOMMENDATION

Funding for these services and supports in the amount of \$100,000 has been included in the Fiscal Year 2022 Budget and will be provided from the Mental Health Service Act Fund 315-51-503-526-2017-000-451-636110.

CURRENT SITUATION AND ITS EFFECTS

Berkeley Mental Health (BMH) issued a Request for Proposals for Representative Payee services on June 14, 2018, and BOSS was selected as the most responsive responsible bidder. They have provided Representative Payee services for BMH clients since March 1, 2019, and have acted in a satisfactory capacity. This recommendation entails extending the term of the current contract for one year and increasing the contract limit to reflect the additional time added. Current Contract No. 31900132 ended on June 30, 2021, and the requested amendment would extend the term through June 30, 2022, adding \$100,000 for a total Not to Exceed (NTE) amount of \$300,000. The current payment terms and scope of work would not change.

BACKGROUND

On May 26, 2015 by Resolution No. 67,026-N.S, City Council approved the MHSA Fiscal Year 2014-2015/2016-2017 Three Year Program and Expenditure Plan. In this Plan, BMH proposed to use a portion of CSS System Development Funds to provide Sub-Representative Payee Services, to be acquired through a competitive Request for Proposal (RFP) process. BMH issued an RFP for Representative Payee Services, and selected Building Opportunities for Self-Sufficiency (BOSS) as the most responsible and responsive vendor. On February 26, 2019 by Resolution No. 68,768-N.S., the City

Council authorized the City Manager to execute contract No. 31900132 with BOSS for Representative Payee services.

A representative payee is a person or organization appointed by the Social Security Administration to receive the Social Security or Supplemental Security Income benefits for anyone who is unable to manage or direct the management of their benefits. A payee's main duties are to use the benefits to pay for the current and future needs of the beneficiary, and properly save any benefits not needed to meet current needs. A payee must also keep records of expenses. When a regulatory agency requests a report, a payee must provide an accounting of how he or she used or saved the benefits.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects, climate impacts, or sustainability opportunities associated with the subject of this report.

#### RATIONALE FOR RECOMMENDATION

BOSS has additional capacity and specialized practices in administering a representative payee program, not only providing an enhanced level of service to consumers, but also permitting BMH clinicians to focus exclusively on their clients' other mental health needs.

#### ALTERNATIVE ACTIONS CONSIDERED

As an alternative action, Council could instead direct staff to circulate a new RFI or formal Request for Proposals to competitively solicit a different vendor.

#### CONTACT PERSON

Conor Murphy, Assistant Management Analyst, HHCS, 510-981-7611  
Steven Grolnic-McClurg, Manager of Mental Health Services, HHCS, 510-981-5249

Attachments:

1: Resolution:

RESOLUTION NO. ##,###-N.S.

CONTRACT NO. 31900132 AMENDMENT WITH BUILDING OPPORTUNITIES FOR SELF-SUFFICIENCY FOR REPRESENTATIVE PAYEE SERVICES

WHEREAS, Mental Health Services Act (MHSA) funds are allocated to mental health jurisdictions across the state for the purposes of transforming the mental health system into one that is consumer and family driven, culturally competent, wellness and recovery oriented, includes community collaboration, and implements integrated services; and

WHEREAS, on May 26, 2015 by Resolution No. 67,026-N.S., the City Council authorized the City Manager to approve the MHSA Fiscal Years 2015 through 2017 Three Year Program and Expenditure Plan; and

WHEREAS, within the City Council approved MHSA Fiscal Years 2015 through 2017 Three Year Program and Expenditure Plan was the goal of contracting with a community-based organization to provide Representative Payee Services; and

WHEREAS, on May 29, 2018 City Council approved the Finance Department's request to issue a Request for Proposals for Representative Payee Services; and

WHEREAS, the City of Berkeley's Mental Health Division issued a Request for Proposals for Representative Payee Services, and selected Building Opportunities for Self-Sufficiency as the vendor; and

WHEREAS, on February 26, 2019 by Resolution No. 68,768-N.S., the City Council authorized the City Manager to execute contract No. 31900132 with Building Opportunities for Self Sufficiency for Representative Payee services; and

WHEREAS, on January 21, 2020 by Resolution No. 69,249-N.S., the City Council authorized the City Manager to amend contract No. 31900132; and

WHEREAS, on June 30, 2020 by Resolution No. 69,470-N.S., the City Council authorized the City Manager to amend contract No. 31900132; and

WHEREAS, Building Opportunities for Self-Sufficiency has been the vendor for Representative Payee services for the City of Berkeley since March 1, 2019, and has acted in a satisfactory capacity; and

WHEREAS, funds are available in the current budget year in the Mental Health Service Act budget Code 315-51-503-526-2017-000-451-636110-.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is authorized to execute a contract amendment with Building Opportunities for Self-Sufficiency for Representative Payee services through June 30, 2022 in an amount not to exceed \$300,000. A record signature copy of said contract and any amendments to be on file in the City Clerk Department.







Office of the City Manager

CONSENT CALENDAR  
September 28, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Lisa Warhuus, Director, Health, Housing & Community Services  
 Subject: Contract: Berkeley Free Clinic for Laboratory Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to execute a contract and any amendments or extensions with the Berkeley Free Clinic (BFC) for laboratory services, in an amount not to exceed \$150,000 for the period July 1, 2021 through June 30, 2024.

FISCAL IMPACTS OF RECOMMENDATION

\$50,000 for this contract is available in ERMA Discretionary General Fund Account: 011-51-506-555-0000-000-451-636110 in the adopted Fiscal Year 2022 budget. \$50,000 annually will also be included in the Fiscal Year 2023 and Fiscal Year 2024 budgets.

CURRENT SITUATION AND ITS EFFECTS

This contract provides financial support to BFC by reimbursing it for clinical laboratory expenses up to \$50,000 annually for the period July 1, 2021 through June 30, 2024. These clinical laboratory services are related to reproductive and sexual health and will be provided by a clinical laboratory which is currently licensed and in good standing.

BACKGROUND

Berkeley Public Health Division has a longstanding partnership with BFC, providing funding for laboratory services for BFC clients. BFC was founded in 1969 and is an essential safety-net provider of health care services in Berkeley. Fees have never been charged for any services, materials, medications or supplies provided at BFC. Income has been generated solely via individual or organizational donations and government programs. Direct services are provided almost exclusively by volunteer lay health care workers. Volunteers receive extensive and specific training in classroom and clinical settings. Treatments, referrals and guidance are provided in a client-centered context, and are appropriate to the client's lifestyle, culture, language and financial situation.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The provision of laboratory services by a currently licensed laboratory in good standing ensures that the production of medical and laboratory waste is minimized, and that potential negative impacts from such waste is avoided or mitigated.

RATIONALE FOR RECOMMENDATION

BFC offers free health care services, provided by volunteer staff, to uninsured, disenfranchised, and under-served populations. Services include reproductive and sexual health services for men, women, and transgender individuals. These services complement those provided by the City and other community health care providers, and support public health goals of improving the health and well-being of the community.

ALTERNATIVE ACTIONS CONSIDERED

The City could discontinue its long standing support of BFC clients' laboratory fees. This was rejected because of the negative impact it would have on the delivery of health care services to uninsured, disenfranchised, and under-served populations in the city of Berkeley.

CONTACT PERSON

Janice Chin, Public Health Division Manager, HHCS, (510) 981-5212

Attachments:

1: Resolution

RESOLUTION NO. ##,###-N.S.

CONTRACT: BERKELEY FREE CLINIC FOR CLINICAL LABORATORY SERVICES

WHEREAS, Berkeley Public Health Division has a longstanding partnership with Berkeley Free Clinic (BFC), providing funding for laboratory services for BFC clients; and

WHEREAS, BFC was founded in 1969 and is an essential safety-net provider of health care services in Berkeley; and

WHEREAS, BFC offers free health care services, provided by volunteer staff, to uninsured, disenfranchised, and under-served populations; and

WHEREAS, BFC's services complement those provided by the City and other community health care providers, and support public health goals of improving the health and well-being of the community; and

WHEREAS, funds are available in the Fiscal Year 2022 budget in the Discretionary General Fund

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is authorized to execute an expenditure contract and any amendments or extensions with the Berkeley Free Clinic (BFC) in an amount not to exceed \$150,000 for the period July 1, 2021 through June 30, 2024 (\$50,000 annually) for the purpose of funding clinical laboratory expenses for BFC clients related to reproductive and sexual health; ERMA Discretionary General Fund Account: 011-51-506-555-0000-000-451-636110. A record signature copy of said contract to be on file in the office of the City Clerk.





Office of the City Manager

11

CONSENT CALENDAR  
September 28, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Lisa Warhuus, Director, Health, Housing & Community Services  
 Subject: Memorandum of Understanding with Alameda County Behavioral Health Care Services for Wellness Center Operations

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to adopt a Memorandum of Understanding (MOU) between the City of Berkeley and Alameda County Behavioral Health Care Services (ACBHCS) for the term July 1, 2021 through June 30, 2023 for an expenditure of up to \$491,933 to fund the operational costs of a Mental Health Wellness Center (Wellness Center) located in Berkeley.

FISCAL IMPACTS OF RECOMMENDATION

The execution of this MOU will result in the transfer of a portion of the City of Berkeley's Mental Health Services Act (MHSA) Community Services and Supports (CSS) funding allocation to Alameda County BHCS. These funds will be used for operational costs of a Mental Health Wellness Center in Berkeley.

The total amount of money to be expended on the Wellness Center operational costs from the City of Berkeley would be \$491,933 (\$437,500 program contribution over the contract term, in addition to \$54,433 for a one-time reconciling of Fiscal Year [FY] 2021 expenditures). ACBHCS will also contribute \$437,500 for operational costs. The MOU is the mechanism which defines the terms of the fiscal relationship between the City and the County and will enable the transfer of funds. Funding for these services and supports has been included in the FY22 Budget in the Mental Health Service Act Fund 315-51-503-525-2020-000-451-636110-.

CURRENT SITUATION AND ITS EFFECTS

On October 13, 2015, via Resolution No. 67,228-N.S., City Council approved an MOU with ACBHCS to implement, manage, and evaluate a Mental Health Wellness Center. On January 29, 2019 via Resolution No. 68,749-N.S., City Council approved an MOU with ACBHCS for the construction of the Wellness Center. On September 15, 2020 via Resolution No. 69,549-N.S. City Council approved funding operational costs of

the Wellness Center. The Mental Health Division and ACBHCS decided to mutually end the previous contracts and enter into negotiations for a new MOU for Wellness Center operations exclusively, which is the subject of this report. The Wellness Center is currently conducting both activity and support groups and providing individualized supportive services to the community in person and via telehealth and telephone.

Bonita House is the vendor who is contracted by ACBHCS for the operation of the Wellness Center, located at 1909 University Avenue, Berkeley, CA 94704. Bonita House has estimates of \$875,000 in operational costs for fiscal years 2022 and 2023. This MOU will allow MHSA CSS funding to be spent on operating the Wellness Center. A new agreement is beneficial to all parties involved to allow for enhanced contractual oversight and accountability.

### BACKGROUND

The City of Berkeley is partnering with Alameda County to fund continued operation of a Wellness Center for residents of Berkeley. The Wellness Center is modeled after existing Wellness Centers in other parts of Alameda County and provides three level of services. First, the Wellness Center is open to anyone in the community who either needs support or connection to the mental health system. This is the largest level of service and is primarily staffed by individuals with lived experience with mental health illness. Second, for a smaller cohort, the Wellness Center provides short term case management with a licensed clinician. This level of service allows people who are not otherwise connected to care, and who use the Wellness Center, to receive some targeted support for a wide variety of issues. Finally, the Wellness Center has some capacity to provide psychiatry and medication services for individuals not otherwise connected to care.

The Wellness Center has been in operation since late fall of 2019, and has continued to provide services via tele-health through the COVID-19 pandemic. Bonita House will continue to operate and support the goals of the Wellness Center. ACBHCS will utilize the funding provided by the City of Berkeley to pay for approved charges for this project. Previous contracts for the Wellness Center were mutually ended by Berkeley's Mental Health Division and ACBHCS, and new terms were negotiated for an MOU for Wellness Center operations exclusively, which is the subject of this report.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects, climate impacts, or sustainability opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

Providing this funding will support the ability of the vendor to operate a Wellness Center, which provides a needed expansion of the system of care for individuals with mental health issues in Berkeley.

ALTERNATIVE ACTIONS CONSIDERED

The City could decide not to fund the ongoing operational costs of the Wellness Center. This would either lead to the closing of the Wellness Center or greatly complicate its capacity to exist in its current form.

CONTACT PERSON

Conor Murphy, Assistant Management Analyst, HHCS, (510) 981-7611  
Steven Grolnic-McClurg, Mental Health Manager, HHCS, (510) 981-5249

Attachments:

1: Resolution

RESOLUTION NO. ##,###-N.S.

MEMORANDUM OF UNDERSTANDING WITH ALAMEDA COUNTY BEHAVIORAL HEALTH CARE SERVICES FOR WELLNESS CENTER OPERATIONS

WHEREAS, as part of the Mental Health Services Act (MHSA), the State of California designated a process for all mental health jurisdictions for expenditures from Community Services and Supports (CSS); and

WHEREAS, on October 13, 2015, via Resolution No. 67,228-N.S., City Council approved a Memorandum of Understanding with Alameda County Behavioral Health Care Services to implement, manage, and evaluate a Mental Health Wellness Center (Wellness Center); and

WHEREAS, on January 29, 2019, via Resolution No. 68,749-N.S. City Council approved funding the construction of the Wellness Center located in Berkeley in partnership with Alameda County Behavioral Health Care Services; and

WHEREAS, on September 15, 2020 via Resolution No. 69,549-N.S. City Council approved funding operational costs of the Wellness Center located in Berkeley in partnership with Alameda County Behavioral Health Care Services; and

WHEREAS, an MOU will provide the mechanism whereby the City of Berkeley MHSA CSS funds can be transferred to the lead agency, Alameda County Behavioral Health Care Services, to be utilized for the operational costs of the Mental Health Wellness Center; and

WHEREAS, funds are available in the FY 2022 budget code 315-51-503-525-2020-000-451-636110- in the MHSA fund received from the State of California.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is authorized to adopt a MOU between the City of Berkeley and Alameda County Behavioral Health Care Services for the term July 1, 2021 through June 30, 2023 for an expenditure of up to \$491,933 to fund the operational costs of a Mental Health Wellness Center (Wellness Center) located in Berkeley.





Office of the City Manager

CONSENT CALENDAR  
September 28, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront  
 Subject: Donation: Memorial Bench at Cesar Chavez Park in Memory of Nancy Park

RECOMMENDATION

Adopt a Resolution accepting a cash donation in the amount of \$3,400 for a memorial bench to be placed at Cesar Chavez Park in memory of Nancy Park.

FISCAL IMPACTS OF RECOMMENDATION

The value of a single bench and memorial plaque is \$3,400, which covers the purchasing and installation costs performed by the City. The cash donation will be deposited into Marina Fund donation revenue budget code 608-52-544-591-0000-000-000-481110 and will be appropriated in FY 2022.

CURRENT SITUATION AND ITS EFFECTS

The family of Nancy Park wishes to donate a memorial bench in their memory to be placed at Cesar Chavez Park with a cash donation of \$3,400. Per the City's Park Bench Donation Policy, individuals may donate memorial benches to the City's parks in selected locations, subject to the approval of the Director of the Parks Recreation & Waterfront Department, and pay for all associated costs, subject to Council disclosure and approval of the gift donation. The Director has determined that the proposed donation complies with the City's Bench Donation Policy as described in Resolution No. 64,148-N.S. and has approved the donation, subject to Council approval.

BACKGROUND

Benches are placed throughout the City in accordance with the City's Park Bench Donation Policy approved by Council on July 22, 2008 (Resolution No. 64,148-N.S.). The City's Open Governance Ordinance (OGO) requires City Council disclosure and approval of any gift to the City in excess of \$1,000 (BMC Section 2.06.150, Ord. 7,166-N.S.)

Donation: Memorial Bench at Cesar Chavez Park  
in Memory of Nancy Park

CONSENT CALENDAR  
September 15, 2021

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACT

The City's vendor for benches, Dumor, Inc., makes its priority to purchase only sustainably-harvested wood derived from stringently-regulated timber source locations, including California, Oregon, Washington and British Columbia. This policy reduces solid waste volumes in landfills, helps conserve natural resources and limits the environmental effects resulting from the extraction of virgin materials. The benches therefore comply with the City's environmentally preferable purchasing policy, specifically section 3.7 Forest Conservation.

CONTACT PERSON

Alexandra Endress, Waterfront Manager, 510-981-6737

Attachments:

1: Resolution

RESOLUTION NO. -N.S.

DONATION: MEMORIAL BENCH AT CESAR CHAVEZ PARK AT THE BERKELEY MARINA IN MEMORY OF NANCY PARK

WHEREAS, on July 22, 2008, Council adopted the Park Bench Donation Policy (Resolution No. 64,148-N.S.); and

WHEREAS, the City's Open Governance Ordinance (OGO) requires City Council disclosure and approval of any gift to the City in excess of \$1,000 (BMC Section 2.06.150, Ord. 7,166-N.S.); and

WHEREAS, the family of Nancy Park wishes to donate a memorial bench in their memory to be placed at Cesar Chavez Park with a cash donation of \$3,400; and

WHEREAS, per the City's Park Bench Donation Policy, individuals may donate memorial benches to the City's parks in selected locations, subject to the approval of the Director of the Parks Recreation & Waterfront Department, and pay for all associated costs, subject to Council disclosure and approval of the gift donation; and

WHEREAS, the Director has determined that the proposed donation complies with City's Bench Donation Policy as described in Resolution No. 64,148-N.S. and has approved the proposed donation; and

WHEREAS, the cash donation will be deposited into Marina Fund donation revenue budget code 608-52-544-591-0000-000-000-481110 and will be appropriated in FY 2020.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that a cash donation in the amount of \$3,400 for a memorial bench to be placed at Cesar Chavez Park in memory of Nancy Park is hereby accepted.





Office of the City Manager

CONSENT CALENDAR  
September 28, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront  
 Subject: Donation: Memorial Bench at Greg Brown Park in memory of Michael, Anna, and John Wyman

RECOMMENDATION

Adopt a Resolution accepting a cash donation in the amount of \$3,400 for a memorial bench to be placed at Greg Brown Park in memory of Michael, Anna, and John Wyman.

FISCAL IMPACTS OF RECOMMENDATION

The value of a single bench and memorial plaque is \$3,400, which covers the purchasing and installation costs performed by the City. The cash donation will be deposited into Parks Tax donation revenue budget code 138-52-542-568-0000-000-000-481110 and will be appropriated in FY 2022.

CURRENT SITUATION AND ITS EFFECTS

The family of Wyman Family Memorial Fund (Paul Rafferty) wishes to donate a memorial bench in their memory to be placed at Greg Brown Park with a cash donation of \$3,400. Per the City's Park Bench Donation Policy, individuals may donate memorial benches to the City's parks in selected locations, subject to the approval of the Director of the Parks Recreation & Waterfront Department, and pay for all associated costs, subject to Council disclosure and approval of the gift donation. The Director has determined that the proposed donation complies with the City's Bench Donation Policy as described in Resolution No. 64,148-N.S. and has approved the donation, subject to Council approval.

BACKGROUND

Benches are placed throughout the City in accordance with the City's Park Bench Donation Policy approved by Council on July 22, 2008 (Resolution No. 64,148-N.S.). The City's Open Governance Ordinance (OGO) requires City Council disclosure and approval of any gift to the City in excess of \$1,000 (BMC Section 2.06.150, Ord. 7,166-N.S.)

Donation: Memorial Bench at Greg Brown Park  
in memory of Michael, Anna, and John Wyman

CONSENT CALENDAR  
September 28, 2021

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACT

The City's vendor for benches, Dumor, Inc., makes its priority to purchase only sustainably-harvested wood derived from stringently-regulated timber source locations, including California, Oregon, Washington and British Columbia. This policy reduces solid waste volumes in landfills, helps conserve natural resources and limits the environmental effects resulting from the extraction of virgin materials. The benches therefore comply with the City's environmentally preferable purchasing policy, specifically section 3.7 Forest Conservation.

CONTACT PERSON

Bruce Pratt, Parks Superintendent, 510-981-6632

Attachments:

1: Resolution

RESOLUTION NO. -N.S.

DONATION: MEMORIAL BENCH AT GREG BROWN PARK AT IN MEMORY OF  
MICHAEL, ANNA, AND JOHN WYMAN

WHEREAS, on July 22, 2008, Council adopted the Park Bench Donation Policy (Resolution No. 64,148-N.S.); and

WHEREAS, the City's Open Governance Ordinance (OGO) requires City Council disclosure and approval of any gift to the City in excess of \$1,000 (BMC Section 2.06.150, Ord. 7,166-N.S.); and

WHEREAS, the Wyman Family Memorial Fund wishes to donate a memorial bench in their memory to be placed at Greg Brown Park with a cash donation of \$3,400; and

WHEREAS, per the City's Park Bench Donation Policy, individuals may donate memorial benches to the City's parks in selected locations, subject to the approval of the Director of the Parks Recreation & Waterfront Department, and pay for all associated costs, subject to Council disclosure and approval of the gift donation; and

WHEREAS, the Director has determined that the proposed donation complies with City's Bench Donation Policy as described in Resolution No. 64,148-N.S. and has approved the proposed donation; and

WHEREAS, the cash donation will be deposited into Parks Tax donation revenue budget code 138-52-542-568-0000-000-000-481110 and will be appropriated in FY 2020.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that a cash donation in the amount of \$3,400 for a memorial bench to be placed at Greg Brown Park in memory of Michael, Anna, and John Wyman is hereby accepted.







Office of the City Manager

CONSENT CALENDAR  
September 28, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront  
 Subject: Donation: Memorial Bench at the Jane Hammond Softball Field at  
 Codornices Park in memory of Dixie Lewis

RECOMMENDATION

Adopt a Resolution accepting a cash donation in the amount of \$3,400 for a memorial bench to be placed at the Jane Hammond Softball Field at Codornices Park in memory of Dixie Lewis.

FISCAL IMPACTS OF RECOMMENDATION

The value of a single bench and memorial plaque is \$3,400, which covers the purchasing and installation costs performed by the City. The cash donation will be deposited into Parks Tax donation revenue budget code 138-52-542-568-0000-000-000-481110 and will be appropriated in FY 2022.

CURRENT SITUATION AND ITS EFFECTS

The family of Dixie Lewis wishes to donate a memorial bench in their memory to be placed at the Jane Hammond Softball Field at Codornices Park with a cash donation of \$3,400. Per the City's Park Bench Donation Policy, individuals may donate memorial benches to the City's parks in selected locations, subject to the approval of the Director of the Parks Recreation & Waterfront Department, and pay for all associated costs, subject to Council disclosure and approval of the gift donation. The Director has determined that the proposed donation complies with the City's Bench Donation Policy as described in Resolution No. 64,148-N.S. and has approved the donation, subject to Council approval.

BACKGROUND

Benches are placed throughout the City in accordance with the City's Park Bench Donation Policy approved by Council on July 22, 2008 (Resolution No. 64,148-N.S.). The City's Open Governance Ordinance (OGO) requires City Council disclosure and approval of any gift to the City in excess of \$1,000 (BMC Section 2.06.150, Ord. 7,166-N.S.)

Donation: Memorial Bench at the Jane Hammond Softball Field at  
Codornices Park in memory of Dixie Lewis

CONSENT CALENDAR  
September 28, 2021

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACT

The City's vendor for benches, Dumor, Inc., makes its priority to purchase only sustainably-harvested wood derived from stringently-regulated timber source locations, including California, Oregon, Washington and British Columbia. This policy reduces solid waste volumes in landfills, helps conserve natural resources and limits the environmental effects resulting from the extraction of virgin materials. The benches therefore comply with the City's environmentally preferable purchasing policy, specifically section 3.7 Forest Conservation.

CONTACT PERSON

Bruce Pratt, Parks Superintendent, 510-981-6632

Attachments:

1: Resolution

RESOLUTION NO. -N.S.

DONATION: MEMORIAL BENCH AT JANE HAMMOND SOFTBALL FIELD AT  
CODORNICES PARK IN MEMORY OF DIXIE LEWIS

WHEREAS, on July 22, 2008, Council adopted the Park Bench Donation Policy (Resolution No. 64,148-N.S.); and

WHEREAS, the City's Open Governance Ordinance (OGO) requires City Council disclosure and approval of any gift to the City in excess of \$1,000 (BMC Section 2.06.150, Ord. 7,166-N.S.); and

WHEREAS, the family of Dixie Lewis wishes to donate a memorial bench in their memory to be placed at the Jane Hammond Softball Field at Codornices Park with a cash donation of \$3,400; and

WHEREAS, per the City's Park Bench Donation Policy, individuals may donate memorial benches to the City's parks in selected locations, subject to the approval of the Director of the Parks Recreation & Waterfront Department, and pay for all associated costs, subject to Council disclosure and approval of the gift donation; and

WHEREAS, the Director has determined that the proposed donation complies with City's Bench Donation Policy as described in Resolution No. 64,148-N.S. and has approved the proposed donation; and

WHEREAS, the cash donation will be deposited into Parks Tax donation revenue budget code 138-52-542-568-0000-000-000-481110 and will be appropriated in FY 2022.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that a cash donation in the amount of \$3,400 for a memorial bench to be placed at the Jane Hammond Softball Field at Codornices Park in memory of Dixie Lewis is hereby accepted.





Office of the City Manager

CONSENT CALENDAR  
September 28, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront  
 Subject: Donation: Memorial Bench at Shorebird Park at the Berkeley Marina in Memory of Shay M. Finnegan

RECOMMENDATION

Adopt a Resolution accepting a cash donation in the amount of \$3,400 for a memorial bench to be placed at Shorebird Park in memory of Shay M. Finnegan.

FISCAL IMPACTS OF RECOMMENDATION

The value of a single bench and memorial plaque is \$3,400, which covers the purchasing and installation costs performed by the City. The cash donation will be deposited into Marina Fund donation revenue budget code 608-52-544-591-0000-000-000-481110 and will be appropriated in FY 2022.

CURRENT SITUATION AND ITS EFFECTS

The family of Shay M. Finnegan wishes to donate a memorial bench in their memory to be placed at Shorebird Park with a cash donation of \$3,400. Per the City's Park Bench Donation Policy, individuals may donate memorial benches to the City's parks in selected locations, subject to the approval of the Director of the Parks Recreation & Waterfront Department, and pay for all associated costs, subject to Council disclosure and approval of the gift donation. The Director has determined that the proposed donation complies with the City's Bench Donation Policy as described in Resolution No. 64,148-N.S. and has approved the donation, subject to Council approval.

BACKGROUND

Benches are placed throughout the City in accordance with the City's Park Bench Donation Policy approved by Council on July 22, 2008 (Resolution No. 64,148-N.S.). The City's Open Governance Ordinance (OGO) requires City Council disclosure and approval of any gift to the City in excess of \$1,000 (BMC Section 2.06.150, Ord. 7,166-N.S.)

Donation: Memorial Bench at Shorebird Park  
in Memory of Shay M. Finnegan

CONSENT CALENDAR  
September 28, 2021

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACT

The City's vendor for benches, Dumor, Inc., makes its priority to purchase only sustainably-harvested wood derived from stringently-regulated timber source locations, including California, Oregon, Washington and British Columbia. This policy reduces solid waste volumes in landfills, helps conserve natural resources and limits the environmental effects resulting from the extraction of virgin materials. The benches therefore comply with the City's environmentally preferable purchasing policy, specifically section 3.7 Forest Conservation.

CONTACT PERSON

Alexandra Endress, Waterfront Manager, 510-981-6737

Attachments:

1: Resolution

RESOLUTION NO. -N.S.

DONATION: MEMORIAL BENCH AT SHOREBIRD PARK AT THE BEREKELEY MARINA IN MEMORY OF SHAY M. FINNEGAN

WHEREAS, on July 22, 2008, Council adopted the Park Bench Donation Policy (Resolution No. 64,148-N.S.); and

WHEREAS, the City's Open Governance Ordinance (OGO) requires City Council disclosure and approval of any gift to the City in excess of \$1,000 (BMC Section 2.06.150, Ord. 7,166-N.S.); and

WHEREAS, the family of Shay M. Finnegan wishes to donate a memorial bench in their memory to be placed at Shorebird Park with a cash donation of \$3,400; and

WHEREAS, per the City's Park Bench Donation Policy, individuals may donate memorial benches to the City's parks in selected locations, subject to the approval of the Director of the Parks Recreation & Waterfront Department, and pay for all associated costs, subject to Council disclosure and approval of the gift donation; and

WHEREAS, the Director has determined that the proposed donation complies with City's Bench Donation Policy as described in Resolution No. 64,148-N.S. and has approved the proposed donation; and

WHEREAS, the cash donation will be deposited into Marina Fund donation revenue budget code 608-52-544-591-0000-000-000-481110 and will be appropriated in FY 2020.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that a cash donation in the amount of \$3,400 for a memorial bench to be placed at Shorebird Park in memory of Shay M. Finnegan is hereby accepted.







Office of the City Manager

CONSENT CALENDAR  
September 28, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront  
 Subject: Exclusive Negotiating Agreement with Innovation Properties Group for 199 Seawall Drive

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to execute an Exclusive Negotiating Agreement (ENA) with Innovation Properties Group (IPG) to develop a pre-development agreement that could lead to a long-term lease of City property at 199 Seawall Drive and a short-term license for a portion of the adjacent parking lot.

FISCAL IMPACTS OF RECOMMENDATION

There are no direct fiscal impacts associated with this recommendation. IPG has requested this ENA in order to secure funding to perform the feasibility studies during phase 2 (pre-development).

CURRENT SITUATION AND ITS EFFECTS

On April 5, 2021, IPG submitted a letter of interest for a long-term lease of 199 Seawall Drive, the City-owned building formerly known as Hs Lordships Restaurant at the Berkeley Waterfront. IPG's proposal has several components: activation of a three to five-year food truck village and outdoor recreation space in a portion of the adjacent parking lot, improvements to the building and building's outdoor spaces, and operation of a restaurant and indoor event space.

Since April, IPG and the City have worked to develop a plan for a potential long-term lease of the building that involves three phases: (1) an Exclusive Negotiating Agreement; (2a) License Agreement for a temporary outdoor food/recreation space (2b) a Predevelopment Agreement; and (3) a Master Lease Agreement.

**Phase 1: Exclusive Negotiating Agreement**

A three to six-month Exclusive Negotiating Agreement (ENA) is necessary in order for IPG to obtain funding and partners to work on the subsequent phases of the project. During the ENA period, the City would agree not to entertain any other offers for 199 Seawall, and would work with IPG towards developing the

phase 2a and 2b Agreements. At this time, only the ENA is being considered for Council approval.

### **Phase 2a: License Agreement**

In the second phase of the project, a license agreement would authorize IPG to activate a portion of the parking lot for a food truck village and outdoor recreation space similar to a food truck village/recreation garden in San Francisco. The license agreement would be for three-to-five years and could be modified if any potential ferry service becomes available.

### **Phase 2b: Pre-Development Agreement**

The second phase of the project would also involve a Pre-Development Agreement that would authorize IPG to conduct feasibility studies, including conceptual design, permitting, financial analysis, and marketing to determine if a viable long-term master lease agreement could be undertaken. This agreement would be for approximately one to two years.

### **Phase 3: Master Lease Agreement**

If the results of the studies conducted during Phase 2 indicate that a long-term project is viable, a Master Lease agreement would be developed for Council consideration.

The ENA being considered here in Phase 1 would be for a period of three months, and could be extended for up to three additional months with the City Manager's authorization. In addition, the ENA includes a "non-circumvention" clause, which would preclude the City from separately engaging with the specific contacts provided by IPG for a period of 12-months after the date of this Agreement. Based on Council feedback, the ENA also states the expectation that any future lease would include labor provisions that the operator would not interfere with workers' rights to organize, and that former employees of Hs Lordships would be offered opportunities to apply for positions in the new operation.

The ENA for Phase 1 of this project does not commit the City to any future agreements.

### **BACKGROUND**

In 1967, the City and Specialty Restaurant Corporation entered into a 50-year ground lease to develop a restaurant and event space that opened in 1969 as "Hs. Lordships". While the lease was set to expire in August, 2019, Specialty Restaurant Corporation terminated their lease 13-months early and Hs. Lordships closed its doors on July 1, 2018. On August 9, 2018, the City entered into an agreement with Collier's Parish International, a provider of real-estate services, to help the City find entities to lease the space (Contract Number 10960). To-date, the building has remained unleased for over three years.

This ENA and the three phases of the project were discussed by Council in Closed Session on June 3, 2021.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE CHANGE

There are no environmental impacts associated with the Exclusive Negotiating Agreement.

RATIONALE FOR RECOMMENDATION

If adopted, the attached ENA would set the City on a path toward leasing the building at 199 Seawall Drive and activating an underutilized parking area on a short-term basis.

CONTACT PERSON

Scott Ferris, Director, Parks, Recreation and Waterfront, 981-6700

Christina Erickson, Deputy Director, Parks, Recreation and Waterfront, 981-6703

Ali Endress, Waterfront Manager, Parks, Recreation and Waterfront, 981-6737

Attachments:

1: Resolution

Exhibit A: Exclusive Negotiating Agreement

Exhibit B: Potential Term Sheet for Future Master Lease

RESOLUTION NO. ##-###

AUTHORIZING AN EXCLUSIVE NEGOTATING AGREEMENT WITH INNOVATION PROPERTIES GROUP, INC. (IPG) FOR CITY PROPERTY AT 199 SEAWALL DRIVE

WHEREAS, City received a grant of state tidelands to be held in trust for uses that include wharves, docks, piers, slips, commercial and industrial purposes, aviation facilities, transportation and utility facilities, public buildings, parks, playgrounds, marinas, snack bars, cafes, restaurants, and motels, including but not limited to the property located at 199 Seawall Drive, Berkeley; and

WHEREAS, on April 5, 2021, IPG submitted a letter of interest for a long-term lease of 199 Seawall, the City-owned building formerly known as Hs Lordships Restaurant at the Berkeley Waterfront; and

WHEREAS, IPG's proposal has several components: activation of a three to five-year food truck village and outdoor recreation space in a portion of the adjacent parking lot, improvements to the building and building's outdoor spaces, and operation of a restaurant and indoor event space; and

WHEREAS, since April, IPG and the City have worked to develop a plan for a potential long-term lease of the building that involves three phases: (1) an Exclusive Negotiating Agreement; (2a) License Agreement for a temporary outdoor food/recreation space (2b) a Predevelopment Agreement; and (3) a Master Lease Agreement.

NOW, THEREFORE BE IT RESOLVED, that the City Council of the City of Berkeley hereby authorizes the City Manager to execute the Exclusive Negotiating Agreement with IPG described in Exhibit A.

Exhibits

A: Exclusive Negotiating Agreement

B: Potential Term Sheet for Future Master Lease

**Exhibit A**

**EXCLUSIVE NEGOTIATING AGREEMENT BETWEEN THE CITY OF BERKELEY AND INNOVATION PROPERTIES GROUP REGARDING THE REDEVELOPMENT AND REUSE OF THE PROPERTY AT 199 SEAWALL DR.**

This Exclusive Negotiating Agreement (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021 (“Effective Date”), by and between the City of Berkeley, a municipal corporation (“City”) and Innovation Properties Group, Inc., a California Corporation, dba Innovation Properties Group (“IPG”).

**RECITALS**

WHEREAS, City was granted certain tidelands in the Berkeley Marina to be held in trust for uses that include the establishment, improvement and conduct of small boat harbors, marinas, aquatic playgrounds and similar recreational facilities, and for all works, buildings, facilities, utilities, structures and appliances incidental, necessary or convenient for the promotion and accommodation of any such uses, including but not limited to snack bars, cafes, restaurants, motels, launching ramps and hoists, storage sheds, boat repair facilities with cranes and marine ways, administration buildings, public restrooms, bait and tackle shops, chandleries, boat sales establishments, service stations and fuel docks, yacht club buildings, parking areas, roadways, pedestrian ways and landscaped areas, including but not limited to the property located at 199 Seawall Drive, Berkeley (“Property”);

WHEREAS, the City and IPG mutually wish to evaluate (A) the construction of improvements to and a master lease of the Property based on IPG’s qualifications and concept to use the Property as a restaurant and event space, and (B) the operation of an outdoor food truck village with recreation components, as outlined in more detail in the attached proposed Term Sheet;

WHEREAS, the City and IPG now desire to perform initial due diligence and explore the feasibility of the proposed project; and negotiate a pre-development agreement for the building and a three- to five-year license agreement for a portion of the parking lot adjacent to the building;

NOW, THEREFORE, City and IPG agree as follows:

1. RECITALS

The recitals to this Agreement, above, are incorporated herein and made a part hereof.

2. PURPOSE OF AGREEMENT

- a. This Agreement confirms the selection of IPG by City to enter into exclusive negotiations with City to determine if IPG can be the developer and master tenant of a restaurant and event space (the “Project”) at the Property.

- b. The purpose of this Agreement is to affirm the mutual intent of IPG and the City to consider generating (A) a pre-development agreement for a master ground lease of 199 Seawall, and (B) a 3-5 year term license agreement for a portion of the parking lot adjacent to 199 Seawall.

### 3. AGREEMENTS

Subject to the terms of this Agreement, City and IPG each hereby agree to negotiate in good faith during the “Exclusivity Period,” as that term is defined in Section 6.a, in order to attempt to cause the execution of written definitive agreements (the “Agreements”), together with such changes and modifications as the parties shall mutually agree. The Agreements shall include, without limitation, (A) a pre-development agreement which shall set forth the procedure and schedule for pre-development activities related to the Project, and (B) a draft license agreement for the short-term use of a portion of the parking lot for three to five years.

### 4. CONFIDENTIALITY

Except where disclosure is required by law, including but not limited to the California Public Records Act (California Government Code section 6250 *et seq.*), IPG and City shall treat as confidential (the “Confidential Information”) (i) all documents, studies, electronic materials and information furnished to the other party by its officers, trustees, executives, employees, agents or representatives (collectively, the “Representatives”) relating to the Property, whether furnished before, on or after the date of this Agreement and whether furnished orally, in writing or by any other medium, and (ii) all reports, studies and other documents and information prepared by or for IPG which contain or reflect any such documents or information furnished by a party’s Representatives or any information obtained through inspection or review of the Property (collectively, the “Evaluation Materials”). Confidential Information does not include the Final Documents, which are subject to public disclosure by the City. The Evaluation Materials shall not include any information which (a) is or becomes generally available to the public other than as a result of disclosure by a party’s Representatives, in breach of this Agreement, (b) was already available to or in the possession of a party prior to its disclosure by the other party’s Representatives, unless obtained from a source which was not permitted to disclose such information, or (c) is or becomes available to a party from a source other than the other party’s Representatives, unless such source was not permitted to disclose such information to IPG. Notwithstanding the provisions of this Section 4, IPG may commence marketing the Project and disclose its selection to potential tenants and other third parties so long as IPG does not disclose any Confidential Information unless IPG has obtained an appropriate confidentiality agreement from such party), or the written consent of the City.

### 5. NO REPRESENTATIONS OR WARRANTIES

City makes no express or implied representations or warranties as to the accuracy or completeness of any Evaluation Materials provided by the City. IPG acknowledges and agrees that neither City nor any of City’s Representatives has or will have any liability to IPG or any other person resulting from any use of the Evaluation Materials by IPG or IPG’s Representatives. Only those representations or warranties, if any, made to IPG in Final Documents, if executed, and subject to the limitations specified therein, shall have any legal effect.

6. EXCLUSIVE NEGOTIATIONS

- a. City and IPG agree that this Agreement shall be effective for a period of ninety (90) days commencing on the Effective Date, and continuing in full force and effect until expiration or earlier termination pursuant to Section 10 (“Exclusivity Period”). The City Manager is authorized to extend this Agreement by an additional ninety (90) days with the consent of IPG.
- b. During the Exclusivity Period, IPG and the City shall negotiate diligently and in good faith to prepare the Agreements. The execution of the Agreements shall be subject to the approval of the Berkeley City Council. During the Exclusivity Period, the City shall not negotiate for the development of the Property, or any portion thereof, with any party other than IPG, or approve or conduct a public hearing for any other development of the Property, or any portion thereof.

7. DUTIES AND RESPONSIBILITIES DURING THE EXCLUSIVITY PERIOD

- a. During the Exclusivity Period, IPG and the City shall negotiate in good faith to attempt to cause the (A) execution of a pre-development agreement for the Project; and (B) the drafting of a license agreement to allow the use of the Property for outdoor food trucks and events.
- b. Nothing in this Agreement requires any party to enter into any further agreement or requires the City to commit to any course of action with respect to the future development of the Property. Nothing in this Agreement is intended to or shall be construed as a commitment to approve any project or any subsequent agreement(s) contemplated herein. The approval of any subsequent agreement negotiated pursuant to this Agreement shall be subject to approval of the Berkeley City Council, and nothing in this Agreement shall alter or limit the discretion the Berkeley City Council possesses pursuant to the City’s Charter and applicable law to approve, disapprove, or modify any such subsequent agreement.

8. TERMS

City and IPG hereby agree to the following terms.

- a. Due Diligence and Inspection of Property. During the Exclusivity Period, the City shall allow IPG, at IPG’s sole cost and expense, to inspect the Property, accompanied by City staff, and review due diligence relating to the Property as made reasonably available to IPG by the City. Such reviews and inspections by IPG shall be conducted in accordance with reasonable restrictions or limitations imposed by the City.
- b. IPG Responsible for Own Costs. IPG acknowledges and agrees that all expenses and costs of IPG arising from this Agreement or the performance of IPG’s obligations hereunder shall be the sole responsibility of IPG.

- c. Assignments; Ownership Changes. IPG acknowledges that the City's consent to issue this Agreement is based on the prior experience and qualifications of IPG. Therefore, IPG shall not assign, sell, or otherwise transfer any rights under this Agreement without the prior written approval of the City in its sole and absolute discretion.
  - d. Conflicts of Interest. The parties to this Agreement have read and are aware of the provisions of California Government Code sections 1090 *et seq.* and 87100 *et seq.*, relating to conflict of interest of public officers and employees, as well as the conflict of interest provisions in Berkeley City Charter Section 36 and Berkeley Municipal Code Chapter 3.64. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of the City relating to this Agreement. Notwithstanding any other provision of this Agreement, it is further understood and agreed that if such a financial interest does exist at the inception of this Agreement, the City may immediately terminate this Agreement by giving written notice thereof.
  - e. Labor Peace. IPG understands that it is the City's expectation that any future Master Lease, and any potential sublease agreements, would include provisions that prohibit IPG or any of its tenants or subtenants from engaging in practices that impede any employee's ability to organize or contract with a labor organization for the purpose of collective bargaining (e.g., harassment, intimidation," captive audience" anti-union meetings or illegal terminations of workers in retaliation for organizing).
  - f. Employment Opportunities for Former Hs Lordships Employees. IPG understands that it is the City's expectation that employees of the former Hs Lordships restaurant located at 199 Seawall Drive employed at the time of the restaurant's closure would be offered an opportunity to apply for positions in new business operations conducted on the property.
9. LIMITATION ON REMEDIES FOR BREACH OR DEFAULT AND RELEASE OF CLAIMS
- a. In the event of an uncured default by a party, the non-defaulting party's sole remedy shall be to terminate this Agreement. Following such termination, neither party shall have any further right, remedy or obligation under this Agreement, except that Developer's indemnification obligations pursuant to Section 11 shall survive termination.
  - b. In no event shall either party be entitled to damages of any kind in the event of termination of this Agreement. Except as expressly provided in subsection (a) of this Section 9, neither party shall have any liability to the other party for damages arising out of or related to performance under this Agreement or otherwise for any default, nor shall either party have any other claims with respect to performance or default under this Agreement. Each party specifically waives and releases any such rights or claims it may otherwise have at law or in equity.



## 10. TERMINATION

Unless terminated by City or IPG pursuant to this Section, this Agreement shall terminate without notice on the earlier of (i) the expiration of the Exclusivity Period; or (ii) the execution of the City and IPG of the Agreements.

## 11. INDEMNITY

IPG releases and discharges, and agrees to defend, indemnify and hold harmless, the City and the City's former, present and future governing bodies, elected and appointed officials, employees, officers, directors, representatives, agents, departments, assigns, insurers, attorneys, predecessors, successors, divisions, subdivisions and parents, and all persons or entities acting by, through, under or in concert with any of the foregoing from and against any and all rights, claims, demands, damages, debts, liabilities, accounts, liens, attorneys' fees, costs, expenses, actions and causes of action arising from or related to this Agreement, the Property and/or the proposed redevelopment.

## 12. NON-CIRCUMVENTION

Non-Circumvention. The City shall not propose any transaction, project, or financing to any IPG Associate, affiliates, partners introduced to the City by IPG with respect to a Business Relationship that would interfere with or provide a substitute for any transaction, financing, redevelopment, or project proposed and/or being negotiated by IPG with respect to IPG's interest to the Property and Project, without the prior written consent of IPG. The City agrees not to engage in any such transaction for a period of twelve months from the date of this Agreement. This section shall not apply in the event of breach of contract or wrongdoing by IPG.

## 13. STATE TIDELANDS GRANT

Tenant acknowledges that the Property is located on State tidelands held by the City of Berkeley in trust pursuant to Chapter 347 of the California Statutes of 1913, as amended ("the Grant"). Tenant agrees that any interpretation of this Agreement and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.

## 14. MISCELLANEOUS

- a. This Agreement together with all exhibits hereto constitutes the entire agreement between the parties with respect to the subject matter hereof. Any amendment or modification of this Agreement must be in writing and signed by all of the parties hereto, and any waiver of any provision of this Agreement must be by written instrument signed by the party charged with the alleged waiver.
- b. This Agreement shall inure to the benefit of and be binding upon the parties and their successors and assigns.
- c. This Agreement shall be construed and enforced in accordance with the laws of the State of California and may be signed in any number of counterparts.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the Effective Date.

IPG:

Innovation Real Estate Group, Inc.,  
a California Corporation  
dba Innovation Properties Group, Inc.

CITY:

City of Berkeley,  
a California municipal corporation

By: \_\_\_\_\_

Owner

By: \_\_\_\_\_

B.D. Williams,  
City Manager

Approved as to form:

\_\_\_\_\_

City Attorney

Registered by:

\_\_\_\_\_

City Auditor

Attest:

\_\_\_\_\_

City Clerk

### **Exhibit B: Potential Term Sheet for Future Master Lease**

The following is a summary of draft terms between the City of Berkeley and Innovation Properties Group (IPG) for a potential future Master Lease Agreement for the property at 199 Seawall Drive at the Berkeley Waterfront:

|                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Use:                   | The premises shall be used primarily as a restaurant and event space, and may include ancillary culinary and innovation space.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| State Tidelands:       | Tenant acknowledges that the premises is located on State of California Tidelands and must be used in a manner consistent with the Public Trust Doctrine.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Term:                  | 45 years with two 10-year tenant options to extend.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Parking Lot:           | Following execution of a license agreement during the predevelopment period, Tenant shall operate a food truck area and outdoor event space in the southern half of the 199 Seawall parking lot. Use of the parking lot shall not extend beyond 2026 without written consent from the City.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Rent:                  | The NNN Base rate shall be \$15,000/ month + 6% of Gross Sales accrued within the Premises. Base rent shall increase 3% annually.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| Condition of Delivery: | The landlord will deliver the premises in as-is condition.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Improvements:          | Tenant will fund all necessary improvements to upgrade the facility.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Sublease & Assignment: | Tenant shall have the right to Sublease all or any portion of the Premises provided that sublessees comply with State Lands Commission requirements for tidelands. Subleasing must be approved by the Landlord with prior written consent, which shall not be unreasonably withheld.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Non-Binding:           | This term sheet is only a proposal to negotiate and is neither an offer nor a contract.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Approval/Execution :   | <p>This Term Sheet is only a list of the above terms and conditions that may or may not become a part of the final Master Lease. This Term Sheet is not intended to be binding or to impose any obligations whatsoever on either party, including any obligation to bargain in good faith. No covenants are implied. The parties do not intend to be bound by an agreement until both parties have executed a formal written License Agreement, Pre-development Agreement, or Master Lease contract.</p> <p>In addition, this Term Sheet is subject to review and acceptance of the final terms and conditions of the Master Lease and related documents. Nothing contained herein shall be binding on either party unless and until such documents are approved, fully executed and exchanged by both parties. Either party is free to terminate the negotiations at any time, and will not by doing so incur any additional obligations or liability.</p> |





Office of the City Manager

CONSENT CALENDAR  
September 28, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Jordan Klein, Director, Department of Planning and Development  
 Subject: Contract No. 10508 Amendment: Ben Noble, City and Regional Planning for the Zoning Ordinance Revision Project (ZORP)

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 10508 with Ben Noble, City and Regional Planning, to develop objective standards in the Zoning Ordinance as ZORP Phase 2, increasing the contract amount by \$125,000 to a new total not-to-exceed contract amount of \$425,000, and extending the contract period to December 31, 2023.

FISCAL IMPACTS OF RECOMMENDATION

Sufficient funding was appropriated in FY 2021 and will be carried over to FY 2022 and recommended for appropriation through the First Amendment to the FY 2022 Annual Appropriations Ordinance in the General Fund (account code 011-53-584-622-0000-000-441-612990-).

CURRENT SITUATION AND ITS EFFECTS

ZORP Phase 1 (adoption of a Baseline Zoning Ordinance) is approaching completion and the Planning Department is shifting focus to ZORP Phase 2 (substantive changes to the Zoning Ordinance). ZORP Phase 2 will focus on changes to Berkeley's Zoning Ordinance that clarify land use regulations citywide and that are necessary for compliance with State laws.

Over the past several years, the State of California has passed annual housing legislation intended to increase housing supply. Many of these new laws -- including, but not limited to Housing Element Law, Senate Bill (SB) 35 and 330, State Density Bonus Law and the Housing Accountability Act (HAA) -- mandate streamlined permitting processes by reducing local discretion and relying on locally adopted objective development standards. Jurisdictions without such standards have more limited local control. Housing Element law in particular has been amended to impose many more research, analysis and code amendment requirements on local jurisdictions, and established penalties for non-compliance.

Berkeley has previously recognized the importance of adopting objective development standards. City Council convened the Joint Subcommittee for the Implementation of State Housing Laws (JSISHL) to research and recommend an approach to developing objective standards. Their recommendation is being considered by City Council this month. City Council set aside \$125,000 in Fiscal Year 2021-2022 to support preparation of objective development standards. Furthermore, Berkeley's Housing Element Update will require a dwelling-units-per-acre density standard in order to accurately estimate the city's capacity to accommodate below market rate Regional Housing Needs Allocation (RHNA) units. These efforts will clarify regulations, simplify the permitting process, and facilitate housing development, while providing predictable outcomes for all interested parties -- goals shared by multiple on-going City Council referrals and land use policy project.

The City's consultant team that prepared ZORP Phase I is uniquely poised to advance objective development standards efficiently, as they have in-depth knowledge of Berkeley's Zoning Ordinance and have the technical expertise needed to complete this project. By merging previously-allocated funding for objective standards with ZORP Phase 2, objective development standards can be developed within the timeframe needed for adoption of the Housing Element Update.

### BACKGROUND

ZORP originates from a 2016 City Council Referral focused on customer service improvements that directs staff to simplify complex technical standards and update procedural elements of the Zoning Ordinance in order to create regulations that are easy to understand and administer. Based on discussions with Planning Commission and the Zoning Adjustments Board on project goals, ZORP was split into two phases.

- **Phase 1** will revise the existing Zoning Ordinance and establish an updated Baseline Zoning Ordinance (BZO) – a document with improved organization, document format, and writing style. Phase 1 does not result in any major substantive changes to existing requirements, standards, or procedures. City Council began its consideration of the BZO on September 14, 2021.
- **Phase 2** will address substantive changes to the Zoning Ordinance. Potential Phase 2 issues have been identified during Phase 1 and will focus on opportunities for improved development outcomes, consistency with State and federal law, and compliance with the City's Strategic Plan, General Plan and Climate Action Plan policies.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Berkeley is an employment and education hub and the ideal location for infill housing. Preparation of objective standards as part of ZORP and the Housing Element Update will help streamline housing entitlement processes and increase housing supply in a

bike- and transit-rich city, thereby advancing climate action and sustainability goals for the City and the region.

RATIONALE FOR RECOMMENDATION

The preparation of objective standards was identified as an element of ZORP Phase 2 and was initially researched by JSISHL. The ZORP consultant team has an in-depth understanding of Berkeley's Zoning Ordinance and technical expertise developing objective development standards. The city is satisfied with the work delivered by Ben Noble, City and Regional Planning, to date under this contract, and believes that the proposed amendment will provide the consultant with the necessary capacity to prepare objective development standards that further the work of JSISHL and is needed for adoption of Berkeley's Housing Element.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSONS

Jordan Klein, Director, Planning and Development Department, 510-981-7437  
Alene Pearson, Principal Planner, Land Use Division, 510-981-7489

Attachments:

1: Resolution

RESOLUTION NO. ##,###-N.S.

CONTRACT NO. 10508 AMENDMENT: BEN NOBLE, CITY AND REGIONAL  
PLANNING FOR ZONING ORDINANCE REVISION PROJECT (ZORP)

WHEREAS the Planning Department issued a Request for Proposals (Spec. #16-11068-C) on July 21, 2016, seeking a vendor to provide technical assistance on a targeted Zoning Ordinance update, later named the Zoning Ordinance Revision Project (ZORP); and

WHEREAS based on written proposals received and staff panel interviews, Ben Noble, City and Regional Planning was selected as the best qualified and most responsive firm to perform the work; and

WHEREAS a contract was entered into on February 14, 2017 (ERMA# 113997-1/CMS #XMW3W/Contract No.10508) in the amount of \$300,000 for Ben Noble, City and Regional Planning to provide these services; and

WHEREAS a contract amendment was entered into on October 24, 2017 to clarify the scope of work for ZORP Phase 1; and

WHEREAS, the work by Ben Noble, City and Regional Planning on ZORP Phase 1 has produced a Baseline Zoning Ordinance and will allow for work on Phase 2 to commence; and

WHEREAS, the need to develop objective development standards was identified as a key issue for ZORP Phase 2 and is also necessary for the Housing Element Update; and

WHEREAS, the scope and budget for development of objective development standards for all zoning districts will require work from Ben Noble, City and Regional Planning; and

WHEREAS, the scope and budget for development of objective standards exceeds the project budget allocated for ZORP Phase 2 and the current contract funding; and

WHEREAS, a portion of the cost of the developing objective development standards is allocated in FY 2021 in budget code 011-53-584-622-0000-000-441-612990-; and

WHEREAS, Ben Noble, City and Regional Planning can complete the project scope if the ZORP contract is amended to include funding allocated for development of objective standards;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute an amendment to Contract No. 10508 with Ben Noble, City and Regional Planning to continue working on ZORP Phase 2, focusing on



objective development standards, with additional funding of \$125,000, to a new total contract not-to-exceed amount of \$425,000, for the period extending through December 31, 2023.

BE IT FURTHER RESOLVED that a record signature copy of said contract and any amendments will be on file in the Office of the City Clerk.





Office of the City Manager

CONSENT CALENDAR  
September 28, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Jennifer A. Louis, Interim Chief of Police  
 Abraham Roman, Interim Fire Chief  
 Subject: Lease Agreement with Motorola Solutions for Public Safety Radios

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to enter into an initial seven-year lease and any future amendments with seven annual payments estimated at \$920,000 and not to exceed \$6,655,000 total for public safety radios with Motorola Solutions.

FISCAL IMPACTS OF RECOMMENDATION

In order to secure this critical communications equipment with the minimal annual impact to the City's limited budget resources, a seven-year lease was selected to stretch the investment period and develop manageable annual payments. The resulting lease will require an annual General fund allocation of approximately \$665,000 and a seven-year lease not to exceed \$4,655,000 and a Measure GG annual allocation of \$255,000 and a seven-year lease not to exceed \$2,000,000. These two funding sources combined represent the combined Lease Agreement for Public Safety Radios consisting of seven annual lease payments of \$920,000 and a seven-year lease agreement not to exceed \$6,655,000 dollars.

CURRENT SITUATION AND ITS EFFECTS

The lease agreement with Motorola Solutions for Public Safety Radios is a Strategic Plan Priority Project, advancing our goal to create a resilient, safe, connected, and prepared city. Both the Police and Fire Departments radio systems are obsolete and no longer supported by the manufacturer, Motorola Solutions, and additionally, the current models are not compliant with California Department of Justice encryption mandates.

During the Fiscal Year 2022 budget process in June of this year, the Police Department had received City Council approval to enter a seven-year lease agreement estimated at \$600,000 annually and estimated total cost of \$4.2 million. The Police Department was able to secure manufacturer discounts which expire on September 30, 2021 of nearly \$600,000 dollars and avoid equipment price increases which result in an additional approximate \$400,000 cost savings. These discounts resulted in a significant savings to the City of Berkeley as the Police Department equipment will be approximately \$3.1

million dollars with an estimated total combined project savings nearing \$1.1 million dollars.

During on-going lease and equipment discussions, the Fire Department determined their existing radio equipment was of the same vintage as the Police radios and also obsolete and would require encryption in order to share radio frequencies with the Police Department, which is an operational necessity. The Fire Department also has a time sensitive business need to expand the number of radios assigned to support the department redesign. These radios will be used to support enhanced operations in fire prevention, wildland urban interface prevention, and the expanding number of ambulances that will be deployed in FY22-23. In an effort to address their critical communications equipment need and realize the pricing discounts available, the Fire Department requested to utilize the \$1.1 million dollars of savings resulting from the Police Department estimates and are contributing up to a maximum of approximately \$2,000,000 dollars in Measure GG funding to support the Fire Department radio equipment needs.

#### BACKGROUND

The majority of the current Public Safety Radios were purchased in December of 2011 and have exceeded their useful life. Additionally, radio replacement parts are no longer manufactured, making radio repairs nearly impossible. The new radios also address the California Department of Justice mandates that all transmissions of confidential personal information be encrypted to reduce the unauthorized use of confidential information over Public Safety Radio systems statewide.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The City of Berkeley will experience some resulting greenhouse gas emissions savings because the new radios do not require in-person software updates since the new system is able to be updated over a secure network and can be pushed out remotely. Globally, Motorola Solutions has reduced its carbon footprint from greenhouse gases (GHG) 8.1% in 2020 compared to 2019 and a decrease of 39.7% compared to their baseline year 2016.

#### RATIONALE FOR RECOMMENDATION

The existing Public Safety Radios have exceeded their useful life and replacement parts are no longer manufactured. The new Motorola Solutions radios have mandated encryption, enhanced operability between the Berkeley Police and Fire Departments, and will ensure reliable communications between the City of Berkeley Communications Center and field personnel responding to in-progress emergencies and requests for services. The seven-year lease agreement with Motorola Solutions represents the best solution to address the deficiencies in the existing radio system at the least possible annual allocation of resources.

#### ALTERNATIVE ACTIONS CONSIDERED

The Police and Fire Departments weighed the upfront purchase of the radios and compared the budget impacts to have smaller annual payments of less than \$1 million dollars versus a one-time purchase cost of nearly \$6 million dollars. The lower annual payments are more easily supported by the available on-going revenue streams in the General Fund and Measure GG which had significant impact on the lease decision.

CONTACT PERSONS

Jennifer A. Louis, Interim Chief of Police, 981-5700

Abraham Roman, Interim Fire Chief, 981-5500

Attachments:

1: Resolution

Exhibit A: Quote from Motorola Solutions

RESOLUTION NO. ##,###-N.S.

Lease Agreement with Motorola Solutions

WHEREAS, both the Police and Fire Departments require mobile radio communications to provide service to the Community and the State of California; and

WHEREAS, the Police and Fire Departments current mobile radios are obsolete and do not meet State of California, Department of Justice encryption standards; and

WHEREAS, the Police and Fire Departments require new mobile radios to provide essential emergency services to the City of Berkeley, regional partners, and the State of California; and

WHEREAS, the Police and Fire Departments essential need for mobile radios can be addressed by securing a lease agreement with Motorola Solutions for radios, equipment, and associated services; and

WHEREAS, the funding for the lease for the new mobile radios will be funded by the General Fund with annual payments at \$665,000 for seven years for a General Fund total not to exceed \$4,655,000 and funded also by Measure GG funding with annual payments at \$255,000 for seven years for a Measure GG total not to exceed \$2,000,000. For the combined lease agreement amount of \$920,000 annually and seven-year not to exceed total of \$6,655,000.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to sign, including any amendments to, the lease agreement with Motorola Solutions, for radios and necessary radio equipment to support the Police and Fire Departments radio systems identified as Public Safety Radios over the entire term of the lease agreement, with seven annual payments estimated at \$920,000 and not to exceed \$6,655,000 total for public safety radios with Motorola Solutions.

BE IT FURTHER RESOLVED that the City Manager is authorized to approve and/or waive City of Berkeley specific provisions which would preclude the execution of the lease, upon review by the City of Berkeley's Attorney's Office.

Exhibits

A: Quote from Motorola Solutions



Quote Number: QUOTE-1388533

BERKELEY, CITY OF

Billing Address:  
BERKELEY, CITY OF  
1326 ALLSTON WAY  
BERKELEY CA, 94702

Shipping Address:  
POLICE COMMUNICATION CENTER  
2100 MLK JR WAY  
BERKELEY CA, 94704

Quote Date: 2020-12-19  
Expiration Date: 2021-9-30  
Quote Created By:  
Dick Fasi  
dfasi@redcloudinc.com

Customer:  
BERKELEY, CITY OF

Contract:  
17724 - HGAC (TX)

| Line # | Item Number      | Description                            | Quantity | Unit List Price | Ext. List Price | Discount % | Discount \$ | Unit Sale Price | Ext. Sale Price |
|--------|------------------|----------------------------------------|----------|-----------------|-----------------|------------|-------------|-----------------|-----------------|
|        | APX™ 8000 Series |                                        |          |                 |                 |            |             |                 |                 |
| 1      | H91TGD9PW7AN     | APX 8000 ALL BAND PORTABLE MODEL 3.5   | 265      | \$6,292.00      | \$1,667,380.00  | 35.76%     | \$2,250.02  | \$4,041.98      | \$1,071,124.70  |
| 1a     | Q806CB           | ADD: ASTRO DIGITAL CAI OPERATION       | 265      | \$515.00        | \$136,475.00    | 35.76%     | \$184.16    | \$330.84        | \$87,672.60     |
| 1b     | Q361AN           | ADD: P25 9600 BAUD TRUNKING            | 265      | \$300.00        | \$79,500.00     | 35.76%     | \$107.28    | \$192.72        | \$51,070.80     |
| 1c     | Q58AL            | ADD: 3Y ESSENTIAL SERVICE              | 265      | \$115.00        | \$30,475.00     | 0.00%      | \$0.00      | \$115.00        | \$30,475.00     |
| 1d     | QA00580AA        | ADD: TDMA OPERATION                    | 265      | \$450.00        | \$119,250.00    | 35.76%     | \$160.92    | \$289.08        | \$76,606.20     |
| 1e     | QA09007AA        | ADD: OUT OF THE BOX WIFI PROVISIONING  | 265      | \$0.00          | \$0.00          | 0.00%      | \$0.00      | \$0.00          | \$0.00          |
| 1f     | QA09001AB        | ADD: WIFI CAPABILITY                   | 265      | \$300.00        | \$79,500.00     | 35.76%     | \$107.28    | \$192.72        | \$51,070.80     |
| 1g     | Q498AU           | ENH: ASTRO 25 OTAR W/ MULTIKEY         | 265      | \$740.00        | \$196,100.00    | 50.00%     | \$370.00    | \$98,050.00     | \$98,050.00     |
| 1h     | H38BS            | ADD: SMARTZONE OPERATION               | 265      | \$1,500.00      | \$397,500.00    | 35.76%     | \$536.40    | \$963.60        | \$255,354.00    |
| 1i     | QA07682AA        | ADD: SMARTCONNECT                      | 265      | \$0.00          | \$0.00          | 0.00%      | \$0.00      | \$0.00          | \$0.00          |
| 1j     | G996AP           | ADD: PROGRAMMING OVER P25 (OTAP)       | 265      | \$100.00        | \$26,500.00     | 35.76%     | \$35.76     | \$64.24         | \$17,023.60     |
| 1k     | Q629AH           | ENH: AES ENCRYPTION AND ADP            | 265      | \$633.00        | \$167,745.00    | 100.00%    | \$633.00    | \$167,745.00    | \$0.00          |
|        | APX™ 8500        |                                        |          |                 |                 |            |             |                 |                 |
| 2      | M37TSS9PW1AN     | APX8500 ALL BAND MP MOBILE             | 68       | \$4,770.00      | \$324,360.00    | 35.76%     | \$1,705.75  | \$3,064.25      | \$208,369.00    |
| 2a     | G90AC            | ADD: NO MICROPHONE NEEDED APX          | 68       | \$0.00          | \$0.00          | 0.00%      | \$0.00      | \$0.00          | \$0.00          |
| 2b     | GA09007AA        | ADD: OUT OF THE BOX WIFI PROVISIONING  | 68       | \$0.00          | \$0.00          | 0.00%      | \$0.00      | \$0.00          | \$0.00          |
| 2c     | G996AS           | ENH: OVER THE AIR PROVISIONING         | 68       | \$100.00        | \$6,800.00      | 35.76%     | \$35.76     | \$64.24         | \$4,368.32      |
| 2d     | GA00250AA        | ADD: WIFI/GNSS STUBBY ANTENNA LMR240   | 68       | \$100.00        | \$6,800.00      | 35.76%     | \$35.76     | \$64.24         | \$4,368.32      |
| 2e     | GA00580AA        | ADD: TDMA OPERATION                    | 68       | \$450.00        | \$30,600.00     | 35.76%     | \$160.92    | \$289.08        | \$19,657.44     |
| 2f     | GA01513AB        | ADD: ALL BAND MOBILE ANTENNA (7/8/V/U) | 68       | \$95.00         | \$6,460.00      | 35.76%     | \$33.97     | \$61.03         | \$4,150.04      |
| 2g     | G51AT            | ENH:SMARTZONE                          | 68       | \$1,500.00      | \$102,000.00    | 35.76%     | \$536.40    | \$963.60        | \$65,524.80     |
| 2h     | G142AD           | ADD: NO SPEAKER APX                    | 68       | \$0.00          | \$0.00          | 0.00%      | \$0.00      | \$0.00          | \$0.00          |

|    |              |                                        |    |            |              |         |            |             |              |
|----|--------------|----------------------------------------|----|------------|--------------|---------|------------|-------------|--------------|
| 2i | G78AT        | ENH: 3 YEAR ESSENTIAL SVC              | 68 | \$176.40   | \$11,995.20  | 0.00%   | \$0.00     | \$176.40    | \$11,995.20  |
| 2j | G298AS       | ENH: ASTRO 25 OTAR W/ MULTIKEY         | 68 | \$740.00   | \$50,320.00  | 50.00%  | \$370.00   | \$25,160.00 | \$25,160.00  |
| 2k | GA09001AA    | ADD: WI-FI CAPABILITY                  | 68 | \$300.00   | \$20,400.00  | 35.76%  | \$107.28   | \$192.72    | \$13,104.96  |
| 2l | G843AH       | ADD: AES ENCRYPTION AND ADP            | 68 | \$633.00   | \$43,044.00  | 100.00% | \$633.00   | \$43,044.00 | \$0.00       |
| 2m | G444AH       | ADD: APX CONTROL HEAD SOFTWARE         | 68 | \$0.00     | \$0.00       | 0.00%   | \$0.00     | \$0.00      | \$0.00       |
| 2n | G67EH        | ADD: REMOTE MOUNT E5 MP                | 68 | \$297.00   | \$20,196.00  | 35.76%  | \$106.21   | \$190.79    | \$12,973.72  |
| 2o | GA01517AA    | DEL: NO J600 ADAPTER CABLE NEEDED      | 68 | \$0.00     | \$0.00       | 0.00%   | \$0.00     | \$0.00      | \$0.00       |
| 2p | G806BL       | ENH: ASTRO DIGITAL CAI OP APX          | 68 | \$515.00   | \$35,020.00  | 35.76%  | \$184.16   | \$330.84    | \$22,497.12  |
| 2q | GA01670AA    | ADD: APX E5 CONTROL HEAD               | 68 | \$572.00   | \$38,896.00  | 35.76%  | \$204.55   | \$367.45    | \$24,986.60  |
| 2r | GA01630AA    | ADD: SMARTCONNECT                      | 68 | \$0.00     | \$0.00       | 0.00%   | \$0.00     | \$0.00      | \$0.00       |
| 2s | G361AH       | ENH: P25 TRUNKING SOFTWARE APX         | 68 | \$300.00   | \$20,400.00  | 35.76%  | \$107.28   | \$192.72    | \$13,104.96  |
|    | GA05509AA    | DEL: DELETE UHF BAND.                  | 68 | -\$800.00  | -\$54,400.00 | 27.00%  | -\$216.00  | -\$584.00   | -\$39,712.00 |
|    | APX™ 8500    |                                        |    |            |              |         |            |             |              |
| 3  | M37TSS9PW1AN | APX8500 ALL BAND MP MOBILE             | 40 | \$4,770.00 | \$190,800.00 | 35.76%  | \$1,705.75 | \$3,064.25  | \$122,570.00 |
| 3a | G90AC        | ADD: NO MICROPHONE NEEDED APX          | 40 | \$0.00     | \$0.00       | 0.00%   | \$0.00     | \$0.00      | \$0.00       |
| 3b | GA09007AA    | ADD: OUT OF THE BOX WIFI PROVISIONING  | 40 | \$0.00     | \$0.00       | 0.00%   | \$0.00     | \$0.00      | \$0.00       |
| 3c | G996AS       | ENH: OVER THE AIR PROVISIONING         | 40 | \$100.00   | \$4,000.00   | 35.76%  | \$35.76    | \$64.24     | \$2,569.60   |
| 3d | GA00250AA    | ADD: WIFI/GNSS STUBBY ANTENNA LMR240   | 40 | \$100.00   | \$4,000.00   | 35.76%  | \$35.76    | \$64.24     | \$2,569.60   |
| 3e | GA00580AA    | ADD: TDMA OPERATION                    | 40 | \$450.00   | \$18,000.00  | 35.76%  | \$160.92   | \$289.08    | \$11,563.20  |
| 3f | GA01513AB    | ADD: ALL BAND MOBILE ANTENNA (7/8/V/U) | 40 | \$95.00    | \$3,800.00   | 35.76%  | \$33.97    | \$61.03     | \$2,441.20   |
| 3g | G66BN        | ADD: DASH MOUNT E5                     | 40 | \$125.00   | \$5,000.00   | 35.76%  | \$44.70    | \$80.30     | \$3,212.00   |
| 3h | G51AT        | ENH:SMARTZONE                          | 40 | \$1,500.00 | \$60,000.00  | 35.76%  | \$536.40   | \$963.60    | \$38,544.00  |
| 3i | G142AD       | ADD: NO SPEAKER APX                    | 40 | \$0.00     | \$0.00       | 0.00%   | \$0.00     | \$0.00      | \$0.00       |
| 3j | G78AT        | ENH: 3 YEAR ESSENTIAL SVC              | 40 | \$176.40   | \$7,056.00   | 0.00%   | \$0.00     | \$176.40    | \$7,056.00   |
| 3k | G298AS       | ENH: ASTRO 25 OTAR W/ MULTIKEY         | 40 | \$740.00   | \$29,600.00  | 50.00%  | \$370.00   | \$14,800.00 | \$14,800.00  |
| 3l | GA09001AA    | ADD: WI-FI CAPABILITY                  | 40 | \$300.00   | \$12,000.00  | 35.76%  | \$107.28   | \$192.72    | \$7,708.80   |
| 3m | G843AH       | ADD: AES ENCRYPTION AND ADP            | 40 | \$633.00   | \$25,320.00  | 100.00% | \$633.00   | \$25,320.00 | \$0.00       |
| 3n | G444AH       | ADD: APX CONTROL HEAD SOFTWARE         | 40 | \$0.00     | \$0.00       | 0.00%   | \$0.00     | \$0.00      | \$0.00       |
| 3o | GA01517AA    | DEL: NO J600 ADAPTER CABLE NEEDED      | 40 | \$0.00     | \$0.00       | 0.00%   | \$0.00     | \$0.00      | \$0.00       |
| 3p | G806BL       | ENH: ASTRO DIGITAL CAI OP APX          | 40 | \$515.00   | \$20,600.00  | 35.76%  | \$184.16   | \$330.84    | \$13,233.60  |
| q  | GA01670AA    | ADD: APX E5 CONTROL HEAD               | 40 | \$572.00   | \$22,880.00  | 35.76%  | \$204.55   | \$367.45    | \$14,698.00  |
| 3r | GA01630AA    | ADD: SMARTCONNECT                      | 40 | \$0.00     | \$0.00       | 0.00%   | \$0.00     | \$0.00      | \$0.00       |
| 3s | G361AH       | ENH: P25 TRUNKING SOFTWARE APX         | 40 | \$300.00   | \$12,000.00  | 35.76%  | \$107.28   | \$192.72    | \$7,708.80   |
|    | GA05509AA    | DEL: DELETE UHF BAND.                  | 40 | -\$800.00  | -\$32,000.00 | 27.00%  | -\$216.00  | -\$584.00   | -\$23,360.00 |
|    | APX™ 8500    |                                        |    |            |              |         |            |             |              |
| 4  | M37TSS9PW1AN | APX8500 ALL BAND MP MOBILE             | 20 | \$4,770.00 | \$95,400.00  | 35.76%  | \$1,705.75 | \$3,064.25  | \$61,285.00  |
| 4a | G90AC        | ADD: NO MICROPHONE NEEDED APX          | 20 | \$0.00     | \$0.00       | 0.00%   | \$0.00     | \$0.00      | \$0.00       |
| 4b | G72AD        | ADD: APX O3 HANDHELD CH                | 20 | \$946.00   | \$18,920.00  | 35.76%  | \$338.29   | \$607.71    | \$12,154.20  |
| 4c | G996AS       | ENH: OVER THE AIR PROVISIONING         | 20 | \$100.00   | \$2,000.00   | 35.76%  | \$35.76    | \$64.24     | \$1,284.80   |
| 4d | GA00250AA    | ADD: WIFI/GNSS STUBBY ANTENNA LMR240   | 20 | \$100.00   | \$2,000.00   | 35.76%  | \$35.76    | \$64.24     | \$1,284.80   |
| 4e | G67DE        | ADD: REMOTE MOUNT O3 MP                | 20 | \$297.00   | \$5,940.00   | 35.76%  | \$106.21   | \$190.79    | \$3,815.80   |
| 4f | GA00580AA    | ADD: TDMA OPERATION                    | 20 | \$450.00   | \$9,000.00   | 35.76%  | \$160.92   | \$289.08    | \$5,781.60   |
| 4g | GA01513AB    | ADD: ALL BAND MOBILE ANTENNA (7/8/V/U) | 20 | \$95.00    | \$1,900.00   | 35.76%  | \$33.97    | \$61.03     | \$1,220.60   |
| 4h | G51AT        | ENH:SMARTZONE                          | 20 | \$1,500.00 | \$30,000.00  | 35.76%  | \$536.40   | \$963.60    | \$19,272.00  |



|    |                  |                                       |    |            |              |         |            |             |              |
|----|------------------|---------------------------------------|----|------------|--------------|---------|------------|-------------|--------------|
| 4i | G142AD           | ADD: NO SPEAKER APX                   | 20 | \$0.00     | \$0.00       | 0.00%   | \$0.00     | \$0.00      | \$0.00       |
| 4j | G78AT            | ENH: 3 YEAR ESSENTIAL SVC             | 20 | \$176.40   | \$3,528.00   | 0.00%   | \$0.00     | \$176.40    | \$3,528.00   |
| 4k | G298AS           | ENH: ASTRO 25 OTAR W/ MULTIKEY        | 20 | \$740.00   | \$14,800.00  | 50.00%  | \$370.00   | \$7,400.00  | \$7,400.00   |
| 4l | GA09001AA        | ADD: WI-FI CAPABILITY                 | 20 | \$300.00   | \$6,000.00   | 35.76%  | \$107.28   | \$192.72    | \$3,854.40   |
| 4m | G843AH           | ADD: AES ENCRYPTION AND ADP           | 20 | \$633.00   | \$12,660.00  | 100.00% | \$633.00   | \$12,660.00 | \$0.00       |
| 4n | G444AH           | ADD: APX CONTROL HEAD SOFTWARE        | 20 | \$0.00     | \$0.00       | 0.00%   | \$0.00     | \$0.00      | \$0.00       |
| 4o | GA01517AA        | DEL: NO J600 ADAPTER CABLE NEEDED     | 20 | \$0.00     | \$0.00       | 0.00%   | \$0.00     | \$0.00      | \$0.00       |
| 4p | G806BL           | ENH: ASTRO DIGITAL CAI OP APX         | 20 | \$515.00   | \$10,300.00  | 35.76%  | \$184.16   | \$330.84    | \$6,616.80   |
| 4q | GA01630AA        | ADD: SMARTCONNECT                     | 20 | \$0.00     | \$0.00       | 0.00%   | \$0.00     | \$0.00      | \$0.00       |
| 4r | G361AH           | ENH: P25 TRUNKING SOFTWARE APX        | 20 | \$300.00   | \$6,000.00   | 35.76%  | \$107.28   | \$192.72    | \$3,854.40   |
|    | GA05509AA        | DEL: DELETE UHF BAND.                 | 20 | -\$800.00  | -\$16,000.00 | 27.00%  | -\$216.00  | -\$584.00   | -\$11,680.00 |
|    | APX™ 8500        |                                       |    |            |              |         |            |             |              |
| 5  | M37TSS9PW1AN     | APX8500 ALL BAND MP MOBILE            | 13 | \$4,770.00 | \$62,010.00  | 35.76%  | \$1,705.75 | \$3,064.25  | \$39,835.25  |
| 5a | GA00250AB        | ADD: MOTORCYCLE WIFI/GNSS             | 13 | \$100.00   | \$1,300.00   | 35.76%  | \$35.76    | \$64.24     | \$835.12     |
| 5b | G90AC            | ADD: NO MICROPHONE NEEDED APX         | 13 | \$0.00     | \$0.00       | 0.00%   | \$0.00     | \$0.00      | \$0.00       |
| 5c | GA09007AA        | ADD: OUT OF THE BOX WIFI PROVISIONING | 13 | \$0.00     | \$0.00       | 0.00%   | \$0.00     | \$0.00      | \$0.00       |
| 5d | G996AS           | ENH: OVER THE AIR PROVISIONING        | 13 | \$100.00   | \$1,300.00   | 35.76%  | \$35.76    | \$64.24     | \$835.12     |
| 5e | GA00580AA        | ADD: TDMA OPERATION                   | 13 | \$450.00   | \$5,850.00   | 35.76%  | \$160.92   | \$289.08    | \$3,758.04   |
| 5f | G51AT            | ENH: SMARTZONE                        | 13 | \$1,500.00 | \$19,500.00  | 35.76%  | \$536.40   | \$963.60    | \$12,526.80  |
| 5g | G142AD           | ADD: NO SPEAKER APX                   | 13 | \$0.00     | \$0.00       | 0.00%   | \$0.00     | \$0.00      | \$0.00       |
| 5h | G78AT            | ENH: 3 YEAR ESSENTIAL SVC             | 13 | \$176.40   | \$2,293.20   | 0.00%   | \$0.00     | \$176.40    | \$2,293.20   |
| 5i | G298AS           | ENH: ASTRO 25 OTAR W/ MULTIKEY        | 13 | \$740.00   | \$9,620.00   | 50.00%  | \$370.00   | \$4,810.00  | \$4,810.00   |
| 5j | GA09001AA        | ADD: WI-FI CAPABILITY                 | 13 | \$300.00   | \$3,900.00   | 35.76%  | \$107.28   | \$192.72    | \$2,505.36   |
| 5k | GA00512AB        | ADD: ANT MTCL 1/4 WAVE WHIP 150.8-162 | 13 | \$50.00    | \$650.00     | 35.76%  | \$17.88    | \$32.12     | \$417.56     |
| 5l | G843AH           | ADD: AES ENCRYPTION AND ADP           | 13 | \$633.00   | \$8,229.00   | 100.00% | \$633.00   | \$8,229.00  | \$0.00       |
| 5m | G138AC           | ADD: APX7500 MOTORCYCLE CH SFWR O5    | 13 | \$0.00     | \$0.00       | 0.00%   | \$0.00     | \$0.00      | \$0.00       |
| 5n | W620AE           | ADD:NO MTRCYCLE ENCL NEEDED APX       | 13 | \$0.00     | \$0.00       | 0.00%   | \$0.00     | \$0.00      | \$0.00       |
| 5o | G444AH           | ADD: APX CONTROL HEAD SOFTWARE        | 13 | \$0.00     | \$0.00       | 0.00%   | \$0.00     | \$0.00      | \$0.00       |
| 5p | G67EJ            | ADD: E5 REMOTE MOUNT MOTORCYCLE       | 13 | \$400.00   | \$5,200.00   | 35.76%  | \$143.04   | \$256.96    | \$3,340.48   |
| 5q | GA01517AA        | DEL: NO J600 ADAPTER CABLE NEEDED     | 13 | \$0.00     | \$0.00       | 0.00%   | \$0.00     | \$0.00      | \$0.00       |
| 5r | G806BL           | ENH: ASTRO DIGITAL CAI OP APX         | 13 | \$515.00   | \$6,695.00   | 35.76%  | \$184.16   | \$330.84    | \$4,300.92   |
| 5s | GA01670AA        | ADD: APX E5 CONTROL HEAD              | 13 | \$572.00   | \$7,436.00   | 35.76%  | \$204.55   | \$367.45    | \$4,776.85   |
| 5t | GA01630AA        | ADD: SMARTCONNECT                     | 13 | \$0.00     | \$0.00       | 0.00%   | \$0.00     | \$0.00      | \$0.00       |
| 5u | G174AG           | ADD: ANT 3DB LOWPRO MCYC 762-870      | 13 | \$43.00    | \$559.00     | 35.77%  | \$15.38    | \$27.62     | \$359.06     |
| 5v | G361AH           | ENH: P25 TRUNKING SOFTWARE APX        | 13 | \$300.00   | \$3,900.00   | 35.76%  | \$107.28   | \$192.72    | \$2,505.36   |
|    | GA05509AA        | DEL: DELETE UHF BAND.                 | 13 | -\$800.00  | -\$10,400.00 | 27.00%  | -\$216.00  | -\$584.00   | -\$7,592.00  |
| 1  | T7936A           | APX UCM UPGRADE CD.                   | 1  | \$57.50    | \$57.50      | 0.00%   | \$0.00     | \$57.50     | \$57.50      |
| 1a | CA00182AR        | ADD: AES ENCRYPTION SOFTWARE.         | 8  | \$633.00   | \$5,064.00   | 50.00%  | \$316.50   | \$316.50    | \$2,532.00   |
|    | FLASHport Series |                                       |    |            |              |         |            |             |              |
| 2  | T7562A           | DIGITAL SMARTZONE.                    | 1  | \$0.00     | \$0.00       | 0.00%   | \$0.00     | \$0.00      | \$0.00       |
| 2a | G298AU           | ENH: ASTRO 25 OTAR W/ MULTIKEY.       | 8  | \$851.00   | \$6,808.00   | 50.00%  | \$425.50   | \$425.50    | \$3,404.00   |
| 1  | T7936A           | APX UCM UPGRADE CD.                   | 1  | \$57.50    | \$57.50      | 0.00%   | \$0.00     | \$57.50     | \$57.50      |
| 1a | CA00182AR        | ADD: AES ENCRYPTION SOFTWARE.         | 8  | \$633.00   | \$5,064.00   | 50.00%  | \$316.50   | \$316.50    | \$2,532.00   |
|    | FLASHport Series |                                       |    |            |              |         |            |             |              |
| 2  | T7562A           | DIGITAL SMARTZONE.                    | 1  | \$0.00     | \$0.00       | 0.00%   | \$0.00     | \$0.00      | \$0.00       |
| 2a | G298AU           | ENH: ASTRO 25 OTAR W/ MULTIKEY.       | 8  | \$851.00   | \$6,808.00   | 50.00%  | \$425.50   | \$425.50    | \$3,404.00   |

|    |                 |                                      |   |            |             |        |            |            |             |
|----|-----------------|--------------------------------------|---|------------|-------------|--------|------------|------------|-------------|
|    | APX™ Consolette |                                      |   |            |             |        |            |            |             |
| 1  | L37TSS9PW1AN    | ALL BAND CONSOLETTTE.                | 3 | \$8,683.00 | \$26,049.00 | 27.00% | \$2,344.41 | \$6,338.59 | \$19,015.77 |
| 1a | L998AB          | ADD: LIMITED FRONT PANEL W/CLOCK/VU. | 3 | \$480.00   | \$1,440.00  | 27.00% | \$129.60   | \$350.40   | \$1,051.20  |
| 1b | G996AS          | ENH: OVER THE AIR PROVISIONING.      | 3 | \$100.00   | \$300.00    | 27.00% | \$27.00    | \$73.00    | \$219.00    |
| 1c | GA00580AA       | ADD: TDMA OPERATION.                 | 3 | \$450.00   | \$1,350.00  | 27.00% | \$121.50   | \$328.50   | \$985.50    |
| 1d | CA01598AB       | ADD: AC LINE CORD US.                | 3 | \$0.00     | \$0.00      | 0.00%  | \$0.00     | \$0.00     | \$0.00      |
| 1e | G51AT           | ENH:SMARTZONE.                       | 3 | \$1,500.00 | \$4,500.00  | 27.00% | \$405.00   | \$1,095.00 | \$3,285.00  |
| 1f | G78AR           | ADD: 3Y ESSENTIAL SERVICE.           | 3 | \$176.00   | \$528.00    | 0.00%  | \$0.00     | \$176.00   | \$528.00    |
| 1g | GA05509AA       | DEL: DELETE UHF BAND.                | 3 | -\$800.00  | -\$2,400.00 | 27.00% | -\$216.00  | -\$584.00  | -\$1,752.00 |
| 1h | G298AS          | ENH: ASTRO 25 OTAR W/ MULTIKEY.      | 3 | \$740.00   | \$2,220.00  | 27.00% | \$199.80   | \$540.20   | \$1,620.60  |
| 1i | G843AH          | ADD: AES ENCRYPTION AND ADP.         | 3 | \$475.00   | \$1,425.00  | 27.00% | \$128.25   | \$346.75   | \$1,040.25  |
| 1j | G806BL          | ENH: ASTRO DIGITAL CAI OP APX.       | 3 | \$515.00   | \$1,545.00  | 27.00% | \$139.05   | \$375.95   | \$1,127.85  |
| 1k | G361AH          | ENH: P25 TRUNKING SOFTWARE APX.      | 3 | \$300.00   | \$900.00    | 27.00% | \$81.00    | \$219.00   | \$657.00    |
| 1l | GA05508AA       | DEL: DELETE VHF BAND.                | 3 | -\$800.00  | -\$2,400.00 | 27.00% | -\$216.00  | -\$584.00  | -\$1,752.00 |
| 2  | HKN6233C        | APX CONSOLETTTE RACK MOUNT KIT.      | 3 | \$200.00   | \$600.00    | 27.00% | \$54.00    | \$146.00   | \$438.00    |

|                          |                       |                         |
|--------------------------|-----------------------|-------------------------|
| <b>Net Total</b>         | \$2,587,941.67        | <b>POLICE TOTAL</b>     |
| <b>Estimated Tax</b>     | \$265,264.02          | 10.25%                  |
| <b>Estimated Freight</b> | \$0.00                |                         |
| <b>PD Radio Total</b>    | \$2,853,205.69        |                         |
| <b>Radio Mgmt</b>        | \$215,603.00          |                         |
| <b>Radio Mgmt tax</b>    | \$22,099.31           |                         |
| <b>PD Project Total</b>  | <b>\$3,090,908.00</b> | <b>PD PROJECT TOTAL</b> |



**Quote Number: QUOTE-1388532**  
**BERKELEY, CITY OF**

Billing Address:  
 BERKELEY, CITY OF  
 P O BOX 700  
 BERKELEY CA, 94701

Shipping Address:  
 BERKELEY, CITY OF  
 1326 ALLSTON WAY  
 BERKELEY CA, 94702

Quote Date: 2020-12-19  
 Expiration Date: 2021-9-30  
 Quote Created By:  
 Dick Fasi  
 dfasi@redcloudinc.com

Customer:  
 BERKELEY, CITY OF

Contract:  
 17724 - HGAC (TX)

| Line # | Item Number      | Description                          | Quantity | Unit List Price | Ext. List Price | Discount % | Discount \$ | Unit Sale Price | Ext. Sale Price |
|--------|------------------|--------------------------------------|----------|-----------------|-----------------|------------|-------------|-----------------|-----------------|
|        | APX™ 8000 Series |                                      |          |                 |                 |            |             |                 |                 |
| 1      | H91TGD9PW6AN     | APX 8000 ALL BAND PORTABLE MODEL 2.5 | 210      | \$6,292.00      | \$1,321,320.00  | 35.76%     | \$2,250.02  | \$4,041.98      | \$848,815.80    |
| 1a     | H64BK            | ALT: APX8000/XE HOUSING YELLOW       | 210      | \$25.00         | \$5,250.00      | 35.76%     | \$8.94      | \$16.06         | \$3,372.60      |
| 1b     | Q806CB           | ADD: ASTRO DIGITAL CAI OPERATION     | 210      | \$515.00        | \$108,150.00    | 35.76%     | \$184.16    | \$330.84        | \$69,476.40     |

|    |                  |                                        |     |            |              |         |            |              |              |
|----|------------------|----------------------------------------|-----|------------|--------------|---------|------------|--------------|--------------|
| 1c | Q361AN           | ADD: P25 9600 BAUD TRUNKING            | 210 | \$300.00   | \$63,000.00  | 35.76%  | \$107.28   | \$192.72     | \$40,471.20  |
| 1d | QA02006AC        | ENH: APX8000XE RUGGED RADIO            | 210 | \$800.00   | \$168,000.00 | 35.76%  | \$286.08   | \$513.92     | \$107,923.20 |
| 1e | Q58AL            | ADD: 3Y ESSENTIAL SERVICE              | 210 | \$115.00   | \$24,150.00  | 0.00%   | \$0.00     | \$115.00     | \$24,150.00  |
| 1f | QA00580AA        | ADD: TDMA OPERATION                    | 210 | \$450.00   | \$94,500.00  | 35.76%  | \$160.92   | \$289.08     | \$60,706.80  |
| 1h | QA09007AA        | ADD: OUT OF THE BOX WIFI PROVISIONING  | 210 | \$0.00     | \$0.00       | 0.00%   | \$0.00     | \$0.00       | \$0.00       |
| 1i | QA09001AB        | ADD: WIFI CAPABILITY                   | 210 | \$300.00   | \$63,000.00  | 35.76%  | \$107.28   | \$192.72     | \$40,471.20  |
| 1j | Q498AU           | ENH: ASTRO 25 OTAR W/ MULTIKEY         | 210 | \$740.00   | \$155,400.00 | 50.00%  | \$370.00   | \$77,700.00  | \$77,700.00  |
| 1k | H38BS            | ADD: SMARTZONE OPERATION               | 210 | \$1,500.00 | \$315,000.00 | 35.76%  | \$536.40   | \$963.60     | \$202,356.00 |
| 1l | QA07682AA        | ADD: SMARTCONNECT                      | 210 | \$0.00     | \$0.00       | 0.00%   | \$0.00     | \$0.00       | \$0.00       |
| 1m | G996AP           | ADD: PROGRAMMING OVER P25 (OTAP)       | 210 | \$100.00   | \$21,000.00  | 35.76%  | \$35.76    | \$64.24      | \$13,490.40  |
| 1n | Q629AH           | ENH: AES ENCRYPTION AND ADP            | 210 | \$633.00   | \$132,930.00 | 100.00% | \$633.00   | \$132,930.00 | \$0.00       |
|    |                  |                                        |     |            |              |         |            |              |              |
| 2  | APX™ 8000 Series |                                        |     |            |              |         |            |              |              |
| 2a | H91TGD9PW6AN     | APX 8000 ALL BAND PORTABLE MODEL 2.5   | 5   | \$6,292.00 | \$31,460.00  | 35.76%  | \$2,250.02 | \$4,041.98   | \$20,209.90  |
| 2b | Q806CB           | ADD: ASTRO DIGITAL CAI OPERATION       | 5   | \$515.00   | \$2,575.00   | 35.76%  | \$184.16   | \$330.84     | \$1,654.20   |
| 2c | Q361AN           | ADD: P25 9600 BAUD TRUNKING            | 5   | \$300.00   | \$1,500.00   | 35.76%  | \$107.28   | \$192.72     | \$963.60     |
| 2d | QA02006AC        | ENH: APX8000XE RUGGED RADIO            | 5   | \$800.00   | \$4,000.00   | 35.76%  | \$286.08   | \$513.92     | \$2,569.60   |
| 2e | Q58AL            | ADD: 3Y ESSENTIAL SERVICE              | 5   | \$115.00   | \$575.00     | 0.00%   | \$0.00     | \$115.00     | \$575.00     |
| 2f | QA00580AA        | ADD: TDMA OPERATION                    | 5   | \$450.00   | \$2,250.00   | 35.76%  | \$160.92   | \$289.08     | \$1,445.40   |
| 2g | QA09007AA        | ADD: OUT OF THE BOX WIFI PROVISIONING  | 5   | \$0.00     | \$0.00       | 0.00%   | \$0.00     | \$0.00       | \$0.00       |
| 2h | QA09001AB        | ADD: WIFI CAPABILITY                   | 5   | \$300.00   | \$1,500.00   | 35.76%  | \$107.28   | \$192.72     | \$963.60     |
| 2i | Q498AU           | ENH: ASTRO 25 OTAR W/ MULTIKEY         | 5   | \$740.00   | \$3,700.00   | 50.00%  | \$370.00   | \$1,850.00   | \$1,850.00   |
| 2j | H38BS            | ADD: SMARTZONE OPERATION               | 5   | \$1,500.00 | \$7,500.00   | 35.76%  | \$536.40   | \$963.60     | \$4,818.00   |
| 2k | QA07682AA        | ADD: SMARTCONNECT                      | 5   | \$0.00     | \$0.00       | 0.00%   | \$0.00     | \$0.00       | \$0.00       |
| 2l | G996AP           | ADD: PROGRAMMING OVER P25 (OTAP)       | 5   | \$100.00   | \$500.00     | 35.76%  | \$35.76    | \$64.24      | \$321.20     |
| 2m | Q629AH           | ENH: AES ENCRYPTION AND ADP            | 5   | \$633.00   | \$3,165.00   | 100.00% | \$633.00   | \$3,165.00   | \$0.00       |
|    |                  |                                        |     |            |              |         |            |              |              |
|    | APX8000 Series   |                                        |     |            |              |         |            |              |              |
| 3  | H91TGD9PW7AN     | APX 8000 ALL BAND PORTABLE MODEL 3.5   | 4   | \$6,292.00 | \$25,168.00  | 35.76%  | \$2,250.02 | \$4,041.98   | \$16,167.92  |
| 3a | Q806CB           | ADD: ASTRO DIGITAL CAI OPERATION       | 4   | \$515.00   | \$2,060.00   | 35.76%  | \$184.16   | \$330.84     | \$1,323.36   |
| 3b | Q361AN           | ADD: P25 9600 BAUD TRUNKING            | 4   | \$300.00   | \$1,200.00   | 35.76%  | \$107.28   | \$192.72     | \$770.88     |
| 3c | QA02006AC        | ENH: APX8000XE RUGGED RADIO            | 4   | \$800.00   | \$3,200.00   | 35.76%  | \$286.08   | \$513.92     | \$2,055.68   |
| 3d | Q58AL            | ADD: 3Y ESSENTIAL SERVICE              | 4   | \$115.00   | \$460.00     | 0.00%   | \$0.00     | \$115.00     | \$460.00     |
| 3e | QA00580AA        | ADD: TDMA OPERATION                    | 4   | \$450.00   | \$1,800.00   | 35.76%  | \$160.92   | \$289.08     | \$1,156.32   |
| 3f | QA09007AA        | ADD: OUT OF THE BOX WIFI PROVISIONING  | 4   | \$0.00     | \$0.00       | 0.00%   | \$0.00     | \$0.00       | \$0.00       |
| 3g | QA09001AB        | ADD: WIFI CAPABILITY                   | 4   | \$300.00   | \$1,200.00   | 35.76%  | \$107.28   | \$192.72     | \$770.88     |
| 3h | Q498AU           | ENH: ASTRO 25 OTAR W/ MULTIKEY         | 4   | \$740.00   | \$2,960.00   | 50.00%  | \$370.00   | \$1,480.00   | \$1,480.00   |
| 3i | H38BS            | ADD: SMARTZONE OPERATION               | 4   | \$1,500.00 | \$6,000.00   | 35.76%  | \$536.40   | \$963.60     | \$3,854.40   |
| 3j | QA07682AA        | ADD: SMARTCONNECT                      | 4   | \$0.00     | \$0.00       | 0.00%   | \$0.00     | \$0.00       | \$0.00       |
| 3k | G996AP           | ADD: PROGRAMMING OVER P25 (OTAP)       | 4   | \$100.00   | \$400.00     | 35.76%  | \$35.76    | \$64.24      | \$256.96     |
| 3l | Q15              | ENH: AES/DES,DES-XL,DES-OFB AND ADP    | 4   | \$799.00   | \$3,196.00   | 50.00%  | \$399.50   | \$1,598.00   | \$1,598.00   |
| 3m | Q53              | ADD: FRONT PANEL PROGRAMMING & CLONING | 4   | \$150.00   | \$600.00     | 35.76%  | \$53.64    | \$96.36      | \$385.44     |

|    |              |                                         |    |            |              |         |            |             |              |
|----|--------------|-----------------------------------------|----|------------|--------------|---------|------------|-------------|--------------|
|    |              |                                         |    |            |              |         |            |             |              |
|    | APX™ 8500    |                                         |    |            |              |         |            |             |              |
| 4  | M37TSS9PW1AN | APX8500 ALL BAND MP MOBILE              | 99 | \$4,770.00 | \$472,230.00 | 35.76%  | \$1,705.75 | \$3,064.25  | \$303,360.75 |
|    | G88          | ADD: NO CONTROL HEAD                    | 99 | \$0.00     | \$0.00       | 0.00%   | \$0.00     | \$0.00      | \$0.00       |
| 4a | G90AC        | ADD: NO MICROPHONE NEEDED APX           | 99 | \$0.00     | \$0.00       | 0.00%   | \$0.00     | \$0.00      | \$0.00       |
| 4b | GA09007AA    | ADD: OUT OF THE BOX WIFI PROVISIONING   | 99 | \$0.00     | \$0.00       | 0.00%   | \$0.00     | \$0.00      | \$0.00       |
| 4c | G996AS       | ENH: OVER THE AIR PROVISIONING          | 99 | \$100.00   | \$9,900.00   | 35.76%  | \$35.76    | \$64.24     | \$6,359.76   |
| 4d | GA00250AA    | ADD: WIFI/GNSS STUBBY ANTENNA LMR240    | 99 | \$100.00   | \$9,900.00   | 35.76%  | \$35.76    | \$64.24     | \$6,359.76   |
| 4e | GA00580AA    | ADD: TDMA OPERATION                     | 99 | \$450.00   | \$44,550.00  | 35.76%  | \$160.92   | \$289.08    | \$28,618.92  |
| 4f | GA01513AB    | ADD: ALL BAND MOBILE ANTENNA (7/8/V/U)  | 99 | \$95.00    | \$9,405.00   | 35.76%  | \$33.97    | \$61.03     | \$6,041.97   |
| 4g | G51AT        | ENH:SMARTZONE                           | 99 | \$1,500.00 | \$148,500.00 | 35.76%  | \$536.40   | \$963.60    | \$95,396.40  |
| 4h | G142AD       | ADD: NO SPEAKER APX                     | 99 | \$0.00     | \$0.00       | 0.00%   | \$0.00     | \$0.00      | \$0.00       |
| 4i | G78AT        | ENH: 3 YEAR ESSENTIAL SVC               | 99 | \$176.40   | \$17,463.60  | 0.00%   | \$0.00     | \$176.40    | \$17,463.60  |
| 4j | GA00179AB    | ADD: NO REMOTE CABLE NEEDED APX         | 99 | \$0.00     | \$0.00       | 0.00%   | \$0.00     | \$0.00      | \$0.00       |
| 4k | G298AS       | ENH: ASTRO 25 OTAR W/ MULTIKEY          | 99 | \$740.00   | \$73,260.00  | 50.00%  | \$370.00   | \$36,630.00 | \$36,630.00  |
| 4l | GA09001AA    | ADD: WI-FI CAPABILITY                   | 99 | \$300.00   | \$29,700.00  | 35.76%  | \$107.28   | \$192.72    | \$19,079.28  |
| 4m | G843AH       | ADD: AES ENCRYPTION AND ADP             | 99 | \$633.00   | \$62,667.00  | 100.00% | \$633.00   | \$62,667.00 | \$0.00       |
| 4n | G444AH       | ADD: APX CONTROL HEAD SOFTWARE          | 99 | \$0.00     | \$0.00       | 0.00%   | \$0.00     | \$0.00      | \$0.00       |
| 4o | G67EH        | ADD: REMOTE MOUNT E5 MP                 | 99 | \$297.00   | \$29,403.00  | 35.76%  | \$106.21   | \$190.79    | \$18,888.21  |
| 4p | GA01517AA    | DEL: NO J600 ADAPTER CABLE NEEDED       | 99 | \$0.00     | \$0.00       | 0.00%   | \$0.00     | \$0.00      | \$0.00       |
| 4q | G806BL       | ENH: ASTRO DIGITAL CAI OP APX           | 99 | \$515.00   | \$50,985.00  | 35.76%  | \$184.16   | \$330.84    | \$32,753.16  |
| 4r | GA01630AA    | ADD: SMARTCONNECT                       | 99 | \$0.00     | \$0.00       | 0.00%   | \$0.00     | \$0.00      | \$0.00       |
| 4q | G361AH       | ENH: P25 TRUNKING SOFTWARE APX          | 99 | \$300.00   | \$29,700.00  | 35.76%  | \$107.28   | \$192.72    | \$19,079.28  |
|    | APX™ 8500    |                                         |    |            |              |         |            |             |              |
| 5  | M37TSS9PW1AN | APX8500 ALL BAND MP MOBILE              | 2  | \$4,770.00 | \$9,540.00   | 35.76%  | \$1,705.75 | \$3,064.25  | \$6,128.50   |
| 5a | GA09007AA    | ADD: OUT OF THE BOX WIFI PROVISIONING.  | 2  | \$0.00     | \$0.00       | 0.00%   | \$0.00     | \$0.00      | \$0.00       |
| 5b | GA00250AA    | ADD: WIFI/GNSS STUBBY ANTENNA LMR240.   | 2  | \$100.00   | \$200.00     | 35.67%  | \$35.67    | \$71.34     | \$128.66     |
| 5c | G72AD        | ADD: APX O3 HANDHELD CH.                | 2  | \$946.00   | \$1,892.00   | 27.00%  | \$255.42   | \$690.58    | \$1,381.16   |
| 5d | GA00580AA    | ADD: TDMA OPERATION.                    | 2  | \$450.00   | \$900.00     | 35.67%  | \$0.00     | \$0.00      | \$900.00     |
| 5e | GA01513AB    | ADD: ALL BAND MOBILE ANTENNA (7/8/V/U). | 2  | \$95.00    | \$190.00     | 35.67%  | \$33.89    | \$67.77     | \$122.23     |
| 5f | G51AT        | ENH:SMARTZONE.                          | 2  | \$1,500.00 | \$3,000.00   | 35.67%  | \$535.05   | \$1,070.10  | \$1,929.90   |
| 5g | G78AT        | ENH: 3 YEAR ESSENTIAL SVC.              | 2  | \$176.00   | \$352.00     | 35.67%  | \$62.78    | \$125.56    | \$226.44     |
| 5h | G298AS       | ENH: ASTRO 25 OTAR W/ MULTIKEY.         | 2  | \$740.00   | \$1,480.00   | 50.00%  | \$370.00   | \$740.00    | \$740.00     |
| 5i | GA09001AA    | ADD: WI-FI CAPABILITY.                  | 2  | \$300.00   | \$600.00     | 35.67%  | \$107.01   | \$214.02    | \$385.98     |
| 5j | B18CR        | ADD: AUXILIARY SPKR 7.5 WATT APX.       | 2  | \$60.00    | \$120.00     | 35.67%  | \$21.40    | \$42.80     | \$77.20      |
| 5k | G843AH       | ADD: AES ENCRYPTION AND ADP.            | 2  | \$633.00   | \$1,266.00   | 100.00% | \$633.00   | \$1,266.00  | \$0.00       |
| 5l | G67DE        | ADD: REMOTE MOUNT O3 MP.                | 2  | \$297.00   | \$594.00     | 35.67%  | \$105.94   | \$211.88    | \$382.12     |
| 5m | G444AH       | ADD: APX CONTROL HEAD SOFTWARE.         | 2  | \$0.00     | \$0.00       |         | \$0.00     | \$0.00      | \$0.00       |
| 5n | GA01517AA    | DEL: NO J600 ADAPTER CABLE NEEDED.      | 2  | \$0.00     | \$0.00       |         | \$0.00     | \$0.00      | \$0.00       |
| 5o | G806BL       | ENH: ASTRO DIGITAL CAI OP APX.          | 2  | \$515.00   | \$1,030.00   | 35.67%  | \$183.70   | \$367.40    | \$662.60     |
| 5p | W22BA        | ADD: STD PALM MICROPHONE APX.           | 2  | \$72.00    | \$144.00     | 35.67%  | \$25.68    | \$51.36     | \$92.64      |
| 5q | G361AH       | ENH: P25 TRUNKING SOFTWARE APX.         | 2  | \$300.00   | \$600.00     | 35.67%  | \$107.01   | \$214.02    | \$385.98     |

FIRE ACCESSORIES

|                                 |              |                                                             |     |            |              |        |          |             |              |
|---------------------------------|--------------|-------------------------------------------------------------|-----|------------|--------------|--------|----------|-------------|--------------|
| 1                               | PMMN4106CBLK | XE500 REMOTE SPKR MIC WITH CHANNEL KNOB, HIGH IMPACT BLACK. | 270 | \$616.00   | \$166,320.00 | 35.67% | \$219.73 | \$59,326.34 | \$106,993.66 |
| 2                               | HN008000P13  | U_HOUSING-HOUSING,FRONT,PTT SIDE, BLUE, APX8000.            | 20  | \$33.00    | \$660.00     | 35.67% | \$11.77  | \$235.42    | \$424.58     |
| 3                               | PMLN7466A    | OVER THE HEAD H/DUTY HEADSET, GCAI.                         | 4   | \$330.00   | \$1,320.00   | 35.67% | \$117.71 | \$470.84    | \$849.16     |
| 4                               | HN008000P07  | HOUSING-HOUSING,FRONT,PTT SIDE, RED, APX8000.               | 5   | \$35.48    | \$177.40     | 35.67% | \$12.66  | \$63.28     | \$114.12     |
| 5                               | HN008000G13  | U_HOUSING-HOUSING,FRONT,GCAI SIDE, BLUE, APX8000.           | 20  | \$33.00    | \$660.00     | 35.67% | \$11.77  | \$235.42    | \$424.58     |
| 6                               | HN008000G14  | U_HOUSING-HOUSING,FRONT,GCAI SIDE, RED, APX8000.            | 5   | \$33.00    | \$165.00     | 35.67% | \$11.77  | \$58.86     | \$106.14     |
| 7                               | PMLN7902A    | CARRY ACCESSORY-HOLSTER,UNIVERSAL HOLDER FOR XE MODELS.     | 250 | \$29.00    | \$7,250.00   | 35.67% | \$10.34  | \$2,586.08  | \$4,663.93   |
| KVL and Programming Accessories |              |                                                             |     |            |              |        |          |             |              |
| 1                               | T8476B       | KVL 5000.                                                   | 1   | \$6,000.00 | \$6,000.00   | 10.00% | \$600.00 | \$5,400.00  | \$5,400.00   |
| 1a                              | CA00182AW    | ADD: AES ENCRYPTION SOFTWARE.                               | 1   | \$0.00     | \$0.00       | 0.00%  | \$0.00   | \$0.00      | \$0.00       |
| 1b                              | CA03467AA    | ADD: NORTH AMERICA MICRO USB CHARGER 100/240V.              | 1   | \$0.00     | \$0.00       | 0.00%  | \$0.00   | \$0.00      | \$0.00       |
| 1c                              | CA03358AA    | ADD: ASTRO 25 MODE.                                         | 1   | \$0.00     | \$0.00       | 0.00%  | \$0.00   | \$0.00      | \$0.00       |
| 1d                              | X423AG       | ADD: DES/DES-XL/DES-OFB ENCRYPTION.                         | 1   | \$750.00   | \$750.00     | 10.00% | \$75.00  | \$675.00    | \$675.00     |
| Standalone Items                |              |                                                             |     |            |              |        |          |             |              |
| 2                               | PMPN4381A    | CHGR DESKTOP MULTI UNIT EXT PS NA/LA/CA.                    | 1   | \$675.00   | \$675.00     | 35.67% | \$240.77 | \$240.77    | \$434.23     |
| 3                               | HKN6182B     | CABLE KEYLOADING ADAPTER CGAI.                              | 2   | \$163.33   | \$326.66     | 20.01% | \$32.68  | \$130.65    | \$261.30     |
| 4                               | HKN6184C     | CBL ASSY:CABLE CH, PROGRAMMING, USB.                        | 2   | \$57.20    | \$114.40     | 20.00% | \$11.44  | \$45.76     | \$91.52      |
| 5                               | PMKN4013C    | PROGRAMMING, TEST & ALIGNMENT CABLE.                        | 2   | \$103.40   | \$206.80     | 20.00% | \$20.68  | \$82.72     | \$165.44     |
| 6                               | WPLN6905B    | KEYLOAD RS-232 CABLE.                                       | 2   | \$199.00   | \$398.00     | 20.01% | \$39.82  | \$159.18    | \$318.36     |
| 7                               | PMNN4549A    | BATT IMPRES 2 LIION 2925T.                                  | 2   | \$80.00    | \$160.00     | 25.00% | \$20.00  | \$60.00     | \$120.00     |
| 8                               | AN000131A01  | ANTENNA, WHIP,ALL BAND-V/U/7800, MOBILE, 17 FT, QMA.        | 19  | \$240.00   | \$4,560.00   | 20.01% | \$48.02  | \$191.98    | \$3,647.62   |

|                             |                |                                              |
|-----------------------------|----------------|----------------------------------------------|
| <b>Net Total</b>            | \$2,282,848.06 | <b>FIRE TOTAL</b>                            |
| <b>Estimated Tax</b>        | \$233,991.93   |                                              |
| <b>Radio Mgmt</b>           | \$190,810.00   | added in FD radio mgmt, like in the PD quote |
| <b>Radio Mgmt tax</b>       | \$19,558.03    |                                              |
| <b>Estimated Freight</b>    | \$0.00         |                                              |
| <b>Fire Total</b>           | \$2,727,208.01 |                                              |
| <b>Total Both Estimates</b> |                |                                              |
| <b>Net Total</b>            | \$4,870,789.73 | <b>PD &amp; FD Equipment Total</b>           |
| <b>RM PD FD</b>             | \$442,163.00   | <b>RM TOTAL FOR PD FD</b>                    |
| <b>Sub Total</b>            | \$5,312,952.73 |                                              |
| <b>Estimated Tax</b>        | \$544,577.65   | TAX ON SB TOTAL WITH RM ADDED                |
| <b>Estimated Freight</b>    | \$0.00         |                                              |
| <b>Sub Total</b>            | \$5,857,530.38 |                                              |

|     |     |                                   |             | Police        | Fire          |               |
|-----|-----|-----------------------------------|-------------|---------------|---------------|---------------|
| 726 | DMS | RADIO MANAGEMENT HOSTED           | \$ 245.00   | \$ 177,870.00 | \$ 99,470.00  | \$ 78,400.00  |
| 726 | DMS | RADIOMAMGEMENT HOSTING FEE        | \$ 310.00   | \$ 225,060.00 | \$ 125,860.00 | \$ 99,200.00  |
| 1   | DMS | ONSITE RM SETUP VIRTUAL SERVER    | \$29,655.00 | \$ 29,655.00  | \$29,655.00   | 0             |
| 726 | DMS | 7 YEAR WARRANTY ACCIDENTAL DAMAGI | \$ 453.00   | \$ 328,878.00 | \$ 183,918.00 | \$ 144,960.00 |

|               |               |
|---------------|---------------|
| Police DMS    | Fire DMS      |
| \$ 438,903.00 | \$ 322,560.00 |

|     |          |                     |             | Police          | Fire            |                |
|-----|----------|---------------------|-------------|-----------------|-----------------|----------------|
| 726 | CREDIT   | Discount 30 off     | \$ (300.00) | \$ (217,800.00) | \$ (121,800.00) | \$ (96,000.00) |
| 549 | Trade-In | Trade-In Radio Unit | \$ (250.00) | \$ (137,250.00) | \$ (101,500.00) | \$ (35,750.00) |

|                 |                 |
|-----------------|-----------------|
| Police Credit   | Fire Credit     |
| \$ (223,300.00) | \$ (131,750.00) |

|       |               |               |               |
|-------|---------------|---------------|---------------|
| Total | \$ 406,413.00 | \$ 215,603.00 | \$ 190,810.00 |
|-------|---------------|---------------|---------------|

| INTERNAL FIRE FUNDING CALCULATIONS |                |
|------------------------------------|----------------|
| Police                             | \$3,090,908.00 |
| Fire                               | \$2,727,208.01 |
| Total                              | \$5,818,116.00 |
| Total General Funds                | \$4,200,000    |
| Remaining Balance After PD Funding | \$1,109,092    |
| Fire Total Unfunded                | \$1,618,116    |
| Amortized Over 7 Years             | \$231,159      |

|                          |                                                            |
|--------------------------|------------------------------------------------------------|
| <b>Net Total</b>         | \$5,277,202.73                                             |
| <b>Estimated Tax</b>     | \$540,913.28 RM is included in net total                   |
| <b>Estimated Freight</b> | \$0.00                                                     |
| <b>Grand Total</b>       | <b>\$5,818,116.00</b> Equipment and related services costs |

|                                   |                     |                                         |
|-----------------------------------|---------------------|-----------------------------------------|
| <b>Total Annual Lease Payment</b> | <b>\$917,644.89</b> | \$487,504 for PD and \$430,141 for Fire |
|-----------------------------------|---------------------|-----------------------------------------|

|                                    |                       |                                             |
|------------------------------------|-----------------------|---------------------------------------------|
| <b>Total 7 year Lease Payments</b> | <b>\$6,423,514.25</b> | \$3,412,528 for PD and \$3,010,986 for Fire |
|------------------------------------|-----------------------|---------------------------------------------|



Office of the City Manager

CONSENT CALENDAR  
September 28, 2021

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Liam Garland, Director, Department of Public Works  
 Subject: Purchase Orders: Bruce's Tire, Inc. for New Automobile and Truck Tires

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute yearly purchase orders for new tires for City owned vehicles and equipment with Bruce's Tire, Inc. in an amount not to exceed \$2,900,000 for FY 2022 through FY 2026.

FISCAL IMPACTS OF RECOMMENDATION

Funds for the Purchase Orders are available in the FY 2022 through FY 2026 Equipment Maintenance Fund 672 in the baseline budget. It is anticipated that the annual amount is \$580,000.

CURRENT SITUATION AND ITS EFFECTS

Public Works Equipment Maintenance regularly purchases a wide range of automobile and truck tires for City vehicles and equipment. These tires are needed for the safe operation of all City vehicles, including pursuit and other emergency vehicles operated by Public Safety staff, all cars and trucks (heavy and light) used to repair and maintain City streets, sewers, sidewalks, parks and landscape; and the heavier trucks and equipment used to transport refuse from the City's Transfer Station. In addition, tires need to be replaced for the safe operation and reliability of the mini-buses used in the senior and homeless programs and for all other City programs that operate transportation vehicles.

On April 16, 2021 Public Works released an Invitation for Bid (IFB Specification No. 21-11421-C) for New Automobile and Truck Tires. The IFB was released for approximately twenty-one days. Three bids were received and Equipment Maintenance and General Services staff reviewed the bids. Bruce's Tire, Inc. was determined to be the lowest responsive and responsible bidder that met the specifications.

BACKGROUND

Automobile and Truck tires wear out from normal use, carrying heavy refuse loads, construction and daily operations. It is imperative that all City vehicles, including passenger, light, medium and large trucks have tires in good condition to operate in a

safe manner. This purchase order supports the City's Strategic Plan Goal of Provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Bruce's Tires, Inc. is working to limit their carbon footprint by recycling waste tires. They also retread the casings of truck and industrial tires per industry standards. Retreading generates 70% fewer carbon emissions than production of a new tire.

RATIONALE FOR RECOMMENDATION

Yearly purchase orders allows for the timely replacement and retreading will replace tires that have reached the end of their useful life. Bruce's Tires, Inc. was the lowest responsible bidder and has previously provided excellent service to the City.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Greg Ellington, Superintendent, Department of Public Works (510) 981-6469

Attachments:

1: Resolution



RESOLUTION NO. ##,###-N.S.

PURCHASE ORDER: BRUCE'S TIRE, INC. FOR NEW AUTOMOTIVE AND TRUCK  
TIRES

WHEREAS, automobile and truck tires are needed for City vehicles and equipment; and

WHEREAS, on April 16, 2021 Public Works released an Invitation for Bid (IFB Specification No. 21-11421-C for New Automobile and Truck Tires, the solicitation was released for approximately twenty-one days and three bids were received; and

WHEREAS, Public Works Equipment Maintenance and Finance General Services reviewed and evaluated the bids and Bruce's Tire, Inc. was determined to be the lowest responsible bidder to meet the specifications; and

WHEREAS, the annual cost of tires is approximately \$580,000; and

WHEREAS, funds for the tires are available in the FY 2022 through FY 2026 Equipment Maintenance Fund 672; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to issue yearly purchase orders with Bruce's Tire, Inc. for the purchase of new automobile and truck tires for City vehicles and equipment for a total amount not to exceed \$2,900,000 for FY 2022 through FY 2026.





Disaster and Fire Safety Commission

CONSENT CALENDAR  
September 28, 2021

To: Honorable Mayor and Members of the City Council  
 From: Disaster and Fire Safety Commission  
 Submitted by: Jose Bedolla, Chairperson, Disaster and Fire Safety Commission  
 Subject: Extending the Requirements for Telestaff Time Reporting

RECOMMENDATION

The Disaster and Fire Safety Commission (DFSC) recommends that the Berkeley Fire Department require that all overtime recorded for Fire Suppression be coded properly in the Telestaff application to show the reason for the overtime. Further, to assist determining what overtime is eligible to be charged to Measure GG as “Minimum Staffing” that overtime must be properly coded as supporting minimum staffing. (Currently, this would be code 00FS10 and 00FS11). This would not affect charges for Measure GG approved time or overtime.

In addition, we recommend that in any future reports to the DFSC on Measure GG budget that the report include a breakdown of the time by labor purpose of both regular and overtime.

FISCAL IMPACTS OF RECOMMENDATION

Utilizing the purpose codes for minimum staffing should significantly reduce the time required to properly determine the overtime charges which can be legitimately charged to Measure GG.

CURRENT SITUATION AND ITS EFFECTS

Currently, the tendency is to report a large percentage of worked overtime to Measure GG. The DFSC believes that much of this overtime is not demonstrably in alignment with the intent of the measure - to enable the city to keep fire stations open and improve medical emergency response and disaster preparedness - resulting in overcharges to the Measure GG Budget. As a partial result, the funds for measure GG support to the Berkeley Fire Department are in danger of running out without meeting all of the intended purposes intended by the measure.

BACKGROUND

The DFSC has sent several previous recommendations or communications to City Council to discuss what the commission saw as excess charges to the Measure GG

fund. The feeling of the commission has been, and still is, that more overtime is being charged to the Measure GG accounts than is actually justifiable.

In the past the claim has been made that the accounting system was not adequate to properly separate out the overtime required for minimum staffing. However, the current system both has the ability to track this time with more accuracy and the ability to extract reports based on that tracking. At the time of this writing, the supervisors are apparently not coding overtime assignments in Telestaff, however that coding is both possible and fairly easy.

At the August 4, 2021 Disaster and Fire Safety Commission regular meeting, the commission voted to recommend that the Berkeley Fire Department require that all overtime recorded for Fire Suppression be coded properly in the Telestaff application to show the reason for the overtime. Motion: Rader, Second: Degenkolb, Vote: 6 Ayes: Couzin, Rader, Dean, Bradstreet, Degenkolb, Stein; 0 Noes; 2 Absent: Simmons, Bedolla; 0 Abstain.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There is no environmental or climate impact to this recommendation.

#### RATIONALE FOR RECOMMENDATION

Measure GG clearly specifies what the funds generated by the voter approved tax were to be used for. In the past the excuse that our accounting system was not up to properly tracking that information provided an impetus to charge all fire suppression overtime as applicable to Measure GG. With the new accounting system, that rationale is no longer valid. As such, improper charges of overtime to Measure GG has become a matter of misappropriation of public funds. This recommendation is intended to make it easier to properly separate out charges that are appropriate to the intent of the Measure GG tax.

#### ALTERNATIVE ACTIONS CONSIDERED

While previous recommendations have been made, none have been practical until now.

#### CITY MANAGER

The City Manager concurs with the content and recommendations of the Disaster and Fire Commission's Report. At the time of this report, details regarding how the information was being transferred from the Telestaff program and added to Enterprise Resource Management Application (ERMA) was not fully realized by the Disaster and Fire Safety Commission.

Telestaff records all overtime of personnel with various codes that relates to specific reasons that personnel are being hired to work. Those codes are noted and assigned in ERMA when payroll is being completed by finance staff. The Commission's recommendation is a standard practice when staff is completing payroll procedures.

CONTACT PERSON

Keith May, Secretary, Disaster and Fire Safety Commission, 510-981-5508





Mental Health Commission

CONSENT CALENDAR  
September 28, 2021

To: Honorable Mayor and Members of the City Council  
 From: Mental Health Commission  
 Submitted by: Margaret Fine, Chairperson, Mental Health Commission  
 Subject: Appointment of Tommy Escarcega to Mental Health Commission

RECOMMENDATION

Adopt a Resolution appointing: Tommy Escarcega as a representative of the Special Public Interest, Consumer Category, to complete her first 3-year term beginning September 29, 2021 and ending September 28, 2024.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The Mental Health Commission is authorized to be composed of thirteen members. However, there are presently five vacancies on the Commission. These vacancies impair the Commission's ability to adequately review and evaluate the community's mental health needs, resources, and programs.

Approval of the recommended action will keep the one position filled, and allow the Commission to move one step closer to having a full and diverse complement of commissioners to review and evaluate the community's mental health needs, resources, and programs.

BACKGROUND

California State law requires that appointments to the Mental Health Commission meet specific categories, who may serve up to nine years consecutively. The general public interest category may include anyone who has an interest in and some knowledge of mental health services. The special public interest category includes direct consumers of public mental health services and family members of consumers, which together must constitute at least fifty percent or nine of the commission seats. Direct consumers and family members shall each constitute at least 20% of the commission membership.

Tommy Escarcega is a resident of Berkeley and has experience with community advocating and organizing in the area of Re-entry and voting. She has the compassion to help others and believes in using other models of treatment such as community

engagement and consumers not only having voice but a meaningful vote in the system. She would like to join the Mental Health Commission because she has experience with Berkeley Mental Health services and homelessness. This would be her first term participating on the Mental Health Commission.

The Mental Health Commission passed the following motions at the July 22, 2021 meeting:

Interview and vote on the nomination of Tommy Escarcega on the Mental Health Commission.

M/S/C (Fine, Prichett) Make a motion to nominate Tommy Escarcega to join us on the Mental Health Commission

PASSED

Ayes: Blanton, cheema, Fine, Jones, Opton, Prichett, Noes: None; Abstentions: None; Absent: Moore, Taplin

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

#### RATIONALE FOR RECOMMENDATION

Approval of the recommended action will allow the Mental Health Commission to move one step closer to having a full and diverse complement of commissioners to review and evaluate the community's mental health needs, resources, and programs.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CITY MANAGER

The City Manager concurs with the content and recommendations of the Commission's Report.

#### CONTACT PERSON

Jamie Works-Wright, Commission Secretary, HHCS, 510-981-7721

Attachments:

1: Resolution



RESOLUTION NO. ##,###-N.S.

APPOINTMENT OF TOMMY ESCARCEGA TO THE MENTAL HEALTH  
COMMISSION

WHEREAS, membership of the Mental Health Commission is composed of thirteen appointments by the City Council as a whole, including one appointment by the Mayor (*or designee*), six special public interest appointments, and four general public interest appointments; and

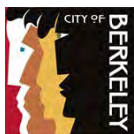
WHEREAS, with the ongoing implementation of the Mental Health Services Act, the City of Berkeley will need to have a full complement of diverse appointees to the Commission to review and evaluate the community's mental health needs, resources, and programs and to fulfill its mandate; and

WHEREAS, Ms. Escarcega has an investment in the community advocating and organizing and is prepared to contribute to helping others.

WHEREAS, the Mental Health Commission at its July 22, 2021 meeting recommends appointment of Tommy Escarcega.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council appoints Tommy Escarcega as a representative of the Special Public Interest, Consumer category, to complete her first-term ending September 28, 2024.





Rashi Kesarwani  
Councilmember District 1

CONSENT CALENDAR

September 28, 2021

TO: Honorable Mayor and Members of City Council

FROM: Councilmember Rashi Kesarwani (Author), Councilmember Lori Droste (Co-Sponsor), Councilmember Terry Taplin (Co-Sponsor), and Councilmember Wengraf (Co-Sponsor)

SUBJECT: Referral to Strengthen Public Health and Environmental Impact Mitigation for Industrial Facilities in the Manufacturing Zone

RECOMMENDATION

Refer to the City Manager to:

- Establish a procedure for enhanced review of use permits in the manufacturing zone for industrial facilities—upon initial submission or upon submission of an amended use permit—in order to ensure public health and environmental impacts are appropriately mitigated as a condition of the use permit. Further, if appropriate, consider mitigation that includes the use-permit applicant contracting with a certified third-party to install air quality monitoring device(s) that can enable periodic reporting on pollutants relevant to the particular industrial process proposed in the initial or amended use permit.
- Explore feasibility of increasing penalty fee schedule as a deterrence for use-permit violations related to public health and environmental impacts, such as air, noise, and water pollution.

CURRENT SITUATION AND ITS EFFECTS

Industrial facilities can be in compliance with the requirements of their use permit without necessarily utilizing industry-standard best practices intended to safeguard public health and mitigate environmental impacts of their operations. For example, the City's use permit for the LeHigh Hanson asphalt plant requires an enhanced enclosure for the asphalt loading area, but it does not require installation of a Blue Smoke Abatement System to control the emission of pollutants. The City Planning Department issues a use permit in perpetuity, and therefore, is unable to change the conditions for a use permit unless the applicant seeks a use-permit amendment in

order to alter their operations in some capacity. In effect, use permits issued many years ago for industrial facilities lack a clear mechanism to be updated in order to adapt to evolving technologies and industry standards. While the California Air Resources Board (CARB) is the primary agency responsible for protecting the public from the harmful effects of air pollution, we note that CARB does not regulate asphalt plants. This Council referral seeks to ensure that initial and amended use permit applications from industrial facilities receive appropriate review and include conditions that safeguard public health and mitigate any environmental impacts.

Possible appropriate mitigation to safeguard public health and mitigate environmental impacts may include:

- Requirements to install new equipment and/or technologies to address air, noise, and water pollution as well as disposal of hazardous materials;
- State-of-the-art containment and enclosure mechanisms in order to ensure that release of noise, particulate matter, and/or chemical compounds are reduced or eliminated;
- Requirements to install monitoring systems in order for third parties to easily discern when pollutants exceed regulatory limits;
- Increased penalty fees for violations as a means of deterring unwanted behavior by industrial actors.

## BACKGROUND

Portions of West Berkeley are zoned specifically for heavy manufacturing and industrial uses. Over time, the area has been home to an array of industries that have provided blue-collar union jobs, such as the now-closed Pacific Steel Casting and Macauley Foundry. Currently, the LeHigh Hanson Aggregates asphalt plant—located on Virginia Street between Second and Fourth streets—and Berkeley Forge—located on Eastshore Highway between Camelia and Gilman—continue to operate in West Berkeley. Over the years, industrial facilities in West Berkeley have elicited neighbor complaints and concerns related to public health and environmental impacts, such as air and noise pollution.

### ***History of Impacts from LeHigh Hanson (formerly Berkeley Asphalt)***

In 1999, the Oceanview Neighborhood Association entered into a settlement agreement (attached) with both the City of Berkeley and Berkeley Asphalt Company (now LeHigh Hanson) to specify terms for mitigating noise and air quality impacts on neighbors. The terms of the agreement focused on: traffic patterns in order to prevent trucks from driving through residential neighborhoods; air quality controls to reduce dust and odors, such as enclosures for loading facilities; noise mitigations and sound barrier installations; and implementation of a complaint and response mechanism for resident concerns.

In 2015, Councilmembers Linda Maio and Lori Droste presented two informational status reports on West Berkeley Industries (attached) as a result of continued

2180 Milvia Street, Berkeley, CA 94704 ● Tel: (510) 981-7110 ● TDD: (510) 981-6903 ● Fax: (510) 981-7111  
E-Mail: rkesarwani@cityofberkeley.info

complaints from West Berkeley neighbors residing in close proximity to Pacific Steel Casting and LeHigh Hanson. According to a January 2015 Council item submitted by the Community Health Commission, more than 100 complaints were made in the 2012 to 2013 timeframe by Berkeley residents and community groups to the Bay Area Air Quality Management District (BAAQMD)—the regional air pollution control agency charged with regulating pollution emissions in the nine Bay Area counties.

Most recently, beginning in the end of October 2020, the office of Councilmember Rashi Kesarwani began receiving multiple complaints of a noxious, sulfuric smell, most strongly noticed in West Berkeley, though also experienced as far east as neighborhoods surrounding the North Berkeley BART station. According to a BAAQMD December 9, 2020 fact sheet (attached), the agency fielded more than 190 complaints about this odor in less than a two-month span of time.

### ***Current Enforcement Actions Against LeHigh Hanson***

While BAAQMD has regulatory authority over industries that negatively impact air quality, the City of Berkeley regulates the 1999 Settlement Agreement and use permit conditions. As the noxious odors continued into February 2021, BAAQMD issued four Notices of Violation (NOVs) related to nuisances due to odors on Dec. 3, 2020 through Feb. 5, 2021. The last reported complaint about the odor occurred on Feb. 12, 2021. BAAQMD staff indicated that the facility's plan to construct an enhanced enclosure for loading, in addition to adding a Blue Smoke Abatement System would help alleviate the odors, according to April 2, 2021 correspondence from Planning Director Jordan Klein.<sup>1</sup>

The City of Berkeley began issuing NOVs on Jan. 11, 2021 as recent inspections uncovered insufficient enclosures of the asphalt truck loading area. LeHigh Hanson was required to resubmit application materials for a building permit for construction of an enhanced enclosure as well as a Blue Smoke Abatement System that the company was opting to install in the loading area. As LeHigh Hanson failed to resubmit the materials by the stated February 1, 2021 deadline, the City issued a citation warning on February 10, 2021, indicating that if the company failed to comply within 15 days, the City would issue daily administrative citations with penalties. Additionally, a second violation was added to the warning related to their failure to entirely vacuum sweep the required portion of their facility to control dust. LeHigh Hanson was able to comply shortly thereafter, resubmitting their plans by Feb. 16, 2021; the city approved the plans on March 1, 2021. Two days later, on March 3, the City issued another citation warning to complete construction and inspections associated with the enhanced enclosure system and Blue Smoke Abatement System. While the asphalt plant was able to complete construction of the enhanced enclosure shortly thereafter, it wasn't until July 2021 that the company secured the

---

<sup>1</sup> See Planning Director Jordan Klein's letter to the Sierra Club regarding enforcement of pollution control measures at Lehigh Hanson's asphalt plant, attached.

2180 Milvia Street, Berkeley, CA 94704 • Tel: (510) 981-7110 • TDD: (510) 981-6903 • Fax: (510) 981-7111  
E-Mail: rkesarwani@cityofberkeley.info

permitting for the electrical work for the Blue Smoke Abatement System and made it operational. In total, City staff conducted seven different inspections from Dec. 2020 to April 2021.

### ***Health Outcomes in West Berkeley***

One of the major contributing causes of asthma, which itself is a leading cause of childhood hospitalizations, is air pollution, according to Berkeley's 2018 Health Status Report.<sup>2</sup> The report finds that the West Berkeley zip code 94710 has the highest rates of asthma hospitalizations, particularly among children 0 to 14. The report also finds significant racial disparities, with asthma rates among our Black residents 10 times higher than white residents.<sup>3</sup> Given these health outcomes, we find that it is incumbent upon the City to fully exercise its permitting authority in order to ensure that industrial facilities mitigate any public health and environmental impacts.

### FISCAL IMPLICATIONS

Staff time.

### ENVIRONMENTAL IMPACTS

Strengthening the requirements of a use permit for industrial facilities is likely to result in mitigations that enhance environmental indicators, leading to a cleaner, safer environment for all.

### CONTACT PERSON

Councilmember Rashi Kesarwani, District 1 (510) 981-7110

### Attachments:

1999 Settlement Agreement

May 26, 2015 Status Report: Berkeley Asphalt; Pacific Steel Casting: Air Quality Inquiries (#38)

July 14, 2015 Status Report: West Berkeley Industry (#69)

January 20, 2015 Community Health Commission Council item (#25): West Berkeley Industrial Plants Air Quality

Bay Area Air Quality Management's Fact Sheet on Berkeley Asphalt, Dec. 9, 2020

Planning Director Jordan Klein's email to the Sierra Club regarding enforcement of pollution control measures at Lehigh Hanson's asphalt plant

<sup>2</sup> See [City of Berkeley Health Status Report 2018](#), pages 42 & 43

<sup>3</sup> [City of Berkeley Healthy Status Report 2018](#), p. 43

**SETTLEMENT AGREEMENT**

WHEREAS, Communities for a Better Environment ("CBE") brought an action in the Alameda County Superior Court against the City of Berkeley ("City") under the California Environmental Quality Act ("CEQA"), Public Resources Code § 21000 et seq., for approving modifications to Use Permit #3033, which enables Berkeley Asphalt Company ("BAC") to replace its pug mill and expand its operation, without preparing an environmental impact report;

WHEREAS, BAC, a company in the business of making asphalt located at 699 Virginia Street, intends to expand operations by inter alia increasing nighttime and weekend production;

WHEREAS, Berkeley Ready Mix Company ("BRM"), a business which manufactures ready mix cement, operates a facility located at 699 Virginia Street, Berkeley, California;

WHEREAS, in October 1998, the Ocean View Neighborhood Association ("ONA") filed a public nuisance complaint with the City against BAC and BRM (collectively referred to as "BARM");

WHEREAS, CBE, ONA, BARM, and the City (collectively referred to as "the parties") have met to discuss ways to resolve the disputes now pending between them;

WHEREAS, the parties agree to this Settlement Agreement to resolve all of CBE's CEQA claims against the City and ONA's now pending administrative public nuisance complaint against BARM; and

THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. Traffic. The City has proposed to design and install a traffic roundabout at the intersection of the Eastshore Freeway a.k.a. Frontage Road and Gilman Street ("Gilman Interchange Project"). The City will use its best efforts to obtain completion of the Gilman Interchange Project within the following timeline:

- (a) No later than September 1999, retain consultant to design traffic roundabout;
- (b) No later than November 1999, consultant completes design;
- (c) No later than January 2000, confirm preferred design and request CalTrans to prepare project report;
- (d) No later than February 2000, retain environmental consultant;
- (e) No later than March 2000, CalTrans completes project report;
- (f) No later than April 2000, CalTrans begins preparing Cooperative Agreement;
- (g) No later than May 2000, CalTrans completes environmental analysis;
- (h) No later than June 2000, CalTrans completes Cooperative Agreement;
- (i) No later than August 2000, CalTrans and the City sign Cooperative Agreement after City Council approval;
- (j) No later than September 2000, project bid;
- (k) No later than November 2000, construction begins;
- (l) No later than February 2001, project completed.

The parties recognize that the foregoing schedule is subject to a number of contingencies that are not within the control of the City and that completion of the proposed improvements may consequently take longer. First, actions by CalTrans are not within the City's control and may take longer than estimated. Second, CalTrans may ultimately not approve the City's proposal, thus creating a delay while the City develops an alternative proposal. Third, the time allotted for environmental review assumes that the project will not require an environmental impact report ("EIR"). However, if CalTrans, other agencies, or the public demands an EIR and produces substantial evidence that the proposal may have a significant adverse impact on the environment, an EIR will be required. This will also delay completion.

The parties further agree to use their best efforts to encourage CalTrans to meet the schedule set out herein.



2. The parties agree that upon completion of the Gilman Interchange Project, BARM will direct all trucks traveling to and from the BARM facilities to and from I-80 and I-580 to use the Frontage Road except trucks going to jobs in Berkeley.

3. Interim Measures to Divert Truck Traffic Away from Residential Blocks and to Eastshore Freeway and Gilman Street. BARM shall be responsible for assuring that all trucks traveling to and from its facility use exclusively the Gilman/I-80 interchange, Frontage Road and Cedar Street to gain access to, or return from I-80 or I-580; except that trucks traveling during the peak commute hours of 4 p.m. to 6 p.m., and trucks which are exclusively bound for jobs within Berkeley, are not subject to the limitations of this paragraph.

4. BARM shall institute the following measures to increase compliance with the established truck routes:

- (a) Notify customers in regular invoices of the established truck routes that must be taken by means of the notice attached hereto as Exhibit A or a substantially similar notice;
- (b) Inform customers by means of a notice such as the one attached hereto as Exhibit A or a substantially similar notice that after three violations of the truck routing requirements, customers will no longer be allowed to send trucks to BARM;
- (c) Notify suppliers of the established truck routes in a letter such as the one attached hereto as Exhibit B or a substantially similar notice;
- (d) Give a flyer with the established truck route to each truck as it leaves the BAC or BRM facility;
- (e) Post a visible, lighted sign at the exit gate clearly stating the established truck routes.

5. BARM shall perform the activities listed on the Traffic Compliance Checklist, jointly developed by the parties, attached hereto as Exhibit C. The Traffic Compliance Checklist

contains tasks agreed upon by the parties in this Agreement in addition to activities identified to be necessary to accomplish the agreed upon tasks. The BARM manager should review and complete the checklist daily to ensure that the activities listed therein are completed as required. This review shall include an inspection of each of the logs referred to in the Traffic Compliance Checklist.

6. BARM and the City shall implement a complaint and response mechanism for complaints about truck traffic as follows:

- (a) BARM will have either an employee or have a Pacific Bell voicemail system answer its regularly listed telephone number, (510) 526-1611, at all times the concrete plant or asphalt plant is in operation to receive complaints by neighbors about truck drivers violating the established truck routes, or other traffic complaints;
- (b) BARM will assure that the voicemail automatically records the date and time of a call and allows the caller sufficient time to explain the nature of the complaint;
- (c) The City will send a letter drafted by ONA and approved by the City to residents of Cedar Street and Virginia Street between 2<sup>nd</sup> Street and 6<sup>th</sup> Street, residents of Fifth Street and Sixth Street between University Avenue and Gilman Street, and to all ONA members informing them of the procedures for making a complaint about truck traffic, a copy of which is attached hereto as Exhibit D;
- (d) All complaints received by a BAC or BRM employee or on the Pacific Bell voicemail system regarding trucks shall be recorded on the Complaint Log, a copy of which is attached hereto as Exhibit E;

- (e) A BAC or BRM employee shall respond by phone and/or in writing to the complainant by the end of the next business day after the complaint is received;
- (f) The BAC or BRM employee shall investigate each complaint and shall complete a Complaint Report Form, which is attached hereto as Exhibit F, summarizing the complaint and follow-up taken;
- (g) BARM shall send to the City's Zoning Compliance Officer, on a monthly basis, copies of the Complaint Log and Report Forms from the previous month.

7. Air Quality: Dust. BARM shall use its best efforts to minimize the amount of dust generated at the facilities from entering residential streets.

8. Each day that the BAC facility is operating, it shall use the vacuum sweeper to sweep the asphalt plant (dry area) from fenceline to fenceline between 2<sup>nd</sup> and 3<sup>rd</sup> Streets as needed, but at least once a day.

9. Each day that the BAC or BRM facilities are operating, BARM shall use the vacuum sweeper to sweep the roads outside of its facility, specifically Virginia and Cedar Streets between 2<sup>nd</sup> and 3<sup>rd</sup> Streets, as needed, but at least once a day.

10. Each day that BRM is operating, the tires of concrete trucks shall be washed before the trucks leave the plant.

11. BARM will upgrade the vacuum sweeper to one that is a larger size, with an improved filtration system, to prevent both large and finer particles of dust from re-releasing into the sweepers' air output.

12. If and when BRM has concrete customers, it will require that they use trucks that are loaded according to State Statutory requirements, and will encourage the truck drivers of its customers' trucks to wash the tires of their trucks before leaving the plant.

13. BRM will ensure that its suppliers conform to applicable California Statutes (including a 6" clearance of materials from top of trucks and wetting materials) regarding transportation of materials to and from the facility.

14. BAC shall encourage its asphalt customers to place tarps on their trucks before leaving the plant.

15. BARM shall regularly, but not less than annually, instruct its staff about their responsibilities for the housekeeping and maintenance measures agreed upon in this Settlement Agreement.

16. BARM shall develop a Procedural Handbook which details the procedures that must be taken and the rationale for diligently performing the housekeeping and maintenance measures agreed upon in this Settlement Agreement. This Procedural Handbook shall be distributed to each employee at the training(s) and shall be made available for reference at a central location at each facility.

17. BARM shall perform the activities listed on the Housekeeping and Maintenance Checklist, a copy of which is attached hereto as Exhibit G. The Housekeeping and Maintenance Checklist contains tasks agreed upon by the parties in this Agreement in addition to activities identified to be necessary to accomplish the agreed upon tasks. The BARM manager should review and complete the checklist to ensure that the activities listed therein are completed as required. This review shall include an inspection of each of the logs referred to in the Housekeeping and Maintenance Checklist.

18. Noise. BARM shall implement the following measures to reduce noise from its facilities:

- (a) A sound barrier at the eastern side of the asphalt plant burner, dryer and exhaust fan shall be installed. The barrier shall be located adjacent to the burner and dryer along the foundation, will follow the foundation around the bag house and fan, and turn the corner and extend westward along the south

side of the exhaust fan foundation for approximately 8 feet. The northern end of the barrier shall extend about 20 feet north of the burner inlet. The height of the barrier shall be about 20 feet as measured from the ground. The barrier shall have sufficient sound transmission loss to control sound transmitted through the barrier and shall include absorption treatment on the surface facing the asphalt plant. Design and specification of barrier materials will be forwarded to Wilson, Ihrig & Associates, Inc. for review prior to purchase and construction of the barrier. In the event the experts disagree about the design and specification of barrier materials, the City's Noise Control Officer determination will determine the design and specification of the barrier materials;

- (b) Sound absorbing barriers shall be provided around the bucket elevator head and its motor. The barriers shall have sufficient sound transmission loss to control sound transmitted through the barrier and shall include sound absorption treatment on the surface facing the equipment to control reflections between the barrier and surfaces of the plant equipment. Design and specifications of barrier materials and locations shall be forwarded to Wilson, Ihrig & Associates, Inc. for review prior to purchase and construction of the barriers. In the event the experts disagree about the design and specification of barrier materials, the City's noise expert's determination will determine the design and specification of the barrier materials;
- (c) As the pneumatic vibrators expire, they will be replaced with electric vibrators or with equally quiet equipment;
- (d) Exhaust from electric air valves will be muffled.

19. Experts representing CBE, ONA, and BARM conducted an on-site noise audit of the BARM facilities on June 17, 1999. The parties agree that a second visit will take place after

equipment for the asphalt plant, back ordered and expected to be delivered in July 1999, is installed and in operation. BARM agrees to pay \$200 toward the cost of CBE's and ONA's noise expert. In addition to the measures set forth in paragraphs 18, 20, and 21 herein, BARM will implement any mitigation measures to reduce noise identified and agreed upon by the experts as a result of the second noise audit visit.

20. BARM shall perform the maintenance activities listed on the Noise Checklist, a copy of which is attached here to as Exhibit H. The Noise Checklist contains tasks agreed upon by the parties as measures necessary to reduce the impact of noise from BARM on the neighborhood. In addition, the Noise Checklist includes activities identified to be necessary to accomplish the agreed upon tasks. The BARM manager should review and complete the checklist daily to ensure that the activities listed therein are completed as required. This review shall include an inspection of each of the logs referred to in the Noise Checklist.

21. BARM shall implement a complaint and response mechanism for noise as follows:

- (a) BARM will have either an employee or have a Pacific Bell voicemail answer its regularly listed telephone number, (510) 526-1611, at all times the concrete plant or asphalt plant is in operation to receive complaints by neighbors about noise;
- (b) BARM will assure that the voicemail automatically records the date and time of a call and allows the caller sufficient time to explain the nature of the complaint;
- (c) All complaints received by a BAC or BRM employee or on the Pacific Bell voicemail system regarding noise shall be recorded on the Complaint Log, a copy of which is attached hereto as Exhibit E;

- (d) A BAC or BRM employee shall respond by phone and/or in writing to the complainant by the end of the next business day after the complaint is received;
- (e) The BAC or BRM employee shall investigate each complaint and shall complete a Complaint Report Form, which is attached hereto as Exhibit F, summarizing the complaint and follow-up taken; and
- (f) BARM shall send to the City's Zoning Compliance Officer, on a monthly basis, copies of the Complaint Log and Report Forms from the previous month.

22. The City shall implement the Noise Complaint Response Protocol attached hereto as Exhibit I.

23. Wherever a noise measurement is taken in response to a noise complaint, the following methodology shall be used: Noise measurements shall be taken using a sound level meter that meets ANSI specifications for Type II Precision at a sample of residential properties, including the property of the complainant, along 5<sup>th</sup> Street in sight of the asphalt plant burner and along 4<sup>th</sup> Street in sight of the asphalt plant. If any violations are noted, the noise measurements shall include identification, to the extent possible, of sources of aurally identifiable sounds such as impacts, impulse noise, pure tones, and rattling, etc., operating conditions, and wind and temperature conditions.

24. The parties agree that it may be useful to revise and/or update the Berkeley Community Noise Ordinance. The parties also agree that it may be useful to revisit the manner in which the Ordinance is implemented and enforced. Therefore, by authorizing execution of this Agreement, the Berkeley City Council directs staff to provide, within 12 months of the execution of this Agreement, recommendations for (a) how to revise and update the language of the Berkeley Community Noise Ordinance; and (b) how to improve implementation and

enforcement of the Ordinance. The City Council shall also direct staff to provide the City Council with an estimate of resources necessary to carry out the recommended improvements.

25. Odors. BAC shall implement the following measures to reduce odors from its facilities:

- (a) BAC shall enclose the asphalt product truck loading operations;
- (b) BAC shall vent vapors from the truck loading operations to the baghouse;
- (c) BAC shall hire an inspector acceptable to all parties to conduct a one time odor audit of the asphalt silo storage truck loading operation when it is fully operating to determine if this loading operation versus the background odors of the general plant is a source of odor problems at the BAC facility's property line, and if so, BAC shall implement measures to mitigate the odor problem. BAC shall pay no more than \$200 for the cost of the odor inspector;
- (d) BAC shall close up vent openings and other fugitive leaks in the conveyor system leading to the asphalt cement storage silos;
- (e) BAC shall add condensers to the two storage tanks now without such equipment;
- (f) BAC shall follow good engineering practice for minimizing emissions for all fugitive sources, such as pumps, hatches, valves, flanges, and other pipe connections. Such practices include, among other things, ensuring that: all hatches are closed during operation, pumps are outfitted with appropriate seals, the pug mill is kept under sufficient negative pressure, the vent line from the pug mill to baghouse is inspected at least daily to ensure that it is not plugged, the baghouse magnehelic measurement is inspected for pressure drop (such as zero pressure drop indicating broken bags and high pressure indicating plugged bags should be shaken down more often), and the truck loading doors are kept in good repair; and



(g) BAC shall keep in a clearly marked and readily accessible binder the manufacturers' specifications for all air pollution control and manufacturing equipment. All equipment will be operated according to manufacturers' specifications, and logs will be developed and maintained to record on a daily basis recording actions taken to keep operation within specified parameters. These logs shall be available for inspection.

26. BAC shall perform the activities listed on the Odor Checklist attached hereto as Exhibit J. The Odor Checklist contains tasks agreed upon by the parties as measures necessary to reducing the impact of odor from BARM on the neighborhood. In addition, the Odor Checklist includes activities identified to be necessary to accomplish the agreed upon tasks. The BARM manager should review and complete the checklist daily to ensure that the activities listed therein are completed as required. This review shall include an inspection of each of the logs referred to in the Odor Checklist.

27. Post-Settlement Monitoring by the City. For a period of 3 years following the execution of this Agreement, the City shall conduct a semiannual audit of all logs associated with the Traffic Compliance Checklist, the Housekeeping and Maintenance Checklist, the Noise Checklist, and the Odor Checklist.

28. Post-Settlement Inspection for Dust by the City. For a period of 3 years following the execution of this Agreement, the City shall conduct semiannual on-site inspections of the BARM facilities to ensure compliance with the terms of this Agreement. The semiannual audit and on-site inspection of the BARM facilities shall be unannounced. The inspections shall include, but are not limited to, the following elements:

- (a) Assess whether there is substantial visible dust present on the general grounds that is likely to be tracked or blown off site;
- (b) Assess whether there is substantial visible dust present on the driveways exiting the facility that is likely to be tracked or blown off site;

- (c) Assess whether there is substantial visible dust present on tires of trucks leaving the property;
- (d) Assess whether the facilities are clear of significant dust build-up;
- (e) Assess whether there is substantial visible dust present on Cedar and Virginia between 2<sup>nd</sup> and 3<sup>rd</sup> Streets near the facility; and
- (f) Assess whether it appears that the Berkeley Asphalt and Ready Mix Company site is the likely source of substantial visible dust on roadways and properties surrounding the facility.

29. Post-Settlement Monitoring for Noise by the City. The City shall conduct a noise assessment of the BARM facilities on a quarterly basis, as required by Condition #14 of the Notice of Decision Modifying Use Permit #3033. Noise measurements shall be taken using a sound level meter that meets ANSI specifications for Type II Precision at a sample of properties along 5<sup>th</sup> Street in sight of the asphalt plant burner and along 4<sup>th</sup> Street in sight of the asphalt plant. If any violations are noted, the noise measurements shall include identification, to the extent possible, of sources of aurally identifiable sounds such as impacts, impulse noise, pure tones and rattling, etc., operating conditions, and wind and temperature conditions. Such quarterly monitoring shall cease after three years or after two consecutive noise assessments show an absence of violations of applicable laws and ordinances, whichever is later.

30. Post-Settlement Monitoring for Odors. For a period of 3 years following the execution of this Agreement, an inspector acceptable to all parties shall conduct a semiannual odor inspection of the BAC facility when the asphalt plant is in full operation. At least one such inspection annually will take place at night. The inspection should include an assessment of odors on-site at the facility and offsite at impacted residential areas. The cost of such inspections will be shared equally by BARM and CBE; neither BARM nor CBE shall be required to pay more than \$400 annually for inspections pursuant to this paragraph. The City shall have no liability for the cost of inspections under this paragraph.

31. Post-Settlement Monitoring by Experts Representing CBE, ONA and BARM. After BARM has installed and implemented the mitigation measures identified herein, it shall allow experts representing CBE, ONA, and BARM to conduct a one time on-site visit to assess the adequacy of the mitigation measures implemented pursuant to this Agreement. BARM will pay up to \$400 toward the cost of CBE's and ONA's noise expert.

32. Semi-Annual Review Meeting. For a period of three years following the execution of this Agreement, BARM agrees to host a meeting semi-annually with CBE, ONA and the City to discuss compliance with this Agreement, problems that have arisen and problems that may arise in fulfilling the terms of this Agreement.

33. Payment of Attorney Fees and Costs to CBE. Within 60 days of the entry of judgment, BARM shall pay to CBE the sum of \$47,500 as full payment of CBE's cost of litigation (including expert costs and attorneys' fees) and as full and final satisfaction of any claims for costs or fees by any party to this Agreement except those costs set forth in paragraphs 19, 25, 30 for inspections, the action *Communities for a Better Environment v. City of Berkeley*, Case No. 807882-5.

34. By executing this Settlement Agreement, ONA withdraws its public nuisance complaint now pending before the Berkeley City Council. The Zoning Adjustments Board ("ZAB") decision of October 22, 1998 shall have no effect on any future proceedings relating to the BARM facilities; however, the parties are free to use the legal arguments raised at the October 22, 1998 ZAB hearing in any nuisance action brought to address facts occurring after the date of this Agreement.

#### GENERAL PROVISIONS

35. Applicable Law. The parties intend and agree that this Agreement shall be subject to, governed by, and enforced and construed pursuant to the laws of the State of California.

36. Representation by Counsel. Each of the parties represents and warrants that, in connection with the negotiation and execution of this Agreement, it has been represented by counsel of its own choosing, has executed this Agreement after receiving the advice of counsel, and its representatives have read and understand the provisions and terms of this Agreement and have had an adequate opportunity to conduct an independent investigation of all facts and circumstances with respect to all matters that are subject to this Agreement.

37. Successors. This Agreement is binding upon and shall inure to the benefit of the parties and their respective successors, assigns, trustees, and personal representatives.

38. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed one and the same instrument.

39. Joint Drafting of Agreement. The parties have jointly drafted this Agreement, and the Agreement shall not be interpreted against or in favor of any of the parties that participated in the drafting of the Agreement.

40. Authorization to Execute Agreement. Each of the parties represents and warrants that the person executing this Agreement on its behalf is a representative duly authorized to bind it and empowered to enter into this Agreement on its behalf.

41. Notices. Whenever this Settlement Agreement requires notice or submission of information, other than the regular reports sent to the City, this material shall be mailed (postage prepaid) to:

(a) For CBE:

Anne Simon, Acting Legal Director  
COMMUNITIES FOR A BETTER ENVIRONMENT  
500 Howard Street, Suite 506  
San Francisco, California 94105

(b) For the City:

Zach Cowan  
OFFICE OF THE CITY ATTORNEY  
1947 Center Street, First Floor  
Berkeley, CA 94704

(c) For ONA:

Nora Chorover  
515 Jackson Street  
Albany, CA 94706

(d) For BARM, BAC or BRM:

Rena Rickles  
Attorney at Law  
1970 Broadway, Suite 1200  
Oakland, CA 94612

42. Modifications. The terms of this Settlement Agreement shall not be changed, revised or modified except by a written instrument signed by the parties to this Settlement Agreement.

43. Entire Agreement. This Settlement Agreement sets forth the entire agreement between the parties. All agreements or representations, express or implied, of the parties with regard to this subject matter are contained in this Settlement Agreement.

44. Enforcement. Before any party may seek judicial enforcement of this Settlement Agreement or the Judgment entered pursuant to it, it shall give the party against whom it intends to enforce the Settlement Agreement or Judgment no less than thirty (30) days written notice of the alleged violation. If the party alleged to be in violation begins in good faith to cure the violation, no judicial enforcement shall be available as long as good faith efforts to cure the alleged violation continue.

45. Reservation of Police Power. Notwithstanding anything to the contrary herein, the parties acknowledge that the City has the continuing power to amend the entitlements that it has issued that control the development and use of BARM's property at 699 Virginia Street, or to grant additional such entitlements, consistent with applicable laws or ordinances. This power extends to amendment of Use Permit #3033, which is the subject of both the pending litigation between CBE and the City and the administrative public nuisance complaint filed by ONA, and Use Permit #3681, which is the subject of the administrative nuisance complaint by ONA.

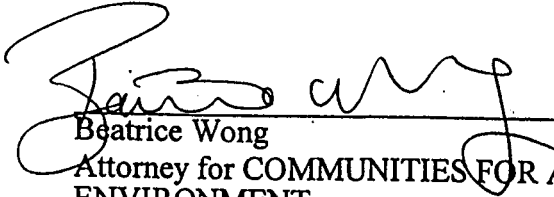
46. Except as provided in paragraph 44, *infra*, nothing in this Agreement shall affect the right of any organization, entity, or individual with respect to complaints that it may file with any appropriate administrative, governmental, or judicial forum alleging violations by BARM for problems that relate to operations at the BARM facilities which continue or occur after the signing of this Agreement.

47. Nothing in this Agreement shall affect the right of any individual to bring an action against BARM for personal injury or property damage related to operations at the BARM facilities. In accordance with Evidence Code § 1151, in any subsequent action for property damage or personal injury by a group or an individual, remedial or precautionary measures taken pursuant to this Agreement shall be deemed inadmissible to prove negligence or culpable conduct.


48. The parties agree that this Settlement Agreement shall be attached as an exhibit to the Stipulated Judgement in the action captioned *Communities for a Better Environment v. City of Berkeley*, Case No. 807882-5. Further, the City shall prepare a Writ of Mandate for the action captioned *Communities for a Better Environment v. City of Berkeley*, Case No. 807882-5, subject to approval as to form by the parties, that includes the provisions of this Settlement Agreement which the City must undertake, except for the actions set forth in paragraph 24. The Writ of Mandate shall also require the City to include in Use Permit #3033 the provisions of this Settlement Agreement which pertain to the operation of the BARM facilities.

APPROVED AS TO FORM:

Dated: Aug 4, 1999

  
Beatrice Wong  
Attorney for COMMUNITIES FOR A BETTER ENVIRONMENT

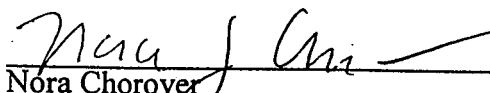
Dated: Aug 26, 1999

  
Zach Cowan  
Attorney for CITY OF BERKELEY

Dated: Aug 20, 1999

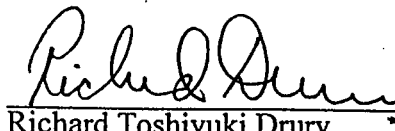
  
Rena Rickles  
Attorney for BERKELEY ASPHALT COMPANY and BERKELEY READY MIX COMPANY

Dated: Aug 5, 1999


  
Nora Chorover  
Attorney for OCEANVIEW NEIGHBORHOOD ASSOCIATION

APPROVED AS TO SUBSTANCE:


Dated: Aug 4, 1999

  
Richard Toshuyuki Drury  
Acting Executive Director  
COMMUNITIES FOR A BETTER ENVIRONMENT

Dated: Aug 20, 1999

  
Zach Cowan  
CITY OF BERKELEY

Dated: Aug 20, 1999

  
William Howard  
Vice President, General Manager  
BERKELEY ASPHALT COMPANY  
BERKELEY READY MIX COMPANY

Dated: Aug 14, 1999

  
Terry Terteling  
President  
OCEANVIEW NEIGHBORHOOD ASSOCIATION

SETTLEMENT AGREEMENT

Communities for a Better Environment, City of Berkeley, Berkeley Asphalt Company, Berkeley Ready Mix Company and the Ocean View Neighborhood Association

July 19, 1999

TO: ALL BERKELEY ASPHALT AND READY MIX  
CUSTOMERS AND SUPPLIERS

FROM: BERKELEY ASPHALT AND READY MIX

SUBJECT; TRUCK ROUTES

Recently our company has entered into an agreement with our neighbors and the City of Berkeley, and we need your help in making it a success. Effective immediately the following truck routes are in force. Frontage Road from the University off ramp to Cedar Street or Virginia Street for trucks entering the plant. Frontage Rd. to Gilman interchange for trucks leaving the plant. Trucks bound for Berkeley jobs are permitted on Cedar Street to 6<sup>th</sup> Street, but not east of 6<sup>th</sup> on Cedar. Additionally until the Gilman interchange is improved, trucks may use Cedar to 6<sup>th</sup> at peak hours (Monday-Friday, 4:00pm-6:00pm)

These truck routes will be communicated as follows;

1. Written customer and supplier notification of truck routes (this document)
2. Notification on customer truck delivery tags
3. Truck route flyers given to drivers at the scale
4. Lighted sign at Virginia Street gate advising drivers of truck routes

And enforced as follows:

1. Verbal warning at first offence
2. Written warning at second offence
3. Suspension from job on third offence
4. Subsequent violations will result in the driver being permanently banned from plant site

If there are any questions please call our Berkeley office, (510) 526-1611



# NOTICE

## BE ADVISED:

YOU ARE TO FOLLOW THE ATTACHED HAUL ROUTES AS SPECIFIED.

VARYING FROM THOSE SPECIFIED ROUTES WILL RESULT IN  
REMOVAL FROM THE JOB.

# NOTICIA

## SE AVISA:

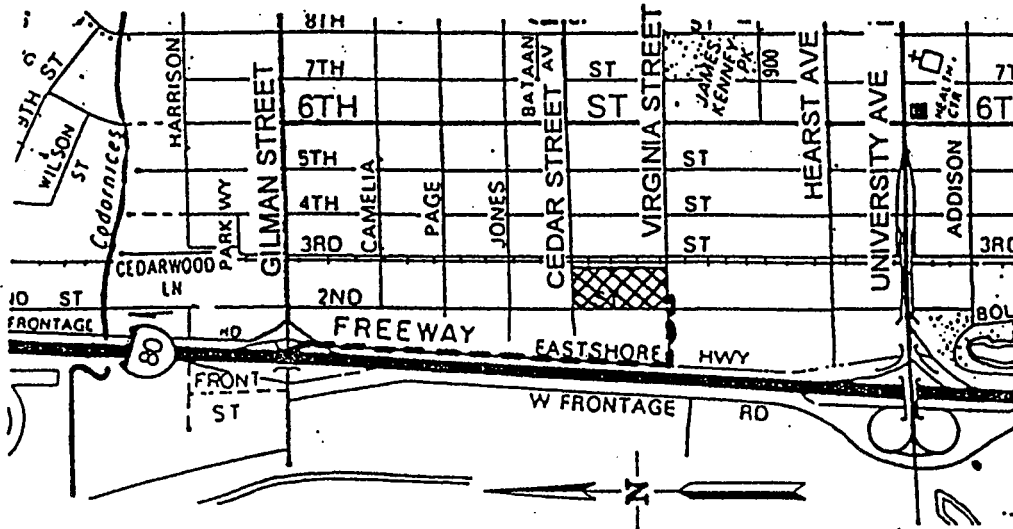
TU TIENES QUE SEGUIR LAS RUTAS QUE SE AN ESPECIFICADO.

VARIANDO DE ESAS RUTAS ESPECIFICADAS PUES ESTAS SERAN EL  
RESULTADO EN EL REMODELADO DEL TRABAJO.

# HAUL ROUTES

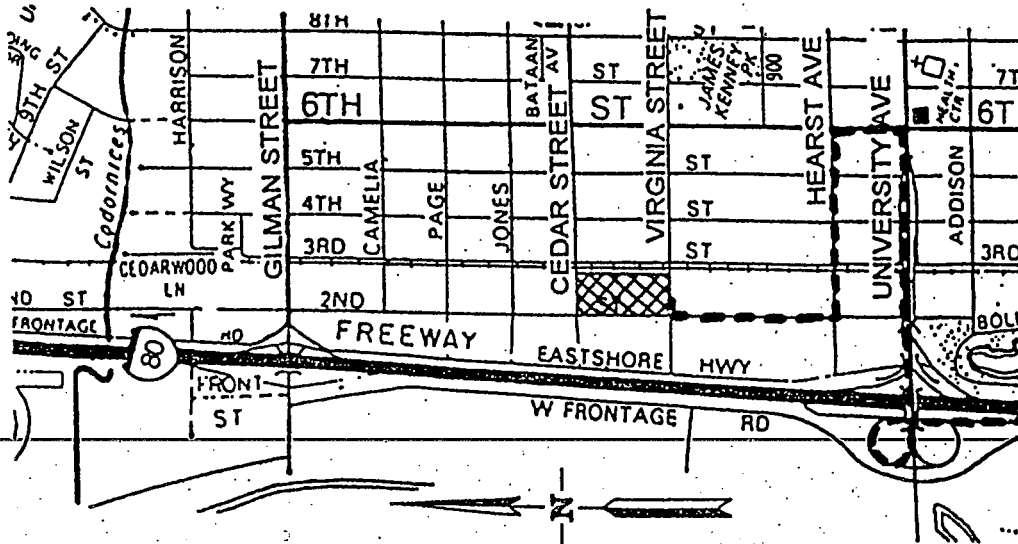
## TO INTERSTATE 80 BOUND HAULERS:

Turn West (Right) on Virginia Street  
Turn North (Right) on Frontage Road  
Enter Hwy. 80 at Gilman Street



## TO INTERSTATE 580 BOUND HAULERS:

Turn West (Right) on Virginia Street  
Turn South (Left) on 2nd Street  
Turn East (Left) on Hearst Avenue  
Turn South (Right) on 6th Street  
Turn West (Right) on University Avenue  
Enter Hwy. 80 South at University Avenue



July 19, 1999

TO: ALL BERKELEY ASPHALT AND READY MIX  
CUSTOMERS AND SUPPLIERS

FROM: BERKELEY ASPHALT AND READY MIX

SUBJECT; TRUCK ROUTES

Recently our company has entered into an agreement with our neighbors and the City of Berkeley, and we need your help in making it a success. Effective immediately the following truck routes are in force. Frontage Road from the University off ramp to Cedar Street or Virginia Street for trucks entering the plant. Frontage Rd. to Gilman interchange for trucks leaving the plant. Trucks bound for Berkeley jobs are permitted on Cedar Street to 6<sup>th</sup> Street, but not east of 6<sup>th</sup> on Cedar. Additionally until the Gilman interchange is improved, trucks may use Cedar to 6<sup>th</sup> at peak hours (Monday-Friday, 4:00pm-6:00pm)

These truck routes will be communicated as follows;

1. Written customer and supplier notification of truck routes (this document)
2. Notification on customer truck delivery tags
3. Truck route flyers given to drivers at the scale
4. Lighted sign at Virginia Street gate advising drivers of truck routes

And enforced as follows:

1. Verbal warning at first offence
2. Written warning at second offence
3. Suspension from job on third offence
4. Subsequent violations will result in the driver being permanently banned from plant site

If there are any questions please call our Berkeley office, (510) 526-1611

TRAFFIC COMPLIANCE CHECKLIST

**Settlement Task #1: BARM will provide regular notice to its customers, suppliers and employees of the truck routes that must be taken.**

- BARM will preprint every ticket, which is issued to customers before they leave the facilities, with the established truck routes.
- All contracts will contain a notice of the agreed upon truck routes.
- Fax map of established route to people contracted to do work for BARM before the start of jobs.

**Settlement Task #2: Berkeley Asphalt and Ready Mix Company will post a clearly visible, lighted sign at the exit gate with the established truck routes.**

- Sign with established truck routes is posted at the exit gate.
- Sign is clean and clearly displays truck routes.
  - Sign is cleaned as needed, but at a minimum of one time per week.
  - Light that illuminates the sign is operational.
  - An employee checks to make sure the light is working properly each time the sign is cleaned.
    - The light is replaced as soon as an employee becomes aware that it is out.
    - Replacement light bulbs for the sign are stocked and available in the plant's supply storage area.
- Employee(s) responsible for cleaning the sign has signed and dated the log verifying that the task was completed. *See attached Truck Route Sign Maintenance Log.*

\_\_\_ Employee(s) responsible for checking the log has signed and dated the log verifying that the task was completed. *See attached Truck Route Sign Maintenance Log.*

**Settlement Task #3: Berkeley Asphalt and Ready Mix Company will inform customers that there will be sanctions for violations of the established truck routes.**

\_\_\_ Notice and warning of sanctions for non-complying trucks will be inserted in the invoices to customers.

\_\_\_ Owner or contractor of non-complying truck will be contacted within 3 days after a complaint is received from a neighbor.

**Settlement Task #4: BARM will have either an employee or a Pacific Bell Voicemail system answer its main business number during all hours to receive complaints regarding violations of established truck routes.**

\_\_\_ Either a BAC employee or a Pacific Bell Voicemail system will answer BARM's normal business line during operating hours to receive complaints about odors.

\_\_\_ The Pacific Bell Voicemail System shall automatically record the time and date of every incoming call or complaint.

\_\_\_ A BAC or BRM employee will enter the date, time and nature of the complaint on the Complaint Log. *See Settlement Agreement, Exhibit E.*

\_\_\_ Employee who responds to complaint shall investigate the complaint and complete a Complaint Report Form summarizing the nature of the complaint and the follow-up response and action. *See Settlement Agreement, Exhibit F.*

\_\_\_\_\_ A Berkeley Asphalt or Berkeley Ready Mix employee will respond to complainant by the end of the next business day by telephone or in writing.

\_\_\_\_\_ The Complaint Logs and Complaint Report Forms are sent to the City's Zoning Compliance Officer on a monthly basis.

**TRUCK ROUTE SIGN MAINTENANCE LOG**

Instructions: The employee that completes each of the following tasks should fill in his or her signature and the date the task was completed.

| <u>Sign with Truck Route Cleaned</u> | <u>Light for Truck Route Sign Working</u> |
|--------------------------------------|-------------------------------------------|
|                                      |                                           |
|                                      |                                           |
|                                      |                                           |
|                                      |                                           |
|                                      |                                           |
|                                      |                                           |
|                                      |                                           |
|                                      |                                           |
|                                      |                                           |
|                                      |                                           |
|                                      |                                           |
|                                      |                                           |
|                                      |                                           |
|                                      |                                           |
|                                      |                                           |
|                                      |                                           |
|                                      |                                           |
|                                      |                                           |
|                                      |                                           |
|                                      |                                           |

Dear West Berkeley Resident:

As part of an agreement with the City of Berkeley and community environmental groups, Berkeley Asphalt and Ready mix ("BARM") will limit the number of trucks using residential streets during nighttime (6:00 p.m. to 6:00 a.m.) and non-peak daytime hours (6 a.m. to 4 p.m.) ("Restricted Hours"). During Restricted Hours, trucks entering and exiting BARM's facilities will use the Frontage Road to access I-80 and I-580 eastbound and westbound. The only trucks that may use residential streets during Restricted Hours will be coming from or heading towards locations in Berkeley.

If you are concerned that trucks entering and exiting the BARM facilities during Restricted Hours are not complying with the required truck routes, or if you have other complaints regarding truck traffic related to the BARM facilities, please call 526-1611 at BARM at any time. A BARM employee or a voice mail system will answer your call.

To facilitate appropriate follow-up of your complaint, please include the following information:

- (1) the time of the complained of event
- (2) the location of the event
- (3) the number of the truck involved (an identification number is located on the side of the truck on the door and back)
- (4) any other descriptive information.

Please remember that the person answering the complaint line may not be personally responsible for the problem. The person may, however, be in a position to help prevent problems from arising in the future.

Your complaint will be responded to by the end of the business day after the complaint is received by phone and/or in writing. The circumstances of the complaint will be described in a Complaint Report Form and the complaint will be recorded in BARM's Complaint Log. BARM will send, on a monthly basis, a copy of the Complaint Log and Complaint Report Forms to the Berkeley Zoning Compliance Officer. The Complaint Log and Complaint Report Forms on file with the Zoning Compliance Officer will be available for your inspection upon request.



COMPLAINT LOG for NOISE, TRUCKS, and ODOR

| <u>Date</u> | <u>Time Received</u> | <u>Nature of Complaint<br/>(including name and phone number of Complainant)</u> | <u>Employee Receiving<br/>Complaint</u> |
|-------------|----------------------|---------------------------------------------------------------------------------|-----------------------------------------|
|             |                      |                                                                                 |                                         |
|             |                      |                                                                                 |                                         |
|             |                      |                                                                                 |                                         |
|             |                      |                                                                                 |                                         |
|             |                      |                                                                                 |                                         |
|             |                      |                                                                                 |                                         |
|             |                      |                                                                                 |                                         |
|             |                      |                                                                                 |                                         |
|             |                      |                                                                                 |                                         |
|             |                      |                                                                                 |                                         |
|             |                      |                                                                                 |                                         |
|             |                      |                                                                                 |                                         |
|             |                      |                                                                                 |                                         |

**COMPLAINT REPORT**

TODAY'S DATE: \_\_\_\_\_

PREPARED BY: \_\_\_\_\_

DATE COMPLAINT RECEIVED: \_\_\_\_\_

TYPE OF COMPLAINT:  TRUCKS  NOISE  ODOR

DESCRIBE THE NATURE OF COMPLAINT:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DESCRIBE INVESTIGATION PERFORMED AND ITS FINDINGS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RESPONSE TO COMPLAINANT:

Telephone Call on \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m.

By Mail (attach a copy of the letter sent)

ACTION TAKEN AGAINST VIOLATOR OF TRUCK ROUTE:

Written Notification of Violation and Warning of Sactions  Notice of Termination

ACTION TAKEN TO REMEDY NOISE OR ODOR PROBLEM:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

HOUSEKEEPING AND MAINTENANCE CHECKLIST

**Settlement Task #1: Berkeley Asphalt and Ready Mix Company ("BARM") will instruct operators and maintenance staff on their responsibilities to perform the housekeeping and maintenance measures agreed upon in the Settlement Agreement, which are intended to mitigate the amount of dust that leaves the BAC and BRM facilities.**

\_\_\_ Within 30 days of Court entry of the Stipulated Judgment including the Settlement Agreement, BARM will draft and distribute a memorandum informing operators and maintenance staff of their responsibilities for performing the measures agreed upon in this action.

\_\_\_ Within 10 days of distributing the memo regarding housekeeping and maintenance measures, BARM will conduct a training to operators and maintenance staff about these agreed upon measures.

\_\_\_ Within 30 working days of Court approval of a settlement agreement, BARM will develop a manual of procedures related to implementation of the Settlement Agreement, which will be distributed to each employee.

\_\_\_ Trainings on the housekeeping and maintenance measures set out in the Settlement Agreement will be conducted annually either in conjunction with the required OSHA training or as a separate training.

\_\_\_ Upon completion of the training on the housekeeping and maintenance measures, each employee who received the training shall sign and date a log verifying his or her attendance at the training. *See attached Attendance Log.*

\_\_\_ If a representative from the City elects to attend the training sessions, that representative will also sign the log.

**Settlement Task #2. BARM shall conduct a visual inspection, assess the overall cleanliness and level of dust onsite and off-site in the plants' vicinity and take steps to fix any dust problems at least once a day when either BAC or BRM is operating.**

\_\_\_ Assess whether there is substantial visible dust present on the general grounds that is likely to be tracked or blown off site

\_\_\_ Assess whether there is substantial visible dust present on the driveways exiting the facility that is likely to be tracked or blown off site

\_\_\_ Assess whether there is substantial visible dust present on tires of trucks on the property

\_\_\_ Assess whether there is substantial visible dust present on tires of trucks leaving the property

\_\_\_ Assess whether the facilities seem to be clear of significant dust build-up

\_\_\_ Assess whether there is substantial visible dust present on the Cedar and Virginia between 2<sup>nd</sup> and 3<sup>rd</sup> Streets near the facility

\_\_\_ Assess whether it appears that the Berkeley Asphalt and Ready Mix Company site is the likely source of substantial visible dust on roadways and properties surrounding the facility

\_\_\_ Assess whether there is equipment not listed on this checklist which appears to be generating significant dust into the air and onto the BARM property? (Specify)

\_\_\_ If the answer to any of the previous questions is yes, identify the source of the dust; determine whether the problem is mechanical or operational; if it is an operational problem, take appropriate action (such as discipline or additional training); if it is mechanical, repair or determine if equipment needs to be re-engineered.

**Settlement Task #3:** Each day the asphalt plant is operating, BAC will use the vacuum sweeper to sweep the asphalt plant (dry area) from fenceline to fenceline as needed to eliminate visible dust, but at least once a day.

- Sweeping accomplished every day plant is in operation.
- The employee who sweeps the plant from fenceline to fenceline should complete a log, which includes time, date and signature, indicating when the task was completed. *See attached Vacuum Sweeper Log.*
- Vacuum Sweeper properly maintained.
  - Maintenance of the sweeper is up to date per manufacturer's recommendation or per a stricter BARM policy.
  - Vacuum filter checked weekly.
  - Vacuum filter changed as needed, but at least in accordance with manufacturer's recommended maintenance schedule.
  - Employee who is responsible for each vacuum sweeper upkeep activity will sign and complete a log indicating the task performed and the date it was performed. *See attached Vacuum Sweeper Maintenance Log.*
- Vacuum Sweeper will be replaced when it does not adequately function to accomplish clean sweep-up of dust or when it cannot be repaired.

**Settlement Task #4:** Each day the asphalt plant is operating, BAC will use the vacuum sweeper to sweep the road outside of its the facility, specifically Virginia and Cedar Streets between 2<sup>nd</sup> and 3<sup>rd</sup> Streets, as needed, but not less than once a day.

- Sweeping is accomplished every day plant is in operation.

\_\_\_ So that sweeping will not disturb sleeping residential neighbors, sweeping will be conducted during daylight hours only.

\_\_\_ The employee who sweeps the outside of the plant will complete a log, which includes time, date and signature, indicating when the task was completed.

\_\_\_ Vacuum Sweeper properly maintained (see Task #3 above)

**Settlement Task #5: Each day the ready mix cement plant is operating, the tires of the concrete trucks, all of which are owned or operated by BRM, will be washed before leaving the plant.**

\_\_\_ BRM will provide a designated area near the plant's exit for the tire wash.

\_\_\_ Each BRM truck driver will be assigned to wash his or her truck tires before leaving the facility.

\_\_\_ The tire washing area will include a drainage system to capture and dispose of the wash water in accordance with any regulatory requirements.

\_\_\_ A clear and visible sign instructing trucks to wash all debris from tires will be posted at the wash area.

\_\_\_ The drainage system will be checked daily to ensure that it is not clogged.

**Settlement Task #6: If and when BRM has concrete customers, it will require that they use trucks that are loaded according to State Statutory requirements, and will encourage the truck drivers of its customers' trucks to wash the tires of their trucks before leaving the plant.**

**Settlement Task #7: Berkeley Asphalt Company will tarp all trucks that it owns or operates.**

\_\_\_ Berkeley Asphalt Company will purchase and provide each of the trucks it owns with a tarp to cover the truck.

\_\_\_ Trucks are to be tarped whenever they are loaded with materials.

\_\_\_ Berkeley Ready Mix Company will ensure that its suppliers conform with applicable California Statutes (including a 6" clearance of materials from top of trucks and wetting materials) regarding transportation of materials to and from the facility.

**Settlement Task #8: Berkeley Asphalt Company will encourage its customers to tarp their trucks before leaving the plant.**

\_\_\_ A Berkeley Asphalt Company employee will provide a tag to each customer requesting that they tarp their loads.

**Settlement Task #9: Berkeley Asphalt and Ready Mix Company shall conduct all maintenance procedures on their equipment e.g. baghouse, exhaust fan, rotary mixer, pug mill, asphalt scale and trucks in accordance with manufacturer's recommendations or as required to eliminate problems identified by neighbors and their consultants or as required to eliminate maintenance problems.**

ATTENDANCE LOG  
HOUSEKEEPING AND MAINTENANCE TRAINING  
GIVEN ON \_\_\_\_\_

| <u>Employee Name</u> | <u>Signature</u> |
|----------------------|------------------|
|                      |                  |
|                      |                  |
|                      |                  |
|                      |                  |
|                      |                  |
|                      |                  |
|                      |                  |
|                      |                  |
|                      |                  |
|                      |                  |
|                      |                  |
|                      |                  |
|                      |                  |
|                      |                  |
|                      |                  |
|                      |                  |
|                      |                  |
|                      |                  |
|                      |                  |
|                      |                  |
|                      |                  |
|                      |                  |
|                      |                  |



**VACUUM SWEEPER MAINTENANCE LOG**

**Instructions:** The employee completing each of the following tasks should fill in his or her signature, the date and where relevant the specific task performed.

| Vacuum Filter<br>Checked | Vacuum Filter<br>Changed | Other Required Maintenance Performed<br>(identify task) |
|--------------------------|--------------------------|---------------------------------------------------------|
|                          |                          |                                                         |
|                          |                          |                                                         |
|                          |                          |                                                         |
|                          |                          |                                                         |
|                          |                          |                                                         |
|                          |                          |                                                         |
|                          |                          |                                                         |
|                          |                          |                                                         |
|                          |                          |                                                         |
|                          |                          |                                                         |
|                          |                          |                                                         |
|                          |                          |                                                         |
|                          |                          |                                                         |
|                          |                          |                                                         |
|                          |                          |                                                         |

## NOISE CHECKLIST

**Settlement Task #1.** BARM shall maintain all plant equipment in good working order.

- \_\_\_ Employee(s) will check, on weekly basis, all bolts, panels, drive systems, and bearings to ensure that they are properly tightened, maintained and repaired.
- \_\_\_ Employee who completes the maintenance check shall complete a log, which includes the date and a signature, indicating what task, if any, was performed (eg. checked and tightened bolt).

**Settlement Task #2.** BARM shall mark major noise mitigation measures (such as the sound barriers) with permanent sign indicating that the item is to remain in place at all times for the purpose of noise control.

- \_\_\_ Signs are clear and visible.
- \_\_\_ Signs kept clean.
- \_\_\_ Employee who completes the maintenance check on the signs shall complete a log, which includes the date and a signature, indicating that the task was performed.

**Settlement Task #3.** BARM shall properly maintain all noise control measures.

- \_\_\_ Noise mitigation measures will be maintained in accordance with manufacturers' specifications.
- \_\_\_ Concurrent with the installation of all noise control measures, BARM will develop a manual of procedures which shall include instructions on the maintenance of the noise control measures and the necessity of maintaining noise control provisions.
- \_\_\_ Trainings on the proper maintenance of noise control measures shall be conducted annually either in conjunction with the required OSHA training or as a separate training.

**Settlement Task #4.** Noise mitigation measures that are removed during the maintenance of equipment shall be replaced as soon as possible.

**NOISE CONTROL MAINTENANCE LOG**

Instructions: The employee completing each of the following tasks should fill in his or her signature, the date and where relevant the specific task performed.

| Bolts checked | Panels checked | Drive system checked | Bearings checked | Maintenance Performed (eg. tightened, repaired, etc.) |
|---------------|----------------|----------------------|------------------|-------------------------------------------------------|
|               |                |                      |                  |                                                       |
|               |                |                      |                  |                                                       |
|               |                |                      |                  |                                                       |
|               |                |                      |                  |                                                       |
|               |                |                      |                  |                                                       |
|               |                |                      |                  |                                                       |
|               |                |                      |                  |                                                       |
|               |                |                      |                  |                                                       |
|               |                |                      |                  |                                                       |
|               |                |                      |                  |                                                       |
|               |                |                      |                  |                                                       |
|               |                |                      |                  |                                                       |
|               |                |                      |                  |                                                       |
|               |                |                      |                  |                                                       |
|               |                |                      |                  |                                                       |
|               |                |                      |                  |                                                       |
|               |                |                      |                  |                                                       |
|               |                |                      |                  |                                                       |
|               |                |                      |                  |                                                       |
|               |                |                      |                  |                                                       |

## CITY OF BERKELEY NOISE COMPLAINT RESPONSE PROTOCOL

### **I. Complaint Routing And Intake Procedures.**

- A. Noise related citizen complaints will be taken and processed by a designated Noise Control Officer (or suitably trained authorized agent of the NCO) who, upon receiving a complaint, shall:
1. interview the complaining person(s) to determine the nature of the complaint; and
  2. fill out Part 1 of the Noise Investigation Report, a sample of which is attached.
- B. Based upon the information provided the NCO will determine whether an on-site investigation will be conducted.
- C. If the NCO determines that an on-site investigation is not warranted, the NCO will so note on the Investigation Form and inform the complainant(s) of that determination and the reasons(s) for such decision.

### **II. Preparation For Onsite Investigation.** In cases where on-site investigation is required, the NCO may do the following:

- A. Determine whether measurements of acoustic data may be required. Generally, the need to conduct acoustic measurements shall be presumed, except where the objectionable noise is identified as the result of a Prohibited Act, and the NCO has reason to believe that investigation and intervention without benefit of measured acoustic data will lead to successful resolution of the complaint.
- B. Dispatch or schedule appropriate personnel and equipment to conduct the on-site investigation of the objectionable noise, if possible, while said noise is occurring.

### **III. On-Site Complaint Investigation Procedures.** The NCO or designated agent shall, upon arriving at the location of a noise-related complaint, do the following:

- A. Based upon information in the Noise Inspection Report, attempt to independently verify the presence of the objectionable noise described.
- B. If the described noise is not apparent, the NCO or agent will contact the complainant(s) to obtain any additional information which might be useful in determining when the noise will reoccur.
- C. If the described noise is apparent, the NCO or agent shall survey the area to determine additional information relating to the source of the noise and impact(s)

on the surrounding community. The NCO may also determine if the objectionable noise is the result of a Prohibited Act under the BCNO.

- D. Upon making the determination that the noise results from a Prohibited Act, the NCO may take any steps reasonably necessary to abate the noise, including but not limited to remedies specified under Section 13.40.030.C of the Noise Ordinance and Sections 11.40.010 through 11.44.030 of the Berkeley Municipal Code.
- E. The NCO or agent may also make a determination as to whether the objectionable noise is a violation of the General Noise Regulations Section 113.40.30.A in that the perceived noise in his/her judgment either "disturbs the peace and quiet of any neighborhood" or "causes any discomfort or annoyance to any reasonable person of normal sensitiveness residing in the Area".
- F. If the NCO or agent determines that the offensive sound contains any of the characteristics listed in Section 13.40.050.B, this determination shall be noted and a 5dB reduction to the applicable exterior noise limit as defined in Table 13.40-1 shall be applied.
- G. If the NCO, upon arrival at the scene, determines that
1. the objectionable noise, when measured, may approach (within 5dB) the noise limits specified in Sections 13.40.050 or 13.40.060 adjusted per any requirement of Section 13.40.050 for character of sound; or
  2. the objectionable noise, when measured, may approach (within 5dB) any other performance standards promulgated pursuant to the Zoning Ordinance applicable to the location; or
  3. there is evidence that the noise is considered objectionable or offensive to persons in 3 or more separate residential units and/or business establishments, whether from current complaint(s) or prior known incidents relating to a particular noise source; or
  4. noise measurement could facilitate resolution of the noise complaint,

then the NCO shall proceed to take sufficient acoustic measurements as to document sound levels resulting from the objectionable noise(s) as well as ambient sound levels utilizing procedures described in Section 13.40.040 and 13.40.050 of the BCNO.

#### IV. Enforcement Procedures.

- A. If, based upon the facts, data and measurements gathered in the investigation, the

NCO or agent determines that the occurrence of the objectionable noise has (1) disturbed the peace of any neighborhood; or (2) caused discomfort or annoyance to any reasonable person of normal sensitivcness; or (3) exceeded applicable noise limits, performance standards or other known standards, the NCO or agent may, take all steps necessary to abate the noise, including but not limited to remedies specified under Section 13.40.030.C of the Noise Ordinance and Sections 11.40.010 through 11.44.030 of the Berkeley Municipal Code. Within seven (7) working days of the complaint the NCO shall send the complainant a copy of the completed Noise Complaint Form showing his/her determination, the reasons therefor and any actions taken.

- B. If, based upon the facts, data and measurements gathered in the investigation, the NCO or agent determines that the objectionable noise is not a violation of the Noise Ordinance or other applicable law, he/she shall so inform the complainant(s), and provide to them within 10 working days a copy of the completed Noise Complaint Form showing his/her determination and reasons therefor.

FAUSERSVZACI\BACNOISEPRO.rev.doc



CITY COUNCIL

INFORMATION CALENDAR

May 26, 2015

TO: Honorable Mayor and Members of the City Council

FROM: Councilmembers Linda Maio and Lori Droste

SUBJECT: Status Report: Berkeley Asphalt; Pacific Steel Casting: Air Quality Inquiries

INTRODUCTION

On January 20, 2015, the Berkeley City Council passed the following actions:

1. Councilmembers Linda Maio and Lori Droste to work with residents, businesses, and City Staff to review complaints and make good faith efforts to mitigate impacts in the areas where the City has authority such as noise and odors and to bring their findings back to City Council.
2. Direct the City Manager to enforce the terms of the Use Permit and the 1999 Settlement Agreement with the Oceanview Neighborhood Association.
3. If the City Manager and delegated staff or department finds the West Berkeley Lehigh Asphalt Company plant is not compliant with the Use Permit or the 1999 Settlement Agreement with the Oceanview Neighborhood Association, the City and its jurisdictional bodies or the appropriate authority implements corrective action and enforces the 1999 Settlement Agreement Use Permit immediately.

CURRENT SITUATION AND ITS EFFECT

On January 20, 2015, the City Council tasked Councilmembers Maio and Droste to review complaints made regarding air quality in West Berkeley. Subsequently, Councilmembers Maio and Droste discussed concerns with residents.

The City of Berkeley's Economic Development Department aided in scheduling site visits to both businesses. During these site visits, we discussed resident concerns, the 1999 Settlement Agreement with Berkeley Asphalt, and reviewed various operational standards of both industrial companies.

FINDINGS**Neighborhood Concerns**

Councilmember Droste met with several groups of residents to review their concerns regarding industry in West Berkeley. Concerns largely fell into the following five categories:

1. Public health
2. Regulatory bodies
3. Reporting protocol
4. Business practices
5. Information access

#### *Public health*

All of the residents interviewed shared the concern of odorous and non-odorous emissions on the community at large, particularly children in nearby homes and schools. In addition to these environmental and physical health concerns, some residents expressed increased anxiety when smelling odorous emissions. Another resident also stated that she was interested in the City's disaster preparedness plan in the industrial areas where hazardous materials (i.e. liquid oxygen) are common.

#### *Regulatory bodies*

Many residents are concerned that industry in West Berkeley is violating local, state, and federal regulations, specifically the EPA Clean Air and Water Act and OSHA standards. Some residents also expressed interest in operations oversight and whether there are appropriate resources to inspect and mitigate concerns. In particular, there is a general concern over enforcement procedures and penalties if a violation occurs. The residents feel that the odors and occasional noise disturbances constitute a nuisance as defined by Code 23B.64.020. Furthermore, a few residents stated their concern over whether the Council-adopted Community Environmental Advisory Commission recommendation from March 13, 2007, was examined and acted upon.

#### *Reporting protocol*

Residents expressed displeasure over the air quality complaint process through Bay Area Air Quality Management District (BAAQMD). Complaints focused on the following issues:

- The three notices of violation in 30 days for a public nuisance declaration is too lenient.
- The five confirmed complaint threshold per day is insufficient.
- Complaint lines with investigators are not available at all hours.
- Complaint forms should be more detailed.
- Residents are limited to one complaint a day.
- Residents must be home and interact with an inspector if a complaint is logged. Often a smell has dissipated once an inspector has arrived.
- The perception that public official complaints have more weight than residential complaints.
- Individuals under 18 can't file a complaint.
- Reliance on an inspector's sense of smell is not scientific.



### *Businesses practices*

Several residents claim that some industries in West Berkeley may not be following protocols for good business. Namely, they seem to be concerned that weekend and after-hour operations disturb residents.

### *Information Access*

Residents feel that they were not notified of the impacts of existing industry when purchasing or renting their homes. Overall, these residents are unclear about what substances are contained in the emissions.

## **Site Visits and Current Practices**

### **Pacific Steel & Casting Company, LLC (PSC)**

On March 3, 2015, Councilmembers Maio and Droste visited PSC, took a tour and met with management to discuss business practices and general resident concerns. Attached is PSC's most recent Emissions Minimization Plan (Attachment 1).

### **Lehigh Hanson Berkeley Asphalt**

On March 27, 2015, Councilmembers Maio and Droste visited Berkeley Asphalt, took a tour and met with management, and went over the 1999 Settlement Agreement in detail. The City Manager's Office is still in the process of reviewing that agreement. The following is a summary of what was discussed:

- *How are the factories prepared to handle a hazardous explosion in the area?*  
Berkeley Asphalt trains their employees annually to handle hazardous materials onsite, which includes Hazardous Communications. As part of site specific training, they notify all persons on site of designated emergency evacuation meeting point.
- *When do the factories operate?*  
Berkeley Asphalt's permit allows them to operate 24 hours/day. The most common operating hours are 7:00AM to 3:00PM M-F. If they have production on the weekend or at night, Councilmember Maio and the Deputy City Manager are notified. These off-shift operations usually occur during the summer and fall, which is historically the busiest production period.
- *Has the asphalt company updated any technology to accommodate the warm mix?*  
See the attached information on the MAXAM AquaBlack system (Attachment 2). This technology is fully implemented.
- *How is equipment modernized or kept up to date?*  
In order to be sure equipment is operating properly, oil samples are taken monthly, and vibration testing occurs twice a year. Equipment is replaced as it wears with like-for-like replacement equipment or with improved technology.

- *Is Berkeley Asphalt compliant with the 1999 Settlement Agreement?*  
Here is a review of current practices:
  - Distinguishing appropriate truck routes (haul routes):
    - Bilingual notices including a map to customers and suppliers about appropriate truck routes and a process to ensure the routes are followed.
    - Signs at the facility direct drivers where to go and of correct routes.
  - Noise mitigation:
    - All employees receive a notice about the use of each of the following pieces of noise mitigation equipment:
      - Sound barrier along eastern side
      - Sound attenuators
      - Sound absorbing barriers
        - Bucket elevator head
        - Screen deck tower
        - Slat conveyor head
        - Barriers covering aggregate bin wall and pugmill
      - Air exhaust valve mufflers (20 throughout the plant)
      - Exhaust stack tubular power flow silencer
      - Installed “white noise” back-up alarm on the loader (much quieter than conventional back-up alarms)
  - Tarping:
    - A notice to customers and suppliers includes a recommendation that they tarp their loads. Tarping does not mitigate odors but prevents material from spilling out.
  - Current emissions monitoring:
    - Berkeley Asphalt conducts tests (Attachment 3) at least every two years as required by the BAAQMD permit.
    - Berkeley Asphalt contracts with a dust mitigation company whose equipment is on site

Additionally, in 2013, Berkeley Asphalt made process improvements. A list of those recommendations and accompanying changes is attached (Attachment 4).

### FUTURE ACTIONS

Councilmembers Maio and Droste have requested a meeting with BAAQMD to answer the following questions:

- What are the odorous and non-odorous emissions from the industries in West Berkeley, what is their cumulative toxicity level, and what can be done to curb them?
- What studies have been done/could be done to examine the cumulative impact of emissions in West Berkeley?
- How can the air quality complaint process be altered to be more user-friendly and efficient?

- Why are inspectors not available 24-7?
- What training do inspectors receive?
- How do inspectors trace the source of an odor and what is then done to mitigate the odor?
- What sampling tools do inspectors use?
- Why can residents only make one complaint a day?
- Why must residents remain home and interact with an inspector if a complaint is logged?
- Why can't minors file a complaint?
- What alternatives to a subjective smell test are available?

#### RECOMMENDED ACTION

Councilmembers Maio and Droste will submit a complete report on their findings and recommendations to Council before the summer break.

#### CONTACT

Councilmember Linda Maio, District 1, 510-981-7110

Councilmember Lori Droste, District 8, 510-981-7180

# Emissions Minimization Plan

---

Regulation 12, Miscellaneous Standards of Performance, Rule 13  
Foundry and Forging Operations

Pacific Steel Casting Company LLC

District Site #187, 703, 1603  
1333 Second Street  
Berkeley, CA 94710

# Table of Contents

---


| Subject                                                                                  | Page # |
|------------------------------------------------------------------------------------------|--------|
| Designation of Confidential Business Information                                         | 5      |
| Company Description                                                                      | 6      |
| Company Organization Chart                                                               | 8      |
| Schedule of Management Operators                                                         | 10     |
| Operations Subject to EMP and Schedule of Operations                                     | 12     |
| Mold & Core Making Operations -<br>Equipment, materials & Abatement                      | 14     |
| Binder, mix ratio & MSDS                                                                 | 20     |
| Abatement devices, PM & PM schedule                                                      | 22     |
| Housekeeping measures to abate                                                           | 24     |
| Metal Management -<br>Metal alloys                                                       | 26     |
| Practices to reduce fugitive emissions                                                   | 27     |
| Furnace Operations -<br>Furnace name and abatement devices                               | 29     |
| Abatement devices, PM & PM schedule                                                      | 30     |
| Housekeeping measures to abate                                                           | 31     |
| Casting and Cooling Operations -<br>Equipment name, cooling time, location and abatement | 38     |
| Verification of cooling times                                                            | 39     |
| Abatement devices, PM & PM schedule                                                      | 40     |
| Housekeeping measures to abate                                                           | 42     |
| Shake Out Operations -<br>Shakeout name and abatement devices                            | 44     |
| Abatement devices, PM & PM schedule                                                      | 45     |
| Housekeeping measures to abate                                                           | 46     |
| Finishing Operations -<br>Operation Type & location, abatement devices                   | 48     |
| Abatement devices, PM & PM schedule                                                      | 52     |
| Housekeeping measures to abate                                                           | 54     |
| Sand Reclamation -<br>Sand Reclamation Equipment name and abatement devices              | 56     |
| Abatement devices, PM & PM schedule                                                      | 57     |
| Housekeeping measures to abate                                                           | 58     |
| Dross and Slag Management                                                                |        |
| Dross and Slag Management                                                                | 60     |
| Abatement devices, PM & PM schedule                                                      | 61     |

|                                                      |    |
|------------------------------------------------------|----|
| Housekeeping measures to abate                       | 63 |
| List of all abatement equipment and sources abated   | 64 |
| Technical Data -                                     |    |
| Process Flow Data - figures in Appendix B            | 68 |
| Facility Layout / Floor Plan - figures in Appendix C | 69 |
| Fugitive Emissions Previously Realized               | 71 |
| Schedule for implementation of EMP prior to May 1    | 73 |
| New or Future elements to be implemented             | 74 |

|            |                                         |
|------------|-----------------------------------------|
| Appendix A | 403.1 3.A - Organization Chart          |
| Appendix B | 403.1 A - Process Flow diagrams         |
| Appendix C | 403.1.B - Facility Layout / Floor Plans |

*I, as the Responsible Manager of this facility, hereby certify that as of this date, this Emissions Minimization Plan contains all elements and information required of a complete EMP pursuant to District Regulation Section 12-13-403 and that the information contained in this EMP is accurate.*

Certified by:

  
\_\_\_\_\_

Dated:

1/11/15  
\_\_\_\_\_

Krishnan Venkatesan, Chief Operating Officer

*Responsible Manager*

# Designation of Confidential Business Information

---

Describe the information you designate as “CONFIDENTIAL” that are trade secret or otherwise exempt under law from public disclosure. Specify what is “CONFIDENTIAL” and include specific section(s) and corresponding page number(s).

| Name of Section / Page Number(s)                                    | Description of Confidential Information                                                                                                                         |
|---------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Organization Chart / Appendix A                                     | This section is business confidential for security reasons and since their disclosure may give competitors and economic advantage. No bearing on air emissions. |
| Schedule of Operations / Pg 12                                      | This section is business confidential for security reasons.                                                                                                     |
| Mold and Core Making Operations / Page 14-18                        | Binders used at the facility are business confidential since their disclosure may give competitors and economic advantage                                       |
| Description of Operations-Mold and Core Making Operations / Page 20 | The Binders, Mix Ratio & MSDS information is proprietary                                                                                                        |
| Appendix C All pages                                                | Plant Layout is business confidential for security reasons and since their disclosure may give competitors and economic advantage                               |
|                                                                     |                                                                                                                                                                 |
|                                                                     |                                                                                                                                                                 |
|                                                                     |                                                                                                                                                                 |
|                                                                     |                                                                                                                                                                 |
|                                                                     |                                                                                                                                                                 |
|                                                                     |                                                                                                                                                                 |
|                                                                     |                                                                                                                                                                 |
|                                                                     |                                                                                                                                                                 |
|                                                                     |                                                                                                                                                                 |
|                                                                     |                                                                                                                                                                 |
|                                                                     |                                                                                                                                                                 |
|                                                                     |                                                                                                                                                                 |
|                                                                     |                                                                                                                                                                 |
|                                                                     |                                                                                                                                                                 |
|                                                                     |                                                                                                                                                                 |
|                                                                     |                                                                                                                                                                 |
|                                                                     |                                                                                                                                                                 |



## Company Description

---

Pacific Steel Casting Company LLC purchased Pacific Steel Casting Company. The transfer of assets was completed on August 29, 2014

Pacific Steel Casting Company LLC (PSC LLC) has three (3) separate steel foundries, which are located within a two-block area in Berkeley, California. They are generally referred to as Plant 187, Plant 703 and Plant 1603. The facilities are located in the Berkeley manufacturing and industrial area. Other industrial facilities such as a forging manufacturer, pattern shop, machine shop, railroad lines, and brewery are also located near PSC LLC. Further, PSC LLC is located adjacent and close to a major East Bay freeway.

PSC LLC produces high quality steel casting using different sand molding processes. Thousands of custom-made parts are produced at PSC LLC that are used in everyday lives by individuals and businesses. PSC LLC cast steel parts can be found in bridges, wheelchair lifts, truck parts, agricultural equipment, valves for sanitary sewers, public water systems, the oil and gas industry, landfill compactors and, in the structural aspects of buildings.

PSC LLC employs over 400 employees. Most of them are union members of the Glass Molders and Plastics Union, Local 164. Many of PSC LLC employees are second or third generation foundry employees. More than 85% of PSC LLC employees live near PSC LLC commuting within 15 miles or less. Employees from PSC LLC participate in health and welfare and pension benefits. PSC LLC maintains an excellent safety and health record. PSC LLC regularly works with material manufacturers to develop better and lower emitting products.

PSC LLC purchases scrap metal from qualified vendors. The scrap is melted into metal that are alloys of steel. The molten steel is poured into sand molds. This is the basic sand mold method of producing castings. The metal inside these molds cools and hardens to form the castings. Once the castings have cooled and adopted their forms, they are sent to the shakeout station in which the sand is separated from the casting both internally and externally. Sand from the shakeout station is transferred to a reclamation unit where it is cleaned of material and processed for reuse. This sand reuse conserves tons of new sand that would otherwise be needed and eliminates tons of sand from landfill disposal. The sand reclamation unit at PSC LLC is, and always has been, state of the art equipment. The cooled castings are next sent to the finishing department before going to the shipping department.

In general, each Company plant produces steel castings using sand molding processes that are best suited for the design and size of the casting made at that plant. The binders are mixed with the sand and are used to harden the sand chemically with or without external heat.

Plant 187 began operations in the 1930's making medium sized castings using primarily the Green Sand molding process. The binder for green sand molds is a combination of clay, water, and cornstarch compacted to form the necessary molds.

Plant 703 began operations in 1975. This plant uses a Shell process for the molding system. This sand molding process uses a binder mixed with the sand and baked to form the necessary molds and cores for the castings.

Plant 1603 began operations in 1981. This plant primarily uses a phenolic urethane binder, which is a chemical binder mixed with the sand.

# Company Organizational Chart and Schedule of Management Operators

## 12-13-403.1.3

---

- A. *Company Organizational Chart*- Attach a copy of the organizational chart of the company, which describes the business structure and includes the name of the facility's Responsible Official.
- B. *Schedule of Management Operators* - Provide the names and contact information of the Onsite Responsible Manager(s) and Onsite Alternate Contact(s) and their duty schedule.

## A. Company Organizational Chart

In Appendix A - Confidential

## **B. Schedule of Management Operators**

### **Onsite Responsible Manager(s)**

Name: Confidential  
Title: Environmental, Health & Safety Director  
Phone: Confidential  
Email: Confidential  
Schedule/Shift: Confidential

Name: Confidential  
Title: Chief Operating Officer  
Phone: Confidential  
Email: Confidential  
Schedule/Shift: Confidential

### **Onsite Alternate Contact(s)**

Name: Confidential  
Title: Environmental Technician  
Phone: Confidential  
Email: Confidential  
Schedule/Shift: Confidential

Name: Confidential  
Title: Supervisor  
Phone: Confidential  
Email: Confidential  
Schedule/Shift: Confidential

Name: Confidential  
Title: Supervisor  
Phone: Confidential  
Email: Confidential  
Schedule/Shift: Confidential

# Contents of the EMP

## 12-13-403

---

The owner or operator of the foundry or forge subject to Section 12-13-401 shall prepare a complete and accurate EMP that details the management practices, measures, equipment and procedures that are employed or scheduled to be implemented to minimize fugitive emissions of particulate matter and odorous substances for the operations subject to the EMP.

*A. Operations Subject to EMP and Schedule of Operations*

*B. Description of Operations* - Facilities with operations under 12-13-402 must list and provide description of all process equipment, material usages, abatement and control equipment and monitoring parameters to reduce fugitive emissions of particulates and odors. Please provide information for all the following operations that apply.

*C. Management Practices to Reduce Fugitive Emissions*- Facilities with operations under 12-13-402 must list and provide descriptions of all preventative maintenance activities, pollution prevention and source reduction measures to reduce fugitive emissions of particulates and odors. Provide schedules of activities conducted.

*D. Description of Abatement and Control Equipment*- Facilities must provide a comprehensive list of all abatement and control equipment for operations subject to 12-13-402 and name the source(s) of operation in which it abates.

## A. Operations Subject to EMP and Schedule of Operations

The EMP shall address all of the following operations that are conducted at a foundry or forge per 12-13-402.

Please check all facility operations that apply and provide the schedule of operation.

| Operation                                                                                   | Schedule of Operations |
|---------------------------------------------------------------------------------------------|------------------------|
| <input checked="" type="checkbox"/> 402.1 Mold and Core Making Operations                   | Confidential           |
| <input checked="" type="checkbox"/> 402.2 Metal Management                                  | Confidential           |
| <input checked="" type="checkbox"/> 402.3 Furnace Operations, including tapping and pouring | Confidential           |
| <input type="checkbox"/> 402.4 Forging Operations                                           | N/A                    |
| <input checked="" type="checkbox"/> 402.5 Casting and Cooling Operation                     | Confidential           |
| <input checked="" type="checkbox"/> 402.6 Shake Out Operations                              | Confidential           |
| <input checked="" type="checkbox"/> 402.7 Finishing Operations                              | Confidential           |
| <input checked="" type="checkbox"/> 402.8 Sand Reclamation                                  | Confidential           |
| <input checked="" type="checkbox"/> 402.9 Dross and Slag Management                         | Confidential           |

## **402.1 Mold and Core Making Operations**



**B. Description of Operations - MOLD AND CORE MAKING OPERATIONS**

| Section # | Equipment Name and Manufacturer /Model #         | District S# and Applicable NESHAPS Section | NAME OF MATERIALS USED IN MOLDING OPERATIONS |              |              |                     | ABATEMENT |               |                                                                        |                                                                        |                                            |                     | Monitoring Parameters                                       |  |
|-----------|--------------------------------------------------|--------------------------------------------|----------------------------------------------|--------------|--------------|---------------------|-----------|---------------|------------------------------------------------------------------------|------------------------------------------------------------------------|--------------------------------------------|---------------------|-------------------------------------------------------------|--|
|           |                                                  |                                            | Binders                                      | Coatings     | Adhesives    | Mold Release Agents | Other     | Source abated | Abatement Required by Permit                                           | A#                                                                     | Type of Abatement and Purpose of Abatement | Abatement Monitored |                                                             |  |
| 1         | 187- 4 Mold machine British Molding Machines BMM | Exempt 40 CFR 63.10886                     | Confidential                                 | NA           | NA           | Confidential        | NA        | Other         | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | NA                                         |                     | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |  |
| 2         | 187 - 2 Squeezer machines SPO                    | Exempt 40 CFR 63.10886                     | Confidential                                 | NA           | NA           | Confidential        | NA        | Other         | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | NA                                         |                     | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |  |
| 3         | 187 - 2 Molding machines BMM                     | Exempt 40 CFR 63.10886                     | Confidential                                 | NA           | NA           | Confidential        | NA        | Other         | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | NA                                         |                     | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |  |
| 4         | 187 - 2 Core machine Dependable 400 FA, 200SA    | Exempt 40 CFR 63.10886                     | Confidential                                 | NA           | NA           | Confidential        | NA        | Other         | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | NA                                         |                     | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |  |
| 5         | 187 - 2 Core machines Redford HS 22 RA           | Exempt 40 CFR 63.10886                     | Confidential                                 | NA           | NA           | Confidential        | NA        | Other         | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | NA                                         |                     | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |  |
| 6         | 187 - 6 Core blower systems B & P                | Exempt 40 CFR 63.10886                     | Confidential                                 | Confidential | Confidential | Confidential        | NA        | Other         | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | NA                                         |                     | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |  |
| 7         | 703 - 2 Shell Molding Machines DSM 3             | 703 S20, S24 40 CFR 63.10886               | Confidential                                 | NA           | Confidential | Confidential        | NA        | Other         | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | NA                                         |                     | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |  |

| A. Description of Operations - MOLD AND CORE MAKING OPERATIONS |                                                 |                                                 |                                              |          |              |                     |       |                                                                        |                                                                        |      |                                                                        |                                                                                                                                                                                                                                                  |                       |
|----------------------------------------------------------------|-------------------------------------------------|-------------------------------------------------|----------------------------------------------|----------|--------------|---------------------|-------|------------------------------------------------------------------------|------------------------------------------------------------------------|------|------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|
| Section #                                                      | Equipment Name and Manufacturer /Model #        | District S# and Applicable NESHAPs Section      | NAME OF MATERIALS USED IN MOLDING OPERATIONS |          |              |                     |       | ABATEMENT                                                              |                                                                        |      |                                                                        |                                                                                                                                                                                                                                                  |                       |
|                                                                |                                                 |                                                 | Binders                                      | Coatings | Adhesives    | Mold Release Agents | Other | Source abated                                                          | Abatement Required by Permit                                           | A#   | Type of Abatement and Purpose of Abatement                             | Abatement Monitored                                                                                                                                                                                                                              | Monitoring Parameters |
| 8                                                              | 703 --Shalco Molding Machine<br>DSM 3           | 703 S21<br>40 CFR 63.10886                      | Confidential                                 | NA       | Confidential | Confidential        | NA    | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No |      | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |                                                                                                                                                                                                                                                  |                       |
| 9                                                              | 703 - 2 Shalco Molding Machines<br>DSM 3        | 703 S22,<br>S23<br>40 CFR 63.10886              | Confidential                                 | NA       | Confidential | Confidential        | NA    | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | A7   | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | Pressure drop across Carbon units<br>I-<P<9, Temp <110 F<br>Odor level < 60 odor units                                                                                                                                                           |                       |
| 10                                                             | 703 - 2 Beardsley & Piper core mach.<br>SF 6 CA | 703 S13,<br>S14<br>40 CFR 63.10886              | Confidential                                 | NA       | NA           | Confidential        | NA    | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No |      | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |                                                                                                                                                                                                                                                  |                       |
| 11                                                             | 703 - 4 Redford core machines<br>HS 16 RA       | 703 S15,<br>S16, S17,<br>S18<br>40 CFR 63.10886 | Confidential                                 | NA       | NA           | Confidential        | NA    | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No |      | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |                                                                                                                                                                                                                                                  |                       |
| 12                                                             | 187 - Simpson Sand Muller<br>1.5                | 187 S-10<br>40 CFR 63.10886                     | Confidential                                 | NA       | NA           | NA                  | NA    | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | A10  | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | Weekly visual inspections of A10 are performed on the interior and exterior of the unit for mechanical integrity. The filter bags are visually inspected for rips/tears. Verification of pulse jet activity is verified weekly by the inspector. |                       |
| 13                                                             | 187 - Omco Sand Mixer<br>MS 1                   | Exempt<br>40 CFR 63.10886                       | Confidential                                 | NA       | NA           | NA                  | NA    | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | A-10 | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | Weekly visual inspections of A10 are performed on the interior and exterior of the unit for mechanical integrity. The filter bags are visually inspected for rips/tears. Verification of pulse jet                                               |                       |

Regulation 12, Rule 13: Foundry and Forging Operations  
Emissions Minimization Plan

|    |                                          |                              |              |    |    |    |    |    |    |    |                                                                        |                                                                        |             |                                                                                                                                                                                                                                                                                                       |
|----|------------------------------------------|------------------------------|--------------|----|----|----|----|----|----|----|------------------------------------------------------------------------|------------------------------------------------------------------------|-------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 14 | 187 - Tinker Omega Sand mixer<br>TOM 250 | Exempt<br>40 CFR<br>63.10886 | Confidential | NA | NA | NA | NA | NA | NA | NA | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | Same as #12 | activity is verified weekly by the inspector.<br><br>Weekly visual inspections of A10 are performed on the interior and exterior of the unit for mechanical integrity. The filter bags are visually inspected for rips/tears. Verification of pulse jet activity is verified weekly by the inspector. |
|----|------------------------------------------|------------------------------|--------------|----|----|----|----|----|----|----|------------------------------------------------------------------------|------------------------------------------------------------------------|-------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**A. Description of Operations - MOLD AND CORE MAKING OPERATIONS**

| Section # | Equipment Name and Manufacturer /Model #   | District S# and Applicable NESHAPS Section | NAME OF MATERIALS USED IN MOLDING OPERATIONS |              |              |                     | ABATEMENT    |               |                                                                        |                                                                        |                                            | Monitoring Parameters                                                              |                                                                                                                                                                                                                                                                                                                                                                                         |
|-----------|--------------------------------------------|--------------------------------------------|----------------------------------------------|--------------|--------------|---------------------|--------------|---------------|------------------------------------------------------------------------|------------------------------------------------------------------------|--------------------------------------------|------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|           |                                            |                                            | Binders                                      | Coatings     | Adhesives    | Mold Release Agents | Other        | Source abated | Abatement Required by Permit                                           | A#                                                                     | Type of Abatement and Purpose of Abatement |                                                                                    | Abatement Monitored                                                                                                                                                                                                                                                                                                                                                                     |
| 15        | 187 - B & P Sand Muller 75 B               | 187 S-8<br>40 CFR 63.10886                 | Confidential                                 | NA           | NA           | NA                  | NA           | NA            | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | A-1, A-7                                   | Baghouse, Shaking into Carbon Adsorption<br>Odors & Particulate                    | Pressure drop across Carbon units<br>1<P<9, Temp <110 F                                                                                                                                                                                                                                                                                                                                 |
| 16        | 703 - Shell sand coating system B&P Muller | 703 S-5 thru S-12<br>40 CFR 63.10886       | Confidential                                 | NA           | NA           | NA                  | NA           | NA            | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | A-4                                        | Baghouse, Shaking<br>Particulate                                                   | Daily - Visual inspection for filter and mechanical integrity and particulate<br>Pressure drop across baghouse                                                                                                                                                                                                                                                                          |
| 17        | 1603 - Omco Sand Muller LAM 50             | 1603 S-14<br>40 CFR 63.10886               | Confidential                                 | Confidential | Confidential | Confidential        | Confidential | NA            | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | A-5, A-3, A-7, A-8                         | Dry filter, into Baghouse, Pulse Jet into Carbon Adsorption<br>Odors & Particulate | At 50 ppm in a 90 minute average);<br>Have full load carbon (52,000 lbs.) on standby within 3 business days.<br>At 65 ppm in a 90 minute average change carbon no later than 7 calendar days.<br>At 85 ppm in a 90 minute average - Cease shakeout operations immediately and pouring operations within 2 hours.<br>Maintain Inlet Face velocity into cooling room, minimum 200 ft/min. |
| 18        | 1603 - No Bake Molding System              | 1603 S18, S20<br>40 CFR 63.10886           | Confidential                                 | Confidential | Confidential | Confidential        | Confidential | NA            | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | A-3, A-7, A-8                              | Baghouse, Pulse Jet into Carbon Adsorption<br>Odors & Particulate                  | At 50 ppm in a 90 minute average);<br>Visual inspection<br>At 50 ppm in a 90 minute average);<br>At 50 ppm in a 90 minute average);<br>At 50 ppm in a 90 minute average);                                                                                                                                                                                                               |

|    |                                       |                       |              |              |              |              |              |              |              |              |              |              |              |              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                     |                                                                        |                                                                        |                                                                        |                                                                        |                                                                        |                                                                        |
|----|---------------------------------------|-----------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|------------------------------------------------------------------------|------------------------------------------------------------------------|------------------------------------------------------------------------|------------------------------------------------------------------------|------------------------------------------------------------------------|------------------------------------------------------------------------|
| 19 | 1603 - Kloster Core Sand Mixer Type 1 | NA<br>40 CFR 63.10886 | Confidential | Confidential | Confidential | Confidential | Confidential | Confidential | Confidential | Confidential | Confidential | Confidential | Confidential | Confidential | <p>Have full load carbon (52,000 lbs.) on standby within 3 business days.<br/>At 65 ppm in a 90 minute average change carbon no later than 7 calendar days.<br/>At 85 ppm in a 90 minute average - Cease shakeout operations immediately and pouring operations within 2 hours.<br/>Maintain Inlet Face velocity into cooling room, minimum 200 ft/min.</p> <p>A3 and A7 - Pressure drop across baghouses - 4.5&lt;P&lt;7;<br/>Visual inspection<br/>A8 - FID continuous monitoring<br/>At 50 ppm in a 90 minute average);<br/>Have full load carbon (52,000 lbs.) on standby within 3 business days.<br/>At 65 ppm in a 90 minute average change carbon no later than 7 calendar days.<br/>At 85 ppm in a 90 minute average - Cease shakeout operations immediately and pouring operations within 2 hours.<br/>Maintain Inlet Face velocity into cooling room, minimum 200 ft/min.</p> | <p>Baghouse, Pulse Jet into Carbon Adsorption<br/>Odor &amp; Particulate Matter</p> | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No |
| 20 | 1603 - Omco Core Sand Mixer HMC-5     | NA<br>40 CFR 63.10886 | Confidential | Confidential | Confidential | Confidential | Confidential | Confidential | Confidential | Confidential | Confidential | Confidential | Confidential | Confidential | <p>Dynamic Air Pulse Cleaner<br/>Baghouse<br/>Particulate Matter</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No              | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No |                                                                        |                                                                        |
| 21 | 1603 - Omco Core Sand Mixer MS1       | NA<br>40 CFR 63.10886 | Confidential | Confidential | Confidential | Confidential | Confidential | Confidential | Confidential | Confidential | Confidential | Confidential | Confidential | Confidential | <p>Baghouse, Pulse Jet into Carbon Adsorption<br/>Odor &amp; Particulate Matter</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No              | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No |                                                                        |                                                                        |



## B. Description of Operations – MOLD AND CORE MAKING OPERATIONS

Provide information on binders used in mold and core making operations.

| Section # | Name of Binder | Binder Mix Ratio | Name of Source(s) and/or District S# Where Binder Is Used        | Product Specification per MSDS                                              |
|-----------|----------------|------------------|------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1         | Confidential   | Confidential     | No Bake Systems<br>Plants 187 Cores &<br>1603 Molding &<br>Cores | VOC CONTENT (%):<br>Confidential<br><br>PHENOL CONTENT (%):<br>Confidential |
| 2         | Confidential2  | Confidential     | No Bake Systems<br>Plants 187 Cores &<br>1603 Molding &<br>Cores | VOC CONTENT (%):<br>Confidential<br><br>PHENOL CONTENT (%):<br>Confidential |
| 3         | Confidential   | Confidential     | No Bake Systems<br>Plants 187 Cores &<br>1603 Molding &<br>Cores | VOC CONTENT (%):<br>Confidential<br><br>PHENOL CONTENT (%):<br>Confidential |
| 4         | Confidential   | Confidential     | Plant 703 - Core &<br>Shell molding<br>S13 - S24                 | VOC CONTENT (%):<br>Confidential<br><br>PHENOL CONTENT (%):<br>Confidential |
| 5         | Confidential   | Confidential     | Plant 703 - Core &<br>Shell molding<br>S13 - S24                 | VOC CONTENT (%):<br>Confidential<br><br>PHENOL CONTENT (%):<br>Confidential |
| 6         | Confidential   | Confidential     | Plant 187 - CO 2<br>Core Blower<br>System                        | VOC CONTENT (%):<br>Confidential<br><br>PHENOL CONTENT (%):<br>Confidential |
| 7         | Confidential   | Confidential     | Plant 187 Molding                                                | VOC CONTENT (%):<br>Confidential<br><br>PHENOL CONTENT (%):                 |

|  |  |  |  |                                         |
|--|--|--|--|-----------------------------------------|
|  |  |  |  | Confidential                            |
|  |  |  |  | VOC CONTENT (%):<br>PHENOL CONTENT (%): |
|  |  |  |  | VOC CONTENT (%):<br>PHENOL CONTENT (%): |



## C. Management Practices to Reduce Fugitive Emissions – MOLD AND CORE MAKING OPERATIONS

Provide description of preventative maintenance (PM) activities including PM schedules and work practice standards for each abatement device for core and mold making operations.

| Section # | Name of Abatement Device and Manufacturer/Model #                     | Description of Preventative Maintenance Activity and Work Practice Standards                                                                                                                                                                        | Schedule of PM                                                                      |
|-----------|-----------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|
| 1         | 187 A8 Baghouse<br><br>Torit/22,000 cfm                               | 1. Check manometer across baghouse $0 < P < 7$ .<br>2. Visual inspection - internal & external, check cartridge filter integrity and condition.<br>3. Replace cartridge filters based on inspection and/or changing manometer readings.             | 1. Weekly<br><br>2. SemiAnnual<br><br>3. As required, based on inspection           |
| 2         | 187 A7 Carbon Adsorption System<br><br>Melrose/Blamer Eng. 60,000 cfm | Replace carbon and prefilters based on daily pressure readings across the carbon beds, prefilters and the semi-weekly odor tests                                                                                                                    | As required - based on monitoring data ( $1 < P < 9$ ), Odor test $> 25$ odor units |
| 3         | 703 A4 Shaker Baghouse<br><br>Industrial Clean Air/3-700SW            | 1. Inspect & lube Shaker & Fan bearings, inspect & check sheaves & V belts<br>2. Inspection of the interior of baghouse for structural integrity and fabric bag condition. Dye check baghouse and replace bags as necessary. Wire brush fan blades. | 1. Weekly<br><br>2. Quarterly                                                       |
| 4         | 703 A7 Carbon Adsorption System<br><br>Melrose                        | Replace carbon and prefilters based on daily pressure readings across the carbon beds, prefilters and the semi-weekly odor tests                                                                                                                    | As required - based on monitoring data ( $1 < P < 9$ ), Odor test $> 25$ odor units |
| 5         | 187 A10 Baghouse, Pulse Jet<br><br>5,600 cfm                          | 1. Check pulse jet pressures<br>2. Inspection of the interior of baghouse for structural integrity and fabric bag condition.<br>3. Replace filter bags based on inspection and/or changing manometer readings.                                      | 1. Monthly<br>2. Quarterly<br><br>3. As required, based on inspection               |
| 6         | 187 A1 Baghouse, Pulse Jet<br><br>Industrial Clean Air/30,000 cfm     | Monitor carbon prefilters, troubleshoot if necessary.<br>Inspection of the interior of baghouse for structural integrity and fabric bag condition. Replace filter bags as necessary.                                                                | Daily<br><br>Quarterly                                                              |

|   |                                                         |                                                                                                                                                                                                                 |                                                                                                       |
|---|---------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|
| 7 | 1603 A3 Baghouse, Pulse Jet<br>Bahnsen/Hawley/HE-378-10 | 1. Check Manometer across baghouse.<br>2. Inspection of the interior of baghouse for structural integrity and fabric bag condition.<br>3. Replace bags based on inspection and/or changing manometer readings . | 1. Monthly<br>2. Quarterly<br>3. As required, based on inspection                                     |
| 8 | 1603 A7 Baghouse, Pulse Jet<br>Bahnsen/Hawley/HE-378-10 | Same as #7                                                                                                                                                                                                      | 1. Monthly<br>2. Quarterly<br>3. As required, based on inspection                                     |
| 9 | 1603 A8 Carbon Adsorption<br>Melrose                    | Replace carbon and prefilters based on FID, steel output, pressure drops across carbon bed & prefilters checked daily                                                                                           | Permit required - FID >65ppm (PSC policy when FID outlet >20 ppm and/or >700 tons of steel processed) |

### C. Management Practices to Reduce Fugitive Emissions – MOLD AND CORE MAKING OPERATIONS

Provide description of other housekeeping measures to abate and/or minimize fugitive emissions of odors and/or particulate matter at sources or source areas.

| Section # | Description of Housekeeping Measure                      | Purpose of Activity                                                                                                                                                                                                      | Schedule of Activity |
|-----------|----------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|
| 1         | Sweeping mold & core rooms once per shift, at a minimum. | Contain particulate matter                                                                                                                                                                                               | On going             |
| 2         | All paved outdoor areas are swept twice per day.         | Storage bins containing used sand and/or broken molds are moved and stored outside. Storage areas are swept to remove any spilled or leaking sand, in order to remove a potential source of airborne particulate matter. | Twice per day        |
| 3         | Visually check exhaust stacks for particulate and dust.  | Insure proper functioning of the baghouse, and identify presence of torn bags or bags that have fallen off.                                                                                                              | Daily                |
|           |                                                          |                                                                                                                                                                                                                          |                      |
|           |                                                          |                                                                                                                                                                                                                          |                      |
|           |                                                          |                                                                                                                                                                                                                          |                      |
|           |                                                          |                                                                                                                                                                                                                          |                      |
|           |                                                          |                                                                                                                                                                                                                          |                      |
|           |                                                          |                                                                                                                                                                                                                          |                      |
|           |                                                          |                                                                                                                                                                                                                          |                      |
|           |                                                          |                                                                                                                                                                                                                          |                      |
|           |                                                          |                                                                                                                                                                                                                          |                      |
|           |                                                          |                                                                                                                                                                                                                          |                      |

## 402.2 Metal Management

| <b>B. Description of Operations - Metal Management</b> |                                                                    |                                                                                  |                                                                                                                                                                                                                                             |
|--------------------------------------------------------|--------------------------------------------------------------------|----------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Section #</b>                                       | <b>Name of Non-Exempt Metal or Metal Alloy Used for Production</b> | <b>Metal Type</b>                                                                | <b>Method of Verification for Determining Chemical Composition</b>                                                                                                                                                                          |
| 1                                                      | Ferrous Feed Stock (Incoming Scrap) - 100% recycled scrap steel    | <input checked="" type="checkbox"/> Ferrous <input type="checkbox"/> Non-Ferrous | All 3 plant scrap yards, yearly random sampling of all vendors - composition verified using Optical Emission Spectrometer and carbon analyzer testing equipment.                                                                            |
| 2                                                      | Ferrous Feed Stock (After Melting) - 100% recycled scrap steel     | <input checked="" type="checkbox"/> Ferrous <input type="checkbox"/> Non-Ferrous | All Heats- composition verified using Optical Emission Spectrometer and carbon analyzer testing equipment. Off specification material identified by heat analysis initiates additional testing of the feed stock in the scrap yard storage. |
| 3                                                      | Ferro Chromium                                                     | <input checked="" type="checkbox"/> Ferrous <input type="checkbox"/> Non-Ferrous | Product certified by vendor                                                                                                                                                                                                                 |
| 4                                                      | Ferro Manganese                                                    | <input checked="" type="checkbox"/> Ferrous <input type="checkbox"/> Non-Ferrous | Product certified by vendor                                                                                                                                                                                                                 |
| 5                                                      | Ferro Molybdenum                                                   | <input checked="" type="checkbox"/> Ferrous <input type="checkbox"/> Non-Ferrous | Product certified by vendor                                                                                                                                                                                                                 |
| 6                                                      | Ferro Vanadium                                                     | <input checked="" type="checkbox"/> Ferrous <input type="checkbox"/> Non-Ferrous | Product certified by vendor                                                                                                                                                                                                                 |
| 7                                                      | Nickel                                                             | <input type="checkbox"/> Ferrous <input checked="" type="checkbox"/> Non-Ferrous | Product certified by vendor                                                                                                                                                                                                                 |
| 8                                                      | Molybdenum Trioxide                                                | <input type="checkbox"/> Ferrous <input checked="" type="checkbox"/> Non-Ferrous | Product certified by vendor                                                                                                                                                                                                                 |
| 9                                                      | Silicon Manganese                                                  | <input type="checkbox"/> Ferrous <input checked="" type="checkbox"/> Non-Ferrous | Product certified by vendor                                                                                                                                                                                                                 |
| 10                                                     | Ferro Aluminum                                                     | <input checked="" type="checkbox"/> Ferrous <input type="checkbox"/> Non-Ferrous | Product certified by vendor                                                                                                                                                                                                                 |
|                                                        |                                                                    | <input type="checkbox"/> Ferrous <input type="checkbox"/> Non-Ferrous            |                                                                                                                                                                                                                                             |
|                                                        |                                                                    | <input type="checkbox"/> Ferrous <input type="checkbox"/> Non-Ferrous            |                                                                                                                                                                                                                                             |

## B. Description of Operations - Metal Management

**Describe the facility's metal inspection program, work practice standards and material acquisition plan/procedures upon receipt of scrap or unprocessed metal. Include any pollution prevention management practices and source reduction measures to ensure the metal received is clean.**

All Pacific Steel scrap yards are indoors, under cover, to minimize fugitive dust. Only scrap originating from the United States which does not contain motor vehicle scrap is purchased. Each Request for Quote (RFQ) and Purchase Order (PO) provided to a scrap vendor shall include the following;

"Material types not acceptable: Automotive Body Scrap, By-products, cans, cylinders, oil, used oil filters, other lubricants, free organic liquids, chlorinated plastic parts, dirt, engine block components, galvanized, lead components, mercury switches, I-beam, Paint, pipe, plastic, skeleton, tubing, or turnings. Scrap must be lead, mercury and Radiation free."

All 3 plant scrap yards conduct yearly random sampling of all vendors - composition of scrap is verified using Optical Emission Spectrometer and carbon analyzer testing equipment. In addition, all heats are analyzed and the composition is verified. If a discrepant heat analytical result is discovered, additional verification of the scrap used for that heat is conducted. All scrap deliveries to PSC must be visually inspected to make sure that each delivery does NOT contain any of the materials listed above.

If any of the above materials are noted in the delivery, the load is rejected and returned to the suppliers. Any rejected scrap shipments not immediately returned to the supplier, shall be sequestered or visibly marked until the shipment is returned to the vendor.

All scrap yard employees are trained concerning proper metal management handling procedures. Training is conducted yearly.

### **C. Management Practices to Reduce Fugitive Emissions– Metal Management**

**Describe control measures to minimize fugitive emissions from scrap or unprocessed metal.**

All scrap is stored indoors under cover. At the end of each shift the scrap rooms are first swept with a magnetic sweeper to pick up any metal fines, followed by regular sweeping to contain any dust.

## **402.3 Furnace Operations**



| B. Description of Operations - FURNACE OPERATIONS |                                                                                                        |                                                   |                                                                                       |                                                                        |                          |             |                              |                                                                        |                                                                                                                                    |  |
|---------------------------------------------------|--------------------------------------------------------------------------------------------------------|---------------------------------------------------|---------------------------------------------------------------------------------------|------------------------------------------------------------------------|--------------------------|-------------|------------------------------|------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------|--|
| Section #                                         | Furnace Name and Manufacturer/ Model #                                                                 | District S# and Applicable NESHAPs Section        | Type of Operation                                                                     | Source abated                                                          | Type of Abatement Device | District A# | Purpose of Abatement         | Abatement Monitored                                                    | Monitoring Parameters                                                                                                              |  |
| 1                                                 | 187 - Electromelt - Electric Arc Furnace ARC FURNACE<br>QT                                             | 187 S-1<br>40 CFR 63.10895(b)<br>40 CFR 63.10686  | <input checked="" type="checkbox"/> Melting<br><input type="checkbox"/> Heat Treating | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | Baghouse, Pulse Jet      | A-9         | Particulate Matter abatement | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | Grain loading less than 0.0017 grains per dry cubic foot. Pressure drop across the baghouse 2<P<12.<br>Semi annual opacity testing |  |
| 2                                                 | 187 - 2 Berkley Steel Heat Treat - HEAT TREATING FURNACES<br>Gas fired heat treat oven                 | 187 S-18<br>Exempt                                | <input type="checkbox"/> Melting<br><input checked="" type="checkbox"/> Heat Treating | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No |                          | NA          |                              | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |                                                                                                                                    |  |
| 3                                                 | 703 - Electromelt - ELECTRIC ARC FURNACE<br>CQT 7' 1097                                                | 703 S-27<br>40 CFR 63.10895(b)<br>40 CFR 63.10686 | <input checked="" type="checkbox"/> Melting<br><input type="checkbox"/> Heat Treating | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | Baghouse, Shaking        | A-3         | Particulate Matter abatement | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | Pressure drop across the baghouse 1<P<9<br>Semi annual opacity testing                                                             |  |
| 4                                                 | 1603 - Whiting EAF Rocker Style ELECTRIC ARC FURNACE                                                   | 1603 S-1<br>40 CFR 63.10895(b)<br>40 CFR 63.10686 | <input checked="" type="checkbox"/> Melting<br><input type="checkbox"/> Heat Treating | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | Baghouse, Pulse Jet      | A-1         | Particulate Matter abatement | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | Grain loading less than 0.0033 grains per dry cubic foot. Pressure drop across the baghouse 2<P<12.<br>Semi annual opacity testing |  |
| 5                                                 | 8'-0 R.H. Rocker Tilt<br>1603 - 2 Units - Johnston<br>Gas fired recirculating box type Tempering ovens | Exempt                                            | <input type="checkbox"/> Melting<br><input checked="" type="checkbox"/> Heat Treating | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | NA                       | NA          |                              | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |                                                                                                                                    |  |
| 6                                                 | 1603 - 5 Units - Johnston<br>Gas fired box type Quench heat treat ovens                                | Exempt                                            | <input type="checkbox"/> Melting<br><input checked="" type="checkbox"/> Heat Treating | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | NA                       | NA          |                              | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |                                                                                                                                    |  |
| 7                                                 | 1603 - Johnston 1524<br>Gas fired Car bottom normalizing heat treat oven                               | Exempt                                            | <input type="checkbox"/> Melting<br><input checked="" type="checkbox"/> Heat Treating | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | NA                       | NA          |                              | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |                                                                                                                                    |  |
|                                                   |                                                                                                        |                                                   | <input type="checkbox"/> Melting<br><input type="checkbox"/> Heat Treating            | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |                          |             |                              | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |                                                                                                                                    |  |

### C. Management Practices to Reduce Fugitive Emissions- FURNACE OPERATIONS

Provide description of preventative maintenance (PM) activities including PM schedules and work practice standards for each abatement device for furnace operations.

| Section # | Abatement Device and Manufacturer/Model #  | Description of Preventative Maintenance Activity and Work Practice Standards                                                            | Schedule of PM |
|-----------|--------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|----------------|
| 1         | 187 - A-9<br>BHA/GE 36,000 cfm             | Visual inspection of duct exhaust checking for PM.<br>Verify leak detector supply air and opacity readings, check alarms                | Daily          |
| 2         | A-9 Continued                              | Visual inspection of ductwork system for leaks.<br>Inspect & lube shaker & fan bearings, inspect & check sheaves & V belts              | Monthly        |
| 3         | A-9 Continued                              | Inspection of the interior of baghouse for structural integrity and fabric bag condition. Dye check baghouse, replace bags as necessary | SemiAnnual     |
| 4         | 703 - A-3<br>Industrial Clean Air 4-3200AE | Visual inspection of duct exhaust checking for PM.                                                                                      | Daily          |
| 5         | A-3 Continued                              | Visual inspection of ductwork system for leaks.<br>Inspect & lube shaker & fan bearings, inspect & check sheaves & V belts              | Monthly        |
| 6         | A-3 Continued                              | Inspection of the interior of baghouse for structural integrity and fabric bag condition. Dye check baghouse, replace bags as necessary | SemiAnnual     |
| 7         | 1603 - A-1<br>Bahnson Hawley/2-294-14-10   | Visual inspection of duct exhaust checking for PM.<br>Verify leak detector supply air and opacity readings, check alarms                | Daily          |
| 8         | A-1 Continued                              | Visual inspection of ductwork system for leaks.<br>Inspect & lube shaker & fan bearings, inspect & check sheaves & V belts              | Monthly        |
| 9         | A-1 Continued                              | Inspection of the interior of baghouse for structural integrity and fabric bag condition. Dye check baghouse, replace bags as necessary | Semi-annual    |
| 10        | A-9, A-3, A-1                              | Drain gear box oil and refill, test run                                                                                                 | Yearly         |

**C. Management Practices to Reduce Fugitive Emissions - FURNACE OPERATIONS**

Provide description of other housekeeping measures to abate and/or minimize fugitive emissions of odors and/or particulate matter at sources or source areas.

| Section # | Description of Housekeeping Measure           | Purpose of Activity                                                                                | Schedule of Activity |
|-----------|-----------------------------------------------|----------------------------------------------------------------------------------------------------|----------------------|
| 1         | Baghouse dust bags secured to baghouse outlet | Eliminate fugitive dust. Baghouse dust is transferred from baghouse to dust bag in a closed system | On going             |
| 2         | Sweeping around baghouse dust collectors      | Removal of potential Particulate Matter                                                            | Daily                |
|           |                                               |                                                                                                    |                      |
|           |                                               |                                                                                                    |                      |
|           |                                               |                                                                                                    |                      |
|           |                                               |                                                                                                    |                      |
|           |                                               |                                                                                                    |                      |
|           |                                               |                                                                                                    |                      |
|           |                                               |                                                                                                    |                      |

## **402.4 Forging Operations**

| B. Description of Operations - FORGING OPERATIONS |                                          |                                            |                    |                                |                      |                                                             |                          |                      |                                                             |                       |
|---------------------------------------------------|------------------------------------------|--------------------------------------------|--------------------|--------------------------------|----------------------|-------------------------------------------------------------|--------------------------|----------------------|-------------------------------------------------------------|-----------------------|
| Section #                                         | Equipment Name and Manufacturer/ Model # | District S# and Applicable NESHAPs Section | Description of Use | Name of Lubricants and/or Oils | Other Materials Used | Source abated                                               | Type of Abatement Device | Purpose of Abatement | Abatement Monitored                                         | Monitoring Parameters |
|                                                   | NA                                       |                                            |                    |                                |                      | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |                          |                      | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |                       |
|                                                   |                                          |                                            |                    |                                |                      | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |                          |                      | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |                       |
|                                                   |                                          |                                            |                    |                                |                      | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |                          |                      | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |                       |
|                                                   |                                          |                                            |                    |                                |                      | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |                          |                      | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |                       |
|                                                   |                                          |                                            |                    |                                |                      | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |                          |                      | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |                       |
|                                                   |                                          |                                            |                    |                                |                      | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |                          |                      | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |                       |
|                                                   |                                          |                                            |                    |                                |                      | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |                          |                      | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |                       |
|                                                   |                                          |                                            |                    |                                |                      | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |                          |                      | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |                       |
|                                                   |                                          |                                            |                    |                                |                      | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |                          |                      | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |                       |
|                                                   |                                          |                                            |                    |                                |                      | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |                          |                      | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |                       |
|                                                   |                                          |                                            |                    |                                |                      | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |                          |                      | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |                       |
|                                                   |                                          |                                            |                    |                                |                      | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |                          |                      | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |                       |



**C. Management Practices to Reduce Fugitive Emissions - FORGING OPERATIONS**

Provide description of preventative maintenance (PM) activities including PM schedules and work practice standards for each abatement device for forging operations.

| Section # | Abatement Device and Manufacturer/Model # | Description of Preventative Maintenance Activity and Work Practice Standards | Schedule of PM |
|-----------|-------------------------------------------|------------------------------------------------------------------------------|----------------|
|           |                                           |                                                                              |                |
|           |                                           |                                                                              |                |
|           |                                           |                                                                              |                |
|           |                                           |                                                                              |                |
|           |                                           |                                                                              |                |
|           |                                           |                                                                              |                |
|           |                                           |                                                                              |                |
|           |                                           |                                                                              |                |
|           |                                           |                                                                              |                |
|           |                                           |                                                                              |                |
|           |                                           |                                                                              |                |
|           |                                           |                                                                              |                |
|           |                                           |                                                                              |                |
|           |                                           |                                                                              |                |
|           |                                           |                                                                              |                |
|           |                                           |                                                                              |                |
|           |                                           |                                                                              |                |
|           |                                           |                                                                              |                |
|           |                                           |                                                                              |                |

### C. Management Practices to Reduce Fugitive Emissions - FORGING OPERATIONS

Provide description of other housekeeping measures to abate and/or minimize fugitive emissions of odors and/or particulate matter at sources or source areas.

| Section # | Description of Housekeeping Measure | Purpose of Activity | Schedule of Activity |
|-----------|-------------------------------------|---------------------|----------------------|
|           |                                     |                     |                      |
|           |                                     |                     |                      |
|           |                                     |                     |                      |
|           |                                     |                     |                      |
|           |                                     |                     |                      |
|           |                                     |                     |                      |
|           |                                     |                     |                      |
|           |                                     |                     |                      |
|           |                                     |                     |                      |
|           |                                     |                     |                      |
|           |                                     |                     |                      |
|           |                                     |                     |                      |
|           |                                     |                     |                      |
|           |                                     |                     |                      |
|           |                                     |                     |                      |



## **402.5 Casting and Cooling Operations**

| B. Description of Operations - CASTING AND COOLING OPERATIONS |                                                                  |                                            |                                            |                                           |                                                                        |                                 |                              |                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  |
|---------------------------------------------------------------|------------------------------------------------------------------|--------------------------------------------|--------------------------------------------|-------------------------------------------|------------------------------------------------------------------------|---------------------------------|------------------------------|------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| # Section                                                     | Name of Pouring and Cooling Operations and Manufacturer/ Model # | District S# and Applicable NESHAPs Section | Cooling Time of Product or Source          | Designated Locations of Cooling Operation | Source Abated                                                          | Type of Abatement Device        | Purpose of Abatement         | Abatement Monitored                                                    | Monitoring Parameters                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |
| 1                                                             | Casting Pour off area<br>Plant 187                               | 187 S2                                     | A-line 1 hr. minimum<br>B-line 3-24 hrs.   | A-line cooling deck, B-line main floor    | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | Baghouse into Carbon Adsorption | Particulate matter and odors | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | Pressure drop across Baghouse 1<P<9<br>Carbon units 1<P<9, Temp <110 F                                                                                                                                                                                                                                                                                                                                                                                                                                  |  |
| 2                                                             | Cast mold cooling room<br>Plant 703                              | 703 S30                                    | 45 min.                                    | Cooling room                              | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | Baghouse into Carbon Adsorption | Particulate matter and odors | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | Pressure drop across Baghouse 1<P<9<br>Carbon units 1<P<9, Temp <110 F                                                                                                                                                                                                                                                                                                                                                                                                                                  |  |
| 3                                                             | Cooling Room<br>Plant 1603                                       | 1603 S19                                   | 23 - 131 hrs. dependant on Sleeve Diameter | Cooling Room                              | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | Baghouse into Carbon Adsorption | Particulate matter and odors | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | A3 and A7 - Pressure drop across baghouses - 4.5<P<7;<br>Visual inspection<br>A8 - FID continuous monitoring<br>At 50 ppm in a 90 minute average):<br>Have full load carbon (52,000 lbs.) on standby within 3 business days.<br>At 65 ppm in a 90 minute average change carbon no later than 7 calendar days.<br>At 85 ppm in a 90 minute average - Cease shakeout operations immediately and pouring operations within 2 hours.<br>Maintain Inlet Face velocity into cooling room, minimum 200 ft/min. |  |
|                                                               |                                                                  |                                            |                                            |                                           | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |                                 |                              | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  |
|                                                               |                                                                  |                                            |                                            |                                           | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |                                 |                              | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  |
|                                                               |                                                                  |                                            |                                            |                                           | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |                                 |                              | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  |
|                                                               |                                                                  |                                            |                                            |                                           | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |                                 |                              | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  |

## C. Management Practices to Reduce Fugitive Emissions - CASTING AND COOLING OPERATIONS

**Describe the method to verify adequate cooling times are achieved to ensure minimization of fugitive emissions of particulates and odors prior to commencing shake out operations.**

During the design phase of a new part at Pacific Steel Casting, the cooling rate/minimum cooling time is determined. Minimum cooling times are unique to each part. The cooling time is dependent on the mold type, mold size and sleeve size. The cooling time is recorded on all job/part cards. Quality assurance requires all minimum cooling times are achieved. Adequate cooling time is required to avoid hardening, cracking, internal damage or an undesired microstructure in the finished part.

Plant 187 - A Line molding is a batch process. The time each heat/batch is poured is recorded. At all times, the operators verify that each mold has cooled for a minimum of one hour before transferring the mold into the shakeout. During continuous pouring, the time of each heat is recorded, however, the minimum cooling time is achieved due to process constraints. Each batch of molds is poured from a small ladle, filled from the larger furnace ladle. The pouring deck space is limited by the small ladle travel availability. Molds are lined up in the pouring deck area. As a mold is poured it is moved forward on to the cooling deck. To make space for the just poured mold, the molds already on the cooling deck are shuttled forward one position towards the shakeout. The cooling deck has space for multiple molds. As each batch is poured the molds are moved forward one position, on the cooling deck. During continuous pouring, the process of shuttling forward molds, one position for each heat, takes a minimum of one hour before the mold reaches the shakeout unit. Plant 187 - B line Molds are tagged with the pouring date and time and the time after which shakeout can proceed. Employees verify the tags in order to insure the minimum cooling time has transpired, prior to shaking out the parts.

Plant 703 - The molds are loaded on a continuous conveyor line which circulates around from 1) the mold loading station, 2) to the pouring station, 3) into the cooling room (multiple switch backs are located inside the cooling room which insure the minimum cooling times are achieved), 4) to the automatic shakout unit and 5) back to the mold loading station. If the conveyor is continuously run, the parts are in the cooling room for 45 minutes. During normal operations the conveyor is stopped and started, as each heat is poured, increasing the time molds are in the cooling room.

Plant 1603 - Floor molds are tagged on the flask with the pouring date and time and the time after which shakout can proceed. Tags are verified by employees prior to shakout. Line molds have the heat number written on the side of the molds, as they are poured. The melting reports are used to establish the pouring date and time from which the shakout time is verified.

### C. Management Practices to Reduce Fugitive Emissions - CASTING AND COOLING OPERATIONS

Provide description of preventative maintenance (PM) activities including PM schedules and work practice standards for each abatement device for casting and cooling operations.

| Section # | Abatement Device and Manufacturer/Model #                  | Description of Preventative Maintenance Activity and Work Practice Standards                                                                                                                                                                      | Schedule of PM                                                                                               |
|-----------|------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|
| 1         | 187 A8 Baghouse, Pulse Jet<br>Torit Cartridge              | 1. Check manometer across baghouse.<br>2. Visual inspection internal & external, check cartridge filter integrity and condition.<br>3. Replace cartridge filters based on inspection and/or changing manometer readings.                          | 1. Weekly<br>2. SemiAnnual<br><br>3. As required - based on visual inspection findings and/or manometer data |
| 2         | 187 A7 Carbon Adsorption<br>Melrose/Blamer Eng. 60,000 cfm | Replace carbon and prefilters based on daily pressure readings across the carbon beds, prefilters and the bi-weekly odor tests                                                                                                                    | As required - based on monitoring data (1<P<9), Odor test >25 odor units                                     |
| 3         | 703 A2 Baghouse Shaking<br>Industrial Clean Air/10-700 SN  | 1. Inspect & lube shaker & fan bearings, inspect & check sheaves & V belts.<br>2. Inspection of the interior of baghouse for structural integrity and fabric bag condition. Dye check baghouse, replace bags as necessary. Wire brush fan blades. | 1. Weekly<br>2. Semi-Annual                                                                                  |
| 4         | 703 A7 Carbon Adsorption<br>Melrose                        | Replace carbon and prefilters based on daily pressure readings across the carbon beds, prefilters and the bi-weekly odor tests                                                                                                                    | As required - based on monitoring data (1<P<9), Odor test >25 odor units                                     |
| 5         | 1603 A3 Baghouse, Pulse Jet<br>Bahnson Hwaley/HE-378-10    | 1. Check manometer across baghouse.<br>2. Inspection of the interior of baghouse for structural integrity and fabric bag condition.<br>3. Replace bags based on inspection and/or changing manometer readings .                                   | 1. Quarterly<br>2. Semi-Annual<br><br>3. As required, based on inspection                                    |
| 6         | 1603 A7 Baghouse, Pulse Jet<br>Bahnson Hwaley/HE-378-10    | 1. Check manometer across baghouse.<br>2. Inspection of the interior of baghouse for structural integrity and fabric bag condition.<br>3. Replace bags based on inspection and/or changing manometer readings                                     | 1. Quarterly<br>2. Semi-Annual<br><br>3. As required, based on inspection                                    |
| 7         | 1603 A8 Carbon Adsorption                                  | Replace carbon and prefilters based on FID, steel output, pressure drops across                                                                                                                                                                   | Permit required - FID >65ppm (PSC policy)                                                                    |

|  |         |                                       |                                                              |
|--|---------|---------------------------------------|--------------------------------------------------------------|
|  | Melrose | carbon bed & prefilters checked daily | when FID outlet >20 ppm and/or >700 tons of steel processed) |
|--|---------|---------------------------------------|--------------------------------------------------------------|

**C. Management Practices to Reduce Fugitive Emissions - CASTING AND COOLING OPERATIONS**

Provide description of other housekeeping measures to abate and/or minimize fugitive emissions of odors and/or particulate matter at sources or source areas.

| Section # | Description of Housekeeping Measure                                                                                                                                                                                                                                | Purpose of Activity                                                                 | Schedule of Activity |
|-----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|----------------------|
| 1         | Configure door openings & room enclosures to enhance odor capture Plant #187 Pouring room, all 2nd street doors 1-C, & 1-J closed at all times, south doors open on calm days. Plant #703 2-D, 2-J doors closed. Plant #1603 3-A, 3-B, 3-D, 3-E, 3-O doors closed. | Eliminate odors through enhanced capture of casting and cooling fugitive emissions. | Daily                |
| 2         | Hot molds only stored in designated areas. Plant #187 A line cooling deck or B line floor, Plant #703 inside the cooling room on the conveyor line, Plant #1603 inside the cooling room                                                                            | Ensure molds are located in areas where odor abatement equipment is located         | Continuous           |
|           |                                                                                                                                                                                                                                                                    |                                                                                     |                      |
|           |                                                                                                                                                                                                                                                                    |                                                                                     |                      |
|           |                                                                                                                                                                                                                                                                    |                                                                                     |                      |
|           |                                                                                                                                                                                                                                                                    |                                                                                     |                      |
|           |                                                                                                                                                                                                                                                                    |                                                                                     |                      |

## **402.6 Shake Out Operations**

| B. Description of Operations - SHAKE OUT OPERATIONS |                                                                      |                                            |                                                      |                                                                        |               |                                 |                                       |                                                                        |                                                                                                                                                                                                                                                                                                                                        |
|-----------------------------------------------------|----------------------------------------------------------------------|--------------------------------------------|------------------------------------------------------|------------------------------------------------------------------------|---------------|---------------------------------|---------------------------------------|------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Section #                                           | Name of Shakeout Operations and Manufacturer/ Model #                | District S# and Applicable NESHAPS Section | Describe Location of Shake Out Operation             | Source Abated                                                          | A#            | Type of Abatement Device        | Purpose of Abatement                  | Abatement Monitored                                                    | Monitoring Parameters                                                                                                                                                                                                                                                                                                                  |
| 1                                                   | B Shake Out<br>Simplicity M-11                                       | 187 S-3                                    | Floor in the middle of B-line cooling room           | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | A-1,<br>A-7   | Baghouse into Carbon Adsorption | Particulate matter and odor abatement | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | Pressure drop across Baghouse 1<P<9 / Carbon units 1<P<9, Temp <110 F                                                                                                                                                                                                                                                                  |
| 2                                                   | A Shake Out<br>Floatex MF7                                           | 187 S-4                                    | East end of A-line deck                              | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | A-1,<br>A-7   | Baghouse into Carbon Adsorption | Particulate matter and odor abatement | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | Pressure drop across Baghouse 1<P<9 / Carbon units 1<P<9, Temp <110 F                                                                                                                                                                                                                                                                  |
| 3                                                   | Shakeout & Tray Sanding                                              | 703 S-31                                   | In clean & finish room just outside the cooling room | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | A-1,<br>A-7   | Baghouse into Carbon Adsorption | Particulate matter and odor abatement | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | Pressure drop across Baghouse 1<P<9 / Carbon units 1<P<9, Temp <110 F                                                                                                                                                                                                                                                                  |
| 4                                                   | Casting Mold Shake Out<br>Station<br>General Kinematics TMTM-96X12-0 | 1603 S-4                                   | Molding room just outside the cooling room           | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | A3,A7,<br>A-8 | Baghouse into Carbon Adsorption | Particulate matter and odor abatement | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | Pressure drop across baghouses 4.5<P<7; Visual inspection FID continuous monitoring - At 50 ppm in a 90 minute average); Submit evidence of full load carbon (52,000 lbs.) on standby within 3 business days.<br>94 of 158<br>Maintain the Inlet face velocity at the openings of the pouring and cooling areas at a minimum 200 fpm . |
|                                                     |                                                                      |                                            |                                                      | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |               |                                 |                                       | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |                                                                                                                                                                                                                                                                                                                                        |
|                                                     |                                                                      |                                            |                                                      | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |               |                                 |                                       | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |                                                                                                                                                                                                                                                                                                                                        |
|                                                     |                                                                      |                                            |                                                      | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |               |                                 |                                       | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |                                                                                                                                                                                                                                                                                                                                        |
|                                                     |                                                                      |                                            |                                                      | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |               |                                 |                                       | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |                                                                                                                                                                                                                                                                                                                                        |
|                                                     |                                                                      |                                            |                                                      | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |               |                                 |                                       | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |                                                                                                                                                                                                                                                                                                                                        |
|                                                     |                                                                      |                                            |                                                      | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |               |                                 |                                       | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |                                                                                                                                                                                                                                                                                                                                        |



### C. Management Practices to Reduce Fugitive Emissions - SHAKE OUT OPERATIONS

Provide description of preventative maintenance (PM) activities including PM schedules and work practice standards for each abatement device for shake out operations.

| Section # | Abatement Device and Manufacturer/Model #                | Description of Preventative Maintenance Activity and Work Practice Standards                                                                                                                                                                      | Schedule of PM                                                                                        |
|-----------|----------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|
| 1         | 187 A1 Baghouse, Pulse Jet<br>Industrial Clean Air       | Monitor carbon prefilters. Excessive prefilter pressure can indicate problem with A1 baghouse.<br>Inspection of the interior of baghouse for structural integrity and fabric bag condition, replace bags as necessary                             | Weekly<br>SemiAnnual                                                                                  |
| 2         | 187 A7 Carbon Adsorption<br>Melrose                      | Replace carbon and prefilters based on daily pressure readings across the carbon beds & prefilters and the semi-weekly odor tests                                                                                                                 | As required - based on monitoring data (1<P<9), Odor test >25 odor units                              |
| 3         | 703 A1 Baghouse, Shaker<br>Industrial Clean Air/7-3200AE | 1. Inspect & lube shaker & fan bearings, inspect & check sheaves & V belts.<br>2. Inspection of the interior of baghouse for structural integrity and fabric bag condition. Dye check baghouse, replace bags as necessary. Wire brush fan blades. | 1.Weekly<br>2.Quarterly                                                                               |
| 4         | 703 A7 Carbon Adsorption<br>Melrose                      | Replace carbon and prefilters based on daily pressure readings across the carbon beds & prefilters and the semi-weekly odor tests                                                                                                                 | As required - based on monitoring data (1<P<9), Odor test >25 odor units                              |
| 5         | 1603 A3 Baghouse, Pulse Jet<br>Bahnson Hwaley/HE-378-10  | 1.Check manometer across baghouse.<br>2.Inspection of the interior of baghouse for structural integrity and fabric bag condition.<br>3.Replace bags based on inspection and/or changing manometer readings.                                       | 1. Monthly<br>2. Quarterly<br>3.As required, based on inspection                                      |
| 6         | 1603 A7 Baghouse, Pulse Jet                              | 1.Check manometer across baghouse.<br>2.Inspection of the interior of baghouse for structural integrity and fabric bag condition.<br>3.Replace bags based on inspection and/or changing manometer readings                                        | 1. Monthly<br>2. Quarterly<br>3.As required, based on inspection                                      |
| 7         | 1603 A8 Carbon Adsorption<br>Bahnson Hwaley/HE-378-10    | Replace carbon and prefilters based on FID, steel output, pressure drops across carbon bed & prefilters checked daily                                                                                                                             | Permit required - FID >65ppm (PSC policy when FID outlet >20 ppm and/or >700 tons of steel processed) |

**C. Management Practices to Reduce Fugitive Emissions- SHAKE OUT OPERATIONS**

Provide description of other housekeeping measures to abate and/or minimize fugitive emissions of odors and/or particulate matter at sources or source areas.

| Section # | Description of Housekeeping Measure                                             | Purpose of Activity                                                                                                              | Schedule of Activity |
|-----------|---------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|----------------------|
| 1         | Plant 187 B line shakout sand piles are frequently loaded into the shakout unit | Minimize the accumulation of sand emissions                                                                                      | On going             |
| 2         | Plant 1603 Inlet face velocity monitored                                        | Inlet face velocity maintained at a minimum 200 fpm, to insure adequate draw into the shakeout unit and into the control devices | Weekly               |
|           |                                                                                 |                                                                                                                                  |                      |
|           |                                                                                 |                                                                                                                                  |                      |
|           |                                                                                 |                                                                                                                                  |                      |
|           |                                                                                 |                                                                                                                                  |                      |
|           |                                                                                 |                                                                                                                                  |                      |
|           |                                                                                 |                                                                                                                                  |                      |
|           |                                                                                 |                                                                                                                                  |                      |
|           |                                                                                 |                                                                                                                                  |                      |
|           |                                                                                 |                                                                                                                                  |                      |
|           |                                                                                 |                                                                                                                                  |                      |
|           |                                                                                 |                                                                                                                                  |                      |
|           |                                                                                 |                                                                                                                                  |                      |

## **402.7 Finishing Operations**

| B. Description of Operations - FINISHING OPERATIONS |                                                                                                                                    |                                            |                                                           |                                   |                                                                        |          |                                      |                                      |                                                                        |                                                                                              |
|-----------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|-----------------------------------------------------------|-----------------------------------|------------------------------------------------------------------------|----------|--------------------------------------|--------------------------------------|------------------------------------------------------------------------|----------------------------------------------------------------------------------------------|
| Section #                                           | Type of Operation                                                                                                                  | District S# and Applicable NESHAPS Section | Describe Location of Finishing Operation                  | Number of Machines                | Abated Source                                                          | A#       | Type of Abatement Device             | Purpose of Abatement                 | Abatement Monitored                                                    | Monitoring Parameters                                                                        |
| 1                                                   | <input checked="" type="checkbox"/> Grinding<br><input type="checkbox"/> Welding<br><input type="checkbox"/> Other:                | 187 S12                                    | North end of Plant 1, clean & finish room                 | GRINDERS: 7<br>WELDERS:<br>OTHER: | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | A4       | Baghouse, Shaker                     | Particulate Matter Abatement         | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | Daily - Visual inspection of stack emissions                                                 |
| 2                                                   | <input type="checkbox"/> Grinding<br><input checked="" type="checkbox"/> Welding<br><input type="checkbox"/> Other:                | 187 S13                                    | East Arc-Air Booth in Plant 1 clean & finish room         | GRINDERS:<br>WELDERS: 1<br>OTHER: | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | A4       | Baghouse, Shaker                     | Particulate Matter Abatement         | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | Daily - Visual inspection of stack emissions                                                 |
| 3                                                   | <input type="checkbox"/> Grinding<br><input checked="" type="checkbox"/> Welding<br><input type="checkbox"/> Other:                | 187 S14                                    | West Arc-Air Booth in Plant 1 clean & finish room         | GRINDERS:<br>WELDERS: 1<br>OTHER: | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | A6       | Baghouse, Shaker                     | Particulate Matter Abatement         | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | Daily - Visual inspection of stack emissions                                                 |
| 4                                                   | <input type="checkbox"/> Grinding<br><input type="checkbox"/> Welding<br><input checked="" type="checkbox"/> Other:<br>Table Blast | 187 S15                                    | South wall in Plant 1 clean & finish room next to furnace | GRINDERS:<br>WELDERS:<br>OTHER: 1 | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | A3       | Baghouse, Shaker                     | Particulate Matter Abatement         | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | Daily - Visual inspection of stack emissions                                                 |
| 5                                                   | <input type="checkbox"/> Grinding<br><input type="checkbox"/> Welding<br><input checked="" type="checkbox"/> Other:<br>RotoBlast   | 187 S16, S17                               | East wall and NW corner in Plant 1 clean & finish room    | GRINDERS:<br>WELDERS:<br>OTHER: 2 | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | A2       | Baghouse, Shaker                     | Particulate Matter Abatement         | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | Daily - Visual inspection of stack emissions                                                 |
| 6                                                   | <input type="checkbox"/> Grinding<br><input type="checkbox"/> Welding<br><input checked="" type="checkbox"/> Other:<br>Rotoblast   | 703 S32                                    | North-West end of Clean & Finish room                     | GRINDERS:<br>WELDERS:<br>OTHER: 1 | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | A2<br>A7 | Baghouse Shaker<br>Carbon Adsorption | Particulate Matter Abatement<br>Odor | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | Daily - Pressure drop across baghouse, Pressure Carbon Unit 1<p<9), Odor test >25 odor units |
| 7                                                   | <input type="checkbox"/> Grinding<br><input type="checkbox"/> Welding                                                              | 703 S33, S34, S35, S36                     | West end of Clean and Finish lines                        | GRINDERS:<br>WELDERS:<br>OTHER: 4 | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | A5       | Baghouse Shaker                      | Particulate Matter Abatement         | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | Daily - Pressure drop across baghouse 1<p<9)                                                 |

Regulation 12, Rule 13: Foundry and Forging Operations  
Emissions Minimization Plan

|   |                                                                                                                                                                                  |                        |                                  |                                   |                                                                        |    |                 |                              |                                                                        |                                                 |
|---|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|----------------------------------|-----------------------------------|------------------------------------------------------------------------|----|-----------------|------------------------------|------------------------------------------------------------------------|-------------------------------------------------|
| 8 | <input checked="" type="checkbox"/> Other:<br>Cut Off Saw<br><input checked="" type="checkbox"/> Grinding<br><input type="checkbox"/> Welding<br><input type="checkbox"/> Other: | 703 S37, S38, S39, S40 | East end of Clean & Finish lines | GRINDERS: 4<br>WELDERS:<br>OTHER: | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | A5 | Baghouse Shaker | Particulate Matter Abatement | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | Daily - Pressure drop across baghouse 1 < P < 9 |
|---|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|----------------------------------|-----------------------------------|------------------------------------------------------------------------|----|-----------------|------------------------------|------------------------------------------------------------------------|-------------------------------------------------|

| B. Description of Operations - FINISHING OPERATIONS |                                                                                                                                     |                                            |                                                             |                                   |                                                                        |          |                          |                              |                                                                        |                                                 |
|-----------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|-------------------------------------------------------------|-----------------------------------|------------------------------------------------------------------------|----------|--------------------------|------------------------------|------------------------------------------------------------------------|-------------------------------------------------|
| # Section                                           | Type of Operation                                                                                                                   | District S# and Applicable NESHAPS Section | Describe Location of Finishing Operation                    | Number of Machines                | Abated Source                                                          | A#       | Type of Abatement Device | Purpose of Abatement         | Abatement Monitored                                                    | Monitoring Parameters                           |
| 9                                                   | <input type="checkbox"/> Grinding<br><input type="checkbox"/> Welding<br><input checked="" type="checkbox"/> Other:<br>Tumble Blast | 1603 S6                                    | Middle of West Wall                                         | GRINDERS:<br>WELDERS:<br>OTHER: 1 | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | A2<br>A6 | Baghouse Shaking         | Particulate Matter Abatement | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | Daily - Pressure drop across baghouse 1 < P < 9 |
| 10                                                  | <input type="checkbox"/> Grinding<br><input type="checkbox"/> Welding<br><input checked="" type="checkbox"/> Other:<br>Table Blast  | 1603 S5                                    | East Center wall of Clean & Finish room                     | GRINDERS:<br>WELDERS:<br>OTHER: 1 | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | A2<br>A6 | Baghouse Shaking         | Particulate Matter Abatement | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | Daily - Pressure drop across baghouse 1 < P < 9 |
| 11                                                  | <input checked="" type="checkbox"/> Grinding<br><input type="checkbox"/> Welding<br><input type="checkbox"/> Other:                 | Exempt                                     | 5 Grinding stations middle of clean & finish room Plant 187 | GRINDERS: 5<br>WELDERS:<br>OTHER: | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | NA       |                          |                              | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |                                                 |
| 12                                                  | <input type="checkbox"/> Grinding<br><input checked="" type="checkbox"/> Welding<br><input type="checkbox"/> Other:                 | Exempt                                     | 8 Welding stations inside Plant 187 Clean & Finish room     | GRINDERS:<br>WELDERS: 8<br>OTHER: | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | NA       |                          |                              | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |                                                 |

|    |                                                                                                                                 |        |                                            |                                   |                                                                        |     |          |                                                             |                                              |
|----|---------------------------------------------------------------------------------------------------------------------------------|--------|--------------------------------------------|-----------------------------------|------------------------------------------------------------------------|-----|----------|-------------------------------------------------------------|----------------------------------------------|
| 13 | <input type="checkbox"/> Grinding<br><input type="checkbox"/> Welding<br><input checked="" type="checkbox"/> Other: Plasma Unit | Exempt | West side of Plant 187 Clean & Finish room | GRINDERS:<br>WELDERS:<br>OTHER: 1 | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | N/A |          | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |                                              |
| 14 | <input checked="" type="checkbox"/> Grinding<br><input type="checkbox"/> Welding<br><input type="checkbox"/> Other:             | Exempt | Grinding stations in Plant 187 Cell        | GRINDERS: 2<br>WELDERS:<br>OTHER: | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | N/A |          | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |                                              |
| 15 | <input type="checkbox"/> Grinding<br><input checked="" type="checkbox"/> Welding<br><input type="checkbox"/> Other:             | Exempt | Welding stations in Plant 187 Cell         | GRINDERS:<br>WELDERS: 9<br>OTHER: | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | N/A |          | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |                                              |
| 16 | <input type="checkbox"/> Grinding<br><input type="checkbox"/> Welding<br><input checked="" type="checkbox"/> Other: Rotoblast.  | Exempt | East end of Plant 187 Cell                 | GRINDERS:<br>WELDERS:<br>OTHER: 1 | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | N/A | Baghouse | Particulate Matter                                          | Daily - Visual inspection of stack emissions |

| B. Description of Operations - FINISHING OPERATIONS |                                                                                                                     |                                            |                                          |                                   |                                                                        |     |                          |                      |                                                                        |                                       |
|-----------------------------------------------------|---------------------------------------------------------------------------------------------------------------------|--------------------------------------------|------------------------------------------|-----------------------------------|------------------------------------------------------------------------|-----|--------------------------|----------------------|------------------------------------------------------------------------|---------------------------------------|
| # Section                                           | Type of Operation                                                                                                   | District S# and Applicable NESHAPS Section | Describe Location of Finishing Operation | Number of Machines                | Abated Source                                                          | A#  | Type of Abatement Device | Purpose of Abatement | Abatement Monitored                                                    | Monitoring Parameters                 |
| 17                                                  | <input checked="" type="checkbox"/> Grinding<br><input type="checkbox"/> Welding<br><input type="checkbox"/> Other: | Exempt                                     | South Wall of Tombstone                  | GRINDERS: 9<br>WELDERS:<br>OTHER: | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | N/A |                          |                      | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |                                       |
| 18                                                  | <input type="checkbox"/> Grinding<br><input type="checkbox"/> Welding                                               | Exempt                                     | Middle North Wall of Tombstone           | GRINDERS:<br>WELDERS:<br>OTHER: 1 | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | N/A | Baghouse                 | Particulate Matter   | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | Daily - Pressure drop across baghouse |

|    |                                                                                                                                                                                       |        |                                                                                                                                     |                                                                        |        |                   |                    |                                                                        |                                       |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|-------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------|--------|-------------------|--------------------|------------------------------------------------------------------------|---------------------------------------|
| 19 | <input checked="" type="checkbox"/> Other:<br>Shot Blast Mach.<br><input type="checkbox"/> Grinding<br><input checked="" type="checkbox"/> Welding<br><input type="checkbox"/> Other: | Exempt | Arc-Air Booths NW corner of Plant 1603 Clean & Finish room<br><br>GRINDERS: 2<br>WELDERS: 2<br>OTHER:                               | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | A2, A6 | Baghouse, Shaking | Particulate Matter | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | Daily - Pressure drop across baghouse |
| 20 | <input checked="" type="checkbox"/> Grinding<br><input checked="" type="checkbox"/> Welding<br><input type="checkbox"/> Other:                                                        | Exempt | Combination grinding/welding booths located on South and West end of Plant 1603 C&F room<br><br>GRINDERS: 8<br>WELDERS: 8<br>OTHER: | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | A2, A6 | Baghouse, Shaking | Particulate Matter | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | Daily - Pressure drop across baghouse |
| 21 | <input type="checkbox"/> Grinding<br><input checked="" type="checkbox"/> Welding<br><input type="checkbox"/> Other:                                                                   | Exempt | Welding booths located SE corner of Plant 1603 C&F room<br><br>GRINDERS: 4<br>WELDERS: 4<br>OTHER:                                  | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | A2, A6 | Baghouse, Shaking | Particulate Matter | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | Daily - Pressure drop across baghouse |
|    | <input type="checkbox"/> Grinding<br><input type="checkbox"/> Welding<br><input type="checkbox"/> Other:                                                                              |        | GRINDERS:<br>WELDERS:<br>OTHER:                                                                                                     | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |        |                   |                    | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |                                       |
|    | <input type="checkbox"/> Grinding<br><input type="checkbox"/> Welding<br><input type="checkbox"/> Other:                                                                              |        | GRINDERS:<br>WELDERS:<br>OTHER:                                                                                                     | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |        |                   |                    | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |                                       |
|    | <input type="checkbox"/> Grinding<br><input type="checkbox"/> Welding<br><input type="checkbox"/> Other:                                                                              |        | GRINDERS:<br>WELDERS:<br>OTHER:                                                                                                     | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |        |                   |                    | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |                                       |

### C. Management Practices to Reduce Fugitive Emissions- FINISHING OPERATIONS

Provide description of preventative maintenance (PM) activities including PM schedules and work practice standards for each abatement device for finishing operations.

| Section # | Abatement Device and Manufacturer/Model #                 | Description of Preventative Maintenance Activity and Work Practice Standards                                                                                                                                                                      | Schedule of PM           |
|-----------|-----------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|
| 1         | 187 A2 Baghouse Shaker<br>Industrial Clean Air/6-700      | 1. Inspect & lube shaker & fan bearings, inspect & check sheaves & V belts.<br>2. Inspection of the interior of baghouse for structural integrity and fabric bag condition.                                                                       | Quarterly<br>Semi Annual |
| 2         | 187 A3 Baghouse Shaker<br>Industrial Clean Air/10,000 cfm | 1. Inspect & lube shaker & fan bearings, inspect & check sheaves & V belts.<br>2. Inspection of the interior of baghouse for structural integrity and fabric bag condition                                                                        | Quarterly<br>Semi Annual |
| 3         | 187 A4 Baghouse Shaker<br>Industrial Clean Air/30,000 cfm | 1. Inspect & lube shaker & fan bearings, inspect & check sheaves & V belts.<br>2. Inspection of the interior of baghouse for structural integrity and fabric bag condition                                                                        | Quarterly<br>Semi Annual |
| 4         | 187 A6 Baghouse Shaker<br>Industrial Clean Air/8,000 cfm  | 1. Inspect & lube shaker & fan bearings, inspect & check sheaves & V belts.<br>2. Inspection of the interior of baghouse for structural integrity and fabric bag condition                                                                        | Quarterly<br>Semi Annual |
| 5         | 703 A2<br>Industrial Clean Air/10-700SN                   | 1. Inspect & lube shaker & fan bearings, inspect & check sheaves & V belts.<br>2. Inspection of the interior of baghouse for structural integrity and fabric bag condition /dye check baghouse, replace bags as necessary. Wire brush fan blades. | Quarterly<br>Semi Annual |
| 6         | 703 A7<br>Melrose                                         | 1. Inspect & lube shaker & fan bearings, inspect & check sheaves & V belts.<br>2. Inspection of the interior of baghouse for structural integrity and fabric bag condition /dye check baghouse, replace bags as necessary. Wire brush fan blades. | Quarterly<br>Semi Annual |
| 7         | 703 A5<br>Industrial Clean Air/M-7-800SW                  | 1. Inspect & lube shaker & fan bearings, inspect & check sheaves & V belts.<br>2. Inspection of the interior of baghouse for structural integrity and fabric bag                                                                                  | Quarterly<br>Semi Annual |



|   |                                   |                                                                                                                                                                                                                    |                          |
|---|-----------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|
|   |                                   | condition /dye check baghouse, replace bags as necessary. Wire brush fan blades.                                                                                                                                   |                          |
| 8 | 1603 A2<br>Pitter Metal Pulse Jet | 1. Inspect & lube fan bearings, inspect & check sheaves & V belts.<br>2. Inspection of the interior of baghouse for structural integrity and fabric bag condition / dye check baghouse, replace bags as necessary. | Quarterly<br>Semi Annual |
| 9 | 1603 A6<br>Pitter Metal Pulse Jet | 1. Inspect & lube fan bearings, inspect & check sheaves & V belts.<br>2. Inspection of the interior of baghouse for structural integrity and fabric bag condition / dye check baghouse, replace bags as necessary. | Quarterly<br>Semi Annual |
|   |                                   |                                                                                                                                                                                                                    |                          |
|   |                                   |                                                                                                                                                                                                                    |                          |
|   |                                   |                                                                                                                                                                                                                    |                          |

### C. Management Practices to Reduce Fugitive Emissions - FINISHING OPERATIONS

Provide description of other housekeeping measures to abate and/or minimize fugitive emissions of odors and/or particulate matter at sources or source areas.

| Section # | Description of Housekeeping Measure                      | Purpose of Activity                                                                                         | Schedule of Activity |
|-----------|----------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|----------------------|
| 1         | Run magnetic sweeper followed by Auto Sweeper            | Pick up and remove particulate matter from operational area                                                 | Twice per shift      |
| 2         | Visually check exhaust stacks for particulates and dust. | Insure proper functioning of the baghouse, and identify presence of torn bags or bags that have fallen off. | Daily                |
|           |                                                          |                                                                                                             |                      |
|           |                                                          |                                                                                                             |                      |
|           |                                                          |                                                                                                             |                      |
|           |                                                          |                                                                                                             |                      |
|           |                                                          |                                                                                                             |                      |
|           |                                                          |                                                                                                             |                      |
|           |                                                          |                                                                                                             |                      |
|           |                                                          |                                                                                                             |                      |

## 402.7 Sand Reclamation

| B. Description of Operations - SAND RECLAMATION |                                                             |                                            |                                                                            |                                                                        |          |                                        |                             |                                                                        |                                                                                              |
|-------------------------------------------------|-------------------------------------------------------------|--------------------------------------------|----------------------------------------------------------------------------|------------------------------------------------------------------------|----------|----------------------------------------|-----------------------------|------------------------------------------------------------------------|----------------------------------------------------------------------------------------------|
| # Section                                       | Name of Sand Reclamation Equipment and Manufacturer/Model # | District S# and Applicable NESHAPS Section | Describe Type of Sand Reclamation Equipment                                | Abated Source                                                          | A#       | Type of Abatement Device               | Purpose of Abatement        | Abatement Monitored                                                    | Monitoring Parameters                                                                        |
| 1                                               | 2 Screens - Vibrating & Rotating<br>Jeffery/Rotex           | 187 S6, S7                                 | Sand Cooler, 6 screen w/mold release vibrating unit & Rotating sand screen | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | A1<br>A7 | Baghouse Pulse Jet / Carbon Adsorption | Particulate Matter<br>Odors | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | Daily visual check for particulates and dust.<br>Carbon units Pressure 1<P<9,<br>Temp <110 F |
| 2                                               | Thermal Recovery Lump Breaker<br>Dependable                 | 703 S45                                    | Lump reducer                                                               | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | A10      | Baghouse Pulse Jet                     | Particulate Matter          | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | Daily visual check for particulates and dust.                                                |
| 3                                               | TR Flow Bin - Rejected matl.<br>Dependable                  | 703 S46                                    | Magnetic Separator, sand hopper & bucket elevator                          | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | A10      | Baghouse Pulse Jet                     | Particulate Matter          | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | Daily visual check for particulates and dust.                                                |
| 4                                               | TR Sand Cooler/Air Bed<br>Dependable/VTO JDR                | 703 S47                                    | Sand Cooler, cooling tower & bucket elevator                               | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | A10      | Baghouse Pulse Jet                     | Particulate Matter          | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | Daily visual check for particulates and dust.                                                |
| 5                                               | TR Material Handling Equip.<br>Dependable                   | 703 S48                                    | 3 hoppers, 3 bucket elevators                                              | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | A10      | Baghouse Pulse Jet                     | Particulate Matter          | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | Daily visual check for particulates and dust.                                                |
| 6                                               | Thermal Recycling Unit<br>Dependable 2 TPH HTCC             | 703 S49                                    | 2 ton per hour gas fired thermal sand reclaimers                           | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | A10      | Baghouse Pulse Jet                     | Particulate Matter          | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | Daily visual check for particulates and dust.                                                |
| 7                                               | Sand Cooler Classifier<br>Omco Fin Type                     | 1603 S9                                    | Fin type sand cooling system                                               | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | A4       | Baghouse Pulse Jet                     | Particulate Matter          | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | Daily visual check for particulates and dust.                                                |
| 8                                               | 2 Sand Conditioning Units<br>B & P Pneu-claim               | 1603 S10, S11                              | Pneumatic sand reclaimers                                                  | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | A4       | Baghouse Pulse Jet                     | Particulate Matter          | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | Daily visual check for particulates and dust.                                                |
| 9                                               | 2 Sand storage silos                                        | 1603 S12, S13                              | Return sand bin, Reclaimed sand bin                                        | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | A4       | Baghouse Pulse Jet                     | Particulate Matter          | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No | Daily visual check for particulates and dust.                                                |
|                                                 |                                                             |                                            |                                                                            | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |          |                                        |                             | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |                                                                                              |
|                                                 |                                                             |                                            |                                                                            | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |          |                                        |                             | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |                                                                                              |

### C. Management Practices to Reduce Fugitive Emissions - SAND RECLAMATION

Provide description of preventative maintenance (PM) activities including PM schedules and work practice standards for each abatement device for sand reclamation making operations.

| Section # | Abatement Device and Manufacturer/Model #                | Description of Preventative Maintenance Activity and Work Practice Standards                                                                                                                                                                                                                                                                             | Schedule of PM                                                           |
|-----------|----------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|
| 1         | 187 A1 Baghouse Shaking<br>Industrial Clean Air 30,000cf | Monitor carbon prefilters. Increased prefilter pressure indicates A1 baghouse inefficiencies, troubleshoot if necessary. Visual inspection internal (bag condition (holes), linkage wear, excessive build-up, inner shell for holes) & external (outer shell for holes, leaks and seal condition). Replace or repair items based on inspection findings. | Daily<br><br>Semi Annual                                                 |
| 2         | 187 A7 Carbon Adsorption<br>Melrose                      | Replace carbon and prefilters as necessary based on odor test & pressure drops across carbon bed & prefilters checked daily                                                                                                                                                                                                                              | As required - based on monitoring data (1<P<9), Odor test >25 odor units |
| 3         | 703 A10 Pulse Jet Baghouse<br>Sly/STJ-1511-10            | Check pulse jet pressure.<br>Check baghouse and filter cartridge integrity.<br>Replace cartridge filters as necessary.                                                                                                                                                                                                                                   | Weekly<br><br>Semi Annual                                                |
| 4         | 1603 A4 Baghouse Pulse Jet<br>Bahnsen Hawley HE-210-10   | Inspect & lube fan bearings, inspect & check sheaves & V belts.<br>Visual inspection internal (bag condition (holes), linkage wear, excessive build-up, inner shell for holes) & external (outer shell for holes, leaks and seal condition).<br>Replace or repair items based on inspection findings.                                                    | Quarterly<br><br>Semi Annual                                             |
|           |                                                          |                                                                                                                                                                                                                                                                                                                                                          |                                                                          |
|           |                                                          |                                                                                                                                                                                                                                                                                                                                                          |                                                                          |
|           |                                                          |                                                                                                                                                                                                                                                                                                                                                          |                                                                          |
|           |                                                          |                                                                                                                                                                                                                                                                                                                                                          |                                                                          |

### C. Management Practices to Reduce Fugitive Emissions - SAND RECLAMATION

Provide description of other housekeeping measures to abate and/or minimize fugitive emissions of odors and/or particulate matter at sources or source areas.

| Section # | Description of Housekeeping Measure                                                                                                                                 | Purpose of Activity       | Schedule of Activity |
|-----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|----------------------|
| 1         | Plant 187 sand reclaim unit is on the roof of the building. Regular roof inspections are conducted. Roof sweeping is conducted if any sand is observed on the roof. | Remove particulate matter | Weekly               |
|           |                                                                                                                                                                     |                           |                      |
|           |                                                                                                                                                                     |                           |                      |
|           |                                                                                                                                                                     |                           |                      |
|           |                                                                                                                                                                     |                           |                      |
|           |                                                                                                                                                                     |                           |                      |
|           |                                                                                                                                                                     |                           |                      |
|           |                                                                                                                                                                     |                           |                      |
|           |                                                                                                                                                                     |                           |                      |

## **402.9 Dross and Slag Management**

| B. Description of Operations - DROSS AND SLAG MANAGEMENT |          |                                                                                                                   |                                                                        |                                   |                           |                                       |                                                                        |                                                                                                                                                                                              |                                                                                                                                                               |
|----------------------------------------------------------|----------|-------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------|-----------------------------------|---------------------------|---------------------------------------|------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Section #                                                | Material | Location for Cooling of Material                                                                                  | Abated Source                                                          | A#                                | Type of Abatement Device  | Purpose of Abatement                  | Abatement Monitored                                                    | Monitoring Parameters                                                                                                                                                                        | Material Disposition                                                                                                                                          |
| 1                                                        | Dross    | Do not generate dross - associated with non ferrous metals                                                        | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |                                   |                           |                                       | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |                                                                                                                                                                                              | <input type="checkbox"/> Offsite Recycling<br><input type="checkbox"/> Offsite Disposal<br><input type="checkbox"/> Onsite Reprocessing                       |
| 2                                                        | Slag     | Plant 187 Between EAF and B line pouring<br>Plant 703 Melting room North end<br>Plant 1603 Pouring room South end | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | A8, A7<br>A1, A7<br>A3, A7,<br>A8 | Baghouse into Carbon unit | Particulate matter and odor abatement | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | 187 & 703 - Carbon units Pressure<br>1 < P < 9,<br>703 - Temp < 110 F<br>1603 - Permit required - FID > 65 ppm<br>(PSC policy when FID outlet > 20 ppm and/or > 700 tons of steel processed) | <input checked="" type="checkbox"/> Offsite Recycling<br><input checked="" type="checkbox"/> Offsite Disposal<br><input type="checkbox"/> Onsite Reprocessing |



### C. Management Practices to Reduce Fugitive Emissions - DROSS AND SLAG MANAGEMENT

Provide description of preventative maintenance (PM) activities including PM schedules and work practice standards for each abatement device for dross and slag operations.

| Section # | Abatement Device and Manufacturer/ Model #                     | Description of Preventative Maintenance Activity and Work Practice Standards                                                                                                                                                                                                            | Schedule of PM                                                           |
|-----------|----------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|
| 1         | 187 A8 Baghouse,<br>Pulse Jet<br><br>Torit Cartridge           | 1. Check manometer across baghouse.<br>2. Visual inspection internal (condition of filter railings and integrity/condition of cartridge filter) & external (frame integrity, diaphragm seal).<br>3. Replace cartridge filters, based on inspection and/or changing manometer readings . | 1. Weekly<br>2. SemiAnnual<br><br>3. As required, based on inspection    |
| 2         | 187 A7 Carbon Adsorption<br><br>Melrose                        | Replace carbon and prefilters as necessary based on odor test & pressure drops across carbon bed & prefilters checked daily                                                                                                                                                             | As required - based on monitoring data (1<P<9), Odor test >25 odor units |
| 3         | 703 A2 Baghouse Shaking<br><br>Industrial Clean Air/10-700 SN  | 1. Inspect & lube shaker & fan bearings, inspect & check sheaves & V belts.<br>2. Inspection of the interior of baghouse for structural integrity and fabric bag condition/dye check baghouse, replace bags as necessary. Wire brush fan blades.                                        | 1. Weekly<br>2. Quarterly                                                |
| 4         | 703 A7 Carbon Adsorption<br><br>Melrose                        | Replace carbon and prefilters as necessary based on odor test & pressure drops across carbon bed & prefilters checked daily                                                                                                                                                             | As required - based on monitoring data (1<P<9), Odor test >25 odor units |
| 5         | 1603 A3 Baghouse,<br>Pulse Jet<br><br>Bahnson Hwaley/HE-378-10 | 1. Check manometer across baghouse.<br>2. Inspection of the interior of baghouse for structural integrity and fabric bag condition.<br>3. Replace cartridge filters based on inspection and/or changing manometer readings                                                              | 1. Monthly<br>2. Quarterly<br><br>3. As required, based on inspection    |
| 6         | 1603 A7 Baghouse,<br>Pulse Jet<br><br>Bahnson Hwaley/HE-378-10 | 1. Check manometer across baghouse.<br>2. Inspection of the interior of baghouse for structural integrity and fabric bag condition.<br>3. Replace cartridge filters based on inspection and/or changing manometer readings                                                              | 1. Monthly<br>2. Quarterly<br><br>3. As required, based on inspection    |

|   |                                      |                                                                                                                      |                                                                                                       |
|---|--------------------------------------|----------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|
| 7 | 1603 A7 Carbon Adsorption<br>Melrose | Replace carbon and prefilters as necessary based on FID, pressure drops across carbon bed & prefilters checked daily | Permit required - FID >65ppm (PSC policy when FID outlet >20 ppm and/or >700 tons of steel processed) |
|   |                                      |                                                                                                                      |                                                                                                       |
|   |                                      |                                                                                                                      |                                                                                                       |
|   |                                      |                                                                                                                      |                                                                                                       |
|   |                                      |                                                                                                                      |                                                                                                       |

### C. Management Practices to Reduce Fugitive Emissions - DROSS AND SLAG MANAGEMENT

Provide description of other housekeeping measures to abate and/or minimize fugitive emissions of odors and/or particulate matter at sources or source areas.

| Section # | Description of Housekeeping Measure                                                                                                                                                                                                                                | Purpose of Activity                                        | Schedule of Activity |
|-----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------|----------------------|
| 1         | Monitor bin loading to avoid overloading                                                                                                                                                                                                                           | Eliminate spills                                           | On going             |
| 2         | Sweep area after loading trucks for offsite disposition                                                                                                                                                                                                            | Remove particulate matter                                  | Every load pick up   |
| 3         | Configure door openings & room enclosures to enhance odor capture Plant #187 Pouring room, all 2nd street doors 1-C, & 1-J closed at all times, south doors open on calm days. Plant #703 2-D, 2-J doors closed. Plant #1603 3-A, 3-B, 3-D, 3-E, 3-O doors closed. | Eliminate odors through enhanced capture of slag emissions | Daily                |
|           |                                                                                                                                                                                                                                                                    |                                                            |                      |
|           |                                                                                                                                                                                                                                                                    |                                                            |                      |
|           |                                                                                                                                                                                                                                                                    |                                                            |                      |
|           |                                                                                                                                                                                                                                                                    |                                                            |                      |

**B. Description of Abatement and Control Equipment**

Provide a comprehensive list of all abatement and control equipment for operations subject to 12-13-402 and identify the source(s) of operation in which it abates. If the abatement equipment abates multiple sources, provide a detailed description of how the abatement is designated to those sources.

| Section # | Name of Abatement Equipment         | District A# | Names of Source(s) Abated                                                                                                          | District S#                | Description of Abatement                                                                                             |
|-----------|-------------------------------------|-------------|------------------------------------------------------------------------------------------------------------------------------------|----------------------------|----------------------------------------------------------------------------------------------------------------------|
| 1         | 187 A1 Baghouse                     | A1          | A line Shakeout, B line Shakeout, Sand Muller, Sand reclaim system                                                                 | S3, S4, S5, S6, S7, S8     | Pulse Jet                                                                                                            |
| 2         | 187 A2 Baghouse                     | A2          | Two Rotoblast units located in Clean & Finish room                                                                                 | S16, S17                   | Shaker                                                                                                               |
| 3         | 187 A3 Baghouse                     | A3          | Table Blast                                                                                                                        | S15                        | Shaker                                                                                                               |
| 4         | 187 A4 Baghouse                     | A4          | Cleaning & Grinding Dept., Arc-Air Booth                                                                                           | S12, S13                   | Shaker                                                                                                               |
| 5         | 187 A6 Baghouse                     | A6          | Arc-Air Booth                                                                                                                      | NA                         | Shaker                                                                                                               |
| 6         | 187 A7 Adsorption, Activated carbon | A7          | Pouring Area (S2)<br>A line (S4) & B line (S3) shakeouts<br>Sand reclaim (sand cooler,sand screen) (S6, S7)<br>Sand Mixer (S5, S8) | S2, S3, S4, S5, S6, S7, S8 | A8 Pulse Jet-S2.<br>A1 Pulse Jet-S3,S4,S5,S6,S7,S8.<br>CA-1, CA-2a and CA-2b Carbon bed-A1 Baghouse and A8 Baghouse. |
| 7         | 187 A8 Baghouse                     | A8          | Pour off area, main floor                                                                                                          | S2                         | Pulse Jet                                                                                                            |
| 8         | 187 A9 Baghouse                     | A9          | Electric Arc Furnace                                                                                                               | S1                         | Shaker                                                                                                               |
| 9         | 187 A10 Baghouse                    | A10         | Core Sand Muller                                                                                                                   | S10                        | Pulse Jet                                                                                                            |
| 10        | 187 E25 Baghouse                    | Exempt      | Plant 1 Cell Rotoblast                                                                                                             | NA                         | Shaker                                                                                                               |
| 11        | 703 A1 Baghouse                     | A1          | EAF Ladle Station w/ canopy hood, Shell Mold Pour Station,Shakeout                                                                 | S28, S29, S31              | Shaker                                                                                                               |

| Section # | Name of Abatement Equipment         | District A# | Names of Source(s) Abated                                                                                                                                                                              | District S#                         | Description of Abatement                                                                                                         |
|-----------|-------------------------------------|-------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|
| 12        | 703 A2 Baghouse                     | A2          | Cast Mold Cooling Room, Rotoblast                                                                                                                                                                      | S29, S31                            | Shaker                                                                                                                           |
| 13        | 703 A3 Baghouse                     | A3          | EAF Electric Arc Furnace                                                                                                                                                                               | S27                                 | Shaker                                                                                                                           |
| 14        | 703 A4 Baghouse                     | A4          | Sand Heater, Sand Coating, Coated sand pug mill, Coated sand vibrating screen, Bucket elevator                                                                                                         | S6, S7, S8, S9, S10                 | Shaker                                                                                                                           |
| 15        | 703 A5 Baghouse                     | A5          | Sand silos #1, #2 & loading elevator, Bucket elevator, 4 abrasive cut-off saws, 4 grinders                                                                                                             | S1, S2, S3, S4, S33-S40             | Shaker                                                                                                                           |
| 16        | 703 A10 Baghouse                    | A10         | Sand silo, Lump breaker, flow bin, Sand cooler, Material handling equipment, Thermal recycling unit                                                                                                    | S44,S45 S46,S47 S48,S49             | Pulse Jet                                                                                                                        |
| 17        | 703 T127 Baghouse                   | Exempt      | Shot blast machine                                                                                                                                                                                     | NA                                  | Pulse Jet                                                                                                                        |
| 18        | 703 A7 Adsorption, Activated Carbon | A7          | EAF Ladle Station w/ canopy hood (S28)<br>Shell Mold Pour Station (S29)<br>Shakeout (S31)<br>Cooling Room (S30)<br>Rotoblast (S32)<br>2 Shell twin molding machines (S22, S23)<br>Electric Arc Furnace | S22,S23 S28,S29 S30,S31 S32         | A1 Shaker-S28, S29,S31.<br>A2 Shaker-S30,S32.<br>CA-1 carbon bed-A2 Baghouse.<br>CA-2 & CA-3 Carbon bed-S22,S23 and A1 Baghouse. |
| 19        | 1603 A1 Baghouse                    | A1          |                                                                                                                                                                                                        | S1                                  | Pulse Jet                                                                                                                        |
| 20        | 1603 A2 Baghouse                    | A2          | Blast table, Rotoblast, Arc-air booths, Welding booths                                                                                                                                                 | S5, S6                              | Shaker                                                                                                                           |
| 21        | 1603 A3 Baghouse                    | A3          | Mold Shakout, Sand Mixer utilizing Techniset binders, Mold coating, Pouring/cooling                                                                                                                    | S4, S14 S18,S19                     | Pulse Jet                                                                                                                        |
| 22        | 1604 A4 Baghouse                    | A4          | Sand silo #1, Sand cooler, Sand conditioning units #1 & #2, Return sand bin #1 & #2, Sand elevators #1, #2, & #3.                                                                                      | S7, S9, S10,S11 S12,S13 S15,S16 S17 | Pulse Jet                                                                                                                        |

| Section # | Name of Abatement Equipment          | District A# | Names of Source(s) Abated                                                                                         | District S#         | Description of Abatement                                                                                 |
|-----------|--------------------------------------|-------------|-------------------------------------------------------------------------------------------------------------------|---------------------|----------------------------------------------------------------------------------------------------------|
| 23        | 1604 A5 Baghouse                     | A5          | Sand Mixer utilizing Techniset Binders                                                                            | S14                 | Dry Filter                                                                                               |
| 24        | 1603 A6 Baghouse                     | A6          | Blast table, Tumble blast, Arc-air booths, Welding booths                                                         | S5, S6              | Shaker                                                                                                   |
| 25        | 1603 A7 Baghouse                     | A7          | Mold Shakeout, Sand Mixer utilizing Techniset binders, Mold coating, Pouring/cooling                              | S4, S14<br>S18, S19 | Pulse Jet                                                                                                |
| 26        | 1603 A8 Adsorption, Activated Carbon | A8          | Mold Shakeout (S4)<br>Sand Mixer utilizing Techniset binders (S14)<br>Mold coating (S18)<br>Pouring/cooling (S19) | S4, S14<br>S18, S19 | A3 and A7 Pulse Jet-S4, S14, S18 and S19.<br>CA-1, CA-2 and CA-3 Carbon bed-A3 Baghouse and A7 Baghouse. |
|           |                                      |             |                                                                                                                   |                     |                                                                                                          |
|           |                                      |             |                                                                                                                   |                     |                                                                                                          |
|           |                                      |             |                                                                                                                   |                     |                                                                                                          |
|           |                                      |             |                                                                                                                   |                     |                                                                                                          |
|           |                                      |             |                                                                                                                   |                     |                                                                                                          |
|           |                                      |             |                                                                                                                   |                     |                                                                                                          |
|           |                                      |             |                                                                                                                   |                     |                                                                                                          |
|           |                                      |             |                                                                                                                   |                     |                                                                                                          |
|           |                                      |             |                                                                                                                   |                     |                                                                                                          |

# Technical Data

## 12-13-403.1

---

- A. Process Flow Diagram* – Facilities must indicate all operations in Section 12-13-402, the flow of materials used and identify all monitoring of processes, abatement and controls to minimize emissions beginning from material receipt to achievement of final product. Identify all abatement and control devices by District source numbers according to District Permit or as exempt from District Permit.
- B. Facility Layout / Floor Plan* - Facilities must indicate all relative locations of processing equipment and monitoring and controls, all permitted and exempt sources identified in the process flow diagram per Section 12-13-403.1.1 and any other source(s) that may contribute to particulates and odors. Include all building walls, partitions, doors, windows, vents and openings and indicate all areas that have abatement for particulates and odors. Identify all metal melting and processing equipment by District source numbers according to District Permit or as exempt from District Permit.

## A. Process Flow Diagram

Appendix B - Confidential



**B. Facility Layout / Floor Plan**

Appendix C - Confidential.

# Fugitive Emissions Reductions Previously Realized

## 12-13-403.2

---

Facilities must provide a description of the equipment, processes and procedures installed or implemented within the last five years to reduce fugitive emissions. Include the purpose for implementation and detail any employee training that was conducted for that equipment, process or procedure and the frequency of any ongoing training.

| 12-13-403.2 FUGITIVE EMISSIONS PREVIOUSLY REALIZED |                                                                                                                      |                                                                           |                     |                                                             |                                                                        |                                                                                                                                                                                                                                                     |
|----------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------|---------------------|-------------------------------------------------------------|------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| # Section                                          | Identify Type of Operation per Section 12-13-402                                                                     | Description of Equipment, Processes or Procedures Previously Realized     | Implementation Date | Purpose of Implementation                                   | Employee Training Conducted                                            | Description of Employee Training and Frequency of Training                                                                                                                                                                                          |
| 1                                                  | Mold & core making, metal management, Furnace operations, casting & cooling, shakeout, finishing, Sand reclaim, Slag | Odor Management Plan approved by BAAQMD                                   | 10/03/2008          | Reduce odors and particulate matter.                        | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | All employees trained after initial roll out. Yearly refresher training is conducted. Plan elements are also incorporated into PSC operating procedures. Job specific training is included during PSC operating procedure training, when conducted. |
| 2                                                  | Mold & core making, casting & cooling, shakeout, Sand reclaim                                                        | Plant 1603 change to lower VOC binder;                                    | 2008                | Reduce VOC emissions                                        | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | Initial training to make employees aware of the sand recipe change.                                                                                                                                                                                 |
| 3                                                  | Furnace operations                                                                                                   | Plant 1603 EAF Room fume collection installed;                            | 2008                | Increase capture efficiency of odors and particulate matter | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | Maintenance trained on equipment PM                                                                                                                                                                                                                 |
| 4                                                  | Mold & core making, casting & cooling, shakeout, Sand reclaim                                                        | Plant 703 precoated sand changed to lower VOC product                     | 2009                | Reduce VOC emissions                                        | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | Employees trained on new MSDS after change                                                                                                                                                                                                          |
| 5                                                  | Casting & cooling, shakeout                                                                                          | Plant 187 Main Floor fume collection directed to baghouse and carbon unit | 2010                | Increase capture efficiency of odors and particulate matter | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | Maintenance trained on equipment PM                                                                                                                                                                                                                 |
| 6                                                  | Mold & core making                                                                                                   | Plant 187 Core Room baghouse installed.                                   | 2010                | Abate core room particulate matter.                         | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No | Maintenance trained on equipment PM                                                                                                                                                                                                                 |
|                                                    |                                                                                                                      |                                                                           |                     |                                                             | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |                                                                                                                                                                                                                                                     |
|                                                    |                                                                                                                      |                                                                           |                     |                                                             | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |                                                                                                                                                                                                                                                     |
|                                                    |                                                                                                                      |                                                                           |                     |                                                             | <input type="checkbox"/> Yes<br><input type="checkbox"/> No            |                                                                                                                                                                                                                                                     |

# Schedule for the Implementation of the EMP Elements

## 12-13-403.3

---

- A.* Provide a list of existing or current EMP elements in place pursuant to and under a District Authority to Construct as of the initial date of EMP submittal (on or before May 1, 2014). Include a description, the purpose and schedule of the element(s).
  
- B.* Provide a list of new or future EMP elements to be implemented following APCO approval of the EMP. Include a description, the purpose and schedule of the element(s) to be implemented.

| A. 12-13-403.3.1 SCHEDULE FOR THE IMPLEMENTATION OF THE EMP ELEMENTS (on or before May 1, 2014) |                                                  |                                                                   |                     |                                           |                           |  |
|-------------------------------------------------------------------------------------------------|--------------------------------------------------|-------------------------------------------------------------------|---------------------|-------------------------------------------|---------------------------|--|
| Section #                                                                                       | Identify Type of Operation per Section 12-13-402 | List Specific Elements to be Implemented on or before May 1, 2014 | Implementation Date | Description of Elements to be Implemented | Purpose of Implementation |  |
|                                                                                                 | NA                                               |                                                                   |                     |                                           |                           |  |
|                                                                                                 |                                                  |                                                                   |                     |                                           |                           |  |
|                                                                                                 |                                                  |                                                                   |                     |                                           |                           |  |
|                                                                                                 |                                                  |                                                                   |                     |                                           |                           |  |
|                                                                                                 |                                                  |                                                                   |                     |                                           |                           |  |
|                                                                                                 |                                                  |                                                                   |                     |                                           |                           |  |
|                                                                                                 |                                                  |                                                                   |                     |                                           |                           |  |
|                                                                                                 |                                                  |                                                                   |                     |                                           |                           |  |

| B. 12-13-403.3.2 NEW OR FUTURE EMP ELEMENTS TO BE IMPLEMENTED |                                                                                                |                                                                                                                                                    |                     |                                                                                                                                                                     |                                                   |  |
|---------------------------------------------------------------|------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------|--|
| # Section                                                     | Identify Type of Operation per Section 12-13-402                                               | List Specific Elements to be Implemented Following APCO Approval of the EMP                                                                        | Implementation Date | Description of Elements to be Implemented                                                                                                                           | Purpose of Implementation                         |  |
| 1                                                             | Mold and Core Making - 703                                                                     | Consider installation of ventilation hoods over S-19 and S-26                                                                                      | To Be Determined    | Working with Engineering and District Staff to determine equipment capabilities and permit requirements for implementation/installation of hoods over S-19 and S-26 | Further reduce fugitive emissions of PM and odors |  |
| 2                                                             | Casting and Cooling - 187                                                                      | Consider installing wall to isolate pouring operations in Plant I                                                                                  | To be Determined    | Working with Engineering and District Staff to determine feasibility and permit requirements for implementation/installation of wall                                | Further reduce fugitive emissions of PM and odors |  |
| 3                                                             | Mold Shakeout/Sand Mixer utilizing Techniset binders<br>Mold coating<br>Pouring/cooling - 1803 | Consider increasing carbon system capacity which affects:<br>Mold Shakeout (S4)<br>Sand Mixer (S14)<br>Mold coating (S18)<br>Pouring/cooling (S19) | To be Determined    | Working with Engineering and District Staff to determine equipment capabilities and permit requirements for implementation                                          | Improve abatement capacity                        |  |
| 4                                                             | Sand Reclamation - 703                                                                         | Consider connecting Sand Reclamation Unit (S-49) to Carbon Unit                                                                                    | To be Determined    | Working with Engineering and District Staff to determine equipment capabilities and permit requirements for implementation                                          | Further reduce fugitive emissions of PM and odors |  |
|                                                               |                                                                                                |                                                                                                                                                    |                     |                                                                                                                                                                     |                                                   |  |
|                                                               |                                                                                                |                                                                                                                                                    |                     |                                                                                                                                                                     |                                                   |  |
|                                                               |                                                                                                |                                                                                                                                                    |                     |                                                                                                                                                                     |                                                   |  |
|                                                               |                                                                                                |                                                                                                                                                    |                     |                                                                                                                                                                     |                                                   |  |
|                                                               |                                                                                                |                                                                                                                                                    |                     |                                                                                                                                                                     |                                                   |  |

# Compliance Schedule for the EMP

## 12-13-404

---

- A. *APCO Recommendations to EMP and Determination of Approvability*— Acknowledge acceptance or rejection of each of the APCO’s recommendations. For each of the accepted recommendations, describe the measures to be implemented and include the date of proposed implementation. If the facility rejects a recommendation, provide a detailed basis for that rejection.

**A. APCO Recommendations to EMP and Determination of Approvability (12-13-405)**      Date of EMP:

Provide determination of acceptance to APCO recommendations. Include the determination of acceptance by the facility's Responsible Manager and the basis for rejecting any APCO recommendations. If recommendation is accepted, include measures to implement APCO recommendation and the proposed date of implementation.

| Section # | Date of APCO Recommendation | (FOR APCO USE ONLY)<br>APCO Recommendation | Acceptance of APCO Recommendation                           | If NO:<br>Basis for Rejecting APCO Recommendation | If YES:<br>Measures to Implement Recommendation | Proposed Date of Implementation | (APCO USE ONLY)<br>Implementation Verified by APCO          |
|-----------|-----------------------------|--------------------------------------------|-------------------------------------------------------------|---------------------------------------------------|-------------------------------------------------|---------------------------------|-------------------------------------------------------------|
|           |                             |                                            | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |                                                   |                                                 |                                 | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |
|           |                             |                                            | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |                                                   |                                                 |                                 | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |
|           |                             |                                            | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |                                                   |                                                 |                                 | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |
|           |                             |                                            | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |                                                   |                                                 |                                 | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |



**A. APCO Recommendations to EMP and Determination of Approvability (12-13-405)**      Date of EMP:

Provide determination of acceptance to APCO recommendations. Include the determination of acceptance by the facility's Responsible Manager and the basis for rejecting any APCO recommendations. If recommendation is accepted, include measures to implement APCO recommendation and the proposed date of implementation.

| Section # | Date of APCO Recommendation | (FOR APCO USE ONLY)<br>APCO Recommendation | Acceptance of APCO Recommendation                           | If NO:<br>Basis for Rejecting APCO Recommendation | If YES:<br>Measures to Implement Recommendation | Proposed Date of Implementation | (APCO USE ONLY)<br>Implementation Verified by APCO          |
|-----------|-----------------------------|--------------------------------------------|-------------------------------------------------------------|---------------------------------------------------|-------------------------------------------------|---------------------------------|-------------------------------------------------------------|
|           |                             |                                            | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |                                                   |                                                 |                                 | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |
|           |                             |                                            | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |                                                   |                                                 |                                 | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |
|           |                             |                                            | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |                                                   |                                                 |                                 | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |
|           |                             |                                            | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |                                                   |                                                 |                                 | <input type="checkbox"/> Yes<br><input type="checkbox"/> No |

# Appendix

---

If additional information are to be included in the EMP, identify the associated Appendix # as “\*#\*” in the text box of the specific table.

In the table below, note the Appendix # and provide the Page # and Section # of the EMP where the material references.

| Appendix # | Reference to Page # and Section # of EMP |
|------------|------------------------------------------|
| A          | Page #9 , Section # 403.1.3 A            |
| B          | Page #75 , Section # 403.1.A             |
| C          | Page #76 , Section # 403.1.B             |
|            | Page # , Section #                       |
|            | Page # , Section #                       |
|            | Page # , Section #                       |
|            | Page # , Section #                       |
|            | Page # , Section #                       |
|            | Page # , Section #                       |
|            | Page # , Section #                       |
|            | Page # , Section #                       |
|            | Page # , Section #                       |
|            | Page # , Section #                       |
|            | Page # , Section #                       |
|            | Page # , Section #                       |
|            | Page # , Section #                       |
|            | Page # , Section #                       |
|            | Page # , Section #                       |
|            | Page # , Section #                       |
|            | Page # , Section #                       |
|            | Page # , Section #                       |
|            | Page # , Section #                       |
|            | Page # , Section #                       |
|            | Page # , Section #                       |
|            | Page # , Section #                       |
|            | Page # , Section #                       |
|            | Page # , Section #                       |
|            | Page # , Section #                       |
|            | Page # , Section #                       |
|            | Page # , Section #                       |
|            | Page # , Section #                       |
|            | Page # , Section #                       |
|            | Page # , Section #                       |
|            | Page # , Section #                       |
|            | Page # , Section #                       |

**Appendix # A**

**Reference to Page #9, Section # Confidential**

**Retrofit any batch  
or drum**



- **No Smoke**
- **No Odor**
- **No Fumes**
- **No Chemicals**
- **No Problem!**

**The Simple,  
Reliable,  
Cost-efficient  
WMA System  
from the  
Asphalt  
Experts**





### Benefits:

- No smoke - no odor
- Quick & easy installation
- Retrofit ANY plant
- Easy to operate
- Lower fuel costs
- Reduce labor costs
- Improve worker safety
- Reduce emissions
- Run more RAP

### Purchase for Less

The AQUABlack® System costs significantly less than most of the WMA systems currently available. In some cases, half the price. It is designed with simplicity and reliability in mind by the world's foremost experts in asphalt plant retrofit applications – MAXAM.

### Quick and Easy Installation

The flexible system retrofits onto any plant and can be installed over a weekend. The unit comes completely assembled. Simply attach it to your A/C line, hook it up to a water source, install the control panel, and you're ready to go.

After installation, we offer a Field Technician to your site for two days of start up and training. Training takes only about an hour since operation is so simple. Once it's set up, you simply turn it on or off as needed.

### Run More RAP

Lower temperatures means you can run more RAP and stay within the temperature limits of your baghouse.

### Save Time

In field tests, AQUABlack® warm mix asphalt consistently reaches targeted compaction rates with fewer roller passes. It also enables paving in cooler weather, extends the paving season, and permits faster release of the pavement to traffic. As the air bubbles created in the foaming process are completely removed during the rolling and compaction process, superior in-place densities are achieved with less rolling effort. In some cases, 25% less.

### Reduce Fuel Consumption

Lower temperatures means lower fuel consumption. Often as much as 15%. It also means the exhaust fan doesn't have to work as hard, saving energy spent on moving air.

### Reduce Emissions

Lower fuel consumption translates directly into lower emission of greenhouse gases at the plant from drying and heating of the aggregate. The fumes and smoke at the plant load-out, and at the laydown site, are also eliminated.

### Simplify Maintenance

Some WMA systems use 10 or more solenoids to control critical components. We thought simpler was better. We thought you'd rather be running your plant than running to get replacement parts.

### Extend Equipment Life

Lower temperatures reduces the wear and tear on equipment; extends maintenance intervals and reduces overall maintenance costs.



Hot Mix Asphalt



Warm Mix Asphalt



## Components:

### PLC Based Touch Screen Control Panel

The touch-screen Control Panel is mounted in the control house and easily connected to the metering system using multi-conductor cable. When the operator sets max tons on the control panel, the system automatically calculates the correct amount of water to be injected into the WMA, and sets the water pump drive to the proper output rate. A mass flow meter monitors flow rate and sounds a warning if it goes out of the optimum range.

### High-pressure Variable Speed Metering System

The high-pressure variable speed metering system comes completely pre-piped and prewired, and is enclosed in a weather tight enclosure. The enclosure is heated for cold weather operation. The system is equipped with an automatic compressed air purge that cleans water out of the delivery line upon shutdown to prevent freezing.

### AQUABlack® Foaming Gun

The AQUABlack® all stainless Foaming Gun comes with all required water hose and hot oil jumpers for installation. It is inserted into the existing a/c line just prior to entering the drum. Access nozzle service ports means that no disassembly is required for inspection of your system.

### AQUABlack® Solutions features:

- High volume foaming with MicroBubble™ technology. Any system can produce foam, but it's the microbubbles that stay in the mix throughout the mixing, hauling and paving process.
- Automatic PLC based touch screen control
- Enclosed and heated for all weather operation
- Stainless construction to eliminate corrosion. The stainless steel mixing diffuser provides even distribution of the water throughout the liquid asphalt.
- Built for 1,000 psi operating pressure
- No moving parts in the meter. This meter will not plug or fail from scale or particulate in the water.
- The high-pressure system enables low water-to-liquid-asphalt ratio during foaming and creates the microbubbles which stay in the mix until compaction.





## Will you go back and forth between hot and warm mix asphalt?

If so, you need to take precautions to protect your baghouse. Here's why: The lower exhaust temperature from WMA can cause condensation in the baghouse, creating acid rain that will damage your equipment, and mud-cake the bags - saddling you with high replacement costs and unnecessary down-time. You need an effective way to control the stack temperature to protect your baghouse. The answer is the patented MAXAMizer® Heat Recovery System. It automatically maintains proper stack temperature +/-5°, and typically saves 5-to-10% in fuel consumption.

## Being More Competitive in a Go Green Business Climate

### Go Green or Go Home

More and more jobs are being specified with a WMA option. If you can't offer WMA, you may not qualify to even bid on a lot of jobs in the future. You don't have to be on the outside looking in. The AQUABlack® WMA System easily retrofits onto any manufacturer's asphalt plant, and it can be installed on yours in just two days.

### Going Green is Good Business

The AQUABlack® WMA System opens doors by allowing you to bid on jobs specified as WMA only. It makes your company more neighborhood friendly by reducing fumes and pollutants. It makes you a more responsible/credible member of the business community; and it helps you attract and retain good employees. If you had your choice of working on a HMA crew or a WMA crew, which would you choose?

### Protect Workers and Your Business

While the adverse affects of breathing asphalt fumes are negligible, OSHA, NIOSH and the EPA continue to conduct studies to gauge its affect on health. NIOSH says additional studies are needed to better characterize occupational exposures to asphalt fumes, vapors and aerosols. Why wait? Move to WMA now with the easy-to-implement system – AQUABlack®.



## MAXAM Equipment, Inc.

1575 Universal Avenue • Kansas City, MO 64120 800•858•6070





BAY AREA  
AIR QUALITY  
MANAGEMENT  
DISTRICT

June 11, 2014

Seth L. Watkins,  
Plant Manager  
**Berkeley Asphalt Company**  
699 Virginia Street  
Berkeley, CA 94710

Dear Mr. Watkins:

Enclosed are the results of the source tests that this District conducted on your *Rotary Dryer (S-1) abated by Cyclone & Baghouse (A-4 & A-7)* on April 15 & 16, 2014.

These data are considered to be representative of the emissions from this source for the operating parameters described during the test times and are forwarded as a courtesy for your information.

Your cooperation with our test personnel is appreciated. Please contact Charles McClure, Supervising Air Quality Engineer, if you have any questions regarding these data.

Sincerely,

A handwritten signature in black ink that reads "Robert Bartley".

Robert Bartley  
Air Quality Engineering Manager

RB:CM:ge

Enclosure



|                                                       |                                                                                                                                                                                                             |                                                                                                                                                                                                |
|-------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Distribution:<br>Firm<br>Permit Services<br>Requester | <b>BAY AREA<br/>                 AIR QUALITY MANAGEMENT DISTRICT</b><br>939 Ellis Street<br>San Francisco, California 94109<br>(415) 771-6000<br><b>SUMMARY OF<br/>                 SOURCE TEST RESULTS</b> | Report No. <u>14181</u><br>Test Date: <u>04/15&amp;16/14</u><br><br>Test Times:<br>Run A : <u>1055 – 1157 60 min</u><br>Run B : <u>0800 – 0903 60 min</u><br>Run C : <u>0935 – 1038 60 min</u> |
|-------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

| Source Information                                                                              |                                                                                                                                                                                                                                                                        | BAAQMD Representatives                                                                                                                                                                      |
|-------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Firm Name and Address:<br>Berkeley Asphalt Company<br>699 Virginia Street<br>Berkeley, CA 94710 | Firm Representative and Title:<br>Seth L. Watkins<br>Plant Manager<br><br>Phone No. (510) 526-1611<br><br>Source: Rotary Dryer (S-1) abated by<br>Cyclone & Baghouse (A-4 & A-7)<br><br>Site No. A0123 Permit No. 06630<br>Operates 7 hrs/day & 240 days/year<br>Batch | Source Test Team:<br>B. Kino/M. Hernandez<br>M. Wiley/J. Aaseth<br><br>Permit Services/Enforcement Division:<br>D. Singh<br><br>Test Requested by:<br>B. Bartley, (CDS)<br>S. Applin, (C&E) |
| Permit Condition:<br>ID # 16017                                                                 |                                                                                                                                                                                                                                                                        |                                                                                                                                                                                             |

Operating Parameters: Test Run A was conducted on 4/15/14, and test Runs B & C were conducted on 4/16/14. The plant was producing an average of 130 tons/hr of asphalt for both test days. The rotary dryer is natural gas fired with an average gas usage of 25.74 MMBtu/hr (4/15/14) and 40.17 MMBtu/hr (4/16/14.)

|                                        |                           |
|----------------------------------------|---------------------------|
| Applicable Regulations: <u>2-1-307</u> | VN Recommended: <b>NO</b> |
|----------------------------------------|---------------------------|

Source Test Results and Comments:

| METHOD | PARAMETER                                                             | RUN A   | RUN B   | RUN C   | AVERAGE | LIMIT |
|--------|-----------------------------------------------------------------------|---------|---------|---------|---------|-------|
| ST-17  | Volume Flow Rate, SDCFM                                               | 28,000  | 27,400  | 26,000  | 27,100  |       |
|        | Stack Temperature, °F                                                 | 190     | 193     | 194     | 192     |       |
| ST-23  | Water Content, volume %                                               | 19.5    | 19.9    | 20.6    | 20.0    |       |
| ST-14  | Oxygen, dry volume %                                                  | 16.4    | 16.0    | 15.9    | 16.1    |       |
| ST-5   | Carbon Dioxide, dry volume %                                          | 2.3     | 2.5     | 2.6     | 2.4     |       |
|        | Carbon Dioxide, lbs/hr                                                | 4,340   | 4,651   | 4,582   | 4,524   |       |
| ST-6   | Carbon Monoxide, dry ppmv                                             | 60      | 55      | 44      | 53      |       |
|        | Carbon Monoxide, Corrected to 15 % O <sub>2</sub> , dry ppmv          | 89      | 70      | 55      | 71      | 230   |
|        | Carbon Monoxide, lbs/hr                                               | 7.3     | 6.5     | 5.0     | 6.3     |       |
| ST-7   | (TOC) Total Organic Carbon (includes methane), ppmv as C <sub>1</sub> | 10      | 11      | 13      | 11      | 300   |
|        | TOC, lbs/hr as Carbon                                                 | 0.5     | 0.6     | 0.6     | 0.6     |       |
|        | Methane, ppmv                                                         | 10      | 11      | 13      | 11      |       |
|        | (NMOC) Non-methane Organic Carbon, ppmv as C <sub>1</sub>             | < 3.0   | < 3.0   | < 3.0   | < 3.0   |       |
|        | NMOC, lbs/hr                                                          | < 0.2   | < 0.2   | < 0.1   | < 0.2   |       |
|        | NMOC, lbs/ton of asphalt                                              | < 0.001 | < 0.001 | < 0.001 | < 0.001 | 0.03  |
| ST-13A | Nitrogen Oxides, dry ppmv                                             | 22      | 22      | 24      | 23      |       |
|        | Nitrogen Oxides, Corrected to 15 % O <sub>2</sub> , dry ppmv          | 30      | 28      | 28      | 29      | 30    |
|        | Nitrogen Oxides, lbs/hr                                               | 4.4     | 4.4     | 4.4     | 4.4     |       |
| ST-19A | Sulfur Dioxide, dry ppmv                                              | 31      | < 10    | 15      | < 16    |       |
|        | Sulfur Dioxide, lbs/hr                                                | 8.8     | < 2.7   | 3.9     | < 5.1   |       |
|        | Sulfur Dioxide, lbs/ton of asphalt produced                           | 0.068   | < 0.021 | 0.030   | < 0.040 | 0.094 |
| EPA-5  | Front Half (FH) Particulate, gr/SDCF                                  | < 0.002 | < 0.002 | < 0.002 | < 0.002 | 0.01  |
|        | FH Particulate, lb/hr                                                 | < 0.60  | < 0.60  | < 0.60  | < 0.60  | 40.0  |
|        | Back Half (BH) Particulate, gr/SDCF*                                  | 0.013   | 0.005   | 0.012   | 0.010   |       |
|        | BH Particulate, lbs/hr*                                               | 3.2     | 1.1     | 2.7     | 2.3     |       |
|        | Isokinetic Ratio, act/theo                                            | 103%    | 104%    | 101%    |         |       |

Note: A "<" indicates values that are less than the method detection limit.

\* Back half particulate refers to particulate that condenses in the impingers, or back half of the sample train. Back half particulate quantified by use of wet impingement methodology.

NO COMMERCIAL USE OF THESE RESULTS IS AUTHORIZED

|                                                                  |                                                                                                  |                                                                                                           |
|------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|
| Air Quality Engineer<br><i>B. Kino</i> 6/10/14<br><b>B. Kino</b> | Date<br>Supervising Air Quality Engineer<br><i>C. McClure II</i> 6/10/14<br><b>C. McClure II</b> | Date<br>Approved by Air Quality Engineering Manager<br><i>Robert Bartley</i> 4/10/14<br><b>B. Bartley</b> |
|                                                                  |                                                                                                  | 273                                                                                                       |

Culminating months of process analysis and discussions between Berkeley City Staff, Councilmember Linda Maio, and Lehigh Hanson (Berkeley Asphalt), the company has agreed to process additional improvements that will further reduce emissions and odors at the company's Berkeley asphalt plant.

The Company has agreed to install new equipment, upgrade their process, and engage in staff training, all of which will significantly change their asphalt.

"It should provide improve the situation for nearby residents, be better environmentally, and better for the actual construction workers who are laying down the asphalt," said Councilmember Maio.

"We appreciate Councilmember Maio's diplomacy and tenacity. This solution is a win-win for all involved," said Mike Roth, Vice President for Lehigh Hanson – Region West.

The new equipment and training will result in an enhanced production process known as "Warm Mix Asphalt," an emerging technology that has been increasingly endorsed by federal and state officials. Typical asphalt is prepared at temperatures reaching 330 degrees Fahrenheit. The new process will use temperatures of 260 to 280 degrees Fahrenheit.

"We believe that the new technology (WMA) will meet or exceed 30-50% reduction in odor emissions. We think we can convert half of our customers to WMA immediately. It will take some time to educate and convert the remaining customers from conventional hot mix asphalt (HMA) to WMA. For our part, we will immediately begin educating our customers to accelerate that acceptance. We are confident that we can achieve the same success that others have with WMA," Roth said.

The new technology should reduce emissions and odors significantly and result in a more environmentally sustainable operation. The company has committed to installing all of the equipment and completing all of its employee training by the end of the year.

"With this state-of-the-art approach to production, other companies have reduced their emissions and odors by as much as 50 percent," said Roth. "We hope to experience similar success."

This agreement is the latest result of pressure from Councilmember Maio on the City and the company to address odors. Residents experiencing odors have been contacting Maio's office and documenting problems. This led to numerous conversations between City staff and neighbors and Lehigh Hanson. City Staff has been diligent in meeting met with Lehigh Hanson on several occasions to discuss ways technological and operational improvements to address complaints about noise, odor and dust. This resulted in the company implementing a series of mitigations, including the following:

**Noise:**

- Installed silencer on exhaust stack: May 2013  
*(Reduces sound emitting from exhaust fan)*
- Installed Variable Frequency Drives on exhaust fan motors: September 2013  
*(Enables operator to turn fan down when not in production mode which reduces sound emitting from exhaust fan)*
- Vulcanized conveyor belts: September 2013  
*(Removed metal clips on conveyor belts to eliminate clicking sound)*
- Replaced sound blankets: October 2013  
*(Reduces sound emitting from various equipment on the plant)*

**Odor:**

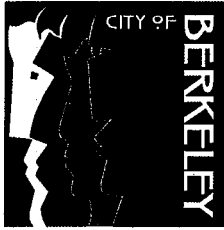
- Added deodorant to incoming oil loads: September 2012 to current  
*(Reduces odor in oil loads being delivered to plant)*
- Replaced four condensers on oil tanks: July 2013  
*(Reduces odor emitting for oil storage tanks)*
- Tuned burner: September 2013  
*(Improves efficiency of natural gas burner used to heat aggregate)*
- Installed four charcoal filters on oil tanks: September 2013  
*(Eliminates odor emitting from oil storage tanks)*
- Hired professional odor consultant: September 2013  
*(Working to improve best practices at the plant)*

**Dust:**

- Installed sprinkler on waste pile: July 2013  
*(Eliminates dust while loading trucks with asphalt waste)*
- Installed fence fabric: August 2013  
*(Reduces dust being blown onto the site from unpaved Second Street)*

This new, proposed enhancement to use state-of-the art equipment and manufacturing processes is a great improvement and demonstrates the City's and the Company's ability to work together to contribute to for a cleaner and more sustainable city.





RECEIVED AT  
COUNCIL MEETING OF:

JUL 14 2015

OFFICE OF THE CITY CLERK  
CITY OF BERKELEY

**Councilmember Maio, District 1**  
**Councilmember Droste, District 8**

## REVISED AGENDA MATERIAL

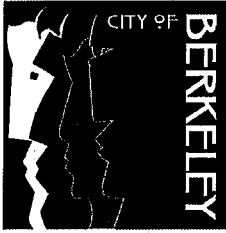
### AGENDA MATERIAL

**Meeting Date:** July 14, 2015  
**Item Number:** 69  
**Item Description:** Status Report: West Berkeley Industry  
**Submitted by:** Council Members Maio and Droste

Due to scheduling difficulties, City staff and Councilmembers met with several directors within the Bay Area Air Quality Management District (BAAQMD) on July 1st. Consequently, a final version of this status report could not be available by the regular agenda publishing deadline.

Office of Councilmember Linda Maio, Vice Mayor of the City of Berkeley, District 1  
510.981.7110 | lmaio@cityofberkeley.info | cityofberkeley.info/lindamaio

Office of Councilmember Lori Droste, District 8  
510.981.7180 | ldroste@cityofberkeley.info | lorldroste.com



CITY COUNCIL

**INFORMATION CALENDAR**

July 14, 2015

TO: Honorable Mayor and Members of the City Council

FROM: Council Members Linda Maio and Lori Droste

SUBJECT: Status Report #2: West Berkeley Industry

**INTRODUCTION**

On January 20, 2015, the Berkeley City Council passed the following actions:

1. Council Members Linda Maio and Lori Droste to work with residents, businesses, and City Staff to review complaints and make good faith efforts to mitigate impacts in the areas where the City has authority such as noise and odors and to bring their findings back to City Council.
2. Direct the City Manager to enforce the terms of the Use Permit and the 1999 Settlement Agreement with the Oceanview Neighborhood Association.
3. If the City Manager and delegated staff or department finds the West Berkeley Lehigh Asphalt Company plant is not compliant with the Use Permit or the 1999 Settlement Agreement with the Oceanview Neighborhood Association, the City and its jurisdictional bodies or the appropriate authority implements corrective action and enforces the 1999 Settlement Agreement Use Permit immediately.

This report documents the information the Council Members found in their good faith efforts to address residents' concerns. In addition to the recommendations provided within this report, Councilmember Maio and Droste will continue to pursue action plans to improve air, noise, and odor emissions in West Berkeley.

Due to scheduling difficulties, City staff and Councilmembers met with several directors within the Bay Area Air Quality Management District (BAAQMD) on July 1st. Consequently, a final version of this status report could not be available by the regular agenda publishing deadline.

**CURRENT SITUATION AND ITS EFFECT**

- On January 20, 2015, the City Council tasked Council Members Maio and Droste to review complaints made regarding air quality in West Berkeley. Subsequently, Council Members Maio and Droste discussed concerns with residents.

- On May 12, 2015, City Council was provided a status update on residents' concerns, site visits and potential questions for a meeting with BAAQMD (Appendix A).
- On July 1, 2015, Council Members Maio and Droste, along with City staff, met with BAAQMD staff, including the Director of Compliance and Enforcement and Air Quality Manager.

## **FINDINGS**

BAAQMD is a nine-county agency jurisdiction that regulates air quality according to federal standards and oversees an air quality monitoring network throughout the Bay Area, including eight air monitor sites in Alameda County.<sup>1</sup> As the only regulator of emissions and air quality of the Bay Area, BAAQMD determines whether industries in West Berkeley are operating in accordance with local, state, and federal regulations.

### ***2009 West Berkeley Air Monitoring Report***

In response to the City's request, in 2009 BAAQMD placed a temporary monitor (for over one year) at the intersection of 6th St. near Gilman St. to measure ambient air quality in West Berkeley. BAAQMD monitored the site at irregular times of the day which were often unannounced. BAAQMD found that "West Berkeley air quality levels were well below all applicable State and National Ambient Air Quality Standards (NAAQS) for gaseous criteria pollutants."<sup>2</sup> According BAAQMD's findings, cancer risk associated with toxic air contaminants is likely associated with proximity to the freeway:

*The compounds that contribute most significantly to cancer risk in West Berkeley are diesel PM, benzene, 1,3-butadiene, and carbon tetrachloride. This is consistent with other monitoring sites. These pollutants are emitted primarily from mobile sources, with the exception of carbon tetrachloride. There are no known local sources of carbon tetrachloride due to the phase-out of this compound as a stratospheric ozone-depleting compound.<sup>3</sup>*

To better identify the impacts of traffic-related air pollution, in 2014, BAAQMD opened two permanent air monitoring stations along Bay Area freeways. They are in the process of installing a third air monitoring station in West Berkeley to better analyze the health effects of traffic related air pollution along the I-80 corridor.

### ***Technology***

BAAQMD indicated that they have recently approved several technologies to address air quality concerns at Hanson Aggregates Berkeley Asphalt. In January of 2015, Hanson Aggregates Berkeley Asphalt introduced a new warm mix which lowers the temperature preparation by

<sup>1</sup> *Bay Area Air Quality Management District*. (n.d.) District Air Monitor Sights. Retrieved from [http://hank.baaqmd.gov/tec/maps/dam\\_sites.htm](http://hank.baaqmd.gov/tec/maps/dam_sites.htm)

<sup>2</sup> *Bay Area Air Quality Management District*. (April 14, 2009). Summary and Analysis of West Berkeley Air Monitoring Results. Retrieved from [http://www.ci.berkeley.ca.us/uploadedFiles/Council\\_1/Level\\_3\\_General/summary\\_analysis\\_west\\_berkeley\\_air\\_monitoring.pdf](http://www.ci.berkeley.ca.us/uploadedFiles/Council_1/Level_3_General/summary_analysis_west_berkeley_air_monitoring.pdf), p.1.

<sup>3</sup> *Ibid.*, p. 3.

approximately 50-70 degrees Fahrenheit.<sup>4</sup> The new warm mix is expected to significantly reduce emissions. In addition, Pacific Steel and Casting (PSC) is assessing new materials for molds that receive hot pourings that will result in a reduction in odor emissions. For more information on technology updates, refer to Councilmembers Maio and Droste's previous report.<sup>5</sup>

### ***Monitoring***

During our conversations with BAAQMD, they indicated that they oversaw a source test in March 2015 which led them to conclude that Hanson Aggregates Berkeley Asphalt was in compliance with its requirements and regulations. BAAQMD also performs 24 hour source tests as well as night tests throughout the region. City Councilmembers Maio and Droste have requested information regarding these findings, which will be examined at a later date.

In addition to new technologies, BAAQMD requires a specific type of air quality stack testing, which has been in place at Pacific Steel Casting. This usually consists of sampling emissions from a single location. Industry is required to provide the stack monitoring data to BAAQMD. Once BAAQMD receives the data, it is reviewed to ensure that the data is accurate and free from manipulation. Councilmembers Maio and Droste have requested information regarding specific stack monitoring.

BAAQMD also incorporates spot checks into their monitoring procedures. Spot checks consist of measuring compounds with additional instrumentation in order to ensure that the industries' instrumentation is accurate. Additionally, spot checks measure emissions to determine what compounds are emitting from facilities. City Councilmembers have requested information regarding specific spot test results.

### ***Complaint Investigation***

BAAQMD has a complaint line in operation 24/7 with translation services. During normal office hours, staff handles the complaints. If the complaint is generated during off-hours, an answering service processes the complaint. Although inspection staff is in the field during normal working hours, if a rash of complaints come in at night staff is contacted and makes a determination how to respond. BAAQMD expressed that they attempt to respond to all complaints within an hour and dispatch within 30 minutes (during normal working hours). Confirmation of an odor must consist of 1) the inspector and complainant simultaneously smelling the odor and 2) the inspector tracing the odor directly back to the source. BAAQMD emphasized that it still follows up with every complaint regardless of whether or not it is confirmed. The agency is working to improve their complaint process.

BAAQMD also has the power to issue public nuisance violations. If BAAQMD has approximately five "face-to-face" confirmations within 24 hours and can trace the odor back to a source, the

---

<sup>4</sup> Maio, L. & Droste, L. (May 26, 2014). Status Report: Berkeley Asphalt; Pacific Steel Casting; Air Quality Inquiries. Retrieved from [http://www.ci.berkeley.ca.us/Clerk/City\\_Council/2015/05\\_May/Documents/2015-05-26\\_Item\\_38\\_Status\\_Report\\_Berkeley\\_Aspphalt.aspx](http://www.ci.berkeley.ca.us/Clerk/City_Council/2015/05_May/Documents/2015-05-26_Item_38_Status_Report_Berkeley_Aspphalt.aspx), p. 94.

<sup>5</sup> *Ibid.*, p. 92-93.



facility may be deemed a public nuisance. Complaints must be self-generated instead of solicited by something such as an email tree to insure validity in a court proceeding.

According to BAAQMD, these particular steps are necessary in order to have court standing and be legally defensible in a court of law. When it issues the nuisance, the agency identifies the issue and serves as a mediator in order to fix the problematic source of the violation. If information is unavailable regarding a particular violation, it is because BAAQMD is still remedying the issue with the violator.

### ***Inspector Training***

Residents state that the current odor process is unscientific because inspectors rely on their sense of smell to validate complaints. Council Members Maio and Droste reviewed inspector training with BAAQMD to address these concerns.

In order to qualify as an inspector, an individual must meet the criteria for employment and have an "average nose." Potential inspectors participate in a panel in order to determine whether their nose is not overly or under sensitive. Inspectors may be subjected to hazardous compounds during trainings. Although the process appears to be unscientific and antiquated, BAAQMD utilizes these steps to have court standing and legal defense.

Council Members Maio and Droste find the complaint and detection system to be in need of improvement and WILL strongly encourage BAAQMD to implement alternative devices to detect odors. While the district has purchased equipment to measure a wide variety of compounds in odor emissions, it is still trying to develop expertise in odor detection. Nevertheless, it is essential that BAAQMD develop capabilities and implement objective odor detection devices.

In order to reduce odorous and non-odorous emissions, Council Members Maio and Droste have confirmed that BAAQMD is pursuing the following to address monitoring technologies, regulations, reporting protocol, and inspector training:

1. BAAQMD is placing an additional air monitor in West Berkeley.
2. BAAQMD is reviewing and updating Regulation 7 "Odorous Substances" that specifically focuses on odors.<sup>6</sup>
3. BAAQMD is reevaluating its reporting protocol and will make significant efforts to outreach to stakeholders prior to this process. *Note: BAAQMD expressed willingness to workshop a new process with concerned stakeholders in 2016.*

---

<sup>6</sup> Bay Area Air Quality Management District. (1982). "Regulation 7: Odorous Substances." Retrieved from <http://www.baaqmd.gov/~media/Files/Planning%20and%20Research/Rules%20and%20Regs/reg%2007/rg0700.ashx?la=en>

4. BAAQMD wishes to acquire objective odor detection devices and to incorporate these devices as the primary determinate of odor detection.
5. BAAQMD has been asked to make regular status reports on the implementation status of PSC's odor control plan.
6. BAAQMD is incorporating new technologies that will assist in reducing emissions.
7. BAAQMD is investigating shrouding operations with Berkeley Asphalt, in particular, to reduce noise and odors.
8. BAAQMD agreed to improve its oversight and detection of Berkeley Forge's emissions.

In order to address concerns with the city's regulatory mechanisms, Council Members Maio and Droste will obtain and assess BAAQMD's response to the Tetra Tech (2008) finding regarding the PSC Health Risk Assessment and how the Community Environmental Advisory Commission's (2007) air quality recommendations re acted upon. City staff has been asked in the previous item to provide information regarding enforcement procedures and assessed penalties in West Berkeley from 2000-2015. Results will be provided in the third status report.

#### **Businesses Practices in West Berkeley**

Residents claim that the larger industries in West Berkeley may not be following protocols for good business in order to reduce emissions. Namely, they seem to be concerned with weekend and after-hour operations. Residents also voiced displeasure over the lack of truck tarping at Hanson Aggregates Berkeley Asphalt as required in the 1999 Settlement Agreement.

In order to address concerns with the city's regulatory mechanisms, Council Members Maio and Droste will further follow up on:

1. City staff providing a report in response to City Council's January 20, 2015, second and third directives regarding use permit compliance using the information gathered in interviews and in this informational report.
2. Hanson Aggregates Berkeley Asphalt requiring trucks to tarp their loads.
3. Hanson Aggregates Berkeley Asphalt installing new shrouds to mitigate emissions caused when the hot asphalt hits cold truck beds.

#### **Information Access**

Finally, some neighbors were alarmed that they were not aware of emissions when purchasing or renting their homes. Overall, these residents had a lack of understanding when the plants are most active.

In order to address challenges regarding information access, Council Members Maio and Droste will pursue the following:

1. West Berkeley Asphalt and Pacific Steel Casting Company holding a meeting with concerned citizens to begin a constructive dialogue and share information regarding evolving technologies and their operations as they relate to public health.
2. West Berkeley industries posting and providing information alerts to the City of Berkeley regarding production schedules, particularly when plants are most active. This information should be on their website and communicated, via link, to concerned residents.

A third status report will be provided that will provide additional information, as relevant, and recommendations will be proposed. Although the proposed next steps go well beyond the 1999 settlement agreement, the third report will also provide an assessment of compliance with that agreement.

**CONTACT**

Office of Councilmember Linda Maio, Vice Mayor of the City of Berkeley, District 1  
510.981.7110 | [Imaio@cityofberkeley.info](mailto:Imaio@cityofberkeley.info) | [cityofberkeley.info/lindamaio](http://cityofberkeley.info/lindamaio)

Office of Councilmember Lori Droste, District 8  
510.981.7180 | [ldroste@cityofberkeley.info](mailto:ldroste@cityofberkeley.info) | [loridroste.com](http://loridroste.com)





Community Health Commission

### ACTION CALENDAR

January 20, 2015

*(Continued from December 16, 2014)*

To: Honorable Mayor and Members of the City Council  
 From: Community Health Commission  
 Submitted by: Linda Franklin, Chairperson, Community Health Commission  
 Subject: West Berkeley Industrial Plants Air Quality

### RECOMMENDATION

Take the following actions regarding air quality complaints in West Berkeley:

1. The City Council hold a Public Hearing regarding air quality complaints on the West Berkeley Lehigh Hanson Asphalt Company plant, Bayline Concrete Cutting Company and Pacific Steel Casting Company; and that the City provide relevant health information.
2. Direct the City Manager to complete the compliance check list based on the 1999 Settlement Agreement with the Oceanview Neighborhood Association; and
3. If the City Manager and delegated staff or department finds the West Berkeley Lehigh Asphalt Company plant is not compliant with the compliance check list based on the 1999 Settlement Agreement with the Oceanview Neighborhood Association, the City and its jurisdictional bodies or the appropriate authority implements corrective action and enforces the 1999 Settlement Agreement compliance checklist immediately.

### FISCAL IMPACTS OF RECOMMENDATION

Potential Costs to the City of Berkeley include but are not limited to: the staff costs of preparing for and attending a public hearing at a City Council meeting and providing relevant health information; the cost to assess compliance of the West Berkeley Lehigh Asphalt Company plant with the 1999 Settlement Agreement with the Oceanview Neighborhood Association; City staff time for implementing and enforcing potential corrective actions.

Potential costs to the West Berkeley Lehigh Hanson Asphalt Company plant include but are not limited to purchasing of requisite equipment and/or reforming practices in order to be compliant with the 1999 Settlement Agreement.

### CURRENT SITUATION AND ITS EFFECTS

According to a September 4, 2014 memo submitted to the Housing Advisory Commission, 93 residents, workers, and business owners signed and submitted a

California Public Records Act in June 2014, to get City records on whether the City of Berkeley complied with a 1999 settlement agreement between the Oceanview Neighborhood Association, Communities for a Better Environment, BAC, BARM, and the City of Berkeley. The 1999 settlement agreement was designed to create stricter regulation on the plant's day-to-day operations. Since the 1999 settlement agreement, BAC was sold to Lehigh Hanson Cement. Residents, workers, and business owners believe that strict adherence to the terms of the settlement has not yet been met. Residents, such as the two residents and members of the Oceanview Neighborhood Association who provided public comment on this matter at the CHC meeting on September 11, 2014, have indicated that the fumes have gotten worse over the last five years, the plant operates at unauthorized hours, and that compliance with several terms of the settlement has not been fully realized.

Due to the potentially significant health effects of these fumes and pollutants, which constitute health ramifications exacerbated by possible noncompliance, the citizens of West Berkeley and the Health Commission are asking the City Council and the City Manager to take meaningful actions to ensure that the air around these plants in West Berkeley where many people live or encounter is safe and does not pose a health risk.

### BACKGROUND

According to a memo submitted to the Housing Advisory Commission on September 4, 2014, in a one-year period, between 2012 and 2013, West Berkeley Alliance for Clean Air and Safe Jobs, and California Environmental Justice Coalition; and homeowners and residents made 111 complaints to the Bay Area Air Quality Management District (BAAQMD).

Lehigh Hanson Cement is by owned by an international conglomerate company Heidelberg Cement. Heidelberg Cement is the global market leader in aggregates and a prominent player in the fields of cement, concrete and other downstream activities, making it one of the world's largest manufacturers of building materials. The company employs some 52,600 people at 2,500 locations in more than 40 countries. In addition to the referral to the HAC, a request was made to the CHC to consider the recommendations due to Health concerns over air quality. Therefore, this topic was framed as a health concern and discussed at the regularly scheduled Community Health Commission meeting on September 11, 2014 where the following motion was approved.

M/S/C (Nathan/Kwanele) Motion to Recommend to City Council that:

1. The City Council hold a Public Hearing regarding air quality complaints on the West Berkeley Lehigh Hanson Asphalt Company plant, Bayline Concrete Cutting Company and Pacific Steel Casting Company; and that the City provide relevant health information.
2. Direct the City Manager to complete the compliance check list based on the 1999 Settlement Agreement with the Oceanview Neighborhood Association; and
3. If the City Manager and delegated staff or department finds the West Berkeley

Lehigh Asphalt Company plant is not compliant with the compliance check list based on the 1999 Settlement Agreement with the Oceanview Neighborhood Association, the City and its jurisdictional bodies or the appropriate authority implements corrective action and enforces the 1999 Settlement Agreement compliance checklist immediately.

**Ayes:** Commissioners Franklin, Kwanele, Lee, Nathan, Neuhauser, Rosales, Shaw, Stein, M. Wong  
**Noes:** None  
**Abstain:** None  
**Absent from vote:** Commissioners Collins, Delgadilo, Namkung, Tempelis  
**Excused:** Commissioners Barry, Speich, A. Wong

### ENVIRONMENTAL SUSTAINABILITY

This recommendation can potentially support the cause of environmental sustainability if the possibly noncompliant Lehigh Hanson Asphalt Company plant adopts any needed reformatory practices as a result of the enforcement of the 1999 Settlement Agreement, which could lead to more efficient resource consumption and reduced environmental degradation caused by extracting less resources. Moreover, as emissions of greenhouse gases and other potentially environmentally harmful compounds could decrease if any possibly needed improved practices are employed, the environment could greatly benefit from the potential results of implementing the recommended acts.

### RATIONALE FOR RECOMMENDATION

This is a health issue because many of the Oceanview residents and homeowners are unable to enjoy clean air that may have harmful or discomforting smoke and pollutants, as directly described to the CHC by two residents of the Oceanview community who provided public comment during the September 11, 2014 CHC meeting. There is a clear nexus between air quality and health as poor air quality relates to asthma incidence rates and hospitalizations. According to the 2013 City of Berkeley Health Status Report, "asthma hospitalizations of children under five years of age are most common in West Berkeley," which demonstrates the importance of evaluating environmental factors that may be contributing to a disproportionately higher rate of youth asthma hospitalizations in West Berkeley (Health Status Report found at [http://www.ci.berkeley.ca.us/uploadedFiles/Health\\_Human\\_Services/Level\\_3\\_-\\_Public\\_Health/BerkeleyHealthReport\\_online\\_FINALv2.pdf](http://www.ci.berkeley.ca.us/uploadedFiles/Health_Human_Services/Level_3_-_Public_Health/BerkeleyHealthReport_online_FINALv2.pdf)).

In addition to health statistics justifying a closer look at possible causes of asthma, the City Manager's most recent report to the City Council on the Breathmobile scheduled on the September 16, 2014 Information Calendar states: "The new "Health Happens in Berkeley" initiative has identified asthma hospitalizations in children (up to 15 years of age) as one of four preliminary Public Health priorities. The Public Health Division is committed to addressing the asthma health inequities seen in Berkeley's Health Status Report 2013." Therefore, in order to cooperate with this health initiative and take potentially substantial action toward realizing the objective of "addressing the asthma health inequities seen in Berkeley's Health Status Report 2013," this recommendation

encouraging the City Manager and City Council to act on this issue was approved. Moreover, as the Occupational Health and Safety Administration states that potential health effects of exposure asphalt pollutants and fumes include: headache, skin rash, sensitization, fatigue, reduced appetite, throat and eye irritation, cough, and skin cancer, it is imperative the City act to mitigate the potential for these health effects to manifest in the citizens of West Berkeley (<https://www.osha.gov/SLTC/asphaltfumes/>). The City Council and City Manager should be responsive to the needs of their residents. Thus, the Community Health Commission calls on the City Council to hold a public hearing on air quality complaints, and requests the City Manager to complete the checklist based on the 1999 settlement agreement and take immediate corrective action.

### ALTERNATIVE ACTIONS CONSIDERED

The Community Health Commission chose its recommendation as being the most efficient and effective, but recognizes that alternative or additional actions may be considered by the City Council. Toward that end, the Commission discussed the following during its deliberations:

1. Gather more information before making a recommendation to the City Council by forming a subcommittee to explore the issue.
2. Let the process take its course without support, as citizens have already filed complaints with the Bay Area Air Quality Management District.
3. Instead of having a Public Hearing, solely recommend that the City Manager and appropriate city staff evaluate the compliance of the West Berkeley Lehigh Hanson Asphalt plant with the 1999 Settlement Agreement between the owners of the plant and the Oceanview Neighborhood Association.

Alternative action #1 was not taken as waiting to gather more information before making a recommendation to the City Council would delay any meaningful action such as assessing compliance and having a public hearing for the people of West Berkeley to voice their concerns while the residents of West Berkeley continue to suffer from polluted air. This delay proved too costly, as it is believed that immediate action is required in order work toward providing answers and relief to those in West Berkeley.

Alternative action #2 was not taken since the fact that 111 complaints have been filed with Bay Area Air Quality Management District (BAAQMD) in a one-year period without any consequential significant review of the air quality situation proves that the complaint process with BAAQMD is insufficient to address this issue requiring more efficient action. Alternative action #3 was not taken because it is believed that it is vital to our political system that the people have the opportunity to voice their concerns, and because a public hearing would be productive in establishing a public record and source of evidence from the anecdotal experiences of the residents of West Berkeley.

### CITY MANAGER

See City Manager companion report.

### CONTACT PERSON



Gail Feldman, Commission Secretary, HHCS, (510) 981-5232





Lehigh Hanson Berkeley Asphalt  
 Site #A0123  
 699 Virginia Street  
 Berkeley, CA 94710

## West Berkeley Odors Fact Sheet December 9, 2020

### Background

- Berkeley Asphalt is an industrial facility located in Berkeley, CA. The facility began operations in 1955 and was acquired by Lehigh Hanson in 2005.
- Berkeley Asphalt has a Permit to Operate, issued by the Air District, which limits total asphalt production to 3,000 tons per day and 250,000 tons per consecutive 12 months. Berkeley Asphalt is in compliance with these limits.
- There are thirteen (13) Air District permitted sources at the facility that include the asphalt batch plant, asphalt oil tanks, conveyers and stockpiles.
- Dust abatement devices include conveyor water sprays, particulate baghouse and cyclone, and a street sweeper.
- Starting October 29, 2020, the Air District began receiving many complaints from West Berkeley residents alleging “sulfur”, “sewage” and “burning” odors from unknown source(s). Staff have received approximately 193 similar Berkeley odor complaints through December 8, 2020. The alleged odor has been fleeting and difficult for staff to confirm even when response times often only takes minutes.

### Air District investigation

- In the past, the Air District has received many ‘sulfur’ odor complaints related to naturally occurring Bay waterfront decomposition throughout the Bay Area, especially at times like this, after a long, hot and dry summer. Thus, Air District Inspectors initially conducted multiple investigations around Aquatic Park and the Berkeley waterfront, but did not observe these locations as the cause of the alleged sulfur odors. Berkeley Council Member Rashi Kesarwani’s December 6, 2020 newsletter confirmed the same observation: “City of Berkeley facilities, such as Aquatic Park and the Transfer Station, have been ruled out by City staff.”
- During the first week of November 2020, Air District staff contacted PG&E to inquire if any gas-line work was being conducted in the area of complaints. PG&E’s response was that there wasn’t any such work being done in the area.
- The Air District also received multiple complaints alleging a “sewage” odor in the same area. It appears there have been two odors occurring in the West Berkeley

area during the past month: a sewage odor and the “burning, sulfur” industrial odor. In early November 2020, Air District staff contacted the East Bay Municipal Utility District (EBMUD), which operates the main sewer intersect line from Berkeley to the EBMUD Sewage Treatment Plant (STP) at the I-580/I-80 interchange. EBMUD stated they had also received odor complaints, so its personnel conducted a patrol along the entire route between North Berkeley and the STP and did not observe any unusually strong odors or evidence of any leaks. EBMUD said the City of Berkeley (City) Public Works Department has jurisdiction over the sewage lines within the city of Berkeley. Air District staff contacted the City Public Works Department, which confirmed they weren’t conducting any projects in the vicinity of West Berkeley where the sewage odors were reported. The City Public Works Department concluded that it was King Tide season and they have observed that water table pressure can force sewer gases to the surface and cause above-ground odors, but they can’t control that natural process.

- On November 6, 2020, an Air District Inspector investigated at Berkeley Asphalt but did not observe the alleged odor on site. The Berkeley Asphalt plant manager confirmed the sulfur odor with the Inspector off-site of the facility, up the street, but could not determine where the odor could be originating from within Berkeley Asphalt. The Inspector then suspected the “burning sulfur” odor was being caused by Berkeley Asphalt, but the nature of its operation is intermittent asphalt batches based on demand and momentary truck loading made actively tracing the odor to the facility after meeting with complainants difficult. However, multiple complaints were confirmed by the Inspector on December 3, 2020 and it was the same odor observed on November 6, 2020. Air District staff now suspect the odors rise aloft and settle blocks away in the community downwind from the facility.

#### Air District response

- The Air District issued a Notice of Violation (NOV) to Berkeley Asphalt on December 8, 2020. The NOV involved a one-day violation for off-site odors which caused multiple confirmed complaints and a public nuisance on December 3, 2020. The NOV is expected to prompt Berkeley Asphalt to evaluate the root cause of the odor and take corrective action(s) necessary to remedy and alleviate the ongoing odor problem.
- To address asphalt smoke odors at Berkeley Asphalt, the facility had submitted a permit application to the Air District. On November 30, 2020, the Air District issued an Authority to Construct to install a new blue smoke abatement system that will be in place by the end of the first quarter 2021. Blue smoke abatement systems capture and abate asphalt plant loading emissions and the Air District is working with the facility to understand how these controls may reduce odors.

- Air District staff will continue to actively investigate the situation and monitor the facility for visible emissions and odors.

What to do if you smell odor

- Call the Air District complaint line 1-800-334-ODOR (6367) or file a complaint online at [www.baaqmd.gov/complaints](http://www.baaqmd.gov/complaints) if you smell an odor. This helps to establish a record of where and when odors are detected, and to trace the cause of the odors. The Air District strives to respond to air quality complaints as soon as possible, typically within thirty minutes during business hours.
- The Air District is not an emergency response (first responder) agency. In case of emergencies, please contact 911, and, for health-related symptoms, your primary care doctor or local health department.



Planning Department

April 2, 2021

Igor Tregub, Chair  
Sierra Club Northern Alameda County Group  
[Delivered via e-mail to itregub@gmail.com]

Dear Mr. Tregub,

Thank you for your March 8, 2021 letter to the Berkeley City Council regarding Lehigh Hanson/Berkeley Asphalt (BA) in Berkeley. I understand that the concerns regarding emissions from the facility represent a longstanding issue for neighbors and community members. The City of Berkeley is committed to using its regulatory authority to ensure compliance with the 1999 Settlement Agreement and Use Permit conditions, to the fullest extent possible.

Here is a summary of the enforcement activities that the City has recently undertaken regarding BA:

- On December 21, 2020, January 14, 2021, and March 19, 2021, City of Berkeley staff from four divisions in three departments conducted comprehensive site inspections to evaluate BA's compliance with the conditions of approval of their 1999 Use Permit. During the December and January inspections, City staff observed that the truck loading area was only partially enclosed, and vacuum sweeping was occurring on a portion of the yard rather than all of it.
- The City issued a notice of violation (NOV) on January 11, 2021, citing an insufficient enclosure of the asphalt truck loading area in violation of the revised condition of approval 8.1 of Use Permit #98-7000018/Modification of Use Permit #3033 pursuant to BMC Chapter 23B.32. The NOV required BA to resubmit by February 1, 2021 application materials for building permit B2020-04108 for construction of an enhanced enclosure and smoke capture system for the asphalt truck loading area. BA did not meet this deadline, so the City issued a Citation warning on February 10, 2021, giving them 15 days to resubmit information for their building permit application. The City added a second violation, related to sweeping, to the citation warning based on observations from the second site visit.

- On February 16, 2021, BA resubmitted plans for their building permit B2020-04108, which was subsequently approved on March 1, 2021. The plans to enclose the asphalt truck loading area addressed the first violation.
- On March 1, 2021, BA responded to the second violation with a letter documenting how they currently vacuum the yard and proposing updates to their sweeping regimen. The City has posed follow-up questions to BA regarding their proposed sweeping regimen to determine whether it satisfies the obligations established through the facility's Use Permit conditions, and whether it appropriately mitigates any potential impacts of dust and dirt on the surrounding neighborhood.
- On March 3, 2021, the City issued BA a citation warning establishing a deadline of April 15, 2021 for BA to complete construction and inspections associated with building permit B2020-04108. If BA does not meet this deadline, they will be cited and fined daily until they are in compliance, with initial fines set at \$250 per day and escalating subsequently.
- BA has made substantial progress towards the construction of the enhanced enclosure and smoke capture system. In late March, the City of Berkeley determined that a portion of the construction activities occurred prior to formal authorization; although staff had reviewed and approved the plans for that work, the City had not yet received payment for the permit and it had not yet been issued. The City is continuing its investigation of this issue and, if appropriate, will cite and fine BA for this violation.

The Bay Area Air Quality Management District (BAAQMD) has regulatory authority over emissions and odors at the Berkeley Asphalt facility, while the City regulates the 1999 Settlement Agreement and Use Permit conditions. The City has been coordinating with BAAQMD in response to the concerns raised by community members. BAAQMD issued four NOV's to BA related to odors on 12/3/20, 12/21/20, 2/3/2021 and 2/5/2021. BAAQMD informed the City on March 24 that the last confirmed odor complaint from the Berkeley Asphalt plant occurred on February 12, 2021. In the same communication, BAAQMD staff indicated that they expect that the enclosure and smoke capture system enhancements that are currently under construction will reduce the odors impacting neighbors and decrease particulate matter.

The City of Berkeley will continue to conduct regular inspections of the Berkeley Asphalt facility; the next inspection is scheduled to occur today. The City will continue to take enforcement action as needed if the facility is found to be out of compliance with any applicable conditions and regulations.

Please feel free to contact me if you have any additional questions regarding this matter.

Igor Tregub, Chair  
Sierra Club Northern Alameda County Group

Page 3  
April 2, 2021

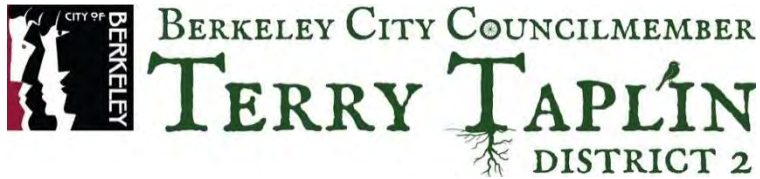
Sincerely,

A handwritten signature in black ink, appearing to read 'JKlein', written in a cursive style.

Jordan Klein  
Interim Director, Planning & Development Department

Cc: Dee Williams-Ridley, City Manager  
Paul Buddenhagen, Deputy City Manager  
Berkeley City Council



CONSENT CALENDAR

September 28, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Terry Taplin (Author), Councilmember Rashi Kesarwani (Co-Sponsor), Councilmember Susan Wengraf (Co-Sponsor)

Subject: Amending BMC Section 14.56.070 for 3-Ton Commercial Truck Weight Limit on Berkeley's Bicycle Boulevards and on At-Risk West Berkeley Residential Streets

RECOMMENDATION

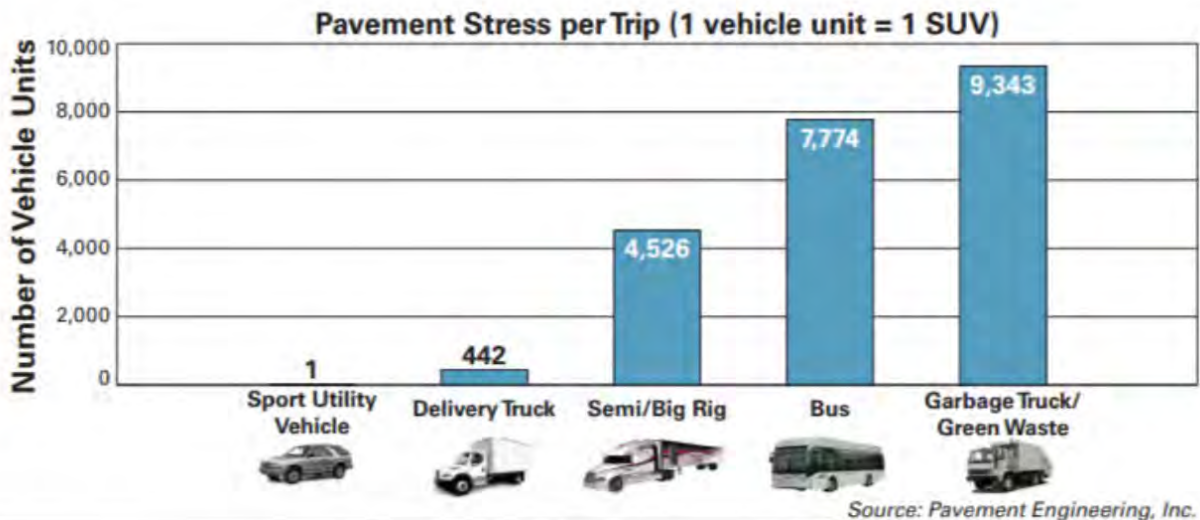
Adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) Section 14.56.070 to add 3-ton commercial truck weight limits on:

1. Ninth Street between Dwight Way and Heinz Avenue
2. Addison Street between San Pablo Avenue and Sixth Street;
3. Allston Way between San Pablo Avenue and Sixth Street;
4. Bancroft Way between San Pablo Avenue and Sixth Street;
5. Channing Way between San Pablo Avenue and Fourth Street;
6. Dwight Way between San Pablo Avenue and Sixth Street;
7. Camelia Street between Eighth Street and Ninth Street;
8. Eighth Street between Jackson Street and Camelia Street;
9. Ninth Street between Camelia Street and Cedar Street;
10. Virginia Street between Sacramento Street and Martin Luther King Jr. Way;
11. Virginia Street between Shattuck Avenue and Euclid Avenue;
12. Channing Way between Martin Luther King Jr. Way and Piedmont Avenue;
13. Heinz Avenue between Ninth Street and San Pablo Avenue;
14. Russell Street between San Pablo Avenue and Shattuck Avenue;
15. Russell Street between Telegraph Avenue and Claremont Avenue;
16. California Street between Hopkins Street and University Avenue;
17. California Street between Dwight Way and Russell Street;
18. King Street between Russell Street and Stanford Avenue;
19. Milvia Street from Dwight Way to Russell Street;
20. Bowditch Street from Bancroft Way to Dwight Way;
21. Hillegass Avenue from Dwight Way to Woolsey Street

CURRENT SITUATION AND ITS EFFECTS

Berkeley’s Bicycle Boulevard Network is a centerpiece of the City’s mobility justice and greenhouse gas emission reduction policies. The Bicycle Boulevards were established with the adoption of the Bicycle Plan in 1999 “with the goal of providing safe, convenient, and low stress bikeways on pleasant neighborhood streets.”<sup>1</sup> Despite having this goal in mind for more than twenty-two years, cyclists using a Bicycle Boulevard in Berkeley can still expect degraded road conditions, reckless drivers speeding alongside them, and large commercial trucks with low visibility threatening the safety of the children, families, and daily commuters who rely on the network. Despite their status as cyclist-priority streets, the Bicycle Boulevards still include many of the streets identified by the City’s Vision Zero Action Plan as “High-Injury” Streets where the most traffic injuries and fatalities have occurred.<sup>2</sup> The Bicycle Boulevards identified by Vision Zero include California Street, Milvia Street, and Channing Way. Eliminating large truck traffic on the Bicycle Boulevards will mark an important step towards creating a network of streets that truly prioritizes the safety and ease of travel for cyclists in Berkeley.

Beyond protecting the bodily safety of cyclists on Berkeley’s streets, restricting large truck traffic goes a long way towards reducing the degradation of the street infrastructure that is itself important for cyclist safety and for increasing bicycle mode share. As the following chart lays out, the stresses on street pavement increases with the size and weight of the vehicles travelling on it:



Minimizing the amount of unnecessary large vehicle traffic on our residential streets is an important supplement to the Street Rehabilitation and Repair Policy and the 5-Year Street Rehabilitation Plan that will work to address the underlying causes of pavement degradation.

<sup>1</sup>[https://www.cityofberkeley.info/uploadedFiles/Public\\_Works/Level\\_3\\_-\\_Transportation/Berkeley-Bicycle-Plan-2017-Executive%20Summary.pdf](https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/Berkeley-Bicycle-Plan-2017-Executive%20Summary.pdf)

<sup>2</sup>[https://www.cityofberkeley.info/uploadedFiles/Public\\_Works/Level\\_3\\_-\\_Transportation/Berkeley\\_Vision\\_Zero\\_Action\\_Plan\\_Approved\\_03102020.pdf](https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/Berkeley_Vision_Zero_Action_Plan_Approved_03102020.pdf)

As the Vision Zero Action Plan makes clear, Berkeley's traffic injuries are particularly concentrated in the neighborhoods of West Berkeley which the plan notes as "Equity Priority Areas" due to the disparity. Due to its proximity to the heavily trafficked commercial streets of University Avenue and San Pablo Avenue, the neighborhood encompassed by the non-Bicycle Boulevard streets within this proposal are regularly trafficked by large trucks cutting through the area. Truck traffic in this neighborhood, which is home to George Florence Park, the West Berkeley YMCA/Head Start facility, and Rosa Parks Elementary School, presents an ongoing danger to the pedestrians, cyclists, and especially children who use these streets on a daily basis. This neighborhood also includes University Avenue and Addison Street, which are also identified by the Vision Zero Action Plan as "High-Injury Streets".<sup>3</sup> In July of this year, the Berkeley City Council extended the 3-ton truck ban to the North-South streets of this neighborhood, but East-West coverage is necessary as well to truly protect this at-risk community.

#### FISCAL IMPACTS

Staff time and an estimated \$250 per sign location.

#### ENVIRONMENTAL IMPACTS

The City estimates that transportation-related emissions accounts for approximately 60% of our community's total annual greenhouse gas emissions.<sup>4</sup> Restricting large truck traffic will make Berkeley's Bicycle Boulevards safer for pedestrian and cyclist transportation, thus encouraging zero-emission forms of transportation and standing to lower the emissions from our community's dominant source of carbon emissions.

#### CONTACT

Terry Taplin, Councilmember, District 2, (510) 981-7120

#### ATTACHMENTS

1. Ordinance

---

<sup>3</sup>[https://www.cityofberkeley.info/uploadedFiles/Public\\_Works/Level\\_3\\_-\\_Transportation/Berkeley\\_Vision\\_Zero\\_Action\\_Plan\\_Approved\\_03102020.pdf](https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/Berkeley_Vision_Zero_Action_Plan_Approved_03102020.pdf)

<sup>4</sup>[https://www.cityofberkeley.info/Clerk/City\\_Council/2018/12\\_Dec/Documents/2018-12-06\\_WS\\_Item\\_01\\_Climate\\_Action\\_Plan\\_Update\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/12_Dec/Documents/2018-12-06_WS_Item_01_Climate_Action_Plan_Update_pdf.aspx)

ORDINANCE NO. ##,###-N.S.

AMENDING BERKELEY MUNICIPAL CODE SECTION 14.56.070 TO ADD NEW SECTIONS OF ROAD IN THE LIST OF LOCATIONS PROHIBITING THE USE OF CERTAIN STREETS BY COMMERCIAL VEHICLES EXCEEDING 3 TONS GROSS VEHICLE WEIGHT

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

Section 1. That Section 14.56.070 of the Berkeley Municipal Code is amended to read as follows:

**14.56.070 Prohibiting the use of certain streets by commercial trucks exceeding three tons gross vehicle weight.**

A. It is unlawful for any person to operate any commercial vehicle exceeding three tons gross vehicle weight on the following portions of streets, hereafter referred to as "restricted streets":

1. Hearst Avenue between 6th Street and San Pablo Avenue;
2. Hearst Avenue between San Pablo Avenue and Sacramento Street;
3. 7th Street between University Avenue and Cedar Street;
4. 8th Street between University Avenue and Cedar Street;
5. 9th Street between University Avenue and Cedar Street;
6. 10th Street between University Avenue and Cedar Street;
7. Delaware Street between San Pablo Avenue and 6th Street;
8. Delaware Street between San Pablo Avenue and Sacramento Street;
9. Virginia Street between San Pablo Avenue and 6th Street;
10. Virginia Street between San Pablo Avenue and Sacramento Street;
11. Francisco Street between San Pablo Avenue and Sacramento Street;
12. Hopkins Street west of Gilman Street;
13. Blake Street between Shattuck Avenue and Telegraph Avenue;
14. Blake Street between San Pablo Avenue and Sacramento Street;
15. Parker Street between Shattuck Avenue and Telegraph Avenue;
16. Carleton Street between Shattuck Avenue and Telegraph Avenue;
17. Carleton Street between San Pablo Avenue and Sacramento Street;
18. Channing Way between San Pablo Avenue and Sacramento Street;
19. Derby Street between Shattuck Avenue and Telegraph Avenue;
20. Ward Street between Shattuck Avenue and Telegraph Avenue;
21. Stuart Street between Shattuck Avenue and Telegraph Avenue;
22. Oregon Street between Shattuck Avenue and Telegraph Avenue;
23. Parker Street between San Pablo Avenue and Sacramento Street;
24. Russell Street between Shattuck Avenue and Telegraph Avenue;
25. Howe Street between Ellsworth Street and Telegraph Avenue;
26. Fulton Street between Ashby Avenue and Dwight Way;
27. Ellsworth Street between Ashby Avenue and Dwight Way;
28. Dana Street between Ward Street and Dwight Way;

29. Spaulding Avenue between Dwight Way and Addison Street;
30. California Street between Dwight Way and University Avenue;
31. Jefferson Avenue between Dwight Way and University Avenue;
32. McGee Avenue between Dwight Way and University Avenue;
33. Roosevelt Avenue between Dwight Way and Addison Street;
34. McKinley Avenue between Dwight Way and Addison Street;
35. Addison Street between Sacramento Street and Martin Luther King Jr. Way;
36. Allston Way between Sacramento Street and Martin Luther King Jr. Way;
37. Bancroft Way between Sacramento Street and Martin Luther King Jr. Way;
38. Channing Way between Sacramento Street and Martin Luther King Jr. Way;
39. Grant Street between Dwight Way and University Avenue;
40. Cedar Street east of 6th Street;
41. Dwight Way between San Pablo Avenue and Martin Luther King Jr. Way;
42. Claremont Avenue between Ashby Avenue and Belrose Avenue;
43. Belrose Avenue between Claremont Avenue and Derby Street;
44. Derby Street between Belrose Avenue and Warring Street;
45. Warring Street between Derby Street and Dwight Way;
46. Piedmont Avenue between Dwight Way and Bancroft Way;
47. Milvia Street between Dwight Way and Hopkins Street;
48. The Uplands between Claremont Avenue and Tunnel Road;
49. Panoramic Way between Canyon Road and Berkeley/Oakland city limits.;
50. Kains Avenue between Virginia Street and Harrison Street;
51. Virginia Street between Shattuck Avenue and Martin Luther King Jr. Way,
52. Francisco Street between Shattuck Avenue and Martin Luther King Jr. Way,
53. Delaware Street between Shattuck Avenue and Martin Luther King Jr. Way,
54. Hearst Avenue between Shattuck Avenue and Martin Luther King Jr. Way,
55. Berkeley Way between Shattuck Avenue and Martin Luther King Jr. Way.
56. Tenth Street between University Avenue and Dwight Way;
57. Ninth Street between University Avenue and ~~Heinz Avenue~~Dwight Way;
58. Eighth Street between University Avenue and Dwight Way;
59. Seventh Street between University Avenue and Dwight Way;
60. Addison Street between San Pablo Avenue and Sixth Street;
61. Allston Way between San Pablo Avenue and Sixth Street;
62. Bancroft Way between San Pablo Avenue and Sixth Street;
63. Channing Way between San Pablo Avenue and Fourth Street;
64. Dwight Way between San Pablo Avenue and Sixth Street;
65. Camelia Street between Eighth Street and Ninth Street;
66. Eighth Street between Jackson Street and Camelia Street;
67. Ninth Street between Camelia Street and Cedar Street;
68. Virginia Street between Sacramento Street and Martin Luther King Jr. Way;
69. Virginia Street between Shattuck Avenue and Euclid Avenue;
70. Channing Way between Martin Luther King Jr. Way and Piedmont Avenue;
71. Heinz Avenue between Ninth Street and San Pablo Avenue;
72. Russell Street between San Pablo Avenue and Shattuck Avenue;

73. Russell Street between Telegraph Avenue and Claremont Avenue;

74. California Street between Hopkins Street and University Avenue;

75. California Street between Dwight Way and Russell Street;

76. King Street between Russell Street and Stanford Avenue;

77. Milvia Street from Dwight Way to Russell Street;

78. Bowditch Street from Bancroft Way to Dwight Way;

59.79. Hillegass Avenue from Dwight Way to Woolsey Street

B. All inter-city buses and tourist buses will be prohibited on these streets. School buses, emergency vehicles, and buses converted for use by disabled people will be allowed to use three-ton commercial truck weight limit routes.

C. The provisions of this section shall not apply to subsections 14.56.050 B and C.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



CONSENT CALENDAR  
September 28, 2021

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Taplin, Mayor Arreguín (co-author), Councilmember Hahn  
 (Co-Sponsor)  
 Subject: Resolution in Support of Afghan Refugees

RECOMMENDATION

Adopt a Resolution in support of refugees from Afghanistan.

FINANCIAL IMPLICATIONS

None.

BACKGROUND

Following the conclusion of the two-decade War in Afghanistan, the United States anticipates the immediate arrival of thousands of refugees fleeing the Taliban government. U.S. Sen. Alex Padilla (D-CA) has requested that the State Department streamline and expedite the issuance of special immigrant visas (SIVs) to evacuate refugees.<sup>1</sup> Governor Gavin Newsom has requested \$16.7 million in the state budget to aid resettling refugees.<sup>2</sup> The City of Berkeley must voice its support for these efforts.

CONTACT PERSON

Councilmember Taplin      Council District 2      510-981-7120

Attachments:

1: Resolution

---

<sup>1</sup> <https://www.padilla.senate.gov/wp-content/uploads/Afghan-Parole-Letter-8.25.21.pdf>

<sup>2</sup> Associated Press. (Sept. 4, 2021). "California Governor seeks \$16.7 Million in Aid for Afghan Refugees." Retrieved from <https://www.nbcbayarea.com/news/california/california-governor-seeks-16-7m-in-aid-for-afghan-refugees/2648391/>

RESOLUTION NO. ##,###-N.S.

RESOLUTION IN SUPPORT OF AFGHAN REFUGEES

WHEREAS, the ongoing uncertainty and violence in Afghanistan and the takeover of the Afghan government by the Taliban has created a humanitarian crisis, with rapidly deteriorating human rights and reductions in safety particularly for vulnerable individuals, including, but not limited to: women and girls, members of the LGBT community, those who have direct ties to the U.S. government and military, members of ethnic minority communities, those who are Shi'a Muslim, adherents of non-Muslim faiths, including those of Sikh and Hindu faiths, and individuals who work for or have ties to aid organizations; and;

WHEREAS, refugees and their families face a multitude of challenges when arriving in the United States and transitioning to a new life, including but not limited to; resettlement, language barriers, understanding cultural nuances, financial hardship, accessing education, finding work and legal status; and

WHEREAS, federal and state leaders in California, specifically in Alameda County, home to the largest concentration of Afghans and Afghan Americans in the United States and the greater Bay Area, have the unique and moral responsibility to welcome Afghan refugees in our communities, while honoring the commitments of the United States government, assisting in the evacuation of vulnerable groups, providing support to organizations who will serve the refugee community, and showing support for the Afghan community during this difficult time;

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley supports and welcomes refugees from Afghanistan into our community and urges our state and federal leaders to act immediately and with determination, and rightfully bring at-risk and vulnerable Afghan peoples and their families to the United States for safety and prosperity and be afforded full benefits to transition into American life; and encourages California to accept more, and house more, Afghan refugees than any other US State;

BE IT FURTHER RESOLVED that the Council of the City of Berkeley supports access to significant opportunities and benefits to individuals and families arriving from Afghanistan, including, but not limited to: immediate eligibility for reception and placement afforded under Special Immigrant Visa (SIV) and refugee status conditions within a week of arriving on US soil.





CONSENT CALENDAR  
September 28, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Ben Bartlett (Author), Mayor Jesse Arreguin (Co-Sponsor), Councilmember Taplin (Co-Sponsor), and Councilmember Kate Harrison (Co-Sponsor)

Subject: Accessible Recreation Center for Ashby BART East Parking Lot

RECOMMENDATION

Refer to the City Manager to explore the feasibility of incorporating an accessible recreation center as part of the development of the Ashby BART East Parking Lot.

BACKGROUND

South Berkeley could benefit from a possible joint non-profit housing and recreation proposal to be processed for the BART parking lot East of the Ed Roberts Campus (ERC).

There is potential for this site that to be dedicated to Berkeley residents who can live proudly with disabilities, and that provides a fully adaptive recreation center, all while remaining open to all members of the public. Paired with truly affordable housing units, this center will be accessible for residents who struggle with mental illness, physical impairments, and unhoused individuals or who are at-risk of homelessness. The center could also be well-equipped with on-site services as necessary. We hope that this development could also provide, as feasible, a right of return to previously displaced South Berkeley residents.

**RECREATIONAL COMPONENT:** The recreational side of this prospective facility should be created, developed, and led by a local recreation organization with great experience integrating adaptive sports programs for people who have physical disabilities. The City should be committed to leading a partnership of individuals and organizations to develop a facility that will provide community to persons with disabilities, along with reliable and permanent opportunities for fitness and recreational activities. Situated next to BART and the Ed Roberts Campus and built using universal design and green building principles, the facility will leverage public transit and existing services to provide broad access to the community of disabled Berkeley Residents.

The envisioned complex will be more than an athletic facility or recreation center; it will be a community hub, providing an inspirational environment for individuals with disabilities, offering regular opportunities for fitness, wellness, recreation, enjoyment and competition. The opportunity to merge with affordable housing only strengthens our vision. Recognizing the tremendous need for increased recreational programming for people with disabilities, this will give philanthropic organizations an opportunity to invest in South Berkeley to help cover the costs of the construction, management, and

maintenance of such a facility, due largely in part that there are few--if any--comparable facilities like the one we envision..

**HOUSING COMPONENT:** The recreational structure will be surrounded by considerably more affordable and accessible housing; the need for which has never been greater. Aside from our general housing crisis, there is a critical shortage of homes for those with disabilities and mental illnesses. Board and Care homes that have historically provided housing for the mentally ill are closing at an alarming rate. It should be noted that a proportion of all units on this campus should provide housing to serve this population. Staff and services for the special needs residents should also be included into the prospective bids submitted to the City Manager.

The number of housing units, their configuration, height and bulk, is yet to be determined, however it will evolve as the zoning and agreements between the City and BART are finalized. Funds from a variety of sources will be needed: Conventional financing, Section 8, and every available government and private source should be pursued--as is often the case with non-profit endeavors.

### CURRENT SITUATION

The push for affordable housing has been growing in the past few years. In September 2018, California authorized BART to construct housing on its property in order to address the housing crisis. Since then, there have been ongoing discussions between community members and city officials to clarify the planning process and provide a unified vision for how to best use the land. In December 2020, the City passed the Adeline Corridor plan, which aims to transform South Berkeley's housing landscape through the creation of affordable housing. To build off of this momentum, the City should explore incorporating an accessible recreation center into the development plan for the Ashby BART East Parking Lot.

### RATIONALE FOR RECOMMENDATION

The South Berkeley District is in dire need of development opportunities that bring together housing and recreation to build a stronger sense of community in our City. Ultimately, its goals align with the City's plans to expand access to affordable housing and, therefore, should be explored.

### FISCAL IMPACTS OF RECOMMENDATION

To be determined by staff upon further analysis after consideration of all bids submitted to the City Manager.

### CONTACT PERSON

Councilmember Ben Bartlett  
James Chang  
Aaron Sanchez

510-981-7130  
[jchang@cityofberkeley.info](mailto:jchang@cityofberkeley.info)  
510-981-7131



# BEN BARTLETT

CITY COUNCILMEMBER, DISTRICT 3

## ACTION CALENDAR

September 28, 2021

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Ben Bartlett (Author), Mayor Jesse Arreguin (Co-Sponsor)  
 and Councilmember Terry Taplin (Co-Sponsor)  
 Subject: Predevelopment Allocation, Ashby Recreation and Community Housing  
 (ARCH) Consortium

### RECOMMENDATION

Refer to staff to work with the Ashby Recreation and Community Housing (ARCH) Consortium to develop a planning grant for the Ashby BART East Parking Lot.

### POLICY COMMITTEE RECOMMENDATION

No final action was taken by the Budget & Finance Committee. The item is automatically returning to the Council agenda pursuant to the 120-day time limit for items referred to policy committees.

### BACKGROUND

A joint non-profit housing and recreation proposal is being proposed for the BART lot east of the Ed Robert's Campus (ERC). The proposal, ARCH (Ashby Recreation and Community Housing) envisions a state-of-the-art recreation facility coupled with deeply affordable housing. The partners are BORP (Bay Area Outreach & Recreation), EBSHC (East Bay Supportive Housing Collaborative) and the ERC. ARCH has a managing developer for the entire site and is contacting non-profit housing developers.

ARCH will be a destination for the Bay Area's disabled community providing a fully adaptive recreation center, including a warm pool, all also available to the public. This will be combined with a deeply affordable housing complex for those living with mental illness, those with physical disabilities, and persons who are homeless or at risk of homelessness." On-site services will be included as needed. The housing complex will provide, as feasible, a right of return for displaced South Berkeley residents.

RECREATIONAL COMPONENT: Bay Area Outreach & Recreation Program (BORP) has 45 years of providing adaptive sports and recreation for people with physical disabilities in the East Bay. We are committed to leading a partnership of individuals and organizations to develop a facility that will provide the disability community with reliable and permanent opportunities for fitness and recreational activities. Situated next to BART and the Ed Roberts Campus, and built using universal design and green building principles, the facility will leverage public transit and existing services to provide broad access to the disability community.

The envisioned complex will be more than an athletic facility or recreation center; it will be a community hub, providing an inspirational environment for individuals with disabilities, offering regular opportunities for fitness, wellness, recreation, enjoyment and competition. The opportunity to merge with affordable housing only strengthens our vision. Recognizing the tremendous need for increased recreational programming for

people with disabilities, the Wayne & Gladys Valley Foundation has generously made a \$5 million-dollar matching grant commitment to the BORP project.

**HOUSING COMPONENT:** The recreational structure will be surrounded by deeply affordable housing, the need for which has never been greater. Aside from our general housing crisis there is a critical shortage of homes for those with disabilities and mental illness. Board and Care homes have historically provided housing for the mentally ill and are closing at an alarming rate. A “slice” of the ARCH housing will serve this population and provide staff and services for the special needs residents.

The number of housing units, their configuration, height and bulk, is to be determined and will evolve as the zoning and agreements between the City and BART are finalized. The EBSHC envisions between 50 to 100 units of completely universal design. It is too early in the BART/City process to predict further. Funds from a variety of sources will be needed: Conventional financing, Section 8, and every government and private source will be pursued--as is often the case with non-profit endeavors.

### ACTIVITIES

ARCH members have been actively engaged in efforts to prevent homelessness and influencing critical policy decisions. In 2020 EBSHC worked successfully with Assemblyman David Chiu and State Senator Nancy Skinner to pass AB 2377, which requires Board and Care facilities to give the counties and cities in which they are located 6-month notice before closure, and local government the first opportunity to offer to purchase. Having stable and affordable living places, with supportive services when needed, is key to solving the problems of homelessness in our community.” A City of Berkeley predevelopment allocation will enable ARCH to create feasibility and architectural scenarios, assemble research and background materials, all necessary to apply for various funding from County, State and Federal sources and to respond to calls for proposals.

### CURRENT SITUATION

The push for affordable housing has been growing in the past few years. In September 2018, California authorized BART to construct housing on its property in order to address the housing crisis. Since then, there have been ongoing discussions between community members and city officials to clarify the planning process and provide a unified vision for how to best use the land. In December 2020, the City passed the Adeline Corridor plan, which aims to transform South Berkeley’s housing landscape through the creation of affordable housing. To build off of this momentum, the City should explore the feasibility of ARCH.

### RATIONALE FOR RECOMMENDATION

ARCH provides an opportunity to infuse recreational activities with housing. Ultimately, its goals align with the City’s plans to expand access to affordable housing and, therefore, should be explored.

### FISCAL IMPACTS OF RECOMMENDATION

To be determined by staff.

CONTACT PERSON

Councilmember Ben Bartlett  
James Chang

510-981-7130  
[jchang@cityofberkeley.info](mailto:jchang@cityofberkeley.info)





Susan Wengraf  
Councilmember District 6

CONSENT CALENDAR  
SEPTEMBER 28, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Susan Wengraf (Author), Councilmember Kate Harrison (Co-Sponsor), Councilmember Sophie Hahn (Co-Sponsor)

Subject: Adopt a Resolution Renewing and Re-Affirming Wildfire Prevention and Safety as a Top Priority in the City of Berkeley

RECOMMENDATION

Request that the Berkeley City Council adopt a resolution re-affirming that wildfire prevention and safety is a top priority in the City of Berkeley.

FINANCIAL IMPLICATIONS

None

BACKGROUND

The Berkeley City Council adopted Resolution No. 69,147-N.S. Declaring Wildfire Prevention And Safety As A Top Priority In The City of Berkeley on October 15, 2019. Since then, extreme weather events have increased in California. Wildfires are starting earlier and ending later each year. Climate change is considered a key driver of this trend. Warmer spring and summer temperatures, reduced snowpack, and earlier spring snowmelt create longer and more intense seasons that increase moisture stress on vegetation and make forests more susceptible to severe wildfire. The length of fire season is estimated to have increased by at least 75 days across the Sierras and seems to correspond with an increase in the extent of forest fires across the state.

Wildfires in 2021 have already exceeded the [2020 season](#), which itself was the largest season in the state's recorded history. As of July 11, more than three times as many acres have burned compared to the previous year through that date, with drought, [extreme heat](#), and reduced snowpack contributing to the severity of the fires. As of August 18, 2021, the state of California was facing unprecedented fire conditions as multiple fires including the [Dixie Fire](#), [McFarland Fire](#), [Caldor Fire](#), and multiple others rage on.

Berkeley's hills are subject to extremely high fire hazards due to proximity to park land where the fuel load is high; narrow, curvy roads, hampering access by first responders and obstructing efficient evacuation routes; steep topography and changing weather conditions. CalFire, has ranked Berkeley at the same risk level of many of the cities that have already been decimated by fire throughout the state<sup>i</sup>. Berkeley's risk to wildfire is designated as the highest in the state.<sup>ii</sup>

In 1923, a wildfire swept through north Berkeley, ultimately destroying approximately 600 homes, including churches, schools, libraries, and student living quarters. The fire traveled down to the intersection of Shattuck and Hearst. At that time, the population of Berkeley was 52,000, Today, the population density is 122,000.

In 1980, a fire in Berkeley's Wildcat Canyon destroyed 5 homes and then, on October 17, 1991, The Tunnel Fire consumed homes in southeast Berkeley and Oakland, claiming 25 lives and reducing approximately 3,000 structures to ashes. Had the wind direction not shifted, it is possible that many more people would have died and more of Berkeley would have been destroyed.

Berkeley's acknowledgment of the serious risk we face to the threats of wildfire is an essential component to a successful program to raise public awareness, and to educate and prepare our community. Our renewed commitment, by resolution, will allow us to move forward with projects and programs to achieve our shared goals of wildfire prevention and safety.

#### ENVIRONMENTAL SUSTAINABILITY

Wildfires negatively impact the ozone and air quality. Wildfires release large amounts of carbon dioxide, black carbon, brown carbon, and ozone precursors into the atmosphere. These emissions affect radiation, clouds, and climate on regional and even global scales. Wildfires also emit substantial amounts of volatile and semi-volatile organic materials and nitrogen oxides that form ozone and organic particulate matter.<sup>iii</sup>

#### CONTACT PERSON

Councilmember Wengraf

Council District 6

510-981-7160

#### Attachments:

1: Resolution

2: [Berkeley Very High Fire Hazard Severity Zone Map](#)



## RESOLUTION NO. ##,###-N.S

## RESOLUTION REAFFIRMING WILDFIRE PREVENTION AND SAFETY AS A TOP PRIORITY FOR THE CITY OF BERKELEY AND ENCOURAGING A VARIETY OF STRATEGIES TO PREVENT AND ABATE FIRE RISK

WHEREAS, on October 15, 2019, The City Council adopted Resolution NO. 69,147-N.S. declaring "Wildfire Prevention and Safety a Top Priority" for the City of Berkeley; and

WHEREAS, since 2019, wildfires have continued to grow larger and increase in intensity due to drought, climate change, and unmanaged and overgrown vegetation; and

WHEREAS, the East Bay Hills experienced a wildfire in 1991 which burned over 1,600 acres and 2,900 structures, causing 25 deaths and injuring 150 people; and

WHEREAS, the entire City of Berkeley is potentially at risk of wildfire, not only in the hill neighborhoods but in the lower neighborhoods between the hills and the Bay; and

WHEREAS, unhealthy and hazardous air quality is a consequence of wildfires, seriously impacting the health of all, and of particular concern, the health of our children, seniors and other vulnerable populations throughout the city; and

WHEREAS, Cal Fire has designated a large geographical area of Berkeley to be in a Very High Fire Hazard Severity Zone (VHFHSZ) within the Local Responsibility Area (LRA) where the City has the financial responsibility for wildfire protection; and

WHEREAS, when a wildfire destroys neighborhoods, the economic impact is devastating and impacts the City's quality of life, infrastructure, and ability to recover financially, and would adversely impact the City's ability to collect its current level of property and sales taxes and other revenue sources that comprise the City budget; and

WHEREAS, there is a housing shortage in Berkeley and wildfires could exacerbate this situation, in addition to concerns that when wildfires hit, financially disadvantaged people are disproportionately affected.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that it reaffirms its commitment to wildfire prevention and safety as a top priority and that discussions and efforts will continue locally and regionally on how best to prevent and abate fire hazards in the City, including but not limited to:

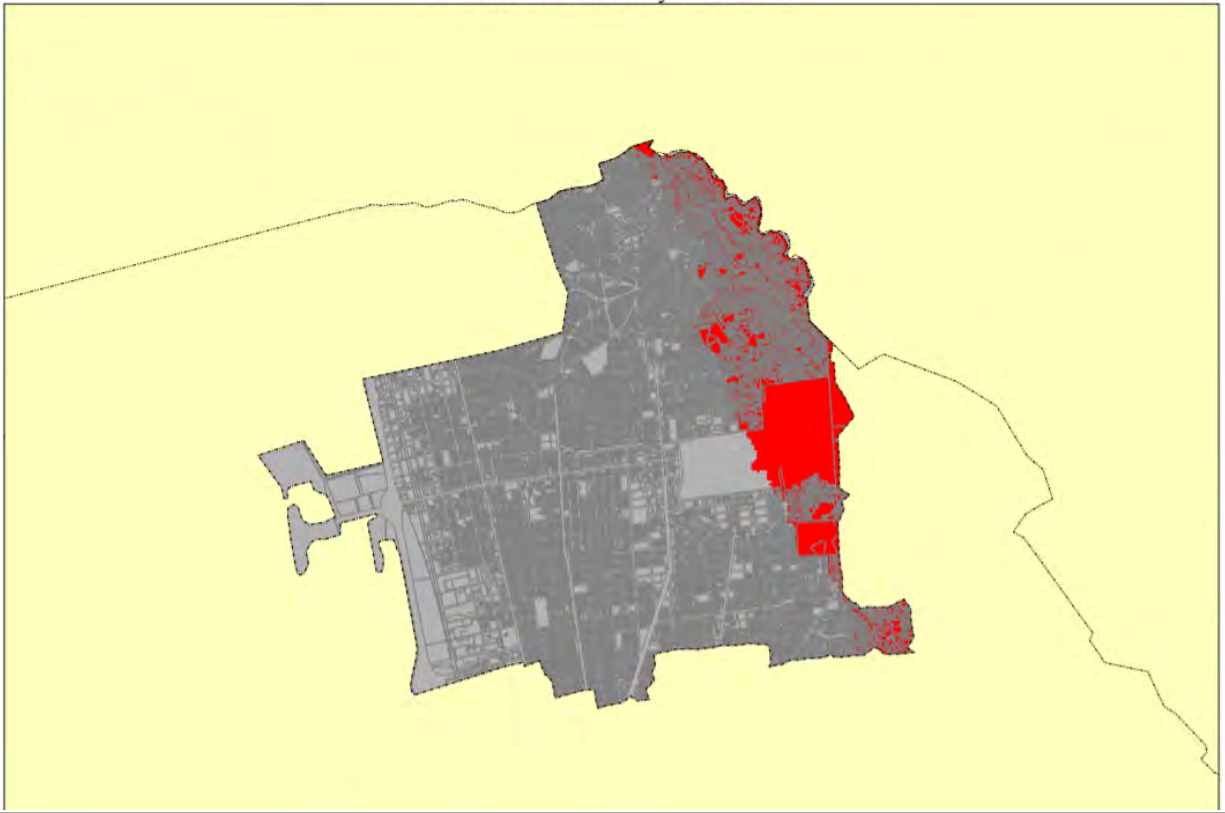
- Working collaboratively with neighboring agencies and jurisdictions on a comprehensive approach to fire prevention
- Seeking grants and other resources for wildfire education, prevention and mitigation
- Planning for and implementing policies for safe evacuation
- Implementing a Vegetation Management Plan to require the removal of flammable vegetation on private properties
- Updating building and fire codes as necessary to make structures more resistant to fire
- Reducing fuel loads in the VHFHSZ in city owned parks and other properties.

BE IT FURTHER RESOLVED that this resolution shall become effective immediately upon passage and adoption.



**Berkeley**

**Very High Fire Hazard Severity Zones in LRA**  
As Recommended by CAL FIRE



<sup>i</sup> <https://www.berkeleyside.org/2019/10/17/the-berkeley-hills-are-kindling-city-takes-steps-to-tackle-wildfire-dangers-safety-issues>

<sup>ii</sup> <https://egis.fire.ca.gov/FHSZ/>

<sup>iii</sup> <https://csl.noaa.gov/factsheets/csdWildfiresFIREX.pdf>





Susan Wengraf  
Councilmember District 6

CONSENT CALENDAR  
September 28, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Wengraf (Author), Councilmember Hahn (Co-Sponsor),  
Councilmember Taplin (Co-Sponsor), Councilmember Droste (Co-Sponsor)

Subject: Amending BMC Section 14.56.040 to reduce the commercial weight limit on  
Marin Ave

RECOMMENDATION

Adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) Section 14.56.040 to reduce the commercial vehicle weight limit from four tons gross weight to three tons gross weight on Marin Avenue between Grizzly Peak Boulevard and The Marin Fountain Circle.

FINANCIAL IMPLICATIONS

Staff time and sign replacement. Expense covered by approved FY 2022 funding allocation for "Traffic Control Mitigations to Protect Pedestrian Access to Cragmont Elementary School".

CURRENT SITUATION AND ITS EFFECTS

Reducing the commercial vehicle weight limit on Marin Ave between Grizzly Peak Boulevard and The Marin Fountain Circle will make Marin Avenue safer to walk on, drive on and live on. Marin Avenue is the steepest street in the City of Berkeley; one of the steepest in the entire Bay Area. Accidents on Marin Ave involving failed brakes and other mechanical failures have resulted in deaths, severe injuries and property damage. The heavier a vehicle the greater potential for catastrophic results from an accident.

On May 11, 2021, at approximately 1:40 PM, a driver of a sedan and his passenger died in a collision with a telephone pole. A second vehicle was impacted in the collision with injuries to the driver. A parked car was also hit. The reason for the accident is still under investigation but speculated to be some sort of mechanical failure. Cragmont Elementary students and parents were traumatized by witnessing the out of control car and hearing the resulting crash. Had the car been a high tonnage commercial vehicle the results would likely have been even more disastrous.

Councilmember Wengraf and Transportation staff participated in a Community Town Hall on Marin Ave Safety, hosted by the Cragmont School PTA on May 26, 2021. This item is a result of discussion and consideration of steps to improve safety on Marin Ave. The recent tragic deaths along with years of concern over traffic safety on Marin Ave bring this recommendation to Council.

BACKGROUND

The commercial vehicle weight limit for the upper section of Marin Ave, between The Marin Fountain Circle and Grizzly Peak Blvd. was set at four tons in 1957 and has remained unchanged. Weight limits were not set again in Berkeley until 1992 (BMC 14.56.050) when five-ton vehicle weight limits were set for sections of collector streets Gilman, Hopkins, The Alameda and MLK Jr. Way. In 2000 the passage of Ordinance No. 6535 – N.S. created a designated truck route system for commercial vehicles exceeding seven tons (BMC 14.56.060). It wasn't until 2004 that the City Council once again addressed commercial vehicle traffic on residential streets with the passage of Ordinance No. 6799 – N.S., which added BMC 14.56.070, and limited commercial vehicle weight limits to three tons on sections of 46 different streets. Marin Ave remains the only residential street in Berkeley with a four-ton weight limit.

Currently, Marin Ave remains the only residential street in Berkeley with a four-ton weight limit.

Marin Avenue is a major thoroughfare for entry and exit from I-80 to all of North Berkeley. It is also a residential street where residents walk up, down and across for exercise and pleasure. As mentioned, Cragmont Elementary School is located on Marin where students, parents and staff walk and cross the street to get to and from school, daily.

Reducing the commercial vehicle weight limit on Marin Avenue between Grizzly Peak Boulevard and The Marin Fountain Circle is consistent with the City's Vision Zero strategy to eliminate all traffic fatalities and severe injuries while increasing safe, healthy and equitable mobility for all. Vision Zero has designated lower Marin Ave, below Spruce street, as one of the City's "High Injury Streets" (16% of the City's streets) where 91% of severe and fatal collisions occurred between 2008 and 2018. While the latest fatal collision on Marin Avenue occurred on lower Marin, the car's speed began to get out of control in the steep, weight limited section of Marin, above Cragmont Elementary. Reducing the commercial vehicle weight limit on Marin Ave by one ton will make Marin Avenue safer for all.

ENVIRONMENTAL SUSTAINABILITY

Safer streets encourage lower emission forms of transportation such as walking, biking and use of public transportation.

CONTACT PERSON

Councilmember Wengraf                      Council District 6                      510-981-7160

Attachments:

- 1: Ordinance
- 2: [Commercial Vehicle Weight Limit Map](#)

ORDINANCE NO. -N.S.

**AMENDING BERKELEY MUNICIPAL CODE SECTION 14.56.040, PROHIBITING THE OPERATION OF COMMERCIAL VEHICLES ON MARIN AVENUE BETWEEN GRIZZLY PEAK BOULEVARD AND THE CIRCLE EXCEEDING FOUR TONS GROSS VEHICLE WEIGHT**

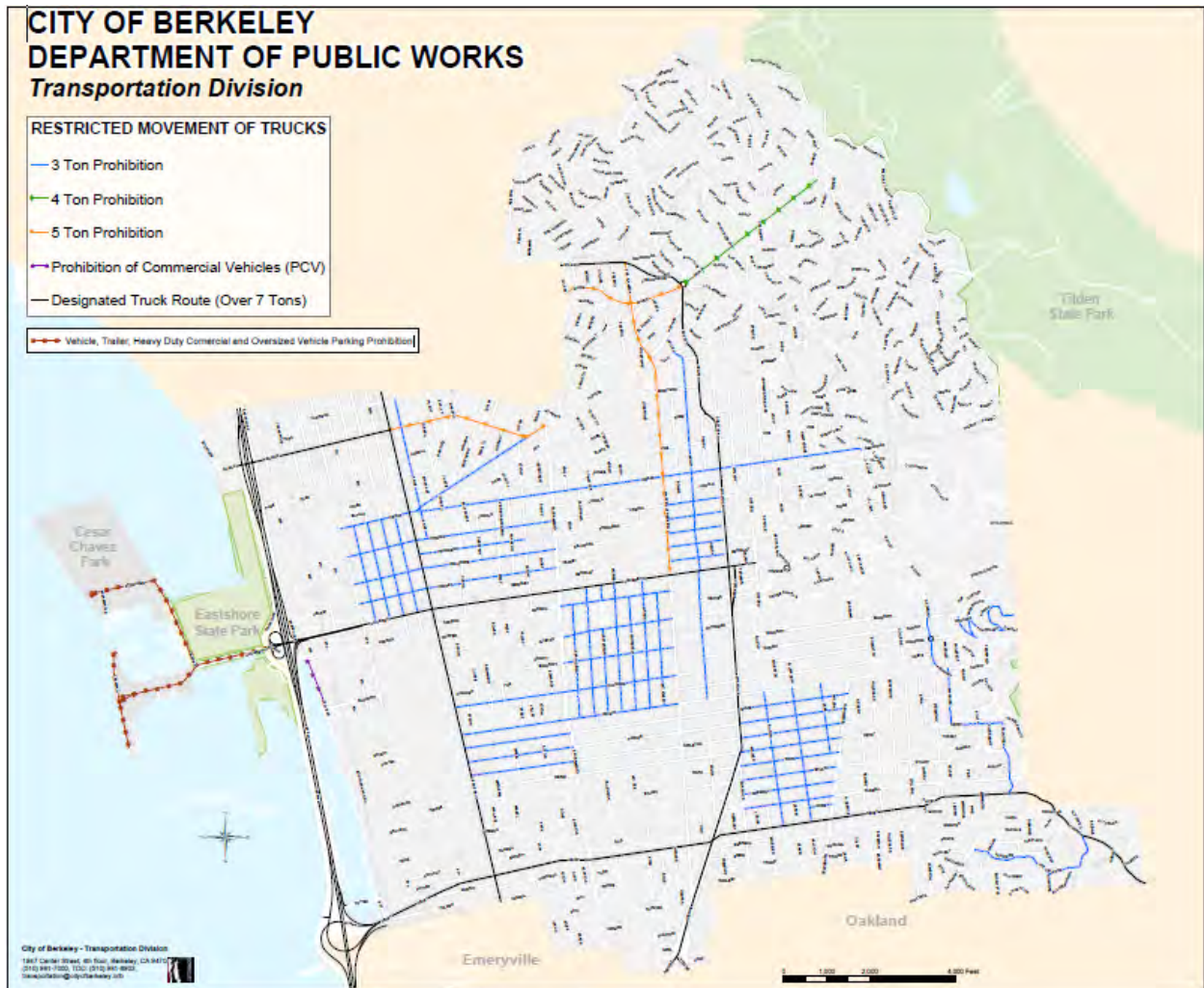
BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That subsection A of Section 14.56.040 of the Berkeley Municipal Code is amended to read as follows:

A. It is unlawful for any person to operate any commercial vehicle over three tons gross weight on Marin Avenue between Grizzly Peak Boulevard and The Marin Fountain Circle. Provided, however, that this section shall not apply to any commercial vehicle using said street when necessary for the purpose of making pickups or deliveries of goods, wares and merchandise from or to any building or structure located on said portion of Marin Avenue or for the purpose of delivering materials to be used in the actual and bona fide repair, alteration, remodeling or construction of any building or structure upon such portion of Marin Avenue for which a building permit has previously been obtained therefore, providing the operator of said commercial vehicle enters and leaves said portion of Marin Avenue by the cross street either above or below the point of pickup or delivery. Provided, further, that this section shall not apply to any vehicle owned by a public utility while necessarily in use in the construction, installation or repair of any public utility. (Ord. 6799-NS § 1 (part), 2004: Ord. 3600-NS § 1, 1957)

B. The prohibitions established herein shall not be effective until appropriate signs are erected indicating the streets affected by this section. (Ord. 6526-NS § 1, 2000: Ord. 6508-NS § 1, 1999: Ord. 6426-NS § 1, 1998: Ord. 6351-NS § 1, 1996: Ord. 6265-NS § 1, 1994: Ord. 6102-NS § 1, 1992)

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



<sup>i</sup> <https://www.berkeleyside.org/2021/05/13/fatal-crash-revives-traffic-safety-concerns-for-berkeley-hills-neighbors>





Office of the City Manager

PUBLIC HEARING  
September 28, 2021

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: ZAB Appeal: 2943 Pine Avenue, Use Permit #ZP2020-0107

### RECOMMENDATION

Conduct a public hearing, and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP2020-0107 to construct a 729 square-foot, second-story addition to an existing one-story 1,822 square-foot single-family dwelling, with an average height of 23 feet 1 inch, add a fifth bedroom, and legalize an existing 10-foot fence at the rear and left side, on a lot that is existing non-conforming for lot coverage, and dismiss the appeal.

### FINANCIAL IMPLICATIONS

None.

### CURRENT SITUATION AND ITS EFFECTS

On October 16, 2020, J. Allen Sayles Architects (“Applicant”) submitted an application for a Use Permit (UP) to add a 729 square-foot second-story addition to the existing one-story single-family dwelling on the 4,320-square-foot lot located at 2943 Pine Avenue.

On November 2, 2020, due to the Health Officer order requiring residents to shelter in place, City staff sent postcards to the owners and occupants of surrounding residences to notify them of the project, in place of the standard requirement that applicants submit neighbors’ signatures. Staff also posted a poster in front of the dwelling to notify residents of the project.

On November 12, 2020, staff received an email from the neighbor at 2918 Elmwood Court, in which they expressed concerns about shadows from the addition during the late spring and summer on their backyard and on an oak tree which straddles their property line. The applicant responded to the neighbor’s concerns in the November 24, 2020 resubmittal packet. On January 7, 2021, the neighbor at 2918 Elmwood Court emailed in response to the applicant’s letter, and said the shadow study and oak tree placement within the study was inaccurate.

On March 10, 2021, after several rounds of incomplete application comments from staff, the application was deemed complete. Notices of a public hearing were sent according to standard protocol for public review of the project.

On April 8, 2021, the Zoning Adjustments Board (ZAB) held a public hearing for the Use Permit. After considering the staff report and administrative record, and hearing public comments and holding discussion, the ZAB added Conditions #11 and #26 requiring the second floor bathroom window on the eastern façade facing the rear yard to be comprised of translucent glass (as shown in the building permit plans, and at all times) and approved #ZP2020-0107 by an 8-0-0-1 vote (Yes: Tregub, Duffy, Gaffney, Thompson, Olson, O’Keefe, Kim, Hauser; No: None; Abstain: None; Absent: Kahn).

On April 13, 2021, staff issued the notice of the ZAB decision, and on April 26, 2021, the City received two appeals of the ZAB decision with the City Clerk: the first was filed by Rena Rickles, on behalf of Debra Levinsky, the neighbor residing at 2918 Elmwood Court; and the second was filed by the residents of 2916 Elmwood Court. The Clerk set the matter for review by the Council on September 28, 2021.

On or before September 14, 2021, staff posted the public hearing notice at the site and two nearby locations, and mailed notices to property owners and occupants within 300 feet of the project site, and to all registered neighborhood groups that cover this area. The Council must conduct a public hearing to resolve the appeal.

### PROJECT DESCRIPTION

The subject property is located on Pine Avenue, between Ashby Avenue and Webster Street, west of Claremont Avenue. The subject property is 4,320 square feet in lot area, with an existing 1,822 square foot one-story single-family dwelling on the property. The site is non-conforming for lot size (a minimum lot size of 5,000 square feet is required in the R-1 Residential District), and the left (north) side and front setbacks are non-conforming. The buildings on the lot result in coverage of 42% (where 40% is permitted). There is an existing curb cut and driveway along the southern (right) side of the parcel, which leads to a one-car garage. There is an existing fence along the rear/east and right/north side property lines that exceeds 10 feet in height (where 6 feet is allowed).

The proposed project is a 729 square-foot second-story addition to the existing one-story single-family dwelling. The proposed addition would increase the average height of the existing residential dwelling unit from 15 feet 1 inch to 23 feet 1 inch. Although the existing dwelling has non-conforming front and left side yard setbacks, the addition would be outside of all required setbacks: it would be setback 21 feet 10 inches from the front property line, and 11 feet from the left side property line. The first floor would largely remain the same, with no exterior changes, and on the second floor a new bedroom and a study would be added.

The proposed study meets the definition of a bedroom from BMC Section 13.42.020, and therefore counts as a fifth bedroom on the parcel. Two small balconies would also be added on the new second floor, one on the south side overlooking the right side yard, and the other on the east side overlooking the rear yard.

### BACKGROUND

At the April 8, 2021 ZAB hearing, neighbors shared concerns about the shadow study, the roof pitch, the oak tree at 2916 Elmwood Court, privacy for the neighbors who face the rear yard of 2943 Pine, and the lack of outreach to neighbors. The ZAB voiced concerns about possible trimming of the existing oak tree on a neighbor's property, the rear bathroom window, and whether the rear bathroom window should be translucent. In response to those concerns, the ZAB added Conditions of Approval #11 and #26. They read as follows:

**11. *Second Floor Bathroom Window.*** *The second floor bathroom window on the eastern façade facing the rear yard shall be comprised of translucent glass. The material shall be noted in the applicable floor plan and elevation of the Building Permit plan set.*

**26. *Second Floor Bathroom Window.*** *The second floor bathroom window on the eastern façade facing the rear yard shall be comprised of translucent glass.*

On April 20, 2021 staff received a letter from the occupants of 2916 Elmwood Court, expressing concerns about the shadow impacts of the proposed second story addition on their dwelling, and clarifying the limited effects of the existing oak tree on the light they receive in comparison to the shadow studies prepared by the applicant. Staff mailed a response letter on April 22, 2021, notifying the occupants that the project had been approved by ZAB, and outlining the appeal procedure.

The issues raised in the appellants' letters and staff's responses follow. For the sake of brevity, the appeal issues are not re-stated in their entirety. Please refer to the attached appeal letters (Attachment 2, parts 1 and 2) for the full text.

Appeal Letter 1, Rena Rickles for Debra Levinsky, 2918 Elmwood Court

### **Issue #1: Lower the roof by 2 feet 2 inches and reduce the roof pitch to reduce shading in yards and main rooms.**

Response: The appellant contends that the proposed second-story roof should be redesigned to be consistent with the nearby dwellings, and reduce shadow impacts on neighbors. The height dimensioned in the plans is the average height, which is defined in the BMC, Chapter 23F.04, *Height of Building, Average: The vertical distance from the average level of the highest and lowest point of that portion of the lot covered by the building (or, in the case of residential additions, that portion of the lot covered by the*

*addition) to: in the cases of sloped, hipped or gabled roofs, the average height of the roof between the ridge and where the eave meets the plate...*

Height is averaged for hipped and gabled roofs since a pitched roof blocks less than a straight wall. The highest point of the proposed roof is 26 feet 5 inches, not 28 feet as the appellant states. The appellant states that 60% of the summer sun will be blocked by the new roof, but there is no data to support that claim.

Furthermore, the appellant states that the proposed roof pitch is inconsistent with the roof lines of other houses along Pine Avenue. However, Design Review does not apply to the R-1 Single-Family Residential District and there is no requirement in the BMC that a new roof be consistent with surrounding roofs. The design approved by ZAB has a stepped roof, which is consistent with the existing residence. Photos of neighboring dwellings submitted with revised plans on November 24, 2020 show similar stepped roof forms at nearby dwellings along Pine Avenue.

As described in the ZAB staff report dated April 8, 2021, the project conforms to the development standards of the R-1 District and the ZAB found that it meets the standards for non-detriment as described in the findings and conditions (Attachment 1 Exhibit A). Therefore, staff recommends the Council dismiss this appeal point.

**Issue #2: Privacy diminished by proposed second-story rear balcony. The “rear second-story balcony looms out over the rear yards of both 2918 and 2916 Elmwood Court.” The balcony should be removed or designed so it will not invade the privacy of 2918 and 2916 Elmwood Court.**

Response: The new rear second-floor balcony does not extend beyond the eaves of the new roof, therefore it would not be accurate to say that it looms over the rear yards of 2918 and 2916 Elmwood Court. Furthermore, the new second-floor terrace faces the neighbors at 2947 Pine Avenue.

The proposed rear balcony is outside of the 20-foot required rear setback. Furthermore, BMC Section 23D.04.030.A provides that balconies and decks may project 6 feet into the required rear yard. Therefore, staff recommends the Council dismiss this appeal point.

**Issue #3: Rear fence height. Appellant states that the rear fence is only 6 feet high on their side of the fence, and applicant states that the fence is 10 feet high, and thus they requested an Administrative Use Permit to legalize the existing fence. Appellant requests that the AUP language be amended to permit a fence “no higher than the existing fence.”**

Response: The appellant states that the fence is 6 feet high on their side, but they have not provided a survey or anything else to validate their claim on the fence height. The appellant requests the language of the AUP should be modified, but they have not

explained why the language of the AUP should be modified. Per BMC Section 23D.08.060.A.2: *no fence or other unenclosed accessory structure located on a property line or within the required yard area for a main building set forth in each residential District's provisions may exceed six feet in height at any point... unless so authorized by an AUP. The height of any such fence or structure shall be determined by measuring the vertical distance from the lowest existing grade point within a three foot radius of any point of such fence or structure, to the highest point of such structure.*

The survey provided by the applicant only indicates the elevation points at the base of structures such as the fence, garage, and house; the fence height is not described in the survey (Attachment 1 Exhibit B, page 14). The dimensions in the elevations provided by the applicant show that the height of the existing fence is 10 feet (Attachment 1 Exhibit B, pages 3, 8, 9). The ZAB found that the fence was acceptable for privacy and did not cause any detriment, and therefore approved it as part of the project. The project is required to comply with the approved plans, which show a 10-foot fence at the rear property line, approximately the same height as the detached garage. Therefore, staff recommends the Council dismiss this appeal point.

Appeal Letter 2, Julia Shen, 2916 Elmwood Court

**Issue #1: The addition at 2943 Pine Avenue blocks sunlight entering the dining area at 2916 Elmwood Court from the southeast in the early to later afternoons year-round.**

Response: Shadow studies submitted by the applicant and reviewed by staff and the ZAB document the addition's projected shadow angles and lengths at three times throughout the day during the summer and winter solstice. The project involves a new second floor, thus increased shadows would occur to the abutting properties to the rear (east) and left (north), and to the northwest across Pine Avenue. The studies show that the addition would create an incremental increase in shadows on two neighboring dwellings, 2932 Pine Avenue and 2939 Pine Avenue, as follows:

- Two hours after sunrise on the winter solstice, shadows on the east side of the dwelling at 2932 Pine Avenue would increase and cover a living room window.
- At noon on the winter solstice shadows on the south side of the dwelling at 2939 Pine Avenue would increase, and reach the bottom third of a bedroom window.
- Two hours before sunset on the winter solstice shadows on the south side of the dwelling at 2939 Pine Avenue would increase and cover the majority of a bedroom window, and would fully cover two office windows.

The appellant has not provided shadow studies that demonstrate their concerns. There is a small portion of new shading on the southwest corner of the rear yard of 2916 Elmwood Court two hours before sunset on the summer solstice, but existing and

proposed shadows from 2943 Pine Avenue are not cast onto the dwelling at 2916 Elmwood Court. Therefore, staff recommends the Council dismiss this appeal point.

**Issue #2: An arborist report is needed to define the Critical Root Zone and the “biological root zone” of the Coast Live Oak at 2918/2916 Elmwood Court. Story poles need to be installed. The shadow studies need to be validated.**

Response: The survey provided by the applicant (Attachment 1 Exhibit B, page 14) does not show the oak tree that straddles the property line between 2918 and 2916 Elmwood Court. The oak tree is shown in the shadow study (Attachment 1 Exhibit B, pages 3 and 6). In Debra Levinsky’s email to staff on January 7, 2021 she states that the oak tree is halfway between the outside of her home and her rear property line, just north of the side property line separating 2918 and 2916 Elmwood Court.

Per page 10 of [Zoning Project Application Submittal Requirements](#) an arborist report is required for construction activity within the drip line of a Coast Live Oak with a circumference of at least 18 inches at 4 feet above the ground (or at least 26 inches aggregate circumference for a multi-stemmed tree). The proposed second story addition does not expand the footprint of the existing dwelling, and the addition is outside of the 20-foot required rear setback. No evidence has been provided to indicate that construction of the proposed addition would be within the drip line of the oak tree at 2916 Elmwood Court, and thus an arborist report is not required.

Per page 10 of [Zoning Project Application Submittal Requirements](#) story poles are required for new main buildings and additions exceeding 14 feet in average height in the Hillside Overlay District. This project is not in the Hillside Overlay. At the project planner’s discretion story poles may be required for projects outside of the Hillside Overlay when there is a view concern, but views were not discussed prior to or during the ZAB hearing.

The shadow studies prepared by the applicant comply with the City’s [instructions](#) (and are discussed under appeal issue #1 above). An arborist report, story poles, and additional shadow studies are not applicable. Therefore, staff recommends the Council dismiss this appeal point.

**ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS**

The project approved by the ZAB is in compliance with all applicable State and local environmental requirements, would be located in a transit-rich area, and would be built and operated according to current codes for energy conservation, waste reduction, low toxicity, and other factors.

**RATIONALE FOR RECOMMENDATION**

The ZAB considered all of the information received from staff, the applicant, the appellants, and the neighbors, and determined that the project is consistent with the zoning ordinance and applicable policies of the General Plan, and would not result in

detrimental impacts to residents, adjacent properties, the surrounding area, or to the general welfare of the city.

Staff believes that the ZAB considered and discussed the evidence presented at the hearing, and acted within its purview to approve the proposed project. None of the issues raised on appeal are different from those raised at the ZAB hearing. Therefore, staff recommends that the City Council uphold the ZAB decision to approve the second-story addition with an average height of 23 feet 1 inch, fifth bedroom, and 10-foot fence at the rear and left side, on a lot that is existing non-conforming for lot coverage and certain setbacks, with the ZAB-approved conditions of approval related to the second-floor bathroom window.

ALTERNATIVE ACTIONS CONSIDERED

Pursuant to BMC Section 23B.32.060.D, the Council may (1) continue the public hearing, (2) reverse, affirm, or modify the ZAB's decision, or (3) remand the matter to the ZAB.

Action Deadline:

Pursuant to BMC Section 23B.32.060.G, if the disposition of the appeal has not been determined within 30 days from the date the public hearing was closed by the Council (not including Council recess), then the decision of the Board shall be deemed affirmed and the appeal shall be deemed denied.

CONTACT PERSONS

Jordan Klein, Director, Planning & Development Department, (510) 981-7534  
Steven Buckley, Land Use Planning Manager, (510) 981-7411  
Allison Riemer, Project Planner, (510) 981-7433

Attachments:

- 1: Resolution
  - Exhibit A: Findings and Conditions
  - Exhibit B: Project Plans, dated March 10, 2021
- 2: Appeal Letters, received April 26, 2021
- 3: ZAB Staff Report, dated April 8, 2021
- 4: Index to Administrative Record
- 5: Administrative Record
- 6: Public Hearing Notice

RESOLUTION NO. ##,###-N.S.

UPHOLD THE ZONING ADJUSTMENTS BOARD (ZAB) DECISION TO APPROVE USE PERMIT #ZP2020-0107 TO CONSTRUCT A 729 SQUARE-FOOT, SECOND-STORY ADDITION TO AN EXISTING ONE-STORY 1,822 SQUARE-FOOT SINGLE-FAMILY DWELLING, WITH AN AVERAGE HEIGHT OF 23 FEET 1 INCH, ADD A FIFTH BEDROOM, AND LEGALIZE AN EXISTING 10-FOOT FENCE AT THE REAR AND LEFT SIDE, ON A LOT THAT IS EXISTING NON-CONFORMING FOR LOT COVERAGE, AND DISMISS THE APPEAL

WHEREAS, on October 16, 2020, J. Allen Sayles Architects (“Applicant”) submitted an application for a Use Permit (UP) to add a 729 square-foot second-story addition to the existing one-story single-family dwelling on the 4,320-square-foot lot located at 2943 Pine Avenue; and

WHEREAS, on March 10, 2021, staff deemed this application complete and determined that the project is categorically exempt from the California Environmental Quality Act (“CEQA”) under Section 15301 (“Existing Facilities”) and Section 15303 (“New Construction or Conversion of Small Structures”) of the CEQA Guidelines; and

WHEREAS, on March 25, 2021 staff posted the ZAB Notice of Public Hearing at the site in three locations and mailed 82 notices to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations; and

WHEREAS, on April 8, 2021, the ZAB held a public hearing in accordance with BMC Section 23B.32.030, and approved the application with Conditions; and

WHEREAS, on April 13, 2021, staff issued the notice of the ZAB decision; and

WHEREAS, on April 26, 2021, Rena Rickles, on behalf of Debra Levinsky, and Julia Shen filed appeals of the ZAB decision with the City Clerk; and

WHEREAS, on or before September 14, 2021, staff posted the public hearing notice at the site in three locations and mailed notices to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations; and

WHEREAS, on September 28, 2021, the Council held a public hearing to consider the ZAB’s decision, and, in the opinion of this Council, the facts stated in or ascertainable from the public record, including the staff report and comments made at the public hearing, warrant approving the project.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Council hereby adopts the findings for approval made by the ZAB in Exhibit A, affirms the decision of the ZAB to approve Use Permit #ZP2020-0107, and dismisses the appeal.



Exhibits

A: Findings and Conditions

B: Project Plans, dated March 10, 2021

---

# FINDINGS AND CONDITIONS

APRIL 8, 2021

## 2943 Pine Avenue

**Use Permit #ZP2020-0107 to construct a 729 sq. ft., second-story addition to an existing one-story 1,822 sq. ft. single-family dwelling, with an average height of 23 ft. 1 in., add a fifth bedroom, and legalize an existing 10 ft. fence at the rear and left side, on a lot that is existing non-conforming for lot coverage.**

### PERMITS REQUIRED

---

- Use Permit, under Berkeley Municipal Code (BMC) 23C.16.070.C, to construct an addition to a dwelling that is non-conforming by reason of violation of the maximum allowable lot coverage
- Administrative Use Permit, under BMC Section 23D.16.030, to construct a major residential addition
- Administrative Use Permit, under BMC Section 23D.16.050.A, to add a fifth bedroom
- Administrative Use Permit, under BMC Section 23D.16.070.C, to allow a residential addition which exceeds 14 feet in average height
- Administrative Use Permit pursuant to BMC Section 23D.08.060 for a fence within the required side and rear yards over six feet in height

### I. CEQA FINDINGS

---

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15301 (“Existing Facilities”) and Section 15303 (“New Construction or Conversion of Small Structures”) of the CEQA Guidelines.
2. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

### II. FINDINGS FOR APPROVAL

---

1. As required by Section 23B.32.040.A of the BMC, the project, under the circumstances of this particular case existing at the time at which the application is granted, will not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because the proposed project will conform to the applicable provisions of the Berkeley Municipal Code including height, number of stories, setbacks, usable open space, and parking established in BMC Section 23D.16.070 (Development Standards). The proposed development is permissible because: (1) the proposed addition conforms to the R-1 District standards, including yard requirements, and average height, and does not worsen any non-conforming condition; (2) the proposed project recognizes and

adheres to an existing pattern of development by maintaining the single-family use of the property; and (3) protects adjacent neighbors from unreasonable obstructions of sunlight, air, and views, since the addition is outside of all required setbacks.

2. While the project increases the number of bedrooms on this parcel, as defined in BMC Section 13.24.020 (Definitions), from three to five, the addition of a fifth bedroom would provide more room for residents within the single-family residence and would not result in an increase in dwelling unit density.
3. The existing fence is 10 feet in height, along the north and rear property lines, and ends near the garage at the back of the lot. The portion of the fence in front of the house is less than 6 feet in height. The fence provides privacy and security for the residents.

### **III. OTHER FINDINGS FOR APPROVAL**

---

1. As required by Section 23C.04.070 of the BMC, the Zoning Adjustments Board finds that the residential addition to a non-conforming structure on a lot that is non-conforming by reason of the lot coverage is permitted because the existing use of the property is conforming, the addition complies with all applicable laws (i.e. development standards), and will not increase the lot coverage or exceed the height limit. Specifically, the proposed addition is located over existing covered area, and therefore, does not increase the non-conforming lot coverage. Additionally, the addition will be below the average height limit of 28 feet, with an average height of 23 feet 1 inch.
-

#### **IV. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS**

The following conditions, as well as all other applicable provisions of the Zoning Ordinance, apply to this Permit:

**1. Conditions Shall be Printed on Plans**

The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions.' *Additional sheets* may also be used if the *second* sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

**2. Applicant Responsible for Compliance with Conditions**

The applicant shall ensure compliance with all of the following conditions, including submittal to the project planner of required approval signatures at the times specified. Failure to comply with any condition may result in construction being stopped, issuance of a citation, and/or modification or revocation of the Use Permit.

**3. Uses Approved Deemed to Exclude Other Uses (Section 23B.56.010)**

- A. This Permit authorizes only those uses and activities actually proposed in the application, and excludes other uses and activities.
- B. Except as expressly specified herein, this Permit terminates all other uses at the location subject to it.

**4. Modification of Permits (Section 23B.56.020)**

No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Board, except that the Zoning Officer may approve changes that do not expand, intensify, or substantially change the use or building.

Changes in the plans for the construction of a building or structure, may be modified prior to the completion of construction, in accordance with Section 23B.56.030.D. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project.

**5. Plans and Representations Become Conditions (Section 23B.56.030)**

Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

**6. Subject to All Applicable Laws and Regulations (Section 23B.56.040)**

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments.

**7. Exercised Permit for Use Survives Vacancy of Property (Section 23B.56.080)**

Once a Permit for a use is exercised and the use is established, that use is legally recognized, even if the property becomes vacant, except as set forth in Standard Condition #8, below.



**Standard Construction-related Conditions Applicable to all Projects:**

**12. Transportation Construction Plan.** The applicant and all persons associated with the project are hereby notified that a Transportation Construction Plan (TCP) is required for all phases of construction, particularly for the following activities:

- Alterations, closures, or blockages to sidewalks, pedestrian paths or vehicle travel lanes (including bicycle lanes);
- Storage of building materials, dumpsters, debris anywhere in the public ROW;
- Provision of exclusive contractor parking on-street; or
- Significant truck activity.

The applicant shall secure the City Traffic Engineer's approval of a TCP. Please contact the Office of Transportation at 981-7010, or 1947 Center Street, and ask to speak to a traffic engineer. In addition to other requirements of the Traffic Engineer, this plan shall include the locations of material and equipment storage, trailers, worker parking, a schedule of site operations that may block traffic, and provisions for traffic control. The TCP shall be consistent with any other requirements of the construction phase.

Contact the Permit Service Center (PSC) at 1947 Center Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dashboard permits). Please note that the Zoning Officer and/or Traffic Engineer may limit off-site parking of construction-related vehicles if necessary to protect the health, safety or convenience of the surrounding neighborhood. A current copy of this Plan shall be available at all times at the construction site for review by City Staff.

- 13.** Construction activity shall be limited to between the hours of 8:00 a.m. and 6:00 p.m. on Monday through Friday, and between 9:00 a.m. and noon on Saturday. No construction-related activity shall occur on Sunday or on any Federal Holiday.
- 14.** If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.
- 15.** Subject to approval of the Public Works Department, the applicant shall repair any damage to public streets and/or sidewalks by construction vehicles traveling to or from the project site.
- 16.** All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter in thickness and secured to the ground.
- 17.** All active construction areas shall be watered at least twice daily, and all piles of debris, soil, sand or other loose materials shall be watered or covered.
- 18.** Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.
- 19.** Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.
- 20.** The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way.

21. The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.
22. Any construction during the wet season shall require submittal of a soils report with appropriate measures to minimize erosion and landslides, and the developer shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.

**Prior to Final Inspection or Issuance of Occupancy Permit:**

---

23. Compliance with Conditions. The project shall conform to the plans and statements in the Use Permit. The developer is responsible for providing sufficient evidence to demonstrate compliance with the requirements throughout the implementation of this Use Permit.
24. Compliance with Approved Plan. The project shall conform to the plans and statements in the Use Permit. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated March 10, 2021, except as modified by conditions of approval.

**At All Times:**

---

25. Exterior Lighting. All exterior lighting shall be energy efficient where feasible; and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
  26. Second Floor Bathroom Window. The second floor bathroom window on the eastern façade facing the rear yard shall be comprised of translucent glass.
-

GENERAL NOTES

- 1. ALL WORK SHALL COMPLY WITH THE 2019 CALIFORNIA BUILDING CODE, 2019 CALIFORNIA RESIDENTIAL CODE, 2019 CALIFORNIA ENERGY CODE, 2019 CALIFORNIA PLUMBING CODE, 2019 CALIFORNIA MECHANICAL CODE, 2019 CALIFORNIA ELECTRICAL CODE, 2019 CALIFORNIA GREEN BUILDING STANDARDS CODE, AND ALL APPLICABLE STATE, COUNTY, AND CITY CODES.
- 2. CONTRACTOR SHALL FAMILIARIZE HERSELF/HIMSELF WITH THE ACTUAL SITE CONDITIONS PRIOR TO BIDDING, AND FOR ANY UNIQUE CIRCUMSTANCES OR DISCREPANCIES THAT MAY EXIST.
- 3. DIMENSIONS, UNLESS OTHERWISE SHOWN, ARE TO STUDLINE, ROUGH CONCRETE OR CONCRETE.
- 4. CONTRACTORS SHALL VERIFY ALL DIMENSIONS PRIOR TO THE FABRICATION OF ANY WORK. DO NOT SCALE DRAWINGS, ONLY WRITTEN DIMENSIONS ARE TO BE USED. ANY ERRORS AND/OR DISCREPANCIES SHALL BE BROUGHT TO THE ATTENTION OF THE ARCHITECT IN WRITING IMMEDIATELY. UNLESS REPORTED, CONTRACTOR SHALL BE RESPONSIBLE FOR ANY DIMENSIONAL INCONSISTENCIES AND PROBABLE REMEDIAL WORK.
- 5. IN THE EVENT THAT CERTAIN FEATURES OF THE CONSTRUCTION ARE NOT SHOWN, THEN THEIR CONSTRUCTION SHALL BE OF THE SAME CHARACTER AS FOR SIMILAR CONDITIONS WHICH ARE SHOWN OR CALLED FOR AS IN ADJACENT SPACES (I.E. CLOSETS MATCH THE SPACE SERVED ETC.).
- 6. CURBS AND CURB CUTS TO BE PER CITY STANDARDS. INSPECT, REPAIR & REPLACE DAMAGED CURBS & CURB CUT PER CITY REQUIREMENTS.
- 7. THE FINISHES FOR THIS BUILDING, INCLUDING BUT NOT LIMITED TO, FLOOR COVERINGS, PAINT, CABINET TREATMENT, LIGHT FIXTURES ETC., ARE THE RESPONSIBILITY OF THE CONTRACTOR.
- 8. SEPARATE PERMIT SHALL BE OBTAINED FOR ELECTRICAL, HEATING, PLUMBING, AND FIRE SPRINKLER INSTALLATIONS, ETC. CONTRACTOR SHALL PROVIDE DESIGN/SCHEMATICS AND PAY REQUIRED PERMITS. CONTRACTOR WILL BE COMPENSATED FOR GENERAL BUILDING PERMIT COSTS.
- 9. CONTRACTOR SHALL COORDINATE BETWEEN THE VARIOUS TRADES/SUBCONTRACTORS.
- 10. WHENEVER REQUIRED, CONTRACTOR SHALL OBTAIN OWNER'S APPROVAL, PRIOR TO INSTALLATION OF FIXTURES, HARDWARE, FINISHES, ETC. SUBMITTALS ARE REQUIRED FOR ALL EXPOSED FINISHES.
- 11. CONTRACTOR SHALL CONTACT USA (1-800-227-2600) PRIOR TO STARTING EXCAVATION, GRADING, OR TRENCHING. CONTRACTOR SHALL INFORM UTILITY, TELEPHONE COMPANIES, ETC. PRIOR TO COMMENCEMENT OF WORK. CONTRACTOR SHALL BE RESPONSIBLE FOR THE HOOK-UP AND START-UP OF ALL UTILITIES.
- 12. ALL MATERIALS TO BE REMOVED FROM THE SITE SHALL BE DISPOSED OF OR RECYCLED BY THE CONTRACTOR IN A LEGAL MANNER.
- 13. CONTRACTOR SHALL MAINTAIN COMPLETE STRUCTURAL INTEGRITY AT ALL TIMES AND SHALL PROVIDE ADEQUATE PRECAUTION FOR THE SAFETY OF PUBLIC LIFE AND PROPERTY.
- 14. INSTALL SMOKE DETECTORS, CARBON MONOXIDE DETECTORS, ALARMS, AND EXIT SIGNS AS REQUIRED PER CITY, COUNTY, AND FIRE MARSHALL STANDARDS.
- 15. SPARK ARRESTOR ON ALL WOOD BURNING FIREPLACES REQUIRED, INCLUDING EXISTING FIREPLACES IF REQUIRED BY ORDINANCE.
- 16. IF PROJECT IS IN A HOME OWNERS' ASSOCIATION, THEN CONTRACTOR IS TO FAMILIARIZE HERSELF OR HIMSELF WITH ITS REQUIREMENTS.



PROJECT INFORMATION

|                          |                                                                                                |
|--------------------------|------------------------------------------------------------------------------------------------|
| <b>PROJECT ADDRESS</b>   | 2943 PINE AVENUE<br>BERKELEY, CA 94705                                                         |
| <b>APN</b>               | 052-1565-080                                                                                   |
| <b>OCCUPANCY</b>         | R-3                                                                                            |
| <b>CONSTRUCTION TYPE</b> | VB                                                                                             |
| <b>ZONING</b>            | R-1                                                                                            |
| <b>SCOPE</b>             | PROPOSED SECOND STORY ADDITION OF 729 SQ. FT. TO INCLUDE NEW MASTER SUITE, LAUNDRY, AND STUDY. |

PROJECT DIRECTORY

|                   |                                                                                                                                  |
|-------------------|----------------------------------------------------------------------------------------------------------------------------------|
| <b>OWNER</b>      | <b>ROBERT &amp; ANNE NACHTWEY</b><br>2943 PINE AVE.<br>BERKELEY, CA 94705   925-818-7739                                         |
| <b>ARCHITECT</b>  | <b>J. ALLEN SAYLES ARCHITECTS</b><br>3249 MT DIABLO CT #202<br>LAFAYETTE, CA 94549   925-937-3986<br>allen@jasarch.com           |
| <b>CIVIL</b>      | <b>DEBOLT CIVIL ENGINEERING</b><br>811 SAN RAMON VALLEY BLVD #201<br>DANVILLE, CA 94526   925-837-3780<br>office@deboltcivil.com |
| <b>CONTRACTOR</b> | TBD                                                                                                                              |

3249 Mt Diablo Ct  
Suite 202  
Lafayette, CA 94549  
allen@jasarch.com  
925-937-3986  
© J. Allen Sayles Architects, 2020

J. Allen Sayles  
Architects

TITLE SHEET

ABBREVIATIONS

|                                    |                                |
|------------------------------------|--------------------------------|
| A.D. AREA DRAIN                    | M.C. MEDICINE CABINET          |
| ADJ. ADJUSTABLE                    | MATL. MATERIAL                 |
| ADU. ACCESSORY DWELLING UNIT       | MAX. MAXIMUM                   |
| ALT. ALTERNATE                     | MECH. MECHANICAL               |
| ALUM. ALUMINUM                     | MFR. MANUFACTURER              |
| ARC. ARC FAULT CIRCUIT INTERRUPTER | MH. MAIN HOUSE                 |
| ARCH. ARCHITECT, ARCHITECTURE      | MIN. MINIMUM                   |
| BD. BOARD                          | MIR. MIRROR                    |
| BET. BETWEEN                       | MISC. MISCELLANEOUS            |
| BLDG. BUILDING                     | (N) OR N. NORTH                |
| BLKG. BLOCKING                     | NEC. NECESSARY                 |
| BOT. BOTTOM                        | N.I.C. NOT IN CONTRACT         |
| BSMT. BASEMENT                     | NO. # NUMBER                   |
| B.W. BOTTOM OF WALL                | N.T.S. NOT TO SCALE            |
| C.A.R. COLD AIR RETURN             | O. OVER                        |
| CAB. CABINET                       | O.A. OVERALL                   |
| C/C CENTER TO CENTER               | OBS. OBSCURE                   |
| CEM. CEMENT                        | O.C. ON CENTER                 |
| CFM CUBIC FT. PER MINUTE           | OPG. OPENING                   |
| CLG. CEILING                       | OPP. OPPOSITE                  |
| CL. CLOSET                         | OPP. HD. OPPOSITE HANG         |
| CLR. CLEAR                         | P D.L. PERFORATED DRAIN LINE   |
| CMU CONCRETE MASONRY UNIT          | PERF. PERFORATED               |
| CNTR. CENTER                       | PLAS. PLASTER                  |
| C.O. CLEAN OUT                     | PL. LAM. PLASTIC LAMINATE      |
| COL. COLUMN                        | PL. PLATE OR PROPERTY LINE     |
| CONC. CONCRETE                     | PLYWD. PLYWOOD                 |
| CONSTR. CONSTRUCTION               | PR. PAIR                       |
| CONT. CONTINUOUS                   | PRCST. PRECAST                 |
| CTR. CENTER                        | PT. POINT                      |
| DBL. DOUBLE                        | QUAN. QUANTITY                 |
| DEPT. DEPARTMENT                   | (R) REUSE                      |
| DET. DETAIL                        | R.D. ROOF DRAIN                |
| DIAM. DIAMETER                     | RAD. RADIUS                    |
| DIM. DIMENSION                     | REF. REFRIGERATOR              |
| DISP. DISPOSAL                     | REQD. REQUIRED                 |
| DN. DOWN                           | RGTR. REGISTER                 |
| DR. DOOR                           | R.H. ROBE HOOK                 |
| DS. DOWNSPOUT                      | R.O. ROUGH OPENING             |
| DW. DISHWASHER                     | RW. RETAINING WALL             |
| DWG. DRAWING                       | RWD. REDWOOD                   |
| DWR. DRAWER                        | R.W.L. RAIN WATER LEADER       |
| (E) OR E. EXISTING                 | S.C. SOLID CORE                |
| EA. EACH                           | S.D. SOAP DISPENSER            |
| ELEC. ELECTRICAL                   | S.S.D. SEE STRUCTURAL DRAWINGS |
| EL. ELEVATION                      | SEC. SECURITY                  |
| ELEV. ELEVATOR                     | SECT. SECTION                  |
| ENCL. ENCLOSURE                    | S.F. SQUARE FOOT               |
| EQ. EQUAL                          | SHT. SHEET                     |
| EQUIP. EQUIPMENT                   | SHTG. SHEATHING                |
| E.W. EACH WAY                      | SIM. SIMILAR                   |
| EXTR. EXTERIOR                     | SPEC. SPECIFICATION            |
| F.D. FLOOR DRAIN                   | SQ. SQUARE                     |
| FDN. FOUNDATION                    | SIS STAINLESS STEEL            |
| F.F. FINISH FLOOR                  | STD. STANDARD                  |
| F.G. FINISHED GRADE                | STL. STEEL                     |
| FIN. FINISH                        | STRUCT. STRUCTURAL             |
| FLASH. FLASHING                    | SYM. SYMMETRICAL               |
| FLR. FLOORING                      | T.B. TOWEL BAR                 |
| FLUOR. FLUORESCENT                 | T.O.C. TOP OF CURB             |
| F.O.S. FACE OF STUD                | T.O.P. TOP OF PLATE            |
| FRMG. FRAMING                      | T.D. TIGHT DRAIN LINE          |
| FRPF. FIREPROOF                    | TEL. TELEPHONE                 |
| FTG. FOOTING                       | TEMP. TEMPERED                 |
| FUR. FURNISHING                    | T&G. TONGUE AND GROOVE         |
| GA. GAUGE                          | TH. THICK                      |
| GALV. GALVANIZED                   | THK. THICK                     |
| GEN. GENERAL                       | T.P. TOILET PAPER DISPENSER    |
| G.F.I. GROUND FAULT INTERRUPTER    | T.W. TOP OF WALL               |
| GL. GLASS, GLAZING                 | TYP. TYPICAL                   |
| G.L.B. GLUE LAM BEAM               | UF. UNDER                      |
| GLU. LAM. GLUE LAMINATED           | UNF. UNFINISHED                |
| GRD. GROUND                        | U.O.N. UNLESS OTHERWISE NOTED  |
| GYP. BD. GYPSUM BOARD              | VERT. VERTICAL                 |
| H.B. HOSE BIB                      | V.I.F. VERIFY IN FIELD         |
| H.C. HOLLOW CORE                   | W. WITH                        |
| H.D. HOLD DOWN                     | W.A.R. WARM AIR REGISTER       |
| HDWD. HARD WOOD                    | W.C. WATER CLOSET              |
| HDWE. HARDWARE                     | WD. WOOD                       |
| HORIZ. HORIZONTAL                  | WDV. WINDOW                    |
| HR. HOUR                           | WH. WATER HEATER               |
| HT. HEIGHT                         | W/O. WITHOUT                   |
| I.D. INSIDE DIMENSION              | WP. WEATHER PROTECTED          |
| IN. INCH                           | WT. WEIGHT                     |
| INCL. INCLUDING                    | WWM. WELDED WIRE MESH          |
| INSUL. INSULATION                  | YR. YEAR                       |
| KIT. KITCHEN                       | CL. CENTERLINE                 |
| LAM. LAMINATE                      | CL. CENTERLINE                 |
| LAV. LAVATORY                      | L. PERPENDICULAR               |

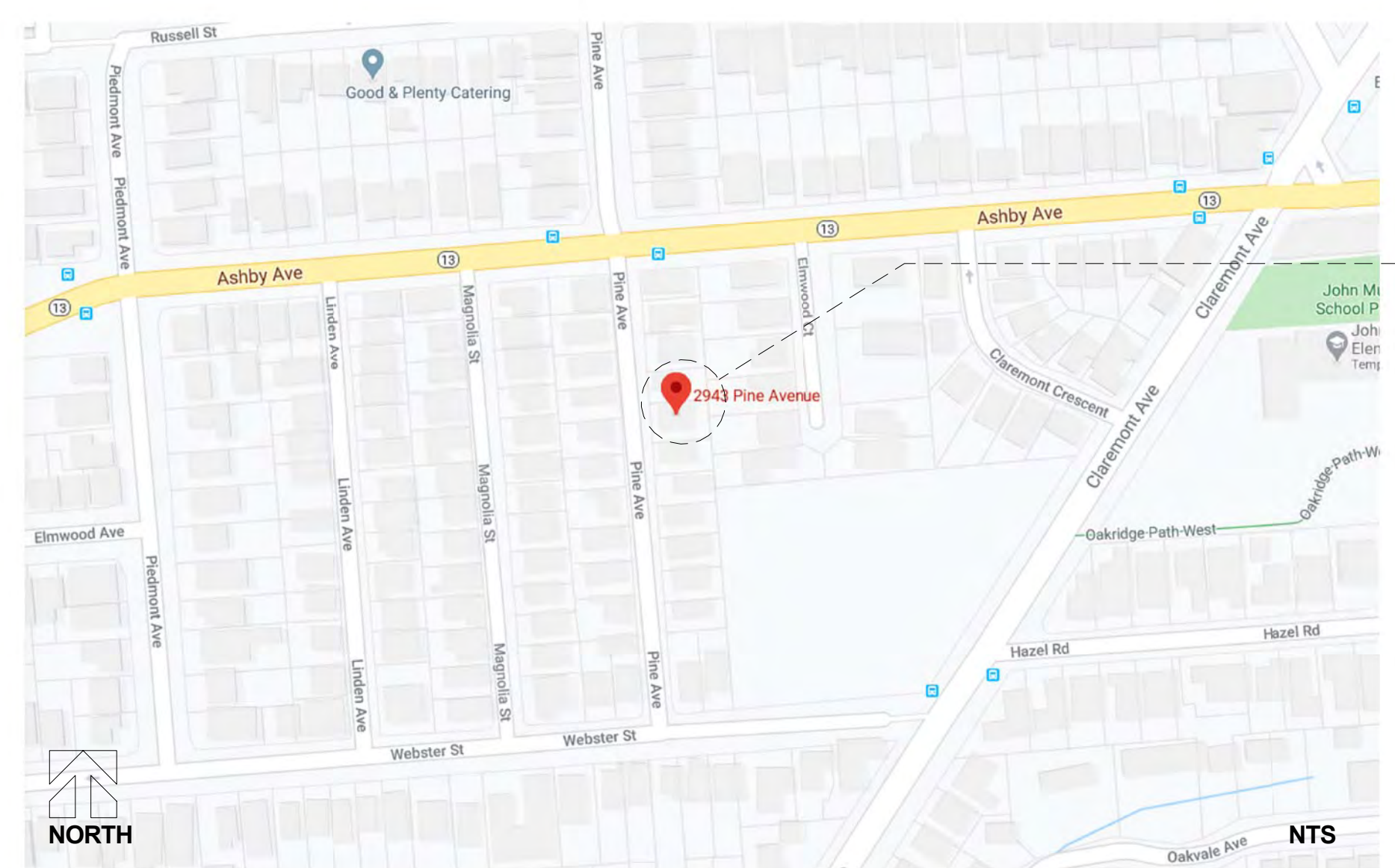
SYMBOLS

|                                                                     |                                                                   |
|---------------------------------------------------------------------|-------------------------------------------------------------------|
| (SWITCH)                                                            | SWITCH                                                            |
| (DIMMER SWITCH)                                                     | DIMMER SWITCH                                                     |
| (VACANCY SENSOR SWITCH)                                             | VACANCY SENSOR SWITCH                                             |
| (DUPLEX OUTLET)                                                     | DUPLEX OUTLET                                                     |
| (SWITCHED DUPLEX OUTLET)                                            | SWITCHED DUPLEX OUTLET                                            |
| (220V OUTLET)                                                       | 220V OUTLET                                                       |
| (QUAD OUTLET)                                                       | QUAD OUTLET                                                       |
| (GROUND FAULT INTERRUPTER OUTLET)                                   | GROUND FAULT INTERRUPTER OUTLET                                   |
| (CEILING RECESSED MOUNTED LIGHT FIXTURE)                            | CEILING RECESSED MOUNTED LIGHT FIXTURE                            |
| (CEILING SURFACE MOUNTED LIGHT FIXTURE)                             | CEILING SURFACE MOUNTED LIGHT FIXTURE                             |
| (WALL MOUNTED LIGHT FIXTURE)                                        | WALL MOUNTED LIGHT FIXTURE                                        |
| (FAN)                                                               | FAN                                                               |
| (LED UNDER CAB. LIGHT FIXTURE)                                      | LED UNDER CAB. LIGHT FIXTURE                                      |
| (TELEPHONE JACK)                                                    | TELEPHONE JACK                                                    |
| (TELEVISION OUTLET)                                                 | TELEVISION OUTLET                                                 |
| (THERMOSTAT)                                                        | THERMOSTAT                                                        |
| (SMOKE DETECTOR)                                                    | SMOKE DETECTOR                                                    |
| (CARBON MONOXIDE DETECTOR)                                          | CARBON MONOXIDE DETECTOR                                          |
| (CABLE TELEVISION)                                                  | CABLE TELEVISION                                                  |
| (HOSE BIB)                                                          | HOSE BIB                                                          |
| (GAS CONNECTION)                                                    | GAS CONNECTION                                                    |
| (WATER CONNECTION)                                                  | WATER CONNECTION                                                  |
| (HOT WATER CONNECTION)                                              | HOT WATER CONNECTION                                              |
| (COLD WATER CONNECTION)                                             | COLD WATER CONNECTION                                             |
| (TIGHT DRAIN)                                                       | TIGHT DRAIN                                                       |
| (PERFORATED DRAIN)                                                  | PERFORATED DRAIN                                                  |
| (PROPERTY LINE)                                                     | PROPERTY LINE                                                     |
| (BLOCKING)                                                          | BLOCKING                                                          |
| (BATT INSULATION)                                                   | BATT INSULATION                                                   |
| (NEW WALL (SHADED))                                                 | NEW WALL (SHADED)                                                 |
| (EXISTING WALL TO BE REMOVED)                                       | EXISTING WALL TO BE REMOVED                                       |
| (EXISTING WALL TO REMAIN)                                           | EXISTING WALL TO REMAIN                                           |
| (BEAMS, HEADERS, GLULAMS AS NOTED)                                  | BEAMS, HEADERS, GLULAMS AS NOTED                                  |
| (POST-CONTINUOUS)                                                   | POST-CONTINUOUS                                                   |
| (POST ABOVE FRAMING LEVEL)                                          | POST ABOVE FRAMING LEVEL                                          |
| (WALL REGISTER)                                                     | WALL REGISTER                                                     |
| (FLOOR REGISTER, CEILING REGISTER)                                  | FLOOR REGISTER, CEILING REGISTER                                  |
| (CONTINUOUS FRAMING)                                                | CONTINUOUS FRAMING                                                |
| (TOP OF SUB FLOOR ELEV.)                                            | TOP OF SUB FLOOR ELEV.                                            |
| (ADDENDUM OR REVISION NUMBER)                                       | ADDENDUM OR REVISION NUMBER                                       |
| (DOOR NUMBER)                                                       | DOOR NUMBER                                                       |
| (WINDOW NUMBER)                                                     | WINDOW NUMBER                                                     |
| (DETAIL - TOP: DWG. NUMBER OR LETTER, BOTTOM: SHEET NUMBER)         | DETAIL - TOP: DWG. NUMBER OR LETTER, BOTTOM: SHEET NUMBER         |
| (ELEVATION - TOP: ELEVATION NUMBER OR LETTER, BOTTOM: SHEET NUMBER) | ELEVATION - TOP: ELEVATION NUMBER OR LETTER, BOTTOM: SHEET NUMBER |
| (CEILING HEIGHT)                                                    | CEILING HEIGHT                                                    |

ZONING DATA

|                                | EXISTING        | PROPOSED        | REQUIRED            |
|--------------------------------|-----------------|-----------------|---------------------|
| LOT SIZE:                      | 4,320 SF        | NO CHANGE       | -                   |
| LOT COVERAGE:                  | 1,822 SF (42%)  | NO CHANGE       | 1,728 SF MAX. (40%) |
| AVG. HEIGHT:                   | 15'-1"          | 23'-1"          | 28' MAX.            |
| SETBACKS:                      |                 |                 |                     |
| FRONT                          | 13.7'           | NO CHANGE       | 20'                 |
| SIDE                           | 2.9' & 10.3'    | NO CHANGE       | 4'                  |
| REAR                           | 24.8'           | NO CHANGE       | 20'                 |
| PARKING                        | 1               | NO CHANGE       | 1 PER DWELLING UNIT |
| <b>FLOOR AREA CALCULATIONS</b> |                 |                 |                     |
| GARAGE                         | 179 SF          | 179 SF          | -                   |
| COVERED PORCH                  | 85 SF           | 85 SF           | -                   |
| FIRST FLOOR                    | 1,558 SF        | 1,558 SF        | -                   |
| SECOND FLOOR                   | 0               | 729 SF          | -                   |
| TOTAL FOOTPRINT                | 1,822 SF        | 1,822 SF        | 1,728 SF MAX. (40%) |
| USABLE OPEN SPACE              | 1,488 SF        | 1,488 SF        | 400 SF MIN.         |
| TOTAL FLOOR AREA               | <u>1,822 SF</u> | <u>2,551 SF</u> | -                   |

VICINITY MAP



SHEET INDEX

|       |                              |
|-------|------------------------------|
| A-1.0 | TITLE SHEET                  |
| A-1.1 | PROPOSED SITE PLAN           |
| A-1.2 | SHADOW STUDIES PART 1        |
| A-1.3 | SHADOW STUDIES PART 2        |
| A-1.4 | SHADOW STUDIES PART 3        |
| A-1.5 | SHADOW STUDIES PART 4        |
| A-2   | PROPOSED FLOOR PLANS         |
| A-3.1 | PROPOSED ELEVATIONS          |
| A-3.2 | PROPOSED ELEVATIONS SECTIONS |
| A-4   | EXISTING FLOOR PLAN          |
| A-7   | EXISTING ELEVATIONS          |
| A-8   | SURVEY BY OTHERS             |

ADDITION & REMODEL FOR:

**ROB & ANNE NACHTWEY**  
2943 PINE AVENUE, BERKELEY, CA 94705

(925) 818-7739



|         |          |
|---------|----------|
| DRAWN   | YB       |
| CHECKED | JAS      |
| DATE    | 03/10/21 |
| SCALE   | AS NOTED |
| JOB NO  | 1912     |
| SHEET   |          |

A-1.0

OF SHEETS

3/10/2021 4:18:59 PM











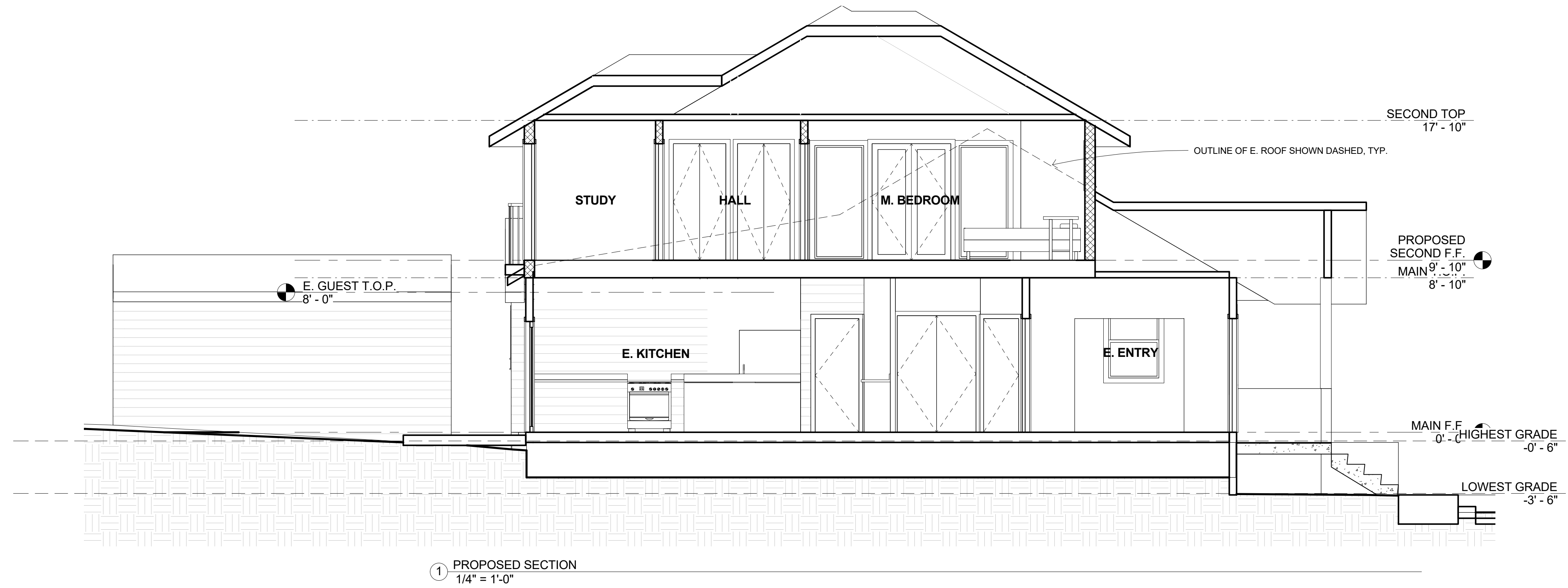




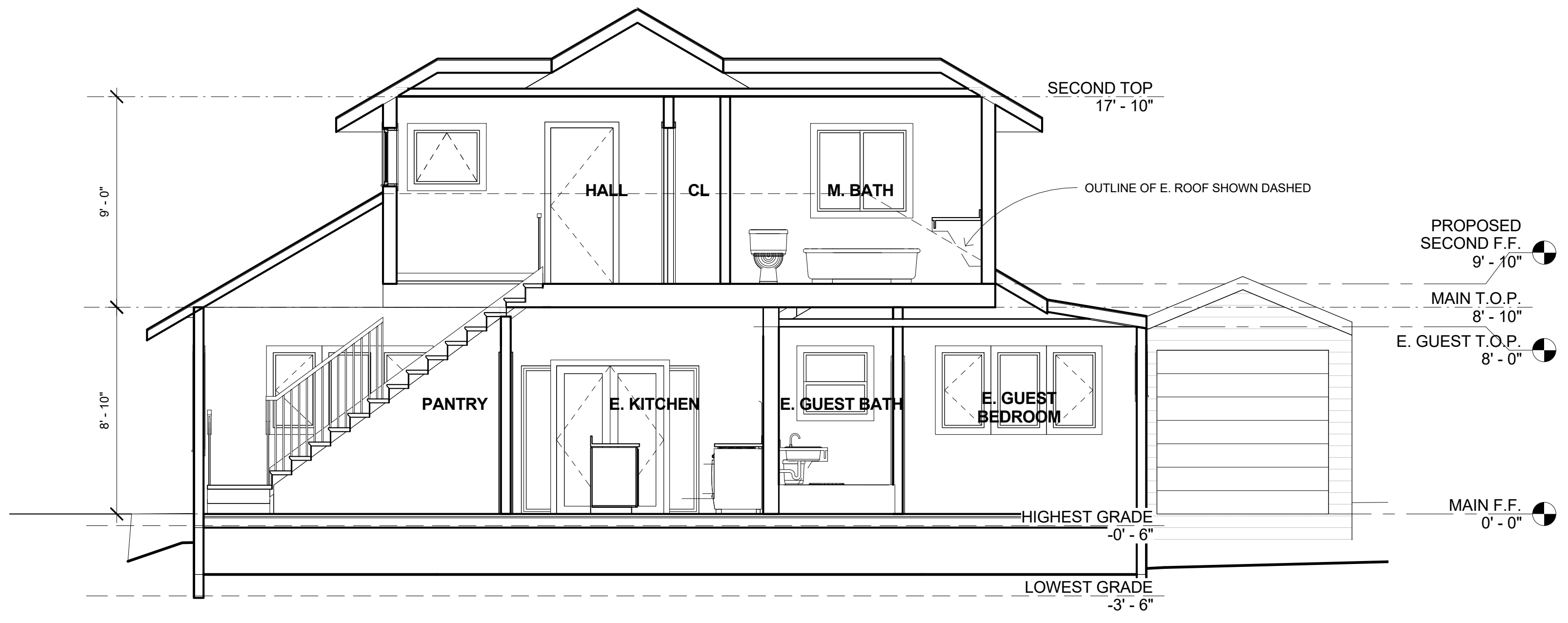








① PROPOSED SECTION  
1/4" = 1'-0"



② PROPOSED SECTION THRU STAIR  
1/4" = 1'-0"

| REVISIONS |             |      |
|-----------|-------------|------|
| #         | Description | Date |
|           |             |      |
|           |             |      |
|           |             |      |
|           |             |      |
|           |             |      |
|           |             |      |
|           |             |      |
|           |             |      |

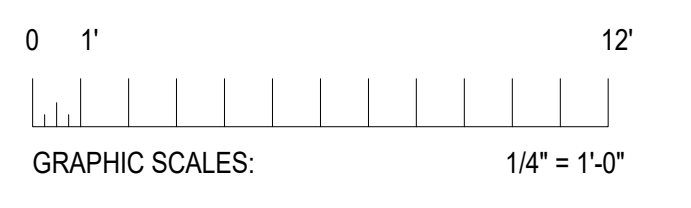
**J. Allen Sayles Architects**  
 3249 Mt Diablo Ct  
 Suite 202  
 Lafayette, CA 94549  
 allen@jasarch.com  
 925.837.3886  
 © J. Allen Sayles Architects, 2020

**SECTIONS**

ADDITION & REMODEL FOR:  
**ROB & ANNE NACHTWEY**  
 2943 PINE AVENUE, BERKELEY, CA 94705  
 (925) 818-7739

|         |          |
|---------|----------|
| DRAWN   | YB       |
| CHECKED | JAS      |
| DATE    | 03/10/21 |
| SCALE   | AS NOTED |
| JOB NO  | 1912     |
| SHEET   |          |

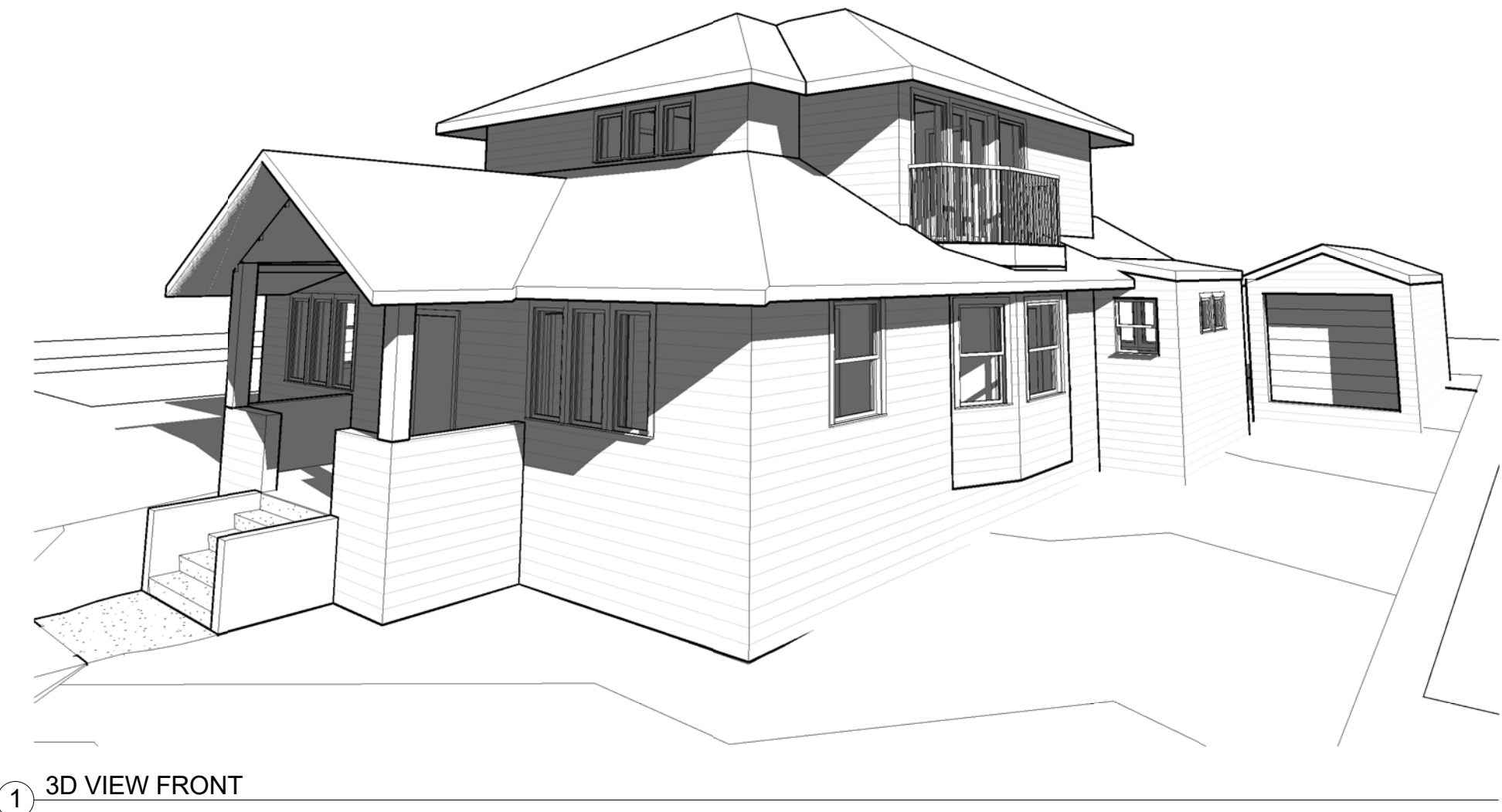
**A-4**  
 OF SHEETS



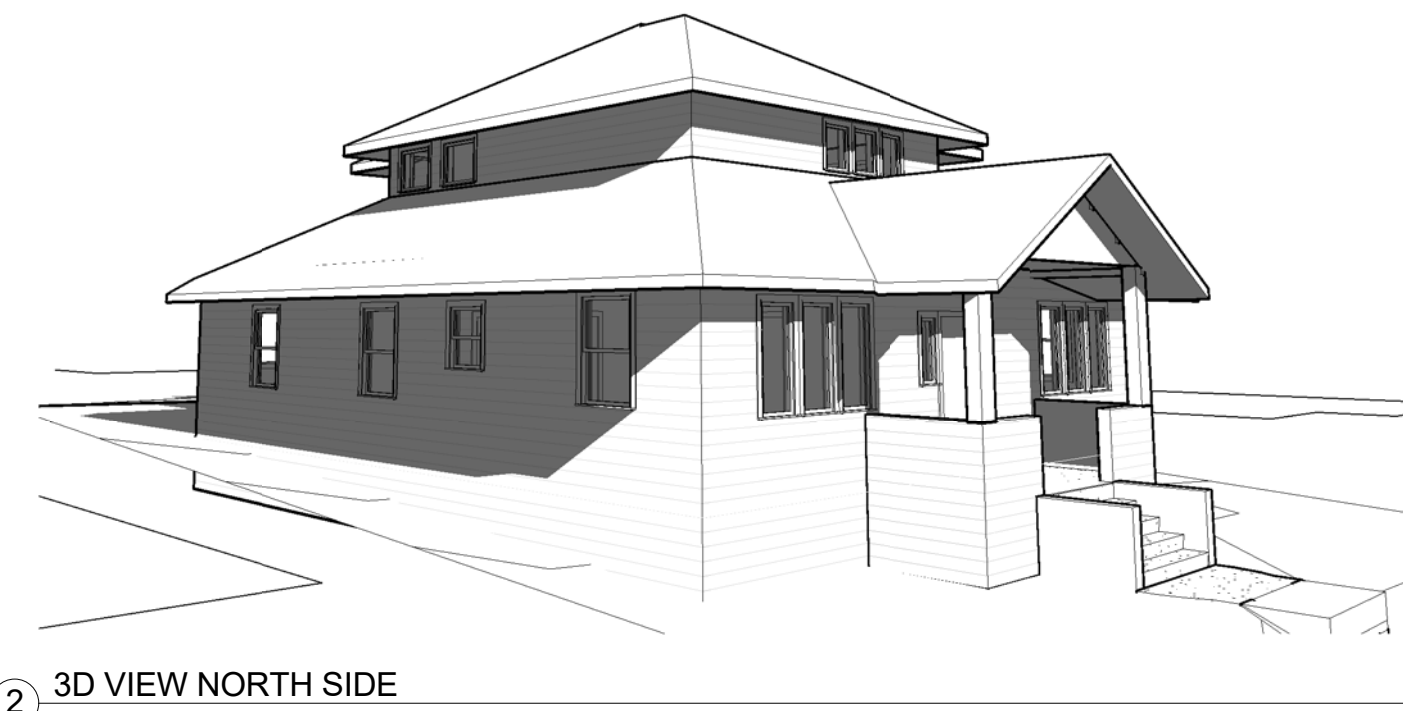
3/10/2021 4:19:39 PM



③ 3D VIEW REAR



① 3D VIEW FRONT



② 3D VIEW NORTH SIDE



④ 3D VIEW SOUTH SIDE

| REVISIONS |             |      |
|-----------|-------------|------|
| #         | Description | Date |
|           |             |      |
|           |             |      |
|           |             |      |
|           |             |      |
|           |             |      |
|           |             |      |
|           |             |      |
|           |             |      |
|           |             |      |
|           |             |      |
|           |             |      |
|           |             |      |
|           |             |      |
|           |             |      |
|           |             |      |

**J. Allen Sayles Architects**  
 3249 Mt. Diablo Ct  
 Suite 202  
 Lafayette, CA 94549  
 allen@jasarch.com  
 925.837.3986  
 © J. Allen Sayles Architects, 2020

3D

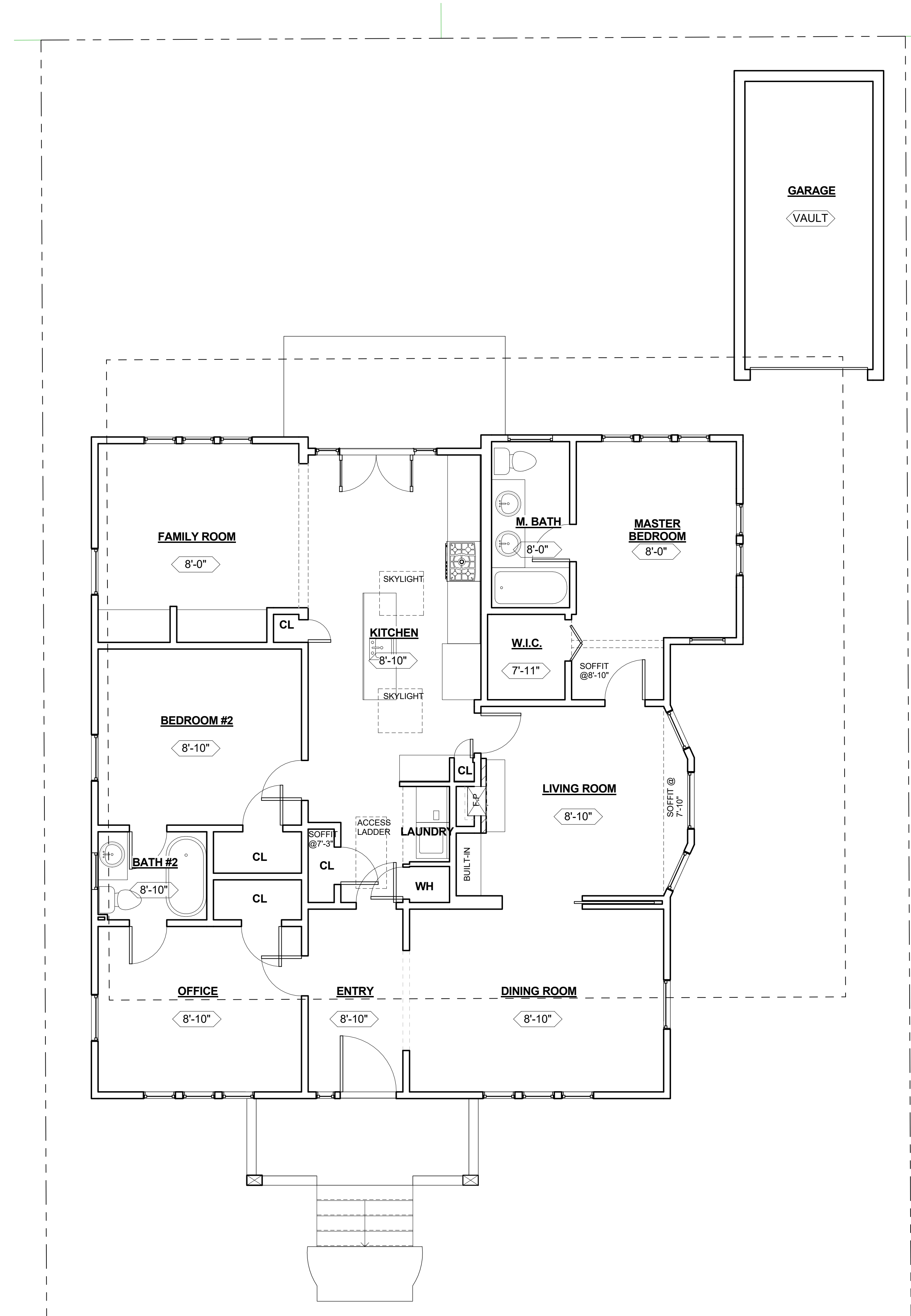
ADDITION & REMODEL FOR:  
**ROB & ANNE NACHTWEY**  
 2943 PINE AVENUE, BERKELEY, CA 94705  
 (925) 818-7739

DRAWN  
 YB  
 CHECKED  
 JAS  
 DATE  
 03/10/21  
 SCALE  
 AS NOTED  
 JOB NO  
 1912  
 SHEET

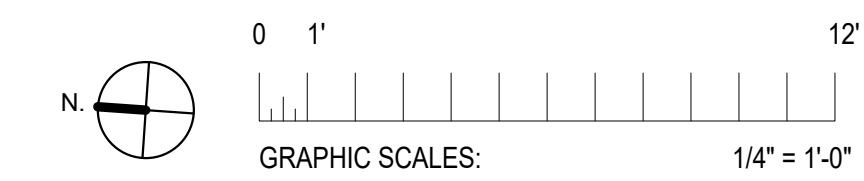


A-5.1  
 OF SHEETS

3/10/2021 4:19:40 PM



1 EXISTING FLOOR PLAN  
1/4" = 1'-0"



| REVISIONS |             |      |
|-----------|-------------|------|
| #         | Description | Date |
|           |             |      |
|           |             |      |
|           |             |      |
|           |             |      |
|           |             |      |
|           |             |      |
|           |             |      |
|           |             |      |
|           |             |      |
|           |             |      |
|           |             |      |
|           |             |      |
|           |             |      |
|           |             |      |
|           |             |      |
|           |             |      |

3249 Mt. Diablo Ct  
Suite 202  
Lafayette, CA 94549  
allen@jasarch.com  
925.837.3986  
© J. Allen Sayles Architects, 2020

**J. Allen Sayles  
Architects**

**EXISTING  
FLOOR  
PLAN**

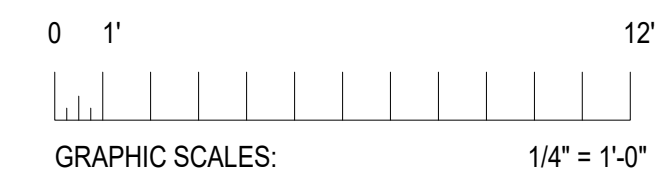
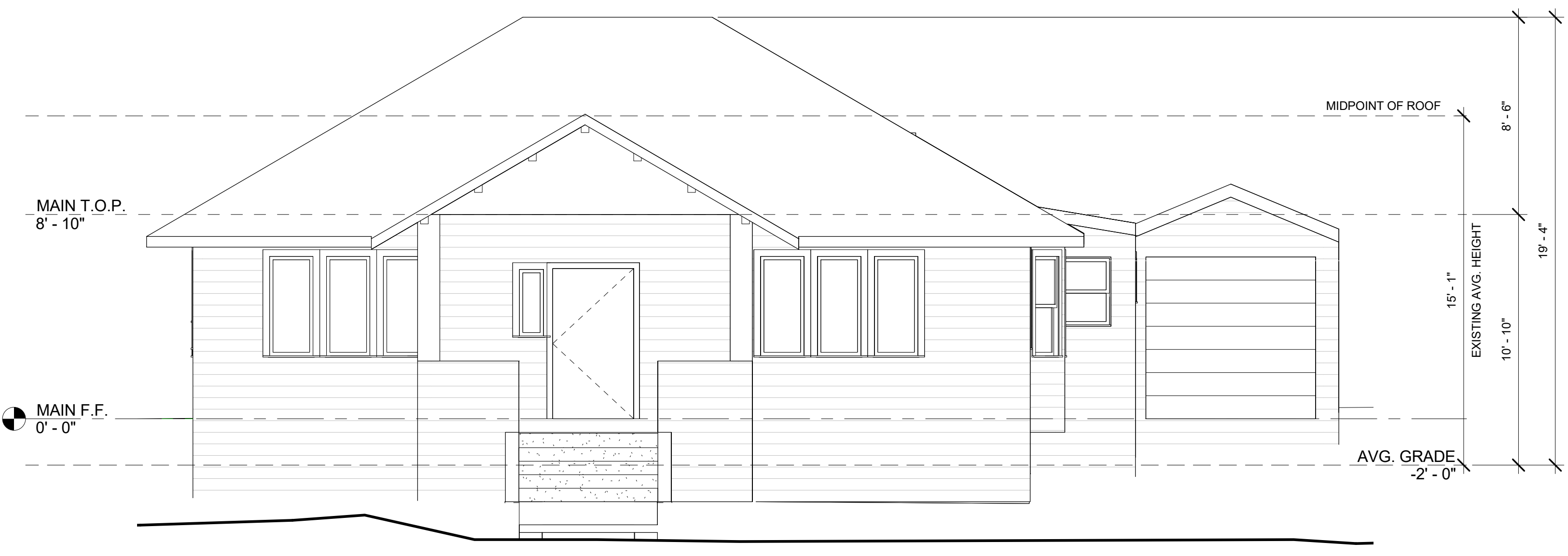
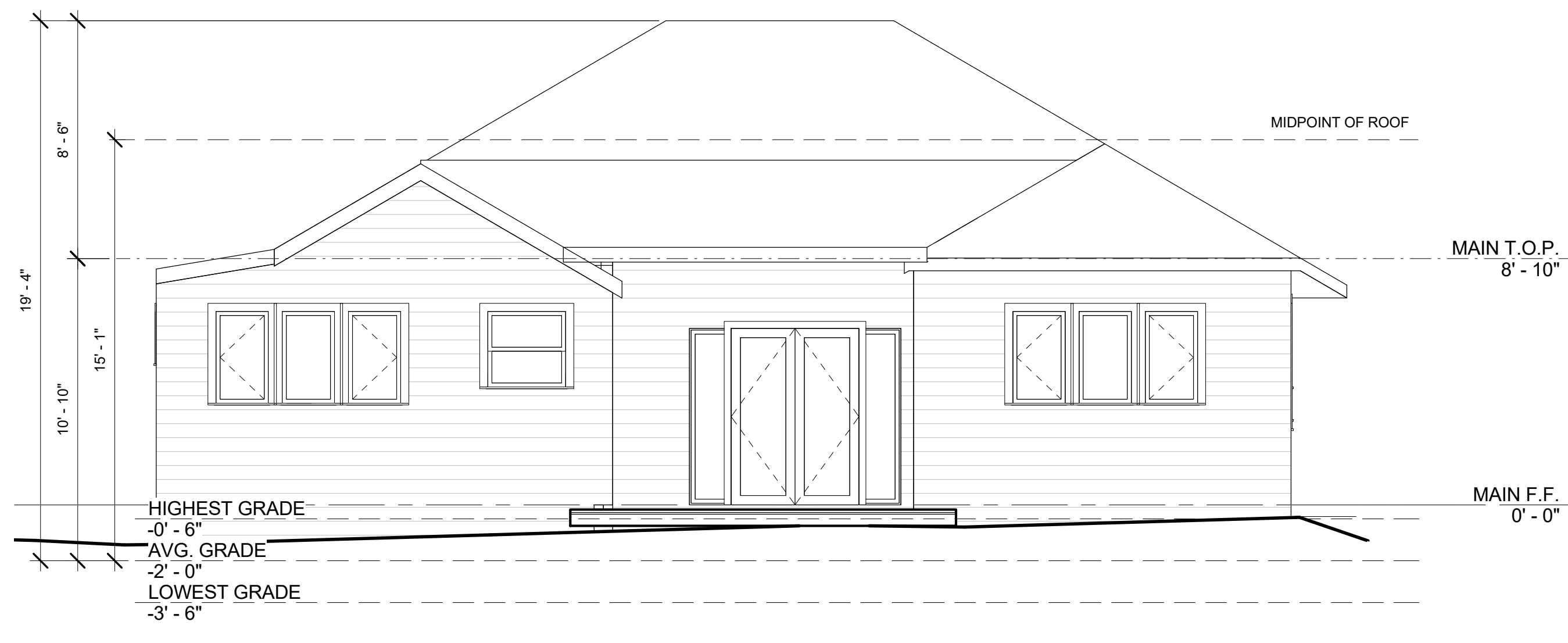
ADDITION & REMODEL FOR:  
**ROB & ANNE NACHTWEY**  
2943 PINE AVENUE, BERKELEY, CA 94705  
(925) 818-7739

DRAWN  
YB  
CHECKED  
JAS  
DATE  
03/10/21  
SCALE  
AS NOTED  
JOB NO  
1912  
SHEET

**A-7**

OF SHEETS

3/10/2021 4:19:41 PM



| # | Description | Date |
|---|-------------|------|
|   |             |      |
|   |             |      |
|   |             |      |
|   |             |      |
|   |             |      |
|   |             |      |
|   |             |      |
|   |             |      |
|   |             |      |

**J. Allen Sayles Architects**  
 3249 Mt Diablo Ct  
 Suite 202  
 Lafayette, CA 94549  
 allen@jasarch.com  
 925.837.3986  
 © J. Allen Sayles Architects, 2020

**EXISTING ELEVATIONS**

ADDITION & REMODEL FOR:  
**ROB & ANNE NACHTWEY**  
 2943 PINE AVENUE, BERKELEY, CA 94705  
 (925) 818-7739

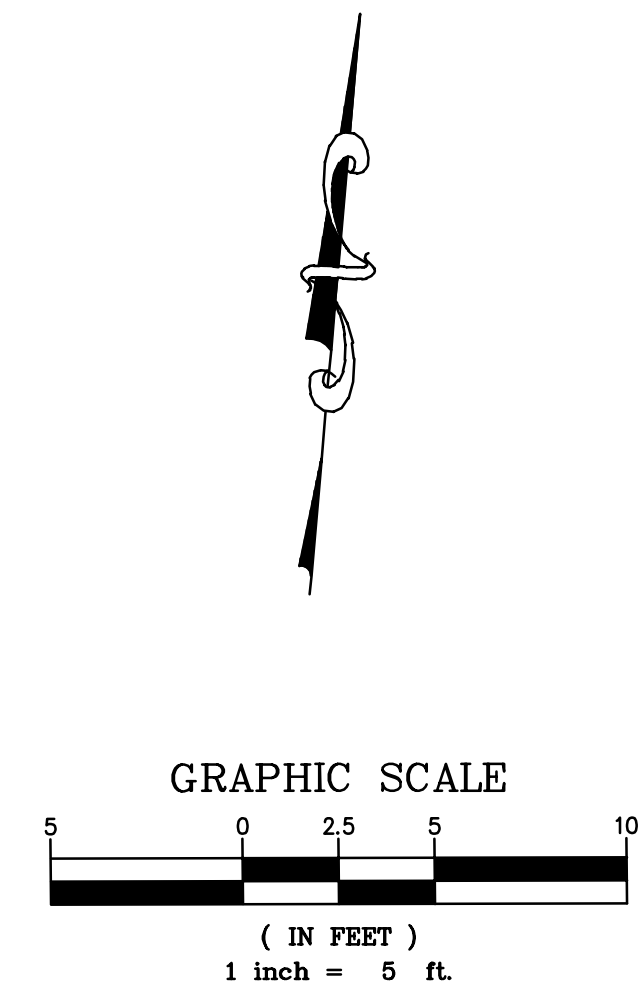
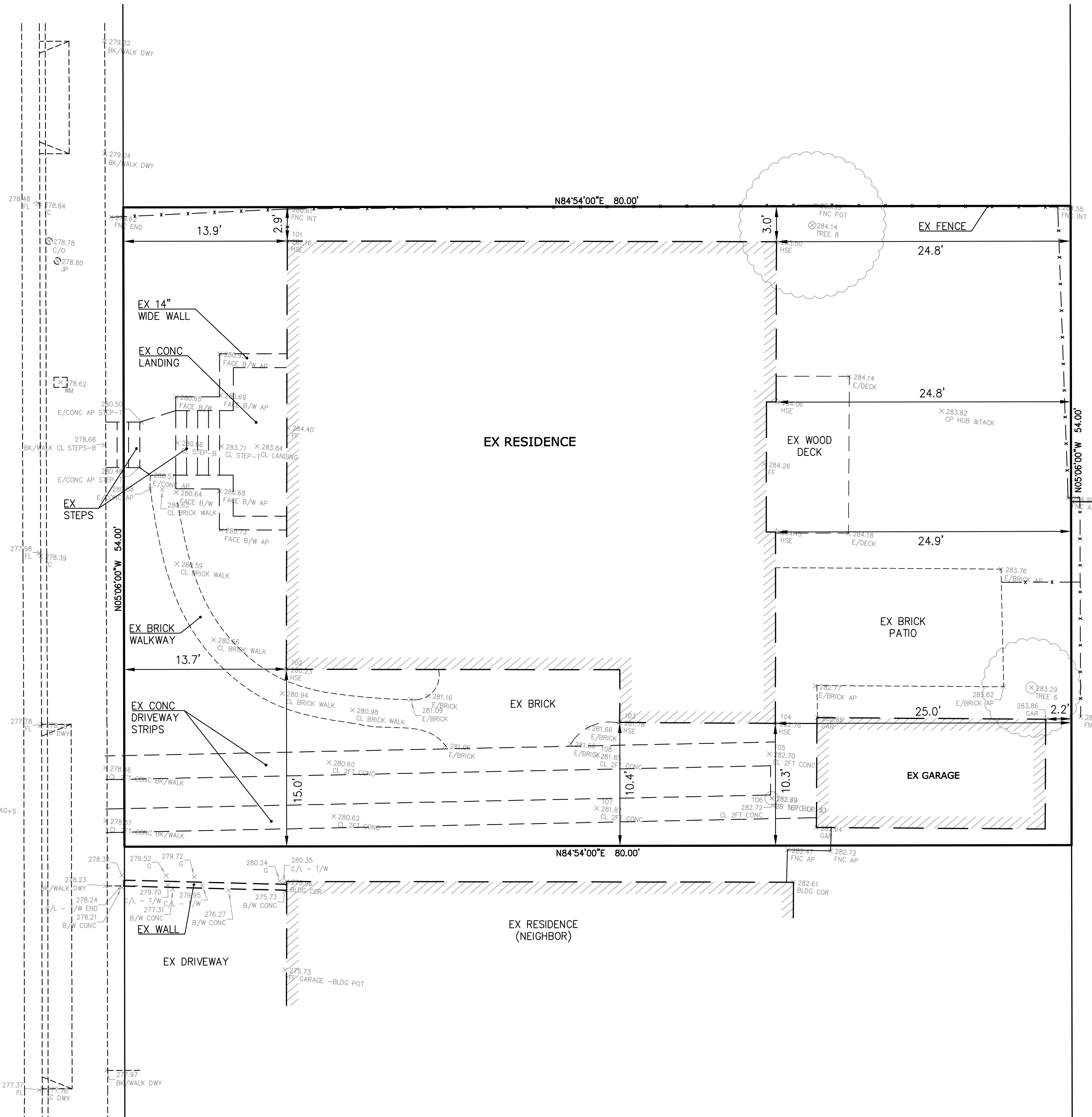
DRAWN: YB  
 CHECKED: JAS  
 DATE: 03/10/21  
 SCALE: AS NOTED  
 JOB NO: 1912  
 SHEET:

**A-8**

OF SHEETS

NOTE: THE DRAWINGS AND SPECIFICATIONS AND IDEAS, DESIGNS AND ARRANGEMENTS REPRESENTED THEREBY ARE AND SHALL REMAIN THE PROPERTY OF THE ARCHITECT AND NO PART THEREOF SHALL BE COPIED, DISCLOSED TO OTHERS OR USED IN CONNECTION WITH ANY WORK OR PROJECT OTHER THAN THE SPECIFIC PROJECT FOR WHICH THEY HAVE BEEN PREPARED AND DEVELOPED WITHOUT THE WRITTEN CONSENT OF THE ARCHITECT.

PINE AVENUE



ALL PLANS ARE PRELIMINARY AND NOT FOR CONSTRUCTION UNLESS SIGNED AND STAMPED BY THE ENGINEER AND REVIEWING AGENCY.

TOPOGRAPHIC SURVEY

2943 PINE AVENUE

BERKELEY

ALAMEDA COUNTY

CALIFORNIA

JAMES E. DIGGINS - R.C.E. 27818  
RENEWAL DATE: 03/31/22

| # | REVISIONS | DATE |
|---|-----------|------|
|   |           |      |
|   |           |      |
|   |           |      |
|   |           |      |



**DEBOLT CIVIL ENGINEERING**  
**45+**  
**YEARS**  
 811 SAN RAMON VALLEY BLVD #201  
 DANVILLE, CALIFORNIA 94526  
 (925) 837-3780 | DEBOLTCIVIL.COM

Date: 8/06/2020  
 Scale: 1" = 5'  
 By: JD/rl  
 Job No.: 20226

RENA RICKLES  
*Attorney at Law*

---

1970 BROADWAY, SUITE 1200  
OAKLAND, CA 94612  
TEL: (510) 452-1600 - FAX: (510) 451-4115  
EMAIL: rena@rickleslaw.com

April 25, 2021

Mayor Jesse Arreguin  
Berkeley Councilmembers  
C/O City Clerk Department  
2180 Milvia Street  
Berkeley, CA 94704

**VIA Email and U.S Mail**

Re: 2943 Pine Avenue: Appeal of Zoning Adjustments Board ("ZAB") Decision  
April 8, 2021

Dear Mayor Arreguin and Councilmembers:

This appeal is on behalf of Debra Levinsky<sup>1</sup> who, with her late husband, moved to 2918 Elmwood Court 36 years ago. The addition to 2943 Pine Avenue, as now designed, will deprive her of half of her western sun and all of her rear-yard privacy.

Her request, to reduce the roof's pitch, should be deemed reasonable, as it will result in a design that retains the approved square footage while simultaneously reducing the detriments imposed by the project to the immediate neighbors. Under the facts and circumstances of this appeal, it should be granted.

General Grounds for Appeal

- The evidence does not support the Findings;
- As such the Findings do not support the decision;
- And, acting as it did, the ZAB acted without or in excess of its jurisdiction.

**Statement of Facts**

Applicant's proposal to add a second story to create more room for their family is reasonable. Unfortunately, because of Covid restrictions, Applicants were not required to circulate their plans to their abutting and confronting neighbors to

---

<sup>1</sup> Debra Levinsky, a recently retired OB-GYN, has over her career delivered over 6,000 new babies in Berkeley.

obtain their input.<sup>2</sup> Instead post cards were ostensibly<sup>3</sup> sent to all homes within 300' of the project; the post cards did not include the specifics of the project; some neighbors never saw the plans. The result: a design that renders the project's impacts to be unreasonably detrimental.

Had there been the previously required outreach, or had applicants exceeded the minimal outreach requirements by delivering the plans to their immediate neighbors, many of the issues raised at the ZAB meeting and this appeal could have been addressed and resolved: 1) the steep slope of the roof on top of the new 2<sup>nd</sup> story; 2) the accuracy of the shadow study--- questioned by all the opposing neighbors; 3) the utter failure to consider the loss of light, and increased shading on yards and main living areas as a detriment to the eastern neighbors; and 4) story poles<sup>4</sup>—would have allowed the neighbors and the ZAB could accurately assess the impacts of the expansion as designed.

The single biggest detriment caused by this lack of notice and communication revolves around the roof design: The roof is described as 23'1", but that is an average height, from the lowest point to the 28' apex. And it is the 28' apex that is causing the blockage of light and shading gardens in the summer. For Debra, the loss will be 60% of her summer sun.

**Debra's Request is Modest: Reducing the Steep Pitch of the Roof Resulting in an Improved Project for Applicant, the Neighborhood; and a Significant Reduction in Detriment for Appellants (Drawing attached)**

By reducing the pitch of the roof, as now designed, to a pitch more in keeping with streetscape on Pine Avenue, most of the loss of light, and increased shading in yards and main rooms will be significantly diminished. Consistent streetscape is important everywhere, but especially in quasi-historic districts. The approved roof pitch is inconsistent with the roof lines on this section of Pine Avenue. The proposed redesigned roof, respects neighboring roofs. It does not result in any loss of the approved square feet. And it significantly reduces the negative impacts of the project upon its neighbors.

**Privacy Considerations:** The rear-second-story balcony looms out over the rear yards of both 2918 and 2916 Elmwood Court. While the balcony is not so large to contain large groups (Staff's argument for non-detriment), it still impacts the privacy of Debra, and her neighbors the Shen's at 2916 Elmwood Court. We request that

<sup>2</sup> Applicants and their architect showed the plans to only one neighbor, at 2939 Pine Avenue; that neighbor's requests for modifications were incorporated into the design.

<sup>3</sup> Several neighbors within the 300' radius state they did not receive the postcards.

<sup>4</sup> Since this project is not in an H District, Story Poles would not have been mandated but would have been under the circumstances of this case, helpful.

the balcony be removed or designed in a way that will not invade appellant's or her neighbor's privacy.

**Permit for the Non-Conforming Rear Fence.** Request for minor revision in the language. It is described as a 10' fence (which technically it is under Zoning Definitions, it is). But it is 6' on Debra's side. We request that the language be amended to "no higher than the existing fence".

**CONCLUSION**

Covid restrictions led to many changes in the requirements for notice and opportunity for immediate neighbors to observe and comment on the impacts of new projects. However, the consequences should not be that impacted neighbors lose their opportunity to learn of a project's negative impacts to their enjoyment of their homes and effectively communicate those impacts to the decisionmakers.

Here, Debra faces the real possibility of staring at a dark wall where she previously enjoyed the western sun. The same is true for many of her neighbors. Fortunately, there is a design solution that is a positive for everyone. We ask, that unless the roof pitch is reduced to result in a roof height no higher than the proposed design that you UPHOLD this appeal and DENY the application.

To preserve Debra's privacy, we ask that this Council require that the rear balcony be removed or redesigned.

Finally we ask that the language approving the non-conforming fence be modified to clarify that what is approved is no higher than the existing fence.

We thank you in advance for your time and courtesy in this matter.

Very truly yours,



RENA RICKLES

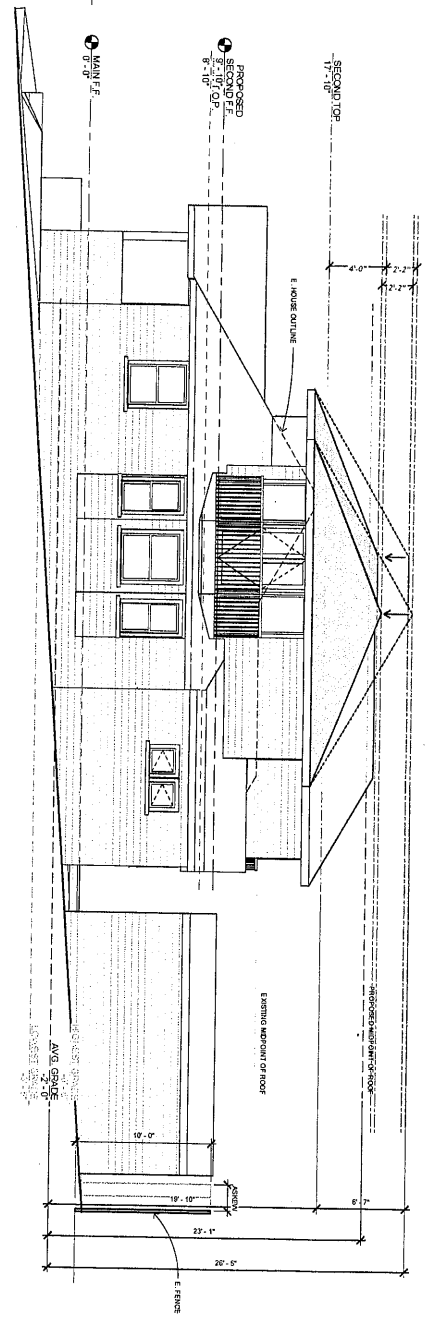
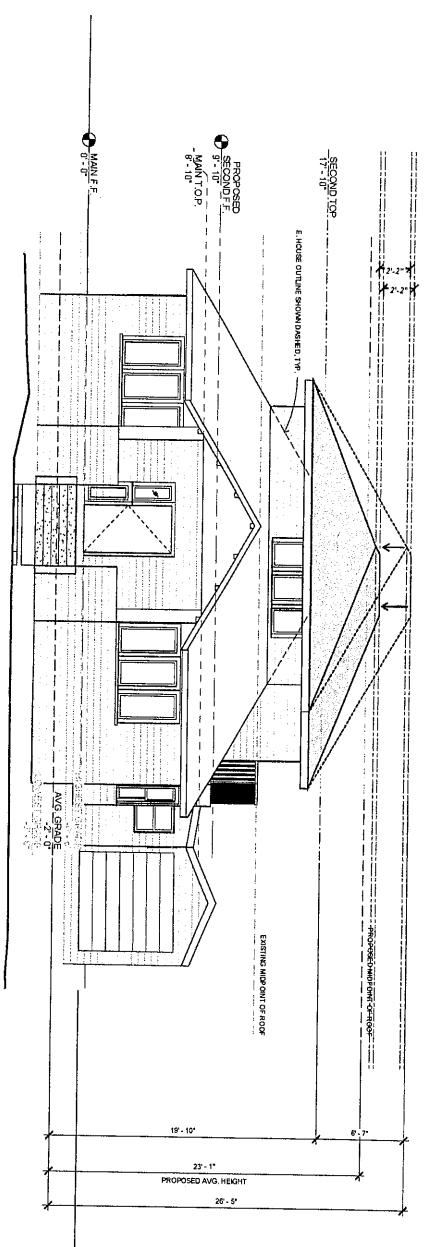
Attachments:

drawings-3 pages



ROOF SHALL REMAIN THE SAME  
HEIGHT OF ROOF REDUCED APPROXIMATELY 2'-2"  
NEW SLOPE APPROXIMATELY 5/12"

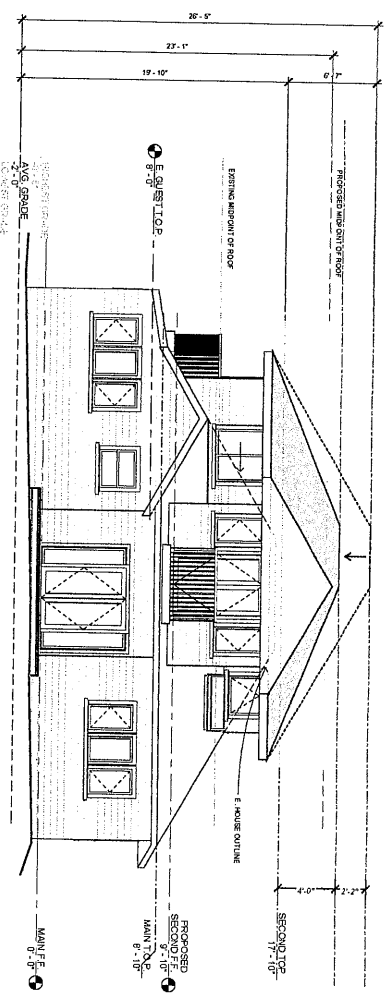
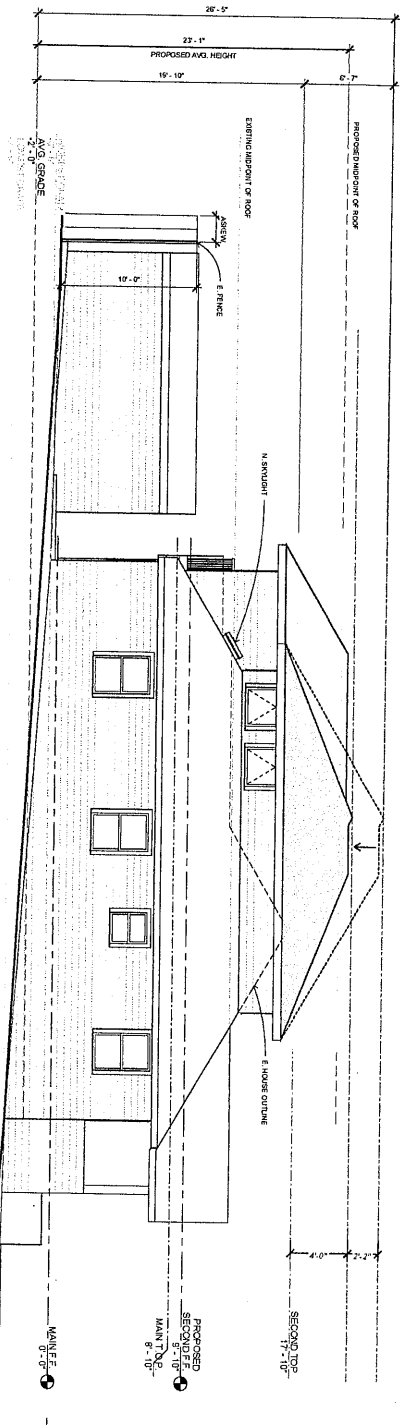
ROOF SHALL REMAIN THE SAME  
HEIGHT OF ROOF REDUCED APPROXIMATELY 2'-2"  
NEW SLOPE APPROXIMATELY 5/12"



|                                                                                                                    |                            |                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|--------------------------------------------------------------------------------------------------------------------|----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ADDITION & REMODEL FOR<br><b>ROB &amp; ANNE NACHTWEY</b><br>2943 PINE AVENUE, BERKELEY, CA 94705<br>(925) 818-7730 | <b>PROPOSED ELEVATIONS</b> | <b>J. Allen Sayles Architects</b><br>8840 Mt Diablo Ct<br>Suite 202<br>Lafayette, CA 94508<br>jsa@jaysayles.com<br>925.837.2300<br>© Allen Sayles Architects, 2020 | 7<br>1<br>2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22<br>23<br>24<br>25<br>26<br>27<br>28<br>29<br>30<br>31<br>32<br>33<br>34<br>35<br>36<br>37<br>38<br>39<br>40<br>41<br>42<br>43<br>44<br>45<br>46<br>47<br>48<br>49<br>50<br>51<br>52<br>53<br>54<br>55<br>56<br>57<br>58<br>59<br>60<br>61<br>62<br>63<br>64<br>65<br>66<br>67<br>68<br>69<br>70<br>71<br>72<br>73<br>74<br>75<br>76<br>77<br>78<br>79<br>80<br>81<br>82<br>83<br>84<br>85<br>86<br>87<br>88<br>89<br>90<br>91<br>92<br>93<br>94<br>95<br>96<br>97<br>98<br>99<br>100 |
|                                                                                                                    |                            |                                                                                                                                                                    | A31                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

ROOF SHAPE TO REMAIN THE SAME.  
HEIGHT OF ROOF REDUCED APPROXIMATELY 2'-2".  
NEW SLOPE APPROXIMATELY 5:12"

ROOF SHAPE TO REMAIN THE SAME.  
HEIGHT OF ROOF REDUCED APPROXIMATELY 2'-2".  
NEW SLOPE APPROXIMATELY 5:12"



ADDITION & REMODEL FOR:  
**ROB & ANNE NACHTWEY**  
2943 PINE AVENUE, BERKELEY, CA 94705  
(925) 818-7739

PROPOSED  
ELEVATIONS

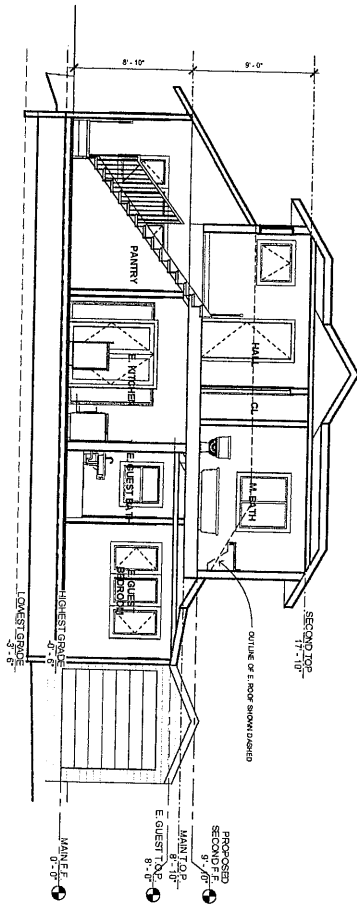
**J. Allen Sayles**  
Architects

8845 Mt Diablo Ct  
Suite 808  
Lafayette, CA 94549  
allen@jaysayles.com  
925.937.3998  
© J. Allen Sayles Architects, 2020

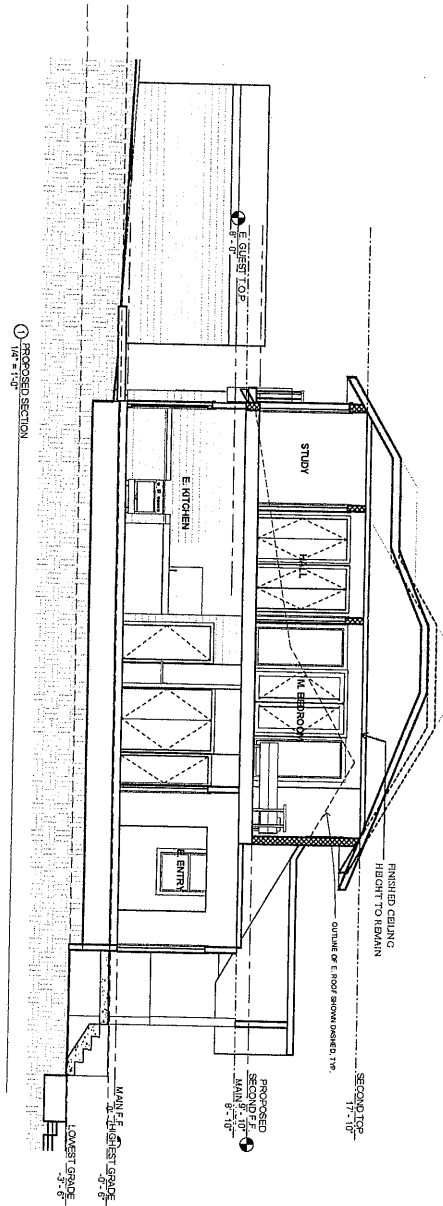
| NO. | REVISION | DATE |
|-----|----------|------|
|     |          |      |
|     |          |      |
|     |          |      |
|     |          |      |

| NO. | REVISION | DATE |
|-----|----------|------|
|     |          |      |
|     |          |      |
|     |          |      |
|     |          |      |

2 PROPOSED SECTION THRU STAIRS  
1/4" = 1'-0"



1 PROPOSED SECTION  
1/4" = 1'-0"



|          |             |
|----------|-------------|
| DATE     | DESCRIPTION |
| 03/10/21 | ADD         |
| 03/10/21 | REV         |
| 03/10/21 | REV         |
| 03/10/21 | REV         |
| 03/10/21 | REV         |
| 03/10/21 | REV         |
| 03/10/21 | REV         |
| 03/10/21 | REV         |
| 03/10/21 | REV         |
| 03/10/21 | REV         |

ADDITION & REMODEL FOR  
**ROB & ANNE NACHTWEY**  
 2943 PINE AVENUE, BERKELEY, CA 94705  
 (925) 618-7739

SECTIONS

**J. Allen Sayles Architects**  
 2249 Mt Diablo Ct  
 Suite 202  
 Lafayette, CA 94648  
 allen@jasaarch.com  
 925.937.2888  
 © J. Allen Sayles Architects, 2020

|     |          |      |
|-----|----------|------|
| NO. | REVISION | DATE |
|     |          |      |
|     |          |      |
|     |          |      |
|     |          |      |
|     |          |      |
|     |          |      |
|     |          |      |
|     |          |      |
|     |          |      |

To: Mayor Arreguin and City Council Members  
 2180 Milvia Street  
 Berkeley, CA 94604

This letter is to appeal the Zoning Adjustment Board (ZAB)'s approval of the ZONING PERMIT # ZP2020-0107. This is a residential single-family major addition that will add 729 sq ft. to 2943 Pine Avenue. The ZAB made their findings without considering our written concerns regarding the impact on 2916 Elmwood Court. 2916 Elmwood Court is located South-East of 2943 Pine Avenue.

Statement of Facts:

1. 2916 Elmwood Court has been in the Shen family for over 35 years. It is a multi generational household, and is now being occupied by 2nd - 4th generation occupants.
2. The addition at 2943 Pine Avenue blocks sunlight entering the dining area from the South-East in the early to late afternoons year round. We depend on the current sunlight as the major source of direct light into the first floor. Otherwise, it would be so dark that we need to turn on artificial lights throughout the day. The dining area is most frequently used as our place to gather together as a family.
3. The residents of 2916 Elmwood Court sent a letter to the ZAB project manager, Ms. Allison Riemer, stating our concerns regarding (1) the protected Coastal Live Oak tree that is situated at the boundary of 2918 and 2916 Elmwood Ct and near the project site (2) The impact of the addition on the path of light from the sun into our house.
4. The letter was postmarked March 31st. According to the Certified tracking information, the letter had been attempted to be delivered since April 6th. It was not successfully delivered to the ZAB office until April 13th due to office closures and finally processed April 20th, 2021. (Exhibit 1, Exhibit 2, Exhibit 3)

In non-COVID times, this letter would have been hand delivered to the ZAB secretary prior to April 8th, 2021. I inquired about doing this, but was subsequently denied by the ZAB/ Zoning Office. As such, Ms. Allison Riemer states in her April 8th, 2021 statement that "no written communications were received by the ZAB" regarding this permit.

5. The letter sent to Ms. Allison Riemer included the following:
  1. The observation that Ms. Anne Nachtwey and the project's architects have not reached out or made any contact through any medium regarding the project or the

oak tree. As of the date of this appeal (April 26, 2021), the Nachtweys and the project architects have not made contact.

2. An offer to work with the Nachtweys and their architects in properly placing the oak tree in a manner that was in keeping with the COVID-19 guidelines issued by Alameda County and the State of California.
3. Ground level, detailed photos of the tree that we included in the letter to the ZAB that demonstrates that Ms. Anne Sum's approximations of the tree was guesswork, and thus the shadow study was also inaccurate.
4. A statement that 2916 Elmwood Court was left out of the studies, but should be included due to the blocking of the sun's path.

4. The Architects for 2943 Pine Avenue use "COVID-19" as justification for why they did not specifically contact any of the surrounding neighbors. However, the county already began transitioning away from "Stay At Home" to less restrictive tiers in late January 2021.

We request the following:

1. An arborist report that appropriately defines the Critical Root Zone and the biological root zone of the protected Coastal Live Oak tree at 2918/ 2916 Elmwood Court.
  1. The rhetoric that has been used to describe the tree and suggesting that the "oak tree canopy that can be trimmed back" as a response to our concern about tree protection. Construction may impact this tree and its root system, and the effects have not yet been evaluated. A typical Live Oak root system can extend far beyond the canopy drip line  
([https://nature.berkeley.edu/garbelottowp/?qa\\_faqs=what-is-the-critical-root-zone](https://nature.berkeley.edu/garbelottowp/?qa_faqs=what-is-the-critical-root-zone))  
. This tree is a protected species within the State of California and it is illegal to do anything "injurious" to the tree within California and within the City of Berkeley without the appropriate data. Based on the scope of work presented by the Permit, it is reasonable to conclude that the tree's critical root zone will be negatively impacted by the foundation work unless it is appropriately protected.
2. Adding story poles and validated shade/solar studies that approximate the impact of the addition on the street so that the residents may be appropriately informed of the impact of this addition. Ms. Anne Sum, the representative from J Allen Sayles Architects, stated at the ZAB board that placements and shadow studies, in particular that of the Coastal Live Oak Tree, had to be approximated using Google maps due to COVID-19. Ms. Sum claims that the programs are accurate. However, they are only as accurate as the parameters that are input into the system. If the parameters are off, then her results would also be incorrect. Validating their existing calculations is now easily achievable as the COVID-19 vaccine is open to everyone 16+, and Contra Costa/ Alameda county has entered the Orange tier.

This appeal and a copy of our check mailed to the Planning Department for the appeal will also be transmitted via facsimile (to (510) 981-6901) as per the publicly posted guidelines listed on the Land Use Division website ([https://www.cityofberkeley.info/Planning\\_and\\_Development/Land\\_Use\\_Division/Guidelines\\_for\\_Filing\\_an\\_Appeal.aspx](https://www.cityofberkeley.info/Planning_and_Development/Land_Use_Division/Guidelines_for_Filing_an_Appeal.aspx)).

Respectfully,  
2916 Elmwood Court

Exhibit 1: Proof of mailing

7019 1640 0000 2981 1188

**U.S. Postal Service™**  
**CERTIFIED MAIL® RECEIPT**  
Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)®

**OFFICIAL MAIL**

Berkeley, CA 94704

Certified Mail Fee \$3.60

Extra Services & Fees (check box, add fee \$1.00/30g rate)  
 Return Receipt (hardcopy) \$0.00  
 Return Receipt (electronic) \$0.00  
 Certified Mail Restricted Delivery \$10.00  
 Adult Signature Required \$0.00  
 Adult Signature Restricted Delivery \$0.00

Postage \$0.75

Total Postage and Fees \$4.35

Sent To Alison Riemer


Street and Apt. No., or PO Box No. 1947 Parkside St

City, State, ZIP+4® Berkeley CA 94704

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

Weight: 0 lb 1.20 oz  
 Estimated Delivery Date Mon 04/05/2021  
 Certified Mail® Tracking #: 7019164000029811188

Total \$4.35



PERMIT # ZP2020-0110

...ry addition at 2934  
 ...st to 2916 Elmwood  
 ... because it will un-nat  
 ... ring the first floor. On su  
 ... akes it position from noc

Exhibit 2: April 2nd, 2021 Letter to the ZAB concerning the addition at 2943 Pine Avenue

Subject: Concerns regarding ZONING PERMIT # ZP2020-0107

1 of 5

Subject:

ZONING PERMIT # ZP2020-0107  
2943 Pine Avenue Addition  
City of Berkeley-

Dear Ms. Allison Riemer,

I am writing concerning the second story addition at 2934 Pine Avenue.  
2943 Pine Avenue is located south-west to 2916 Elmwood Ct.

This project affects 2916 Elmwood because it will un-naturally darken the first floor. It will block the natural light from entering the first floor. On sunny days, the dining room is flooded with natural sunlight as the sun takes it position from noon until sunset.

Attached are photos of the winter sun from the dining area of the house, at about 4pm during the winter (Photos 1 and 2). While there is a mature oak tree between 2916 and 2918 Elmwood Ct., the tree only filters some light but we still receive some direct sunlight (rays of light). The canopy is much higher than the houses in question, and therefore does not significantly occlude or scatter the path of the sunlight. One can see the sun still through the branches of the tree. As it is now, we can also see parts of the water from our vantage point. Adding in this addition would occlude the rays of light entering the dining room, and our view these natural elements and of the sky. In other words, a structure as proposed would permanently occlude the sun's light path from entering the house.

Any shading or light blocking from the oak tree and ivy is temporary and is not permanent: We have asked a tree trimming service to come and do maintenance in late May 2021. The oak tree in question will be thinned appropriately and a significant portion of the ivy canopy is to be removed at that point. Therefore, these should *not* be used as a permanent reference point.

The existing "tree" as diagrammed in the shade studies and the angle taken from the pictures appears to have a density that is not representative of reality. The branches begin at least 9 feet above the ground (Photo 3). Introducing additional branches yields inaccurate results to the shade studies and

- (a) overestimates the existing oak tree's ability to "absorb" additional shadow from a solid structure;
- (b) unfairly adds more pre-existing oak-related shading in the neighboring properties than there are in reality.

We ask that the shade studies be re-done so that it appropriately reflects the oak's true positioning, in addition to an accurate sun and shadow study that also accounts for our property.

We would be happy to provide photos to the project architect to assist in locating the tree trunk and the path of growth, in addition to accurately mapping the branches. A Google Maps satellite image is lacking in high resolution detail, and cannot accurately depict the true texture and



Subject: Concerns regarding ZONING PERMIT # ZP2020-0107

2 of 5

density of a tree canopy. The various pictures and perspectives of the oak tree presented in previous documents do not capture the true sparseness of the tree canopy and the amount of light that passes through it (Photo 3).

We ask that the architect re-design the Pine Avenue addition so that it does not block the path of the sun entering our house.

This house has been home to four generations of our family and we hope that it will see more. The dining room is high traffic and has always been our place for gathering. I grew up in this house doing homework in the dining room with my grandparents, and the next generation also now does homework with my parents in the same room on the same table that I learned how to add and subtract.

Introducing the 2943 addition would block natural light from entering and make the first floor unenjoyable.

Thank you for your consideration.

Respectfully,  
The Occupants of 2916 Elmwood Court

Subject: Concerns regarding ZONING PERMIT # ZP2020-0107

3 of 5

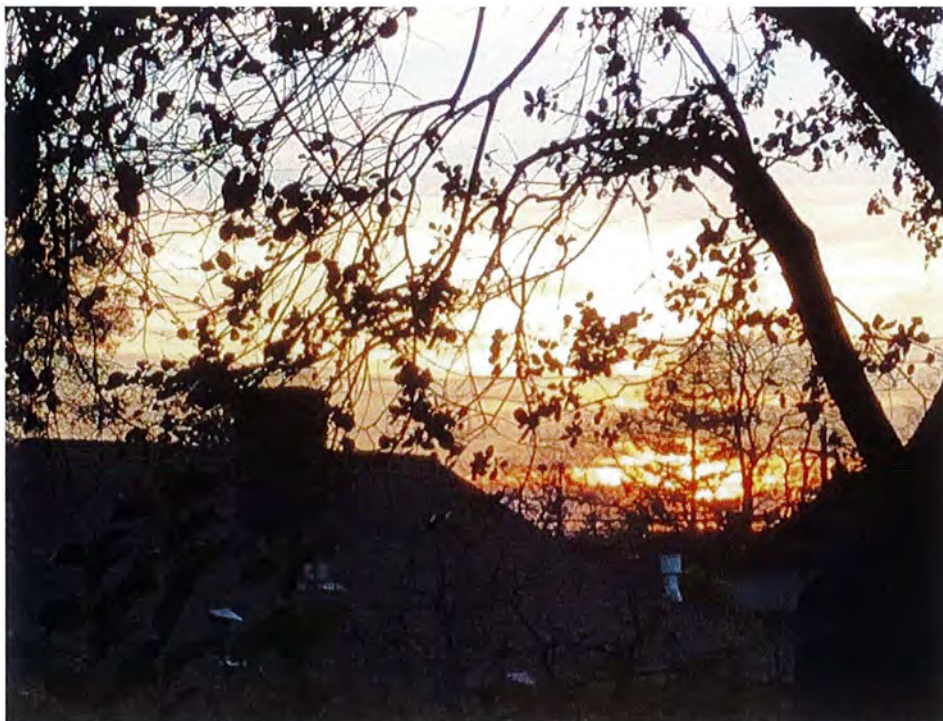


Photo 1: View from the Southwest Corner Window at sundown. Note that parts of the Bay are visible despite the oak tree foliage.

Subject: Concerns regarding ZONING PERMIT # ZP2020-0107

4 of 5



Photo 2: Southwest facing window at around 4pm, January 2021.

Subject: Concerns regarding ZONING PERMIT # ZP2020-0107

5 of 5



Photo 3: View of the oak tree and its canopy from 2916 Elmwood Court. The fence is approximately 7.5 feet high. The lowest branch begins about 9 feet off the ground.

Exhibit 3: Response letter from Ms. Allison Riemer



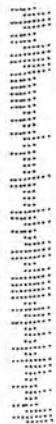
PERMIT # ZP2020-0107



Department of Planning and Development  
Land Use Planning Division  
1947 Center Street, 2nd Floor  
Berkeley, California 94704-1107

Occupants  
2916 Elmwood Court  
Berkeley, CA 94705

9470592026 0008



neopost  
04/22/2021  
FIRST-CLASS MAIL  
US POSTAGE \$000.51  
ZIP 94704  
041M1250756

Vertical text on the left edge of the envelope flap, including 'U P P' and '1/8'.





April 21, 2021

Occupants  
2916 Elmwood Court  
Berkeley, CA 94705

Re: Use Permit ZP2020-0107 for 2943 Pine Avenue

Dear Occupants of 2916 Elmwood Court,

I received the letter you sent on April 20, 2021; based on the envelope, it appears the letter was mailed on April 2. The project was approved by the Zoning Adjustments Board on April 8, and the appeal period ends on April 27, 2021. Below are the instructions to appeal the project to the City Council.

**TO APPEAL THIS DECISION (see Section 23B.32.050 of the Berkeley Municipal Code):**

*Please note that the new method for appeal submittals described below have been put in place to comply with the requirements of the Shelter In Place Order and shall be effective for the duration of Shelter In Place requirements.*

Mail your complete appeal to the City Clerk Department, 2180 Milvia Street, Berkeley, CA 94704 with payment of fees by check or money order included. Appeals submitted by mail must be postmarked on or before the deadline date for filing the appeal.

- A. The fee for persons other than the applicant is \$500. This fee may be reduced to \$100 if the appeal is signed by persons who lease or own at least 50 percent of the parcels or dwelling units within 300 feet of the project site, or at least 25 such persons (not including dependent children), whichever is less.
- B. The fee for all appeals by Applicants is \$2,500.

*If no appeal is received, the permit will be issued on the first business day following expiration of the appeal period, and the project may proceed at that time.*

Please call (510-981-7433), or email me ([ariemer@cityofberkeley.info](mailto:ariemer@cityofberkeley.info)), if you have any questions.

Sincerely,

Allison Riemer, Assistant Planner



# Z O N I N G A D J U S T M E N T S B O A R D S T A F F R E P O R T

FOR BOARD ACTION  
APRIL 8, 2021

## 2943 Pine Avenue

Use Permit #ZP2020-0107 to construct a 729 sq. ft., second-story addition to an existing one-story 1,822 sq. ft. single-family dwelling, with an average height of 23 ft. 1 in., add a fifth bedroom, and legalize an existing 10 ft. fence at the rear and left side, on a lot that is existing non-conforming for lot coverage.

### I. Background

#### A. Land Use Designations:

- General Plan: LDR - Low Density Residential
- Zoning: R-1 – Single-Family Residential

#### B. Zoning Permits Required:

- Use Permit, under Berkeley Municipal Code (BMC) 23C.16.070.C, to construct an addition to a dwelling that is non-conforming by reason of violation of the maximum allowable lot coverage
- Administrative Use Permit, under BMC Section 23D.16.030, to construct a major (i.e. > 500 sq. ft.) residential addition
- Administrative Use Permit, under BMC Section 23D.16.050.A, to add a fifth bedroom to the parcel
- Administrative Use Permit, under BMC Section 23D.16.070.C, to allow a residential addition which exceeds 14 feet in average height
- Administrative Use Permit pursuant to BMC Section 23D.08.060 for a fence within the required side and rear yards over six feet in height

**C. CEQA Recommendation:** It is staff's recommendation to ZAB that this project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15301 ("Existing Facilities") and Section 15303 ("New Construction or Conversion of Small Structures") of the CEQA Guidelines. The determination is made by ZAB.

**D. Parties Involved:**

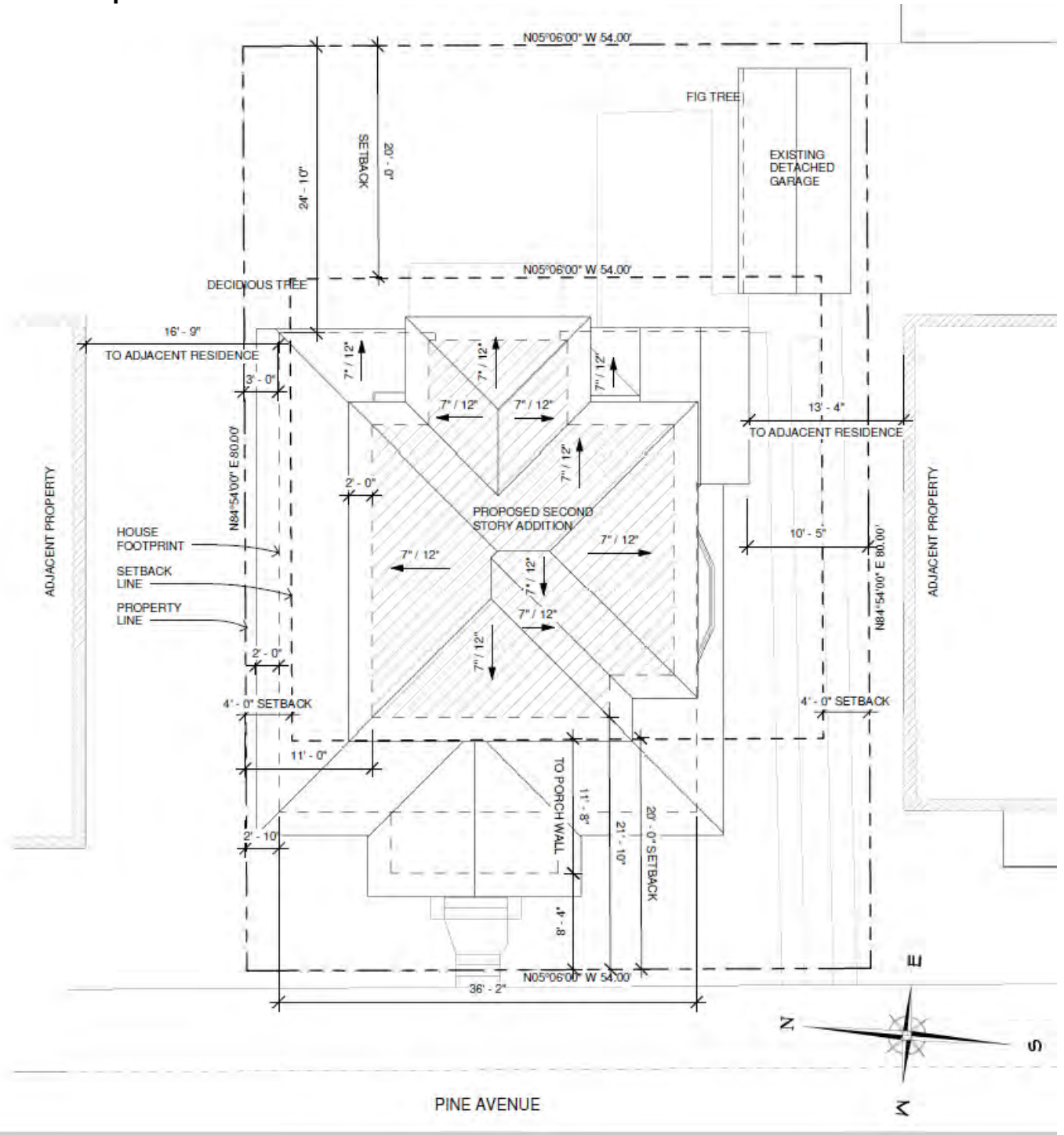
- Applicant: Anne Sum, J. Allen Sayles Architects, 3249 Mt Diablo Court, Suite 202, Lafayette
- Owner: Robert and Anne Nachtwey, 2943 Pine Avenue, Berkeley

**Figure 1: Vicinity Map**





Figure 2: Proposed Site Plan



**Table 1: Land Use Information**

| Location               |       | Existing Use            | Zoning District                 | General Plan Designation     |
|------------------------|-------|-------------------------|---------------------------------|------------------------------|
| Subject Property       |       | One-story dwelling      | R-1 - Single-Family Residential | LDR -Low Density Residential |
| Surrounding Properties | North | One-story dwelling      |                                 |                              |
|                        | South | Two two-story dwellings |                                 |                              |
|                        | East  | Two two-story dwellings |                                 |                              |
|                        | West  | Two one-story dwellings |                                 |                              |

**Table 2: Special Characteristics**

| Characteristic                                                                          | Applies to Project? | Explanation                                                                                                                                                                                                                                                |
|-----------------------------------------------------------------------------------------|---------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Creeks<br>(Per BMC Section 17.08.045)                                                   | No                  | No creek or culvert, as defined by BMC Chapter 17.08, exists on or within 30' of the site.                                                                                                                                                                 |
| Green Building Score                                                                    | No                  | The project involves a remodel and addition to the existing residential building and does not involve construction of new dwelling units.                                                                                                                  |
| Historic Resources<br>(Per Gov't Code §15064.5, BMC Chapter 3.24 or BMC Chapter 23C.08) | No                  | The project does not propose the demolition or substantial alteration of a building over 40 years old. Staff approved a waiver from the Historical Resource Evaluation requirement and it was determined that the building is not likely to be a resource. |
| Housing Accountability Act<br>(Per Gov't Code Section 65589.5(j))                       | No                  | The project is an addition to an existing residential building that does not add residential units, and is therefore not a "housing development project" as defined by Government Code.                                                                    |
| Oak Trees<br>(Per BMC Section 6.52.010)                                                 | No                  | There are no existing oak trees on the site.                                                                                                                                                                                                               |
| Rent Controlled Units<br>(Per BMC Chapter 13.76)                                        | No                  | According to the Rent Stabilization Board (RSB), the subject building is a single-family dwelling and is therefore not subject to BMC Chapter 13.76.                                                                                                       |
| Seismic Hazards Mapping Act<br>(Per State Hazards Mapping Act)                          | No                  | The project site is not located in an area susceptible to liquefaction, fault rupture or landslide, as defined by the State Seismic Hazards Mapping Act (SHMA). Thus, the project is not subject to additional review to comply with the Act.              |
| Soil/Groundwater Contamination                                                          | No                  | The site is not located within the City's Environmental Management Area and is not on the Cortese List.                                                                                                                                                    |
| Transit Access                                                                          | Yes                 | Bus stops for AC transit route 604 are within 300 feet of the project site on Ashby Avenue.                                                                                                                                                                |

**Table 3: Project Chronology**

| Date              | Action                                   |
|-------------------|------------------------------------------|
| October 16, 2020  | Application submitted                    |
| November 3, 2020  | Application deemed incomplete            |
| November 24, 2020 | Revised application materials submitted  |
| December 23, 2020 | Application deemed incomplete            |
| January 25, 2021  | Revised application materials submitted  |
| February 24, 2021 | Application deemed incomplete            |
| March 4, 2021     | Revised application materials submitted  |
| March 9, 2021     | Revised application materials submitted  |
| March 10, 2021    | Application deemed complete              |
| March 25, 2021    | ZAB Public hearing notices mailed/posted |
| April 8, 2021     | ZAB hearing                              |

**Table 4: Development Standards**

| Standard                         |            | Existing | Proposed  | Permitted/<br>Required           |
|----------------------------------|------------|----------|-----------|----------------------------------|
| BMC Sections 23D.16-070 and .080 |            |          |           |                                  |
| Lot Area (sq. ft.)               |            | 4,320    | No Change | 5,000 min                        |
| Dwelling Units on Lot            |            | 1        | No Change | 1 main dwelling unit max.        |
| Bedrooms                         |            | 3        | 5         | AUP required for addition of 5th |
| Gross Floor Area of (Sq. ft.)    |            | 1,822    | 2,551     | n/a                              |
| Building Height                  | Average    | 15'-1"   | 23'-1"    | 28' max. (35' with Use Permit)   |
|                                  | Stories    | 1        | 2         | 3 max.                           |
| Building Setbacks                | Front      | 8'-4"    | No Change | 20' min.                         |
|                                  | Rear       | 24'-10'  | No Change | 20' min.                         |
|                                  | Left Side  | 2'-10"   | No Change | 4' min.                          |
|                                  | Right Side | 10'-5"   | No Change | 4' min.                          |
| Lot Coverage (%)                 |            | 42       | No Change | 40 max.                          |
| Usable Open Space (sq. ft.)      |            | 1,488    | No Change | 400 min.                         |
| Automobile Parking               |            | 1        | No Change | 1 min. for existing dwellings    |

## II. Project Setting

**A. Neighborhood/Area Description:** The subject property is located on Pine Avenue, between Ashby Avenue and Webster Street. The area is residential in nature and consists predominantly of one- and two-story single-family dwellings. The site is west of Claremont Avenue.

**B. Site Conditions:** The subject property is 4,320 square feet in area, with an existing 1,822 square foot one-story single-family dwelling on the property. The site is non-conforming for lot size as a minimum lot size of 5,000 square feet is required in the R-

1 Residential District, and the left (north) side, and front setbacks are non-conforming. The lot has coverage of 42% where 40% is permitted. There is an existing curb cut and driveway along the southern (right) side of the parcel, which leads to a one-car garage. There is an existing fence along the rear (east) and right (north) side property lines exceeds 10 feet in height.

### III. Project Description

The proposed project is a 729 square-foot second-story addition to the existing one-story single-family dwelling on the property. The proposed addition would increase the average height of the existing residential dwelling unit from 15'-1" to 23'-1". Although the existing dwelling has non-conforming front and left side yard setbacks, the addition would be outside of all required setbacks: it would be setback 21 feet-10 inches from the front property line, and 11 feet from the left side property line.

The first floor would largely remain the same, with no exterior changes, and on the second floor a new bedroom and a study would be added. The proposed study meets the definition of a bedroom from BMC Section 13.42.020, and therefore counts as a fifth bedroom on the parcel. Two small balconies would also be added on the new second floor, one on the south side overlooking the right side yard, and the other on the east side overlooking the rear yard.

No change is proposed to the existing garage.

### IV. Community Discussion

**A. Neighbor/Community Concerns:** Due to Shelter in Place, City staff sent postcards to the owners and occupants of surrounding residences to notify them of the project. Staff also posted posters in the vicinity to notify residents of the project. One neighbor located at 2918 Elmwood Court (located to the southeast) emailed concerns regarding shadows. The applicant responded to the neighbor's concerns and the applicant's responses were sent to the neighbor. On March 25, 2021, the City mailed notices for the ZAB hearing to property owners and occupants within a 300-foot radius, to interested neighborhood organizations, and the City posted notices within the neighborhood in three locations. At the time of this writing, staff has not received any written communications.

**B. Committee Review:** This project is not subject to advisory committee review.

### V. Issues and Analysis

**A. Addition to Structure on Parcel with Non-Conforming Lot Coverage:** Pursuant to BMC Sections 23C.04.070.A and 23C.04.070.C, additions and/or enlargements of lawful non-conforming structures that are non-conforming by reason of exceeding lot coverage are permitted with a Use Permit if the existing use of the property is conforming, the addition/enlargement complies with all applicable laws, and the addition/enlargement does not increase lot coverage or exceed the height limit. As described in Site Conditions, above, the property is non-conforming for lot coverage;

the sub-standard lot has a coverage of 42% where 40% is the maximum. However, the proposed addition would not increase lot coverage, the proposed height is approximately 23 feet, where 28 feet is the maximum allowed without a Use Permit, the existing residential use is conforming, the project conforms with the Zoning Code, and conformance with other applicable laws will be confirmed during review of the building permit.

- B. Addition of a Fifth Bedroom:** While the project increases the number of bedrooms on this parcel, as defined in BMC Section 13.24.020 (Definitions), from three to five, the addition of a fifth bedroom would provide more room for the existing residents within the single-family residence and would not result in an increase in density or intensity of the parcel.
- C. Over height (>6') Fence:** An existing, unpermitted fence is ten feet in height, along the north and rear property lines, and ends near the garage at the back of the lot. (The portion of the fence in front of the house is less than six feet in height). The fence provides privacy and security for the residents of the subject property, and for residents of the surrounding properties. The fence has been in place since before the current owners purchased the property (in 2014), and there have been no neighbor complaints about the fence.
- D. General Non-Detriment for Use Permits and Administrative Use Permits:** Pursuant to BMC Section 23D.16.090.B, the Zoning Officer may issue Administrative Permits to allow residential additions to exceed 14 feet in average height, up to the district limit of 28 feet, and allow a major residential addition, so long as the proposal would not unreasonably obstruct sunlight, air or views.

Sunlight/Shadow: Shadow studies submitted by the applicant document the addition's projected shadow angles and lengths at three times throughout the day during the summer and winter solstice. The project involves a new second floor, thus increased shadows would occur to the abutting properties to the rear (east) and left (north), and to the northwest across Pine Avenue. The studies show that the addition would create an incremental increase in shadows on two neighboring dwellings, 2932 Pine Avenue and 2939 Pine Avenue, as follows:

- Two hours after sunrise on the winter solstice, shadows on the east side of the dwelling at 2932 Pine Avenue would increase and cover a living room window;
- At noon on the winter solstice shadows on the south side of the dwelling at 2939 Pine Avenue would increase, and reach the bottom third of a bedroom window;
- Two hours after sunset on the winter solstice shadows on the south side of the dwelling at 2939 Pine Avenue would increase and cover the majority of a bedroom window, and would fully cover two office windows.

Because the impacts to neighboring properties would occur on limited areas, and would only partially shade neighboring buildings for a limited time during the year, and only for a few hours of the day, the residential addition would not result in a significant loss of direct sunlight on abutting residences, and these shading impacts are not deemed detrimental.

Air: As discussed above, the proposed second story would not increase the footprint of the dwelling, and meets all setback requirements of the R-1 district. The addition is found to be consistent with the existing development and building-to-building separation pattern – or air – in this R-1 neighborhood because the addition would be outside of all required setbacks, and would not exceed height or story limits. Therefore, there would be minimal if any air impacts.

Views: The addition would not result in obstruction of significant views in the neighborhood as defined in BMC Section 23F.04.010 (Definitions). The neighborhood is generally flat and developed with one- and two-story residences that filter or obscure most views that may be available of the Berkeley hills or the Golden Gate Bridge from off-site view angles, and the area includes mature vegetation which provides additional visual screening.

### E. Additional Findings

Privacy: The new second-story windows would create new views from the subject residence to adjacent properties, but the new windows would be outside of required setbacks. Mature vegetation would separate the addition from adjacent properties, except for the front dwelling at 2947 Pine Avenue, which is next to the driveway for 2943 Pine Avenue; new views of 2947 Pine Avenue would be of the roof of the front dwelling. In addition, the new second story windows would be modest in scale, similar in size and frequency of those on the existing first story. The proposed second story would consist of one bedroom, and a study, and not common living spaces used for congregating. The terrace off of the master bedroom is only accessible through the bedroom and it is too narrow to allow many people at a time. Since it would overlook the wider side yard of the subject property, including the driveway, minimal privacy impacts are anticipated.

**F. General Plan Consistency:** The 2002 General Plan contains several policies applicable to the project, including the following:

1. Policy LU-7–Neighborhood Quality of Life, Action A: Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area.
2. Policy UD-16–Context: The design and scale of new or remodeled buildings should respect the built environment in the area, particularly where the character of the built environment is largely defined by an aggregation of historically and architecturally significant buildings.
3. Policy UD-24–Area Character: Regulate new construction and alterations to ensure that they are truly compatible with and, where feasible, reinforce the desirable design characteristics of the particular area they are in.
4. Policy UD-32–Shadows: New buildings should be designed to minimize impacts on solar access and minimize detrimental shadows.

Staff Analysis: As discussed above, the project would not substantially block views, cast shadows, or create impacts on the privacy of adjacent neighbors. The proposed second story addition occurs within the existing building footprint, meets

the R-1 District development standards, and would not increase the non-conforming lot coverage. Additionally, the project is consistent with the single-family use and residential design character of other buildings in the vicinity.

## VI. Recommendation

Because of the project's consistency with the Zoning Ordinance and General Plan, and its minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board **APPROVE** Use Permit #ZP2020-0107 pursuant to Section 23B.32.030 and subject to the attached Findings and Conditions (see Attachment 1).

### Attachments:

1. Findings and Conditions
2. Project Plans, dated March 10, 2021
3. Notice of Public Hearing

**Staff Planner:** Allison Riemer, [ariemer@cityofberkeley.info](mailto:ariemer@cityofberkeley.info), (510) 981-7433



Index &  
Administrative Record  
ZAB Appeal:  
2943 Pine  
Avenue

These attachments are on file and available for review upon request from the City Clerk Department, or can be accessed from the City Council Website.

**City Clerk Department**  
2180 Milvia Street  
Berkeley, CA 94704  
(510) 981-6900

or from:

**The City of Berkeley, City Council's Web site**  
<http://www.cityofberkeley.info/citycouncil/>



**NOTICE OF PUBLIC HEARING – BERKELEY CITY COUNCIL  
PUBLIC PARTICIPATION BY REMOTE VIDEO ONLY**

**ZAB APPEAL: 2943 PINE AVENUE, USE PERMIT #ZP2020-0107**

Notice is hereby given by the City Council of the City of Berkeley that on **TUESDAY, SEPTEMBER 28, 2021 at 6:00 P.M.** a public hearing will be conducted to consider an appeal of the decision by the Zoning Adjustments Board to approve Use Permit #ZP2020-0107, to construct a 729 square-foot, second-story addition to an existing one-story 1,822 square-foot single-family dwelling, with an average height of 23 feet 1 inch, add a fifth bedroom, and legalize an existing 10-foot fence at the rear and left side, on a lot that is existing non-conforming for lot coverage.

A copy of the agenda material for this hearing will be available on the City's website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of **SEPTEMBER 16, 2021**. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology.**

For further information, please contact Allison Riemer, Project Planner at (510) 981-7433, or [ariemer@cityofberkeley.info](mailto:ariemer@cityofberkeley.info). Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, 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 or in person to the City Clerk. 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](mailto:clerk@cityofberkeley.info) for further information.

---

Mark Numainville, City Clerk

Mailed: September 14, 2021

**NOTICE CONCERNING YOUR LEGAL RIGHTS:** *If you object to a decision by the City Council to approve or deny (Code Civ. Proc. §1094.6(b)) or approve (Gov. Code 65009(c)(5)) an appeal, the following requirements and restrictions apply: 1) Pursuant to Code of Civil Procedure Section 1094.6, no lawsuit challenging a City decision to deny or approve a Zoning Adjustments Board decision may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a Zoning Adjustments Board decision, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.*

*If you challenge the above in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Berkeley at, or prior to, the public hearing. Background information concerning this proposal will be available by request from the City Clerk Department and posted on the City of Berkeley webpage at least 10 days prior to the public hearing.*





Office of the City Manager

PUBLIC HEARING  
September 28, 2021  
(Continued from July 13, 2021)

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: Response to Short Term Referral for Amendments to Accessory Dwelling Unit (ADU) Ordinance to Address Public Safety Concerns; Amending BMC Chapters 23C.24 and 23F.04

RECOMMENDATION

Conduct a public hearing and, upon conclusion, adopt the first reading of a local Accessory Dwelling Unit (ADU) Ordinance [Berkeley Municipal Code (BMC) Chapter 23C.24] and amendments to relevant Definitions [BMC Chapter 23F.04] in the Zoning Ordinance.

SUMMARY

This report responds to a City Council referral from January 26, 2021, which requested a new local ADU Ordinance to provide public safety measures as allowed by State ADU law [Government Code Sections 65852.2 and 65852.22]. This report also provides background on State ADU regulations, explains where jurisdictions have flexibility to adopt local ordinances, and outlines the proposed Zoning Ordinance amendments recommended by Planning Commission for adoption by Council.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

A local ADU Ordinance is a Strategic Plan Priority Project, advancing our goal to create a resilient, safe, connected, and prepared city. Over the past five years, Berkeley has adopted three comprehensive ADU Ordinance amendments in order to maintain compliance with changing State ADU law. The most recent round of State regulations, which came into effect on January 1, 2020, replaced Berkeley's ADU Ordinance and significantly reduced jurisdictions' abilities to regulate ADU development.

**State ADU Law**

ADUs are recognized as low cost, low impact, infill development. As such, they provide much needed housing to the community. State law mandates a streamlined, ministerial permit process that removes barriers to ADU development. State law requires all

jurisdictions to issue ministerial or “by-right” building permits for ADUs in accordance with the regulations listed below. Jurisdictions can develop more lenient local ordinances to encourage ADU development but they cannot be more restrictive nor limit ADU development.

- Issue over-the-counter building permits for ADUs that comply with State regulations.
- Apply the following development standards:
  - Maximum size of no less than 800 to 1200 square feet (allowable scenarios are discussed below);
  - Maximum height of no less than 16 feet; and
  - Rear and side setbacks of no more than 4 feet.
- Allow at least one ADU on every lot that has an existing or proposed dwelling unit. More specifically, allow:
  - One ADU and one JADU on a lot with a Single Family Dwelling.
  - One ADU on a lot with multiple Single Family Dwellings.
  - At least two detached or at least one interior ADU on a lot with a Duplex or a Multifamily Dwelling or a mixed-use project.
- Allow ADUs created by conversions or re-construction of existing buildings or structures (such as garages and sheds) on a lot, even if existing structures don't conform to maximum size, maximum height and required setback (mentioned above) for ADUs.
- Require fire sprinklers only if the primary dwelling unit(s) has or requires fire sprinklers.
- Do not require off-street parking for the ADU if within a half-mile of public transit.
- Do not require off-street parking for the primary dwelling unit if the proposed ADU requires removal of existing off-street parking.
- Do not require owner occupancy of ADUs or associated primary dwelling units except in the case of a JADU, where an owner must live in either the primary unit or the JADU.
- Do not allow short term rentals of ADUs.

There are additional regulations in State law that dictate how ADUs can be created (e.g., by conversion, by new construction, by addition to existing structures), where they can be created (e.g., attached to primary dwelling units, within the walls of an existing structure, free-standing on a lot), and when and how fees can be assessed. In order to communicate the nuances of State ADU law, the Planning Department prepared a table of State ADU regulations (see Attachment 2). In the absence of a local ADU Ordinance, Berkeley has been and will continue to issue building permits for ADUs according to the State's regulations.

## **Public Safety**

In previous versions of Berkeley's ADU Ordinance, the City took steps to ensure public safety in fire-prone areas such as the Environmental Safety Residential district (Berkeley's Fire Zone 3) and lots with frontage on narrow roads in the Hillside Overlay district (Berkeley's Fire Zone 2). See Attachment 3 for a map of Berkeley's Fire Zones.

In previous iterations of the ADU Ordinance, the City addressed safety concerns by requiring an Administrative Use Permit (AUP) in Fire Zones 2 and 3 with required findings for minimum fire safety requirements. An AUP is a discretionary permit that allows public review and evaluations by staff in the Planning Department. This involves consultation with other departments, including the Fire Department, to identify detrimental impacts of projects and require mitigation measures, such as requiring fire sprinklers, adjusting the location of the ADU on the lot, and/or requiring off-street parking.

New State ADU regulations require the City to issue over-the-counter building permits for ADUs, removing the City's authority to require discretionary permits, such as AUPs. Recognizing public safety issues in Berkeley's most severe fire hazard districts, the City prohibited ADUs in Fire Zones 2 and 3 via an Urgency Ordinance adopted in December 2019 and extended in January 2020. This prohibition was rescinded in September 2020, when the California Department of Housing and Community Development (HCD) published guidance on State ADU law (see Attachment 4) stating that geographic prohibitions for public safety reasons could not be exercised through land use regulation. Guidance from the State clarified that public safety measures are only available through local amendments to the Fire Code, which limits the range of measures that can be utilized, particularly regarding the location of the unit and the provision of off-street parking.

To address this, City Council referred to the City Manager amendments to the Zoning Ordinance and the Fire Code aimed at reducing impacts of additional density in Fire Zones 2 and 3. The Disaster and Fire Safety Commission (DFSC) made separate recommendations to City Council in a Memorandum submitted on March 24, 2021 that addresses emergency access and egress impacts of on-street parking and fire sprinkler requirement. The Planning Commission is recommending modifications to development standards to limit ADU size and ADU placement in these areas.

### **Options for a Local ADU Ordinance**

State law establishes a maximum size for all ADUs at 1,200 square feet, which can be reduced in a local ordinance to 850 square feet if designed as a studio or one-bedroom and 1,000 square feet if designed with two or more bedrooms<sup>1</sup>.

---

<sup>1</sup> ADUs created by conversion of an existing building or structure (e.g. conversion of an attic or basement, conversion of a detached garage) can exceed maximum size requirements per State law. ADUs created in this manner are allowed no more than a 150 square foot addition, intended for ingress and egress.

State law also provides that the local development standards of underlying zoning districts do not apply to ADUs unless explicitly codified in a local ADU ordinance, and only for particular elements such as usable open space, lot coverage, front yard setbacks and design criteria, as long as these standards do not make ADU development “infeasible.” In other words, local ordinances must allow for an ADU of 800 square feet, with a height of 16 feet and side and rear setbacks of 4 feet, on all lots zoned for residential use with at least one proposed or existing dwelling unit, even if the project does not comply with objective development standards in the local ADU ordinance.

### **Planning Commission Recommendation**

On January 26, 2021 City Council referred to the City Manager development of Zoning Ordinance amendments and Fire Code amendments that address emergency access and egress challenges created by new State ADU laws (see Attachment 5). Requested amendments to the Zoning Ordinance involve limitations on the base maximum size of an ADU and required compliance with objective development standards such as front yard setbacks, open space and/or lot coverage.

On April 7, 2021, Planning Commission discussed amendments that responded to Council’s short-term referral. At that meeting, Planning Commission discussed State ADU regulations and focused on allowable modifications to ADU size and height limits. Planning Commission unanimously voted to recommend a set of Zoning Ordinance amendments that update BMC Chapter 23C.24 [Accessory Dwelling Units] and related definitions in BMC Chapter 23F.04 [Definitions] (see Attachment 1). The proposed Zoning Ordinance amendments provide a new ADU Ordinance that is intuitive and written with language that is clear and easy to understand. The bullets below provide rationale where elements of the proposed ordinance are more lenient than State ADU law or involve a level of complexity that benefits from explanation:

- *The Maximum Size:* The referral asks that Berkeley implement size restrictions on ADUs. With no local ordinance, ADUs with a maximum size of 1200 square feet are allowed by State law. **The proposed ADU Ordinance allows a maximum size of 850 square feet for studio and one-bedroom ADUs and 1000 square feet for ADUs with two or more bedrooms. Maximum size is further limited to 800 square feet if a project is located in Fire Zones 2 or 3 or if a project cannot meet front yard setbacks.**
- *Maximum Height:* State law allows a maximum height of 16 feet for ADUs. **The proposed ADU Ordinance allows an 18-foot maximum height** to allow flexibility in ADU design. An 18-foot structure can accommodate two stories, thereby resulting in a possible 50% reduction in building footprint. Planning Commission’s recommendation helps achieve the referral’s goals of preserving open space and minimizing lot coverage, and providing flexibility in design.

- *Objective Development Standards:* The referral asks that Berkeley introduce objective standards for open space and lot coverage to control the maximum size of ADUs. Size controls were requested to ensure lots with ADUs maintain space for emergency access and egress in the event of a disaster. Instead of using open space and lot coverage as metrics, **the proposed ADU Ordinance uses a limit in the number of bedrooms (as explained above) and the location of the lot in Fire Zones 2 and 3 to control ADU size.** The proposal to use the location of lots in State-designated fire-prone area as an objective standard is a simple and intuitive way to limit ADU size for public safety reasons. This eliminates the need to calculate open space and/or lot coverage for proposed projects and provides a direct connection between fire-safety concerns and infill development.
- *Setbacks:* The referral asks that Berkeley introduce objective standards to provide guidance on setbacks. State law explicitly states that side and rear setback requirements can be no more than 4 feet and is silent on front yard setbacks. **The proposed ADU Ordinance utilizes setbacks of the underlying zoning district as an objective standard.**
  - The proposed ADU Ordinance is more lenient than the State if the underlying zoning district has a rear or side setback of less than four feet, such as in some mixed-use districts, where comparable accessory buildings may have a reduced setback requirement.
  - Front yard setbacks are applied in the draft ordinance as they would be in the underlying zoning district. These standards will not limit the ability for a property owner to build an ADU; instead they require objective standards for placement of the ADU. If there is no other location suited to placement of the ADU, then the maximum ADU size will be limited to minimize the impacts to the front yard.
- *ADUs on lots with Group Living Accommodations:* **The draft Zoning Ordinance amendments allow one ADU on lots with GLAs.** The State is silent on whether or not ADU Law applies to GLAs. Over the past year, the Zoning Officer interpreted State ADU law to extend to GLAs (excluding Fraternity Houses, Sorority Houses or Dormitories) by allowing one ADU per lot with a GLA, similar to the regulations for multifamily properties. GLAs are a common residential use in Berkeley and this interpretation is consistent with the State's direction to encourage ADU development. ADUs on lots with GLAs must not be offered for rent as an extension of the GLA, but rented as an independent unit, per State ADU law.

In addition to the items listed above, the proposed amendments include modifications to the ADU and JADU definitions to comply with State law and maintain consistency with the BMC. BMC Chapter 23C.24 is re-written to reflect the requirements of Government

Code Section 65852.2 and 65852.22 in as clear and concise a manner as possible. The proposed ADU Ordinance has been developed with feedback from members of the public, the ADU Task Force, Berkeley Planning staff, and colleagues from other jurisdictions. If City Council adopts the new ADU Ordinance, Planning staff will publish updated documentation, such as FAQs, a flow chart and a table of regulations. These will explain in non-technical language the regulations in Berkeley's local ADU Ordinance.

### BACKGROUND

In the past six years, Berkeley's ADU Ordinance has been modified multiple times to conform to State law and to facilitate the construction of ADUs. Prior to the latest revisions to the State's ADU regulations, Planning Commission was considering other amendments to the local ADU Ordinance to facilitate the construction of ADUs. However, State law that came into effect on January 1, 2020 requires increased flexibility, has rescinded the AUP process for ADUs, and streamlined the ADU permitting process significantly. In addition, the number of building permits issued for ADUs in Berkeley has increased steadily over the past five years, as illustrated in Table 1. For these reasons, and because of the short-term nature of this referral, the focus of this referral response is narrow and the need for additional amendments will be assessed (and implemented) as part of the Housing Element update.

**Table 1. City of Berkeley ADU Building Permits Issued, 2016-2020**

| Year | 2016 | 2017 | 2018 | 2019 | 2020 |
|------|------|------|------|------|------|
| #    | 16   | 74   | 80   | 96   | 119  |

### ENVIRONMENTAL SUSTAINABILITY

ADUs are generally low impact infill development that have the potential to decrease vehicles miles traveled and greenhouse gas emissions and increase availability of housing near various community amenities, the university campus, transit services and employment opportunities.

### RATIONALE FOR RECOMMENDATION

State ADU law restricts the City from utilizing discretionary processes that mitigate public safety concerns associated with infill development. Ordinance amendments reduce ADU footprints, which will increase the possibility of better ingress, egress and emergency access in the event of a disaster.

### ALTERNATIVE ACTIONS CONSIDERED

Council could take no action and continue to utilize State ADU regulations, with no local modifications.

### CONTACT PERSON



Alene Pearson, Principal Planner, Planning & Development Department, (510) 981-7489

Katrina Lapira, Assistant Planner, Planning & Development Department, (510) 981-7488

Attachments:

- 1: Ordinance
- 2: Table of State ADU Regulations
- 3: Map of Berkeley's Fire Zones
- 4: HCD's ADU Guidance Document
- 5: Council Referral from January 26, 2021
- 6: April 7, 2021 Planning Commission Meeting Final Minutes
- 7: Public Hearing Notice

ORDINANCE NO. -N.S.

ACCESSORY DWELLING UNIT ORDINANCE

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

Section 1. That Berkeley Municipal Code Chapter 23C.24 is amended to read as follows:

**Chapter 23C.24  
Accessory Dwelling Units**

Sections:

[23C.24.010](#) Applicability of Regulations

[23C.24.020](#) Purposes

[23C.24.030](#) Permit Procedures

[23C.24.040](#) ~~Repealed by Ord. 7683-NS.~~

[23C.24.050](#) ~~Repealed by Ord. 7683-NS.~~

[23C.24.060](#) ~~Repealed by Ord. 7683-NS.~~

[23C.24.070](#) ~~Repealed by Ord. 7683-NS.~~

**23C.24.010 Applicability of Regulations**

~~The provisions of this Chapter apply to all lots that are zoned for residential use except 1) in the following zoning districts: Environmental Safety Residential (ES-R), Manufacturing (M), Mixed Manufacturing (MM), Mixed Use Light Industrial (MU-LI), and Unclassified (U); and 2) on a lot with frontage on a roadway with less than 26 feet in pavement width in the Hillside Overlay.~~

- A. ~~The provisions of this Chapter apply to all lots that have at least one existing or proposed Dwelling Unit or Group Living Accommodation that is not a Fraternity House, Sorority House or Dormitory.~~
- B. ~~ADUs and JADUs are allowed on lots as follows:~~
- ~~1. One ADU and/or one JADU is allowed on a lot with one Single Family Dwelling.~~
  - ~~2. One ADU is allowed on a lot with multiple Single Family Dwellings.~~
  - ~~3. For lots with a Duplex or Multiple Dwelling Uses, one of the following is allowed:~~
    - ~~a. Up to two detached ADUs; or~~
    - ~~b. At least one ADU created from non-habitable portions of the existing dwelling structure (e.g. basement, attic, storage room). The maximum number of ADUs created from non-habitable portions of the existing dwelling structure shall not exceed 25% of the number of existing Dwelling Units on the lot.~~
  - ~~4. One ADU is allowed on a lot with a Group Living Accommodation that is not a Fraternity House, Sorority House or Dormitory.~~

### 23C.24.020 Purposes

The purposes of this Chapter are to:

- A. Implement California Government Code Section [65852.2](#) and [65852.22](#).
- B. Increase overall supply and range of housing options in Berkeley.
- C. Expedite small-scale infill development.
- D. Support Housing Element goals of facilitating construction of Accessory Dwelling Units and increasing the number of housing units that are more affordable to Berkeley residents.
- E. Encourage development of Accessory Dwelling Units in zoning districts with compatible land uses and infrastructure.
- F. Reduce potential impacts of new development in high fire hazard severity areas.

### 23C.24.030 Permit Procedures

~~Zoning Certificates will be issued for Accessory Dwelling Units and Junior Accessory Dwelling Units per California Government Code Section [65852.2](#) and [65852.22](#).~~

- A. An application for an ADU or JADU is subject to ministerial review. Review must be completed within 60 days of submission of a complete application.
- B. If an application to create an ADU or JADU is submitted as part of a project that requires discretionary review, a building permit shall not be issued for the ADU or JADU until the discretionary approval(s) has/have been granted and any applicable appeal periods have expired.

### 23C.24.040 Special Provisions Development Standards

~~Repealed by Ord. 7683-NS.~~

- A. Development Standards in Paragraphs B through G, below, apply as follows:
  - 1. Detached New Construction. A detached, new construction ADU is subject to Development Standards for ADUs. A detached, new construction ADU is defined as having a 3-foot separation from a Main Building per Section [23E.04.030](#).
  - 2. Converted or Rebuilt Entirely from an Existing Building or Structure. An ADU converted or rebuilt entirely from an existing building or structure, in the same location with the same dimensions and roof height, is not subject to Development Standards for ADUs. These include:
    - a. An ADU created entirely within an existing Single Family Dwelling.
    - b. An ADU created entirely within the existing non-habitable space of a Duplex or Multiple Dwelling Use.
    - c. An ADU created entirely within an existing detached Accessory Building or Accessory Structure.
    - d. An ADU created entirely within an existing Accessory Building or

Accessory Structure that is demolished and rebuilt.

3. Addition to an Existing or Rebuilt Building or Structure. An ADU, fully or partially created by an addition of square footage to or changes in roof height is subject to Development Standards for ADUs. Paragraph B applies to the ADU's maximum size and Paragraphs C through G apply to the added square footage and roof design. These include:
  - a. An ADU created by an addition or roof change to an existing Single Family Dwelling.
  - b. An ADU created by an addition or roof change to an existing detached Accessory Building or Accessory Structure.
  - c. And ADU created by an addition or roof change to an existing Accessory Building or Accessory Structure that is demolished and rebuilt.
4. Notwithstanding any other provision of this Chapter, no ADU is permitted to be built in the Hillside Overlay or Environmental Safety Residential (ES-R) districts unless it complies with the requirements of Government Code section 65852.2(e)(1).
5. A JADU is subject to applicable Development Standards in Paragraphs B and G.

B. Maximum Size

1. A detached, new construction ADU or an ADU fully or partially created by addition to an existing or proposed Single Family Dwelling is subject to the following maximum size limits:
  - a. 850 square feet for a studio or one-bedroom ADU.
  - b. 1000 square feet for an ADU with two or more bedrooms.
2. An ADU created from an existing Accessory Building or Accessory Structure that does not conform to the Development Standards in Paragraphs C and D may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing building or structure. Additions shall conform with the Development Standards in this Chapter
3. An ADU created from an existing Accessory Building or Accessory Structure that conforms to the Development Standards in Paragraphs C and D must comply with one of the following:
  - a. May include an expansion of not more than 150 square feet beyond the same physical dimensions of the existing building or structure; or
  - b. 850 square feet for a studio or one-bedroom ADU; or
  - c. 1000 square feet for an ADU with two or more bedrooms.
4. The maximum size of a JADU is 500 square feet.

C. Maximum Height is applied to ADUs as follows. See Chapter 23F.04 for definition.

1. Maximum Height of a detached, new construction ADU is 18 feet.
2. Maximum Height of new square footage added to a Single Family Dwelling, Accessory Building or Accessory Structure to create an ADU is 18 feet.

- D. Rear and Side Setbacks. The required rear and side setbacks for a detached, new construction ADU or addition to an existing building or structure are 4 feet, unless a lesser setback is allowed for a comparable Accessory Building or Accessory Structure in the underlying zoning district.
- E. Front Yard Setback. The required front yard setback is the same as is established in the underlying zoning district.
- F. Projections. Architectural features (Chimneys, Water Heater Enclosures, Flues, Heating and Cooling Equipment, Eaves, Cornices, Canopies, Awnings and Bay Window) may project two feet into the required setbacks, so long as there remains at least a two-foot setback from property lines.
- G. Parking
  - 1. Off-street parking is not required.
  - 2. Replacement parking is not required, but is allowed if in compliance with Chapter 23D.12 and/or Chapter 23E.28.
- H. Nothing in this Chapter shall preclude the issuance of Zoning Certificate for the construction or conversion of an ADU or JADU that complies with the requirements of Government Code section 65852.2(e)(1). The City shall not apply the Development Standards in this Chapter to the extent they are inconsistent with the requirements of Government Code sections 65852.2 and 65852.22.
- I. A Zoning Certificate for the construction of an ADU or JADU may not be denied based on the failure of the applicant to correct a nonconforming zoning condition.

**23C.24.050 Development Standards Special Provisions**

*Repealed by Ord. 7683-NS.*

- A. A rooftop deck may be established provided that the entire roof, deck and railing comply with Development Standards for ADUs in Section 23C.24.040 Paragraphs C through G.
- B. A JADU must be owner-occupied. For purposes of this paragraph, "owner-occupied" means that a person with legal title to the property must reside in either the Single Family Dwelling or the JADU as their legal permanent residence.
- C. The property owner shall file a deed restriction with the County Recorder providing that:
  - 1. The ADU and/or JADU shall not be sold separately from the Dwelling Unit.
  - 2. The ADU and/or JADU shall not be rented for a term that is shorter than 30 days.

3. The JADU or the Single Family Dwelling in which the JADU is located shall be owner-occupied per the definition in Section 23F.04.010

~~**23C.24.060 Modification of Development Standards with an Administrative Use Permit**~~

~~Repealed by Ord. 7683-NS.~~

~~**23C.24.070 Findings**~~

~~Repealed by Ord. 7683-NS.~~

Section 2. That the definition for Accessory Dwelling Unit in Berkeley Municipal Code Chapter 23F.04.010 is amended to read as follows:

**Accessory Dwelling Unit (ADU):** A secondary Dwelling Unit that is located on a lot ~~with a proposed or existing Single Family Dwelling, Duplex, Multiple Dwelling Use, or Group Living Accommodation, which is occupied by one legally established Single Family Dwelling that conforms to the standards of Section 23C.24.~~ An Accessory Dwelling Unit must comply with local building, housing, safety and other code requirements ~~unless the City is prohibited from applying such requirements by Government Code Section 65852.2 or 65852.22~~ and provide the following features independent of the Single Family Dwelling, ~~Duplex, Multiple Dwelling Use, or Group Living Accommodation~~: 1) exterior ~~or independent~~ access to Accessory Dwelling Unit; 2) living and sleeping quarters; 3) a full kitchen; and 4) a full bathroom. An Accessory Dwelling Unit also includes the following:

- A. An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.
- B. A manufactured home, as defined in Section 18007 of the Health and Safety Code.

Section 3. That the definition for Primary Dwelling Unit in Berkeley Municipal Code Chapter 23F.04.010 is rescinded:

~~**Primary Dwelling Unit:** A legally established Single Family Dwelling that is on a lot with an Accessory Dwelling Unit.~~

Section 4. That the following two definitions are adopted into Berkeley Municipal Code Chapter 23F.04.010:

~~**Efficiency Kitchen:** A kitchen that includes a sink, a cooking facility with appliances (e.g. microwave, toaster, oven, hot plate), and food preparation counter space and cabinets.~~

~~**Junior Accessory Dwelling Unit (JADU):** A unit that is contained within the walls of a Single Family Dwelling and includes a separate exterior entrance. A JADU may not be located in an Accessory Building or an Accessory Structure. A JADU may include separate sanitation facilities, or may share sanitary facilities with a Single Family Dwelling. At a minimum, a JADU shall include an Efficiency Kitchen with a working refrigerator.~~

Section 5. 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.



## **REVISED AGENDA MATERIAL**

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: Response to Short Term Referral for Amendments to Accessory Dwelling Unit (ADU) Ordinance to Address Public Safety Concerns

### **SUMMARY**

At its April 7, 2021 meeting, Planning Commission recommended that the maximum height of ADUs be increased to 18 feet. The Zoning Ordinance amendment initially submitted with this staff report would limit the maximum height of an ADU located in the Hillside Overlay or the Environmental Safety (ES-R) zoning districts to 16 feet. The supplemental material updates the draft Zoning Ordinance amendment (Attachment), permitting a maximum height of 18 feet for all new ADUs city-wide, to more accurately reflect the Planning Commission's recommendation.











**ACCESSORY DWELLING UNIT ORDINANCE SUMMARY**

Effective December 20, 2020

**Processing + Land Use Development Standards**

Ministerial land use approval for ADUs will be issued within **60-days** of receiving a **complete** building permit application.

|                                               | JADU <sup>1</sup>                                                                                                                                                                                   | ADU on LOT WITH SINGLE FAMILY DWELLING(S)                                                                                                                                                                                                                                                                                       |                                                                                                                                          |                                                                                                                                                  | ADU on LOT WITH MULTI-FAMILY DWELLING(S)                                                                                                                                                                          |                                                                                                                                          |
|-----------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------|
| <b>ADU Type</b>                               | <br><b>Conversion JADU<sup>2</sup></b><br><i>[interior conversion of some portion of a single-family dwelling]</i> | <br><b>Conversion ADU<sup>2&amp;3</sup></b><br><i>[interior conversion of existing habitable or non-habitable area within a single-family dwelling, or conversion of a legally built detached accessory structure or accessory building]</i> | <br><b>Detached ADUs</b><br><i>[new construction]</i> | <br><b>Attached ADU</b><br><i>[addition/new construction]</i> | <br><b>Conversion ADU<sup>2</sup></b><br><i>[interior conversion of existing non-habitable area of multifamily structures]</i> | <br><b>Detached ADUs</b><br><i>[new construction]</i> |
| <b>Lot</b>                                    | A JADU may be established on a lot with one single family dwelling.                                                                                                                                 | An ADU may be established on a lot that has an existing or proposed single-family or multi-family dwelling.                                                                                                                                                                                                                     |                                                                                                                                          |                                                                                                                                                  |                                                                                                                                                                                                                   |                                                                                                                                          |
| <b>Number of Accessory Units</b>              | 1 <sup>4</sup>                                                                                                                                                                                      | 1 <sup>5</sup>                                                                                                                                                                                                                                                                                                                  |                                                                                                                                          |                                                                                                                                                  | <b>Interior Conversion ADU:</b> At least one and no more than 25% of the existing unit count in multifamily building. <sup>6</sup><br><b>OR</b><br><b>Detached ADU:</b> 2                                         |                                                                                                                                          |
| <b>Maximum Size (Square Feet<sup>2</sup>)</b> | 500                                                                                                                                                                                                 | N/A                                                                                                                                                                                                                                                                                                                             | 1,200                                                                                                                                    | 1,200                                                                                                                                            | N/A                                                                                                                                                                                                               | 1,200                                                                                                                                    |
| <b>Maximum Height (Feet)</b>                  | N/A                                                                                                                                                                                                 | N/A                                                                                                                                                                                                                                                                                                                             | 16                                                                                                                                       |                                                                                                                                                  | N/A                                                                                                                                                                                                               | 16                                                                                                                                       |
| <b>Side Setbacks (Feet)</b>                   | N/A                                                                                                                                                                                                 | N/A                                                                                                                                                                                                                                                                                                                             | 4                                                                                                                                        |                                                                                                                                                  | N/A                                                                                                                                                                                                               | 4                                                                                                                                        |
| <b>Rear Setbacks (Feet)</b>                   | N/A                                                                                                                                                                                                 | N/A                                                                                                                                                                                                                                                                                                                             | 4                                                                                                                                        |                                                                                                                                                  | N/A                                                                                                                                                                                                               | 4                                                                                                                                        |
| <b>Entrance(s)</b>                            | Exterior entrance required.                                                                                                                                                                         | Exterior entrance required.                                                                                                                                                                                                                                                                                                     |                                                                                                                                          |                                                                                                                                                  | Independent entrance required. <sup>7</sup>                                                                                                                                                                       |                                                                                                                                          |
| <b>Kitchen</b>                                | Efficiency kitchen required. <sup>8</sup>                                                                                                                                                           | Full kitchen required. <sup>9</sup>                                                                                                                                                                                                                                                                                             |                                                                                                                                          |                                                                                                                                                  |                                                                                                                                                                                                                   |                                                                                                                                          |
| <b>Parking Requirements</b>                   | JADUs created in the attached garage are not subject to the same parking protections as ADUs.                                                                                                       | No parking required for ADUs. Replacement parking for existing dwelling unit(s) not required when a garage, carport, covered parking structure, or designated uncovered parking area is physically replaced by an accessory dwelling unit.                                                                                      |                                                                                                                                          |                                                                                                                                                  |                                                                                                                                                                                                                   |                                                                                                                                          |
| <b>Deed Restrictions</b>                      | The owner of the property must record a deed restriction to include the requirements listed in Government Sections 65852.2 and 658582.22.                                                           | The owner of the property must record a deed restriction with Alameda County that restricts the sale of the ADU from the existing dwelling unit(s) and prohibits Short Term Rentals.                                                                                                                                            |                                                                                                                                          |                                                                                                                                                  |                                                                                                                                                                                                                   |                                                                                                                                          |
| <b>Owner Occupancy</b>                        | Required for either single-family dwelling or JADU.                                                                                                                                                 | Not required for ADUs permitted between January 1, 2020 and January 1, 2025.                                                                                                                                                                                                                                                    |                                                                                                                                          |                                                                                                                                                  |                                                                                                                                                                                                                   |                                                                                                                                          |
| <b>Natural Gas Prohibition</b>                | Does not Apply                                                                                                                                                                                      | May Apply <sup>10</sup>                                                                                                                                                                                                                                                                                                         | Applies                                                                                                                                  | Does not Apply                                                                                                                                   | Does not Apply                                                                                                                                                                                                    | Applies                                                                                                                                  |
| <b>Short Term Rentals</b>                     | Prohibited                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                          |                                                                                                                                                  |                                                                                                                                                                                                                   |                                                                                                                                          |
| <b>Impact Fees</b>                            | None                                                                                                                                                                                                | <b>ADUs Less than 750 SF-</b> None<br><b>ADUs Equal to or Greater than 750 SF-</b> Impact fees collected must be proportional to square footage of existing dwelling unit(s).                                                                                                                                                   |                                                                                                                                          |                                                                                                                                                  |                                                                                                                                                                                                                   |                                                                                                                                          |
| <b>Utility Fees and Connections</b>           | No connection fee or capacity charge and no direct line required between ADU or JADU and utility unless in conjunction with a new single-family dwelling.                                           | Connection fee or capacity charge "proportionate to the burden" of the ADU and may require new or separate utility connections.                                                                                                                                                                                                 |                                                                                                                                          |                                                                                                                                                  |                                                                                                                                                                                                                   |                                                                                                                                          |

<sup>1</sup> A Junior ADU (JADU) is a small dwelling unit created from some portion of a single family dwelling. These units can have their own bathroom facilities or share with the single family dwelling.

<sup>2</sup> Conversions do not allow modifications to building footprint/ dimensions of legally built structures or buildings, except where sufficient egress and ingress requires modifications -- in which case, an expansion of up to 150 square feet is allowed for ADUs on lots with single family dwellings.

<sup>3</sup> A Conversion ADU is permitted in an existing accessory structure on both single/multi-family lot.

<sup>4</sup> Lots with multiple detached single-family dwellings may only have one ADU.

<sup>5</sup> Both a JADU and an ADU may exist on a lot zoned with one single-family dwelling.

<sup>6</sup> When calculating, round up to the nearest integer.

<sup>7</sup> Exterior entrance not required, but independent entrance (e.g. off hallway, stairwell or other common space) is required.

<sup>8</sup> An efficiency kitchen includes 1) a sink; 2) a cooking facility with appliances; and 3) food preparation counter and storage cabinets.

<sup>9</sup> A full kitchen requires habitable space used for preparation of food that contains at least a sink, a refrigerator of no less than 10 cubic feet, and either a cooktop and an oven, or a range.

<sup>10</sup> Conversions of detached Accessory Buildings or Accessory Structures that involve Demolition are subject to the Natural Gas Prohibition.

N/A = not applicable SF = square feet

ORDINANCE NO. -N.S.

ACCESSORY DWELLING UNIT ORDINANCE

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

Section 1. That Berkeley Municipal Code Chapter 23C.24 is amended to read as follows:

**Chapter 23C.24  
Accessory Dwelling Units**

Sections:

[23C.24.010](#) Applicability of Regulations

[23C.24.020](#) Purposes

[23C.24.030](#) Permit Procedures

[23C.24.040](#) ~~Repealed by Ord. 7683-NS.~~

[23C.24.050](#) ~~Repealed by Ord. 7683-NS.~~

[23C.24.060](#) ~~Repealed by Ord. 7683-NS.~~

[23C.24.070](#) ~~Repealed by Ord. 7683-NS.~~

**23C.24.010 Applicability of Regulations**

~~The provisions of this Chapter apply to all lots that are zoned for residential use except 1) in the following zoning districts: Environmental Safety-Residential (ES-R), Manufacturing (M), Mixed Manufacturing (MM), Mixed Use-Light Industrial (MU-LI), and Unclassified (U); and 2) on a lot with frontage on a roadway with less than 26 feet in pavement width in the Hillside Overlay.~~

- A. ~~The provisions of this Chapter apply to all lots that have at least one existing or proposed Dwelling Unit or Group Living Accommodation that is not a Fraternity House, Sorority House or Dormitory.~~
- B. ~~ADUs and JADUs are allowed on lots as follows:~~
- ~~1. One ADU and/or one JADU is allowed on a lot with one Single Family Dwelling.~~
  - ~~2. One ADU is allowed on a lot with multiple Single Family Dwellings.~~
  - ~~3. For lots with a Duplex or Multiple Dwelling Uses, one of the following is allowed:~~
    - ~~a. Up to two detached ADUs; or~~
    - ~~b. At least one ADU created from non-habitable portions of the existing dwelling structure (e.g. basement, attic, storage room). The maximum number of ADUs created from non-habitable portions of the existing dwelling structure shall not exceed 25% of the number of existing Dwelling Units on the lot.~~
  - ~~4. One ADU is allowed on a lot with a Group Living Accommodation that is not a Fraternity House, Sorority House or Dormitory.~~

### 23C.24.020 Purposes

The purposes of this Chapter are to:

- A. Implement California Government Code Section [65852.2](#) and [65852.22](#).
- B. Increase overall supply and range of housing options in Berkeley.
- C. Expedite small-scale infill development.
- D. Support Housing Element goals of facilitating construction of Accessory Dwelling Units and increasing the number of housing units that are more affordable to Berkeley residents.
- E. Encourage development of Accessory Dwelling Units in zoning districts with compatible land uses and infrastructure.
- F. Reduce potential impacts of new development in high fire hazard severity areas.

### 23C.24.030 Permit Procedures

~~Zoning Certificates will be issued for Accessory Dwelling Units and Junior Accessory Dwelling Units per California Government Code Section [65852.2](#) and [65852.22](#).~~

- A. An application for an ADU or JADU is subject to ministerial review. Review must be completed within 60 days of submission of a complete application.
- B. If an application to create an ADU or JADU is submitted as part of a project that requires discretionary review, a building permit shall not be issued for the ADU or JADU until the discretionary approval(s) has/have been granted and any applicable appeal periods have expired.

### 23C.24.040 Special Provisions Development Standards

~~Repealed by Ord. 7683-NS.~~

- A. Development Standards in Paragraphs B through G, below, apply as follows:
  1. Detached New Construction. A detached, new construction ADU is subject to Development Standards for ADUs. A detached, new construction ADU is defined as having a 3-foot separation from a Main Building per Section [23E.04.030](#).
  2. Converted or Rebuilt Entirely from an Existing Building or Structure. An ADU converted or rebuilt entirely from an existing building or structure, in the same location with the same dimensions and roof height, is not subject to Development Standards for ADUs. These include:
    - a. An ADU created entirely within an existing Single Family Dwelling.
    - b. An ADU created entirely within the existing non-habitable space of a Duplex or Multiple Dwelling Use.
    - c. An ADU created entirely within an existing detached Accessory Building or Accessory Structure.
    - d. An ADU created entirely within an existing Accessory Building or

Accessory Structure that is demolished and rebuilt.

3. Addition to an Existing or Rebuilt Building or Structure. An ADU, fully or partially created by an addition of square footage to or changes in roof height is subject to Development Standards for ADUs. Paragraph B applies to the ADU's maximum size and Paragraphs C through G apply to the added square footage and roof design. These include:
  - a. An ADU created by an addition or roof change to an existing Single Family Dwelling.
  - b. An ADU created by an addition or roof change to an existing detached Accessory Building or Accessory Structure.
  - c. And ADU created by an addition or roof change to an existing Accessory Building or Accessory Structure that is demolished and rebuilt.
4. Notwithstanding any other provision of this Chapter, no ADU is permitted to be built in the Hillside Overlay or Environmental Safety Residential (ES-R) districts unless it complies with the **maximum size and setback** requirements of Government Code section 65852.2(e)(1).
5. A JADU is subject to applicable Development Standards in Paragraphs B and G.

B. Maximum Size

1. A detached, new construction ADU or an ADU fully or partially created by addition to an existing or proposed Single Family Dwelling is subject to the following maximum size limits:
  - a. 850 square feet for a studio or one-bedroom ADU.
  - b. 1000 square feet for an ADU with two or more bedrooms.
2. An ADU created from an existing Accessory Building or Accessory Structure that does not conform to the Development Standards in Paragraphs C and D may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing building or structure. Additions shall conform with the Development Standards in this Chapter
3. An ADU created from an existing Accessory Building or Accessory Structure that conforms to the Development Standards in Paragraphs C and D must comply with one of the following:
  - a. May include an expansion of not more than 150 square feet beyond the same physical dimensions of the existing building or structure; or
  - b. 850 square feet for a studio or one-bedroom ADU; or
  - c. 1000 square feet for an ADU with two or more bedrooms.
4. The maximum size of a JADU is 500 square feet.

C. Maximum Height is applied to ADUs as follows. See Chapter 23F.04 for definition.

1. Maximum Height of a detached, new construction ADU is 18 feet.
2. Maximum Height of new square footage added to a Single Family Dwelling, Accessory Building or Accessory Structure to create an ADU is 18 feet.

- D. Rear and Side Setbacks. The required rear and side setbacks for a detached, new construction ADU or addition to an existing building or structure are 4 feet, unless a lesser setback is allowed for a comparable Accessory Building or Accessory Structure in the underlying zoning district.
- E. Front Yard Setback. The required front yard setback is the same as is established in the underlying zoning district.
- F. Projections. Architectural features (Chimneys, Water Heater Enclosures, Flues, Heating and Cooling Equipment, Eaves, Cornices, Canopies, Awnings and Bay Window) may project two feet into the required setbacks, so long as there remains at least a two-foot setback from property lines.
- G. Parking
  - 1. Off-street parking is not required.
  - 2. Replacement parking is not required, but is allowed if in compliance with Chapter 23D.12 and/or Chapter 23E.28.
- H. Nothing in this Chapter shall preclude the issuance of Zoning Certificate for the construction or conversion of an ADU or JADU that complies with the requirements of Government Code section 65852.2(e)(1). The City shall not apply the Development Standards in this Chapter to the extent they are inconsistent with the requirements of Government Code sections 65852.2 and 65852.22.
- I. A Zoning Certificate for the construction of an ADU or JADU may not be denied based on the failure of the applicant to correct a nonconforming zoning condition.

**23C.24.050 Development Standards Special Provisions**

*Repealed by Ord. 7683-NS.*

- A. A rooftop deck may be established provided that the entire roof, deck and railing comply with Development Standards for ADUs in Section 23C.24.040 Paragraphs C through G.
- B. A JADU must be owner-occupied. For purposes of this paragraph, "owner-occupied" means that a person with legal title to the property must reside in either the Single Family Dwelling or the JADU as their legal permanent residence.
- C. The property owner shall file a deed restriction with the County Recorder providing that:
  - 1. The ADU and/or JADU shall not be sold separately from the Dwelling Unit.
  - 2. The ADU and/or JADU shall not be rented for a term that is shorter than 30 days.

3. The JADU or the Single Family Dwelling in which the JADU is located shall be owner-occupied per the definition in Section 23F.04.010

~~**23C.24.060 Modification of Development Standards with an Administrative Use Permit**~~

~~Repealed by Ord. 7683-NS.~~

~~**23C.24.070 Findings**~~

~~Repealed by Ord. 7683-NS.~~

Section 2. That the definition for Accessory Dwelling Unit in Berkeley Municipal Code Chapter 23F.04.010 is amended to read as follows:

**Accessory Dwelling Unit (ADU):** A secondary Dwelling Unit that is located on a lot with a proposed or existing Single Family Dwelling, Duplex, Multiple Dwelling Use, or Group Living Accommodation, which is occupied by one legally established Single Family Dwelling that conforms to the standards of Section 23C.24. An Accessory Dwelling Unit must comply with local building, housing, safety and other code requirements unless the City is prohibited from applying such requirements by Government Code Section 65852.2 or 65852.22 and provide the following features independent of the Single Family Dwelling, Duplex, Multiple Dwelling Use, or Group Living Accommodation: 1) exterior or independent access to Accessory Dwelling Unit; 2) living and sleeping quarters; 3) a full kitchen; and 4) a full bathroom. An Accessory Dwelling Unit also includes the following:

- A. An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.
- B. A manufactured home, as defined in Section 18007 of the Health and Safety Code.

Section 3. That the definition for Primary Dwelling Unit in Berkeley Municipal Code Chapter 23F.04.010 is rescinded:

~~**Primary Dwelling Unit:** A legally established Single Family Dwelling that is on a lot with an Accessory Dwelling Unit.~~

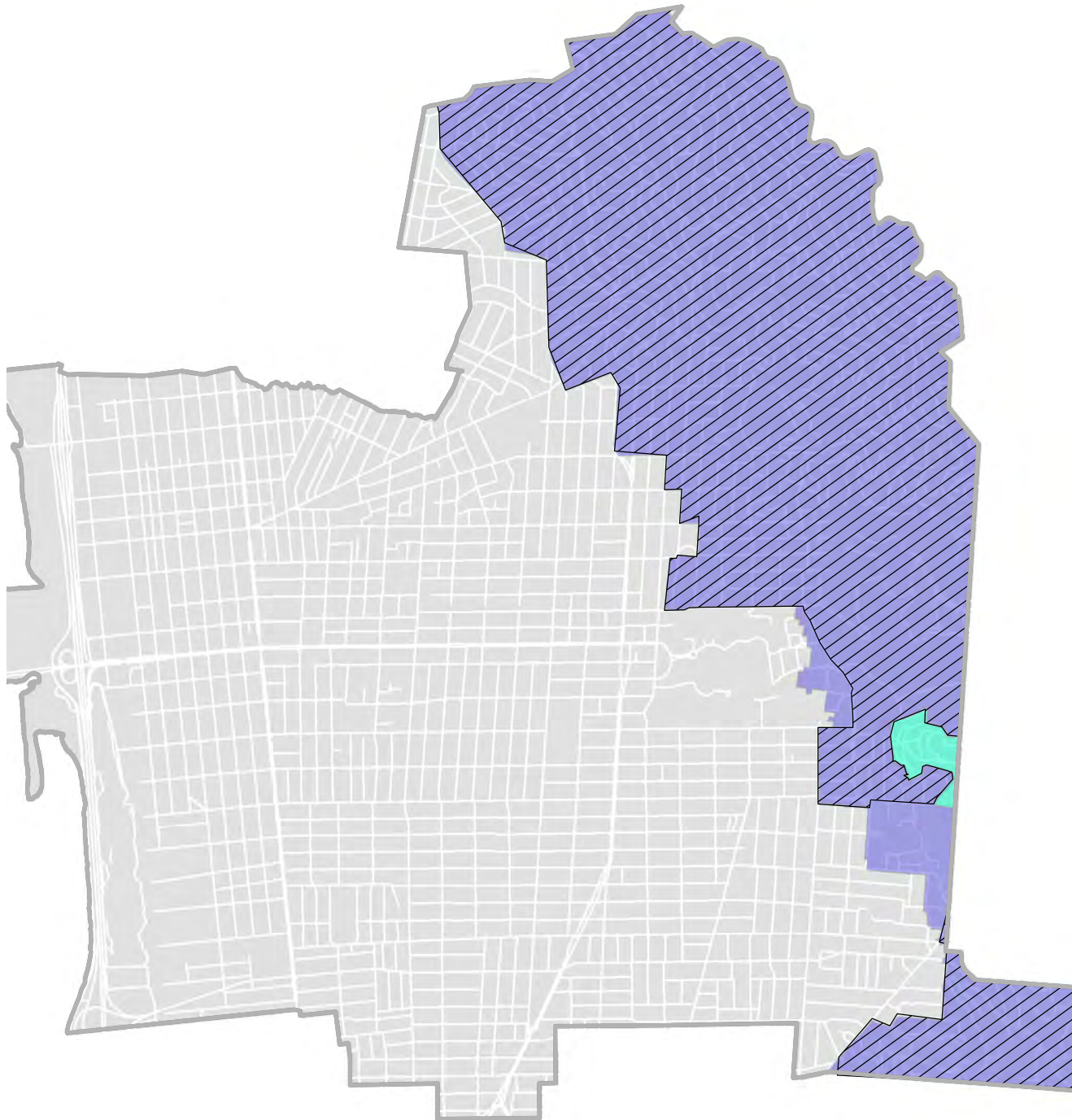
Section 4. That the following two definitions are adopted into Berkeley Municipal Code Chapter 23F.04.010:

~~**Efficiency Kitchen:** A kitchen that includes a sink, a cooking facility with appliances (e.g. microwave, toaster, oven, hot plate), and food preparation counter space and cabinets.~~




~~**Junior Accessory Dwelling Unit (JADU):** A unit that is contained within the walls of a Single Family Dwelling and includes a separate exterior entrance. A JADU may not be located in an Accessory Building or an Accessory Structure. A JADU may include separate sanitation facilities, or may share sanitary facilities with a Single Family Dwelling. At a minimum, a JADU shall include an Efficiency Kitchen with a working refrigerator.~~

Section 5. 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.

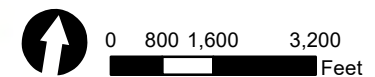
# Hillside Overlay and Fire Zones 2 and 3




## Legend

-  Hillside Overlay
-  Berkeley Fire Zone 2
-  Berkeley Fire Zone 3

Updated:  
November 14, 2019



 **CITY OF BERKELEY**  
Land Use Planning Division  
Dep.t of Planning & Development  
2120 Milvia Street, 2nd Floor  
Berkeley, CA 94704





California Department of Housing and  
Community Development

# Accessory Dwelling Unit Handbook



Where foundations begin

*Updated December 2020*



California Department of Housing and  
Community Development

# Accessory Dwelling Unit Handbook

*December 2020*



Where foundations begin

## Table of Contents

|                                                                                                                                                       |           |
|-------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| <b>Understanding Accessory Dwelling Units (ADUs) and Their Importance</b> .....                                                                       | <b>3</b>  |
| <b>Summary of Recent Changes to Accessory Dwelling Unit Laws</b> .....                                                                                | <b>5</b>  |
| <b>Frequently Asked Questions:</b> .....                                                                                                              | <b>8</b>  |
| 1. Legislative Intent .....                                                                                                                           | 8         |
| 2. Zoning, Development and Other Standards.....                                                                                                       | 9         |
| A) Zoning and Development Standards .....                                                                                                             | 9         |
| B) Size Requirements.....                                                                                                                             | 11        |
| C) Parking Requirements .....                                                                                                                         | 12        |
| D) Setbacks.....                                                                                                                                      | 13        |
| E) Height Requirements .....                                                                                                                          | 13        |
| F) Bedrooms.....                                                                                                                                      | 13        |
| G) Impact Fees.....                                                                                                                                   | 14        |
| H) Conversion of Existing Space in Single Family, Accessory and Multifamily Structures and<br>Other Statewide Permissible ADUs (Subdivision (e))..... | 15        |
| I) Nonconforming Zoning Standards .....                                                                                                               | 16        |
| J) Renter and Owner-occupancy .....                                                                                                                   | 17        |
| K) Fire Sprinkler Requirements.....                                                                                                                   | 17        |
| L) Solar Panel Requirements.....                                                                                                                      | 17        |
| 3. Junior Accessory Dwelling Units (JADUs) – Government Code Section 65852.22 .....                                                                   | 18        |
| 4. Manufactured Homes and ADUs .....                                                                                                                  | 18        |
| 5. ADUs and the Housing Element .....                                                                                                                 | 19        |
| 6. Homeowners Association .....                                                                                                                       | 20        |
| 7. Enforcement.....                                                                                                                                   | 20        |
| 8. Other .....                                                                                                                                        | 20        |
| <b>Resources</b> .....                                                                                                                                | <b>22</b> |
| Attachment 1: Statutory Changes (Strikeout/Italics and Underline).....                                                                                | 23        |
| Attachment 2: State Standards Checklist.....                                                                                                          | 37        |
| Attachment 3: Bibliography.....                                                                                                                       | 38        |

# Understanding Accessory Dwelling Units (ADUs) and Their Importance



California's housing production is not keeping pace with demand. In the last decade, less than half of the homes needed to keep up with the population growth were built. Additionally, new homes are often constructed away from job-rich areas. This lack of housing that meets people's needs is impacting affordability and causing average housing costs, particularly for renters in California, to rise significantly. As affordable housing becomes less accessible, people drive longer distances between housing they can afford and their workplace or pack themselves into smaller shared spaces, both of which reduce quality of life and produce negative environmental impacts.

\*\*\*\*\*

Beyond traditional construction, widening the range of housing types can increase the housing supply and help more low-income Californians thrive. Examples of some of these housing types are Accessory Dwelling Units (ADUs - also referred to as second units, in-law units, casitas, or granny flats) and Junior Accessory Dwelling Units (JADUs).

## **What is an ADU?**

An ADU is an accessory dwelling unit with complete independent living facilities for one or more persons and has a few variations:

- Detached: The unit is separated from the primary structure.
- Attached: The unit is attached to the primary structure.
- Converted Existing Space: Space (e.g., master bedroom, attached garage, storage area, or similar use, or an accessory structure) on the lot of the primary residence that is converted into an independent living unit.
- Junior Accessory Dwelling Unit (JADU): A specific type of conversion of existing space that is contained entirely within an existing or proposed single-family residence.

ADUs tend to be significantly less expensive to build and offer benefits that address common development barriers such as affordability and environmental quality. Because ADUs must be built on lots with existing or proposed housing, they do not require paying for new land, dedicated parking or other costly infrastructure required to build a new single-family home. Because they are contained inside existing single-family homes, JADUs require relatively

modest renovations and are much more affordable to complete. ADUs are often built with cost-effective one or two-story wood frames, which are also cheaper than other new homes. Additionally, prefabricated ADUs can be directly purchased and save much of the time and money that comes with new construction. ADUs can provide as much living space as apartments and condominiums and work well for couples, small families, friends, young people, and seniors.

Much of California's housing crisis comes from job-rich, high-opportunity areas where the total housing stock is insufficient to meet demand and exclusionary practices have limited housing choice and inclusion. Professionals and students often prefer living closer to jobs and amenities rather than spending hours commuting. Parents often want better access to schools and do not necessarily require single-family homes to meet their needs. There is a shortage of affordable units, and the units that are available can be out of reach for many people. To address our state's needs, homeowners can construct an ADU on their lot or convert an underutilized part of their home into a JADU. This flexibility benefits both renters and homeowners who can receive extra monthly rent income.

ADUs also give homeowners the flexibility to share independent living areas with family members and others, allowing seniors to age in place as they require more care, thus helping extended families stay together while maintaining privacy. The space can be used for a variety of reasons, including adult children who can pay off debt and save up for living on their own.

New policies are making ADUs even more affordable to build, in part by limiting the development impact fees and relaxing zoning requirements. A 2019 study from the Turner Center on Housing Innovation noted that one unit of affordable housing in the Bay Area costs about \$450,000. ADUs and JADUs can often be built at a fraction of that price and homeowners may use their existing lot to create additional housing, without being required to provide additional infrastructure. Often the rent generated from the ADU can pay for the entire project in a matter of years.

ADUs and JADUs are a flexible form of housing that can help Californians more easily access job-rich, high-opportunity areas. By design, ADUs are more affordable and can provide additional income to homeowners. Local governments can encourage the development of ADUs and improve access to jobs, education, and services for many Californians.

# Summary of Recent Changes to Accessory Dwelling Unit Laws



In Government Code Section 65852.150, the California Legislature found and declared that, among other things, allowing accessory dwelling units (ADUs) in zones that allow single-family and multifamily uses provides additional rental housing, and is an essential component in addressing California's housing needs. Over the years, ADU law has been revised to improve its effectiveness at creating more housing units. Changes to ADU laws effective January 1, 2021, further reduce barriers, better streamline approval processes, and expand capacity to accommodate the development of ADUs and junior accessory dwelling units (JADUs).

ADUs are a unique opportunity to address a variety of housing needs and provide affordable housing

options for family members, friends, students, the elderly, in-home health care providers, people with disabilities, and others. Further, ADUs offer an opportunity to maximize and integrate housing choices within existing neighborhoods.

Within this context, the California Department of Housing and Community Development (HCD) has prepared this guidance to assist local governments, homeowners, architects, and the general public in encouraging the development of ADUs. The following is a summary of recent legislation that amended ADU law: AB 3182 (2020) and SB 13, AB 68, AB 881, AB 587, AB 670, and AB 671 (2019). Please see Attachment 1 for the complete statutory changes for AB 3182 (2020) and SB 13, AB 68, AB 881, AB 587, AB 670, and AB 671 (2019).

## AB 3182 (Ting)

Chapter 198, Statutes of 2020 (Assembly Bill 3182) builds upon recent changes to ADU law (Gov. Code, § 65852.2 and Civil Code Sections 4740 and 4741) to further address barriers to the development and use of ADUs and JADUs.

This recent legislation, among other changes, addresses the following:

- States that an application for the creation of an ADU or JADU shall be *deemed approved* (not just subject to ministerial approval) if the local agency has not acted on the completed application within 60 days.
- Requires ministerial approval of an application for a building permit within a residential or mixed-use zone to create one ADU *and* one JADU per lot (not one or the other), within the proposed or existing single-family dwelling, if certain conditions are met.
- Provides for the rental or leasing of a separate interest ADU or JADU in a common interest development, notwithstanding governing documents that otherwise appear to prohibit renting or leasing of a unit, *and* without regard to the date of the governing documents.

- Provides for not less than 25 percent of the separate interest units within a common interest development be allowed as rental or leasable units.

### **AB 68 (Ting), AB 881 (Bloom), and SB 13 (Wieckowski)**

Chapter 653, Statutes of 2019 (Senate Bill 13, Section 3), Chapter 655, Statutes of 2019 (Assembly Bill 68, Section 2) and Chapter 659 (Assembly Bill 881, Section 1.5 and 2.5) build upon recent changes to ADU and JADU law (Gov. Code § 65852.2, 65852.22) and further address barriers to the development of ADUs and JADUs.

This legislation, among other changes, addresses the following:

- Prohibits local agencies from including in development standards for ADUs requirements on minimum lot size (Gov. Code, § 65852.2, subd. (a)(1)(B)(i)).
- Clarifies areas designated by local agencies for ADUs may be based on the adequacy of water and sewer services as well as impacts on traffic flow and public safety (Gov. Code, § 65852.2, subd. (a)(1)(A)).
- Eliminates all owner-occupancy requirements by local agencies for ADUs approved between January 1, 2020, and January 1, 2025 (Gov. Code, § 65852.2, subd. (a)(6)).
- Prohibits a local agency from establishing a maximum size of an ADU of less than 850 square feet, or 1,000 square feet if the ADU contains more than one bedroom and requires approval of a permit to build an ADU of up to 800 square feet (Gov. Code, § 65852.2, subds. (c)(2)(B) & (C)).
- Clarifies that when ADUs are created through the conversion of a garage, carport or covered parking structure, replacement of offstreet parking spaces cannot be required by the local agency (Gov. Code, § 65852.2, subd. (a)(1)(D)(xi)).
- Reduces the maximum ADU and JADU application review time from 120 days to 60 days (Gov. Code, § 65852.2, subd. (a)(3) and (b)).
- Clarifies that “public transit” includes various means of transportation that charge set fees, run on fixed routes and are available to the public (Gov. Code, § 65852.2, subd. (j)(10)).
- Establishes impact fee exemptions and limitations based on the size of the ADU. ADUs up to 750 square feet are exempt from impact fees (Gov. Code § 65852.2, subd. (f)(3)); ADUs that are 750 square feet or larger may be charged impact fees but only such fees that are proportional in size (by square foot) to those for the primary dwelling unit (Gov. Code, § 65852.2, subd. (f)(3)).
- Defines an “accessory structure” to mean a structure that is accessory or incidental to a dwelling on the same lot as the ADU (Gov. Code, § 65852.2, subd. (j)(2)).
- Authorizes HCD to notify the local agency if HCD finds that their ADU ordinance is not in compliance with state law (Gov. Code, § 65852.2, subd. (h)(2)).
- Clarifies that a local agency may identify an ADU or JADU as an adequate site to satisfy Regional Housing Needs Allocation (RHNA) housing needs (Gov. Code, §§ 65583.1, subd. (a), and 65852.2, subd. (m)).
- Permits JADUs even where a local agency has not adopted an ordinance expressly authorizing them (Gov. Code, § 65852.2, subds. (a)(3), (b), and (e)).

- Allows a permitted JADU to be constructed within the walls of the proposed or existing single-family residence and eliminates the required inclusion of an existing bedroom or an interior entry into the single-family residence (Gov. Code § 65852.22, subd. (a)(4); former Gov. Code § 65852.22, subd. (a)(5)).
- Requires, upon application and approval, a local agency to delay enforcement against a qualifying substandard ADU for five (5) years to allow the owner to correct the violation, so long as the violation is not a health and safety issue, as determined by the enforcement agency (Gov. Code, § 65852.2, subd. (n); Health & Safety Code, § 17980.12).

### **AB 587 (Friedman), AB 670 (Friedman), and AB 671 (Friedman)**

In addition to the legislation listed above, AB 587 (Chapter 657, Statutes of 2019), AB 670 (Chapter 178, Statutes of 2019), and AB 671 (Chapter 658, Statutes of 2019) also have an impact on state ADU law, particularly through Health and Safety Code Section 17980.12. These pieces of legislation, among other changes, address the following:

- AB 587 creates a narrow exemption to the prohibition for ADUs to be sold or otherwise conveyed separately from the primary dwelling by allowing deed-restricted sales to occur if the local agency adopts an ordinance. To qualify, the primary dwelling and the ADU are to be built by a qualified nonprofit corporation whose mission is to provide units to low-income households (Gov. Code, § 65852.26).
- AB 670 provides that covenants, conditions and restrictions (CC&Rs) that either effectively prohibit or unreasonably restrict the construction or use of an ADU or JADU on a lot zoned for single-family residential use are void and unenforceable (Civ. Code, § 4751).
- AB 671 requires local agencies' housing elements to include a plan that incentivizes and promotes the creation of ADUs that can offer affordable rents for very low, low-, or moderate-income households and requires HCD to develop a list of state grants and financial incentives in connection with the planning, construction and operation of affordable ADUs (Gov. Code, § 65583; Health & Safety Code, § 50504.5).



# Frequently Asked Questions: Accessory Dwelling Units<sup>1</sup>

## 1. Legislative Intent

### a. Should a local ordinance encourage the development of accessory dwelling units?

Yes. Pursuant to Government Code Section 65852.150, the California Legislature found and declared that, among other things, California is facing a severe housing crisis and ADUs are a valuable form of housing that meets the needs of family members, students, the elderly, in-home health care providers, people with disabilities and others. Therefore, ADUs are an essential component of California's housing supply.

ADU law and recent changes intend to address barriers, streamline approval,

### Government Code 65852.150:

(a) *The Legislature finds and declares all of the following:*

(1) *Accessory dwelling units are a valuable form of housing in California.*

(2) *Accessory dwelling units provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods.*

(3) *Homeowners who create accessory dwelling units benefit from added income, and an increased sense of security.*

(4) *Allowing accessory dwelling units in single-family or multifamily residential zones provides additional rental housing stock in California.*

(5) *California faces a severe housing crisis.*

(6) *The state is falling far short of meeting current and future housing demand with serious consequences for the state's economy, our ability to build green infill consistent with state greenhouse gas reduction goals, and the well-being of our citizens, particularly lower and middle-income earners.*

(7) *Accessory dwelling units offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods, while respecting architectural character.*

(8) *Accessory dwelling units are, therefore, an essential component of California's housing supply.*

(b) *It is the intent of the Legislature that an accessory dwelling unit ordinance adopted by a local agency has the effect of providing for the creation of accessory dwelling units and that provisions in this ordinance relating to matters including unit size, parking, fees, and other requirements, are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create accessory dwelling units in zones in which they are authorized by local ordinance.*

<sup>1</sup> Note: Unless otherwise noted, the Government Code section referenced is 65852.2.

and expand potential capacity for ADUs, recognizing their unique importance in addressing California's housing needs. The preparation, adoption, amendment, and implementation of local ADU ordinances must be carried out consistent with Government Code, Section 65852.150 and must not unduly constrain the creation of ADUs. Local governments adopting ADU ordinances should carefully weigh the adoption of zoning, development standards, and other provisions for impacts on the development of ADUs.

In addition, ADU law is the statutory minimum requirement. Local governments may elect to go beyond this statutory minimum and further the creation of ADUs. Many local governments have embraced the importance of ADUs as an important part of their overall housing policies and have pursued innovative strategies. (Gov. Code, § 65852.2, subd. (g)).

## 2. Zoning, Development and Other Standards

### A) Zoning and Development Standards

- **Are ADUs allowed jurisdiction wide?**

No. ADUs proposed pursuant to subdivision (e) must be considered in any residential or mixed-use zone. For other ADUs, local governments may, by ordinance, designate areas in zones where residential uses are permitted that will also permit ADUs. However, any limits on where ADUs are permitted may only be based on the adequacy of water and sewer service, and the impacts on traffic flow and public safety. Further, local governments may not preclude the creation of ADUs altogether, and any limitation should be accompanied by detailed findings of fact explaining why ADU limitations are required and consistent with these factors.

Examples of public safety include severe fire hazard areas and inadequate water and sewer service and includes cease and desist orders. Impacts on traffic flow should consider factors like lesser car ownership rates for ADUs and the potential for ADUs to be proposed pursuant to Government Code section 65852.2, subdivision (e). Finally, local governments may develop alternative procedures, standards, or special conditions with mitigations for allowing ADUs in areas with potential health and safety concerns. (Gov. Code, § 65852.2, subd. (e))

Residential or mixed-use zone should be construed broadly to mean any zone where residential uses are permitted by-right or by conditional use.

- **Can a local government apply design and development standards?**

Yes. A local government may apply development and design standards that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. However, these standards shall be sufficiently objective to allow ministerial review of an ADU. (Gov. Code, § 65852.2, subd. (a)(1)(B)(i))

ADUs created under subdivision (e) of Government Code 65852.2 shall not be subject to design and development standards except for those that are noted in the subdivision.

What does objective mean?

“objective zoning standards” and “objective design review standards” mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. Gov Code § 65913.4, subd. (a)(5)

ADUs that do not meet objective and ministerial development and design standards may still be permitted through an ancillary discretionary process if the applicant chooses to do so. Some jurisdictions with compliant ADU ordinances apply additional processes to further the creation of ADUs that do not otherwise comply with the minimum standards necessary for ministerial review. Importantly, these processes are intended to provide additional opportunities to create ADUs that would not otherwise be permitted, and a discretionary process may not be used to review ADUs that are fully compliant with ADU law. Examples of these processes include areas where additional health and safety concerns must be considered, such as fire risk.

- **Can ADUs exceed general plan and zoning densities?**

Yes. An ADU is an accessory use for the purposes of calculating allowable density under the general plan and zoning that does not count toward the allowable density. For example, if a zoning district allows one unit per 7,500 square feet, then an ADU would not be counted as an additional unit. Further, local governments could elect to allow more than one ADU on a lot, and ADUs are automatically a residential use deemed consistent with the general plan and zoning. (Gov. Code, § 65852.2, subd. (a)(1)(C).)

- **Are ADUs permitted ministerially?**

Yes. ADUs must be considered, approved, and permitted ministerially, without discretionary action. Development and other decision-making standards must be sufficiently objective to allow for ministerial review. Examples include numeric and fixed standards such as heights or setbacks, or design standards such as colors or materials. Subjective standards require judgement and can be interpreted in multiple ways such as privacy, compatibility with neighboring properties or promoting harmony and balance in the community; subjective standards shall not be imposed for ADU development. Further, ADUs must not be subject to a hearing or any ordinance regulating the issuance of variances or special use permits and must be considered ministerially. (Gov. Code, § 65852.2, subd. (a)(3).)

- **Can I create an ADU if I have multiple detached dwellings on a lot?**

Yes. A lot where there are currently multiple detached single-family dwellings is eligible for creation of one ADU per lot by converting space within the proposed or existing space of a single-family dwelling or existing structure or a new construction detached ADU subject to certain development standards.

- **Can I build an ADU in a historic district, or if the primary residence is subject to historic preservation?**

Yes. ADUs are allowed within a historic district, and on lots where the primary residence is subject to historic preservation. State ADU law allows for a local agency to impose standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. However, these standards do not apply to ADUs proposed pursuant to Government Code section 65852.2, subdivision (e).

As with non-historic resources, a jurisdiction may impose objective and ministerial standards that are sufficiently objective to be reviewed ministerially and do not unduly burden the creation of ADUs. Jurisdictions are encouraged to incorporate these standards into their ordinance and submit these standards along with their ordinance to HCD. (Gov. Code, § 65852.2, subs. (a)(1)(B)(i) & (a)(5).)

## B) Size Requirements

- **Is there a minimum lot size requirement?**

No. While local governments may impose standards on ADUs, these standards shall not include minimum lot size requirements. Further, lot coverage requirements cannot preclude the creation of a statewide exemption ADU (800 square feet ADU with a height limitation of 16 feet and 4 feet side and rear yard setbacks). If lot coverage requirements do not allow such an ADU, an automatic exception or waiver should be given to appropriate development standards such as lot coverage, floor area or open space requirements. Local governments may continue to enforce building and health and safety standards and may consider design, landscape, and other standards to facilitate compatibility.

What is a statewide exemption ADU?

A statewide exemption ADU is an ADU of up to 800 square feet, 16 feet in height, as potentially limited by a local agency, and with 4 feet side and rear yard setbacks. ADU law requires that no lot coverage, floor area ratio, open space, or minimum lot size will preclude the construction of a statewide exemption ADU. Further, ADU law allows the construction of a detached new construction statewide exemption ADU to be combined on the same lot with a JADU in a single-family residential zone. In addition, ADUs are allowed in any residential or mixed uses regardless of zoning and development standards imposed in an ordinance. See more discussion below.

- **Can minimum and maximum unit sizes be established for ADUs?**

Yes. A local government may, by ordinance, establish minimum and maximum unit size requirements for both attached and detached ADUs. However, maximum unit size requirements must be at least 850 square feet and 1,000 square feet for ADUs with more than one bedroom. For local agencies without an ordinance, maximum unit sizes are 1,200 square feet for a new detached ADU and up to 50 percent of the floor area of the existing primary dwelling for an attached ADU (at least 800 square feet). Finally, the local agency must not establish by ordinance a minimum square footage requirement that prohibits an efficiency unit, as defined in Health and Safety Code section 17958.1.

The conversion of an existing accessory structure or a portion of the existing primary residence to an ADU is not subject to size requirements. For example, an existing 3,000 square foot barn converted to an ADU would not be subject to the size requirements, regardless if a local government has an adopted ordinance. Should an applicant want to expand an accessory structure to create an ADU beyond 150 square feet, this ADU would be subject to the size maximums outlined in state ADU law, or the local agency's adopted ordinance.

- **Can a percentage of the primary dwelling be used for a maximum unit size?**

Yes. Local agencies may utilize a percentage (e.g., 50 percent) of the primary dwelling as a maximum unit size for attached or detached ADUs but only if it does not restrict an ADU's size to less than the standard of at least 850 square feet (or at least 1000 square feet for ADUs with more than one bedroom). Local agencies must not, by ordinance, establish any other minimum or maximum unit sizes, including based on

a percentage of the primary dwelling, that precludes a statewide exemption ADU. Local agencies utilizing percentages of the primary dwelling as maximum unit sizes could consider multi-pronged standards to help navigate these requirements (e.g., shall not exceed 50 percent of the dwelling or 1,000 square feet, whichever is greater).

- **Can maximum unit sizes exceed 1,200 square feet for ADUs?**

Yes. Maximum unit sizes, by ordinance, can exceed 1,200 square feet for ADUs. ADU law does not limit the authority of local agencies to adopt less restrictive requirements for the creation of ADUs (Gov. Code, § 65852.2, subd. (g)).

Larger unit sizes can be appropriate in a rural context or jurisdictions with larger lot sizes and is an important approach to creating a full spectrum of ADU housing choices.

### C) Parking Requirements

- **Can parking requirements exceed one space per unit or bedroom?**

No. Parking requirements for ADUs shall not exceed one parking space per unit or bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway. Guest parking spaces shall not be required for ADUs under any circumstances.

What is Tandem Parking?

Tandem parking means two or more automobiles that are parked on a driveway or in any other location on a lot, lined up behind one another. (Gov. Code, § 65852.2, subs. (a)(1)(D)(x)(l) and (j)(11).)

Local agencies may choose to eliminate or reduce parking requirements for ADUs such as requiring zero or half a parking space per each ADU.

- **Is flexibility for siting parking required?**

Yes. Local agencies should consider flexibility when siting parking for ADUs. Offstreet parking spaces for the ADU shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made. Specific findings must be based on specific site or regional topographical or fire and life safety conditions.

When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU, or converted to an ADU, the local agency shall not require that those offstreet parking spaces for the primary unit be replaced. (Gov. Code, § 65852.2, subd. (a)(D)(xi).)

- **Can ADUs be exempt from parking?**

Yes. A local agency shall not impose ADU parking standards for any of the following, pursuant to Government Code section 65852.2, subdivisions (d)(1-5) and (j)(10).

(1) Accessory dwelling unit is located within one-half mile walking distance of public transit.

- (2) Accessory dwelling unit is located within an architecturally and historically significant historic district.
- (3) Accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.
- (4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
- (5) When there is a car share vehicle located within one block of the accessory dwelling unit.

*Note: For the purposes of state ADU law, a jurisdiction may use the designated areas where a car share vehicle may be accessed. Public transit is any location where an individual may access buses, trains, subways and other forms of transportation that charge set fares, run on fixed routes and are available to the general public. Walking distance is defined as the pedestrian shed to reach public transit. Additional parking requirements to avoid impacts to public access may be required in the coastal zone.*

## D) Setbacks

- **Can setbacks be required for ADUs?**

Yes. A local agency may impose development standards, such as setbacks, for the creation of ADUs. Setbacks may include front, corner, street, and alley setbacks. Additional setback requirements may be required in the coastal zone if required by a local coastal program. Setbacks may also account for utility easements or recorded setbacks. However, setbacks must not unduly constrain the creation of ADUs and cannot be required for ADUs proposed pursuant to subdivision (e). Further, a setback of no more than four feet from the side and rear lot lines shall be required for an attached or detached ADU. (Gov. Code, § 65852.2, subd. (a)(1)(D)(vii).)

A local agency may also allow the expansion of a detached structure being converted into an ADU when the existing structure does not have four-foot rear and side setbacks. A local agency may also allow the expansion area of a detached structure being converted into an ADU to have no setbacks, or setbacks of less than four feet, if the existing structure has no setbacks, or has setbacks of less than four feet. A local agency shall not require setbacks of more than four feet for the expanded area of a detached structure being converted into an ADU.

A local agency may still apply front yard setbacks for ADUs, but front yard setbacks cannot preclude a statewide exemption ADU and must not unduly constrain the creation of all types of ADUs. (Gov. Code, § 65852.2, subd. (c).)

## E) Height Requirements

- **Is there a limit on the height of an ADU or number of stories?**

Not in state ADU law, but local agencies may impose height limits provided that the limit is no less than 16 feet. (Gov. Code, § 65852.2, subd. (a)(1)(B)(i).)

## F) Bedrooms

- **Is there a limit on the number of bedrooms?**

State ADU law does not allow for the limitation on the number of bedrooms of an ADU. A limit on the number of bedrooms could be construed as a discriminatory practice towards protected classes, such as familial status, and would be considered a constraint on the development of ADUs.

## G) Impact Fees

- **Can impact fees be charged for an ADU less than 750 square feet?**

No. An ADU is exempt from incurring impact fees from local agencies, special districts, and water corporations if less than 750 square feet. Should an ADU be 750 square feet or larger, impact fees shall be charged proportionately in relation to the square footage of the ADU to the square footage of the primary dwelling unit.

What is "Proportionately"?

"Proportionately" is some amount that corresponds to a total amount, in this case, an impact fee for a single-family dwelling. For example, a 2,000 square foot primary dwelling with a proposed 1,000 square foot ADU could result in 50 percent of the impact fee that would be charged for a new primary dwelling on the same site. In all cases, the impact fee for the ADU must be less than the primary dwelling. Otherwise, the fee is not calculated proportionately. When utilizing proportions, careful consideration should be given to the impacts on costs, feasibility, and ultimately, the creation of ADUs. In the case of the example above, anything greater than 50 percent of the primary dwelling could be considered a constraint on the development of ADUs.

For purposes of calculating the fees for an ADU on a lot with a multifamily dwelling, the proportionality shall be based on the average square footage of the units within that multifamily dwelling structure. For ADUs converting existing space with a 150 square foot expansion, a total ADU square footage over 750 square feet could trigger the proportionate fee requirement. (Gov. Code, § 65852.2, subd. (f)(3)(A).)

- **Can local agencies, special districts or water corporations waive impact fees?**

Yes. Agencies can waive impact and any other fees for ADUs. Also, local agencies may also use fee deferrals for applicants.

- **Can school districts charge impact fees?**

Yes. School districts are authorized but do not have to levy impact fees for ADUs greater than 500 square feet pursuant to Section 17620 of the Education Code. ADUs less than 500 square feet are not subject to school impact fees. Local agencies are encouraged to coordinate with school districts to carefully weigh the importance of promoting ADUs, ensuring appropriate nexus studies and appropriate fees to facilitate construction or reconstruction of adequate school facilities.

- **What types of fees are considered impact fees?**

Impact fees charged for the construction of ADUs must be determined in accordance with the Mitigation Fee Act and generally include any monetary exaction that is charged by a local agency in connection with the approval of an ADU, including impact fees, for the purpose of defraying all or a portion of the cost of public facilities relating to the ADU. A local agency, special district or water corporation shall not consider ADUs as a new residential use for the purposes of calculating connection fees or capacity charges for

utilities, including water and sewer services. However, these provisions do not apply to ADUs that are constructed concurrently with a new single-family home. (Gov. Code, §§ 65852.2, subd. (f), and 66000)

- **Can I still be charged water and sewer connection fees?**

ADUs converted from existing space and JADUs shall not be considered by a local agency, special district or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, unless constructed with a new single-family dwelling. The connection fee or capacity charge shall be proportionate to the burden of the proposed ADU, based on its square footage or plumbing fixtures as compared to the primary dwelling. State ADU law does not cover monthly charge fees. (Gov. Code, § 65852.2, subd. (f)(2)(A).)

## H) Conversion of Existing Space in Single Family, Accessory and Multifamily Structures and Other Statewide Permissible ADUs (Subdivision (e))

- **Are local agencies required to comply with subdivision (e)?**

Yes. All local agencies must comply with subdivision (e). This subdivision requires the ministerial approval of ADUs within a residential or mixed-use zone. The subdivision creates four categories of ADUs that should not be subject to other specified areas of ADU law, most notably zoning and development standards. For example, ADUs under this subdivision should not have to comply with lot coverage, setbacks, heights, and unit sizes. However, ADUs under this subdivision must meet the building code and health and safety requirements. The four categories of ADUs under subdivision (e) are:

- b. One ADU and one JADU are permitted per lot within the existing or proposed space of a single-family dwelling, or a JADU within the walls of the single family residence, or an ADU within an existing accessory structure, that meets specified requirements such as exterior access and setbacks for fire and safety.**
- c. One detached new construction ADU that does not exceed four-foot side and rear yard setbacks. This ADU may be combined on the same lot with a JADU and may be required to meet a maximum unit size requirement of 800 square feet and a height limitation of 16 feet.**
- d. Multiple ADUs within the portions of multifamily structures that are not used as livable space. Local agencies must allow at least one of these types of ADUs and up to 25 percent of the existing multifamily structures.**
- e. Up to two detached ADUs on a lot that has existing multifamily dwellings that are subject to height limits of 16 feet and 4-foot rear and side yard setbacks.**

The above four categories are not required to be combined. For example, local governments are not required to allow (a) and (b) together or (c) and (d) together. However, local agencies may elect to allow these ADU types together.

Local agencies shall allow at least one ADU to be created within the non-livable space within multifamily dwelling structures, or up to 25 percent of the existing multifamily dwelling units within a structure and may also allow not more than two ADUs on the lot detached from the multifamily dwelling structure. New detached units are subject to height limits of 16 feet and shall not be required to have side and rear setbacks of more than four feet.



The most common ADU that can be created under subdivision (e) is a conversion of proposed or existing space of a single-family dwelling or accessory structure into an ADU, without any prescribed size limitations, height, setback, lot coverage, architectural review, landscape, or other development standards. This would enable the conversion of an accessory structure, such as a 2,000 square foot garage, to an ADU without any additional requirements other than compliance with building standards for dwellings. These types of ADUs are also eligible for a 150 square foot expansion (see discussion below).

ADUs created under subdivision (e) shall not be required to provide replacement or additional parking. Moreover, these units shall not, as a condition for ministerial approval, be required to correct any existing or created nonconformity. Subdivision (e) ADUs shall be required to be rented for terms longer than 30 days, and only require fire sprinklers if fire sprinklers are required for the primary residence. These ADUs shall not be counted as units when calculating density for the general plan and are not subject to owner-occupancy.

- **Can I convert my accessory structure into an ADU?**

Yes. The conversion of garages, sheds, barns, and other existing accessory structures, either attached or detached from the primary dwelling, into ADUs is permitted and promoted through the state ADU law. These conversions of accessory structures are not subject to any additional development standard, such as unit size, height, and lot coverage requirements, and shall be from existing space that can be made safe under building and safety codes. A local agency should not set limits on when the structure was created, and the structure must meet standards for health and safety. Finally, local governments may also consider the conversion of illegal existing space and could consider alternative building standards to facilitate the conversion of existing illegal space to minimum life and safety standards.

- **Can an ADU converting existing space be expanded?**

Yes. An ADU created within the existing or proposed space of a single-family dwelling or accessory structure can be expanded beyond the physical dimensions of the structure. In addition, an ADU created within an existing accessory structure may be expanded up to 150 square feet without application of local development standards, but this expansion shall be limited to accommodating ingress and egress. An example of where this expansion could be applicable is for the creation of a staircase to reach a second story ADU. These types of ADUs shall conform to setbacks sufficient for fire and safety.

A local agency may allow for an expansion beyond 150 square feet, though the ADU would have to comply with the size maximums as per state ADU law, or a local agency's adopted ordinance.

As a JADU is limited to being created within the walls of a primary residence, this expansion of up to 150 square feet does not pertain to JADUs.

## I) Nonconforming Zoning Standards

- **Does the creation of an ADU require the applicant to carry out public improvements?**

No physical improvements shall be required for the creation or conversion of an ADU. Any requirement to carry out public improvements is beyond what is required for the creation of an ADU, as per state law. For example, an applicant shall not be required to improve sidewalks, carry out street improvements, or access improvements to create an ADU. Additionally, as a condition for ministerial approval of an ADU, an applicant shall not be required to correct nonconforming zoning conditions. (Gov. Code, § 65852.2, subd. (e)(2).)

## J) Renter and Owner-occupancy

- **Are rental terms required?**

Yes. Local agencies may require that the property be used for rentals of terms longer than 30 days. ADUs permitted ministerially, under subdivision (e), shall be rented for terms longer than 30 days. (Gov. Code, § 65852.2, subs. (a)(6) & (e)(4).)

- **Are there any owner-occupancy requirements for ADUs?**

No. Prior to recent legislation, ADU laws allowed local agencies to elect whether the primary dwelling or ADU was required to be occupied by an owner. The updates to state ADU law removed the owner-occupancy allowance for newly created ADUs effective January 1, 2020. The new owner-occupancy exclusion is set to expire on December 31, 2024. Local agencies may not retroactively require owner occupancy for ADUs permitted between January 1, 2020, and December 31, 2024.

However, should a property have both an ADU and JADU, JADU law requires owner-occupancy of either the newly created JADU, or the single-family residence. Under this specific circumstance, a lot with an ADU would be subject to owner-occupancy requirements. (Gov. Code, § 65852.2, subd. (a)(2).)

## K) Fire Sprinkler Requirements

- **Are fire sprinklers required for ADUs?**

No. Installation of fire sprinklers may not be required in an ADU if sprinklers are not required for the primary residence. For example, a residence built decades ago would not have been required to have fire sprinklers installed under the applicable building code at the time. Therefore, an ADU created on this lot cannot be required to install fire sprinklers. However, if the same primary dwelling recently undergoes significant remodeling and is now required to have fire sprinklers, any ADU created after that remodel must likewise install fire sprinklers. (Gov. Code, § 65852.2, subs. (a)(1)(D)(xii) and (e)(3).)

Please note, for ADUs created on lots with multifamily residential structures, the entire residential structure shall serve as the “primary residence” for the purposes of this analysis. Therefore, if the multifamily structure is served by fire sprinklers, the ADU can be required to install fire sprinklers.

## L) Solar Panel Requirements

- **Are solar panels required for new construction ADUs?**

Yes, newly constructed ADUs are subject to the Energy Code requirement to provide solar panels if the unit(s) is a newly constructed, non-manufactured, detached ADU. Per the California Energy Commission (CEC), the panels can be installed on the ADU or on the primary dwelling unit. ADUs that are constructed within existing space, or as an addition to existing homes, including detached additions where an existing detached building is converted from non-residential to residential space, are not subject to the Energy Code requirement to provide solar panels.

Please refer to the CEC on this matter. For more information, see the CEC's website [www.energy.ca.gov](http://www.energy.ca.gov). You may email your questions to: [title24@energy.ca.gov](mailto:title24@energy.ca.gov), or contact the Energy Standards Hotline at 800-772-3300. CEC memos can also be found on HCD's website at <https://www.hcd.ca.gov/policy-research/AccessoryDwellingUnits.shtml>.

### 3. Junior Accessory Dwelling Units (JADUs) – Government Code Section 65852.22

- **Are two JADUs allowed on a lot?**

No. A JADU may be created on a lot zoned for single-family residences with one primary dwelling. The JADU may be created within the walls of the proposed or existing single-family residence, including attached garages, as attached garages are considered within the walls of the existing single-family residence. Please note that JADUs created in the attached garage are not subject to the same parking protections as ADUs and could be required by the local agency to provide replacement parking.

JADUs are limited to one per residential lot with a single-family residence. Lots with multiple detached single-family dwellings are not eligible to have JADUs. (Gov. Code, § 65852.22, subd. (a)(1).)

- **Are JADUs allowed in detached accessory structures?**

No, JADUs are not allowed in accessory structures. The creation of a JADU must be within the single-family residence. As noted above, attached garages are eligible for JADU creation. The maximum size for a JADU is 500 square feet. (Gov. Code, § 65852.22, subds. (a)(1), (a)(4), and (h)(1).)

- **Are JADUs allowed to be increased up to 150 square feet when created within an existing structure?**

No. Only ADUs are allowed to add up to 150 square feet “beyond the physical dimensions of the existing accessory structure” to provide for ingress. (Gov. Code, § 65852.2, subd. (e)(1)(A)(i).)

This provision extends only to ADUs and excludes JADUs. A JADU is required to be created within the single-family residence.

- **Are there any owner-occupancy requirements for JADUs?**

Yes. There are owner-occupancy requirements for JADUs. The owner must reside in either the remaining portion of the primary residence, or in the newly created JADU. (Gov. Code, § 65852.22, subd. (a)(2).)

### 4. Manufactured Homes and ADUs

- **Are manufactured homes considered to be an ADU?**

Yes. An ADU is any residential dwelling unit with independent facilities and permanent provisions for living, sleeping, eating, cooking and sanitation. An ADU includes a manufactured home (Health & Saf. Code, § 18007).

Health and Safety Code section 18007, subdivision (a): **“Manufactured home,”** for the purposes of this part, means a structure that was constructed on or after June 15, 1976, is transportable in one or more sections, is eight body feet or more in width, or 40 body feet or more in length, in the traveling mode, or, when erected on site, is 320 or more square feet, is built on a permanent chassis and designed to be used as a single-family dwelling with or without a foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. “Manufactured home” includes any structure that meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification and complies with the standards established under the National Manufactured Housing Construction and Safety Act of 1974 (42 U.S.C., Sec. 5401, and following).

## 5. ADUs and the Housing Element

- **Do ADUs and JADUs count toward a local agency’s Regional Housing Needs Allocation?**

Yes. Pursuant to Government Code section 65852.2 subdivision (m), and section 65583.1, ADUs and JADUs may be utilized towards the Regional Housing Need Allocation (RHNA) and Annual Progress Report (APR) pursuant to Government Code section 65400. To credit a unit toward the RHNA, HCD and the Department of Finance (DOF) utilize the census definition of a housing unit. Generally, an ADU, and a JADU with shared sanitation facilities, and any other unit that meets the census definition, and is reported to DOF as part of the DOF annual City and County Housing Unit Change Survey, can be credited toward the RHNA based on the appropriate income level. The housing element or APR must include a reasonable methodology to demonstrate the level of affordability. Local governments can track actual or anticipated affordability to assure ADUs and JADUs are counted towards the appropriate income category. For example, some local governments request and track information such as anticipated affordability as part of the building permit or other applications.

- **Is analysis required to count ADUs toward the RHNA in the housing element?**

Yes. To calculate ADUs in the housing element, local agencies must generally use a three-part approach: (1) development trends, (2) anticipated affordability and (3) resources and incentives. Development trends must consider ADUs permitted in the prior planning period and may also consider more recent trends. Anticipated affordability can use a variety of methods to estimate the affordability by income group. Common approaches include rent surveys of ADUs, using rent surveys and square footage assumptions and data available through the APR pursuant to Government Code section 65400. Resources and incentives include policies and programs to encourage ADUs, such as prototype plans, fee waivers, expedited procedures and affordability monitoring programs.

- **Are ADUs required to be addressed in the housing element?**

Yes. The housing element must include a description of zoning available to permit ADUs, including development standards and analysis of potential constraints on the development of ADUs. The element must include programs as appropriate to address identified constraints. In addition, housing elements must

include a plan that incentivizes and promotes the creation of ADUs that can offer affordable rents for very low, low-, or moderate-income households and requires HCD to develop a list of state grants and financial incentives in connection with the planning, construction and operation of affordable ADUs. (Gov. Code, § 65583 and Health & Saf. Code, § 50504.5.)

## 6. Homeowners Association

- **Can my local Homeowners Association (HOA) prohibit the construction of an ADU or JADU?**

No. Assembly Bill 670 (2019) and AB 3182 (2020) amended Section 4751, 4740, and 4741 of the Civil Code to preclude common interest developments from prohibiting or unreasonably restricting the construction or use, including the renting or leasing of, an ADU on a lot zoned for single-family residential use. Covenants, conditions and restrictions (CC&Rs) that either effectively prohibit or unreasonably restrict the construction or use of an ADU or JADU on such lots are void and unenforceable or may be liable for actual damages and payment of a civil penalty. Applicants who encounter issues with creating ADUs or JADUs within CC&Rs are encouraged to reach out to HCD for additional guidance.

## 7. Enforcement

- **Does HCD have enforcement authority over ADU ordinances?**

Yes. After adoption of the ordinance, HCD may review and submit written findings to the local agency as to whether the ordinance complies with state ADU law. If the local agency's ordinance does not comply, HCD must provide a reasonable time, no longer than 30 days, for the local agency to respond, and the local agency shall consider HCD's findings to amend the ordinance to become compliant. If a local agency does not make changes and implements an ordinance that is not compliant with state law, HCD may refer the matter to the Attorney General.

In addition, HCD may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify ADU law.

## 8. Other

- **Are ADU ordinances existing prior to new 2020 laws null and void?**

No. Ordinances existing prior to the new 2020 laws are only null and void to the extent that existing ADU ordinances conflict with state law. Subdivision (a)(4) of Government Code Section 65852.2 states an ordinance that fails to meet the requirements of subdivision (a) shall be null and void and shall apply the state standards (see Attachment 3) until a compliant ordinance is adopted. However, ordinances that substantially comply with ADU law may continue to enforce the existing ordinance to the extent it complies with state law. For example, local governments may continue the compliant provisions of an ordinance and apply the state standards where pertinent until the ordinance is amended or replaced to fully comply with ADU law. At the same time, ordinances that are fundamentally incapable of being enforced because key provisions are invalid -- meaning there is not a reasonable way to sever conflicting provisions and apply the remainder of an ordinance in a way that is consistent with state law -- would be fully null and void and must follow all state standards until a compliant ordinance is adopted.

- **Do local agencies have to adopt an ADU ordinance?**

No. Local governments may choose not to adopt an ADU ordinance. Should a local government choose to not adopt an ADU ordinance, any proposed ADU development would be only subject to standards set in state ADU law. If a local agency adopts an ADU ordinance, it may impose zoning, development, design, and other standards in compliance with state ADU law. (See Attachment 4 for a state standards checklist.)

- **Is a local government required to send an ADU ordinance to the California Department of Housing and Community Development (HCD)?**

Yes. A local government, upon adoption of an ADU ordinance, must submit a copy of the adopted ordinance to HCD within 60 days after adoption. After the adoption of an ordinance, the Department may review and submit written findings to the local agency as to whether the ordinance complies with this section. (Gov. Code, § 65852.2, subd. (h)(1).)

Local governments may also submit a draft ADU ordinance for preliminary review by HCD. This provides local agencies the opportunity to receive feedback on their ordinance and helps to ensure compliance with the new state ADU law.

- **Are charter cities and counties subject to the new ADU laws?**

Yes. ADU law applies to a local agency which is defined as a city, county, or city and county, whether general law or chartered. (Gov. Code, § 65852.2, subd. (j)(5)).

Further, pursuant to Chapter 659, Statutes of 2019 (AB 881), the Legislature found and declared ADU law as “...a matter of statewide concern rather than a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution” and concluded that ADU law applies to all cities, including charter cities.

- **Do the new ADU laws apply to jurisdictions located in the Coastal Zone?**

Yes. ADU laws apply to jurisdictions in the Coastal Zone, but do not necessarily alter or lessen the effect or application of Coastal Act resource protection policies. (Gov. Code, § 65852.22, subd. (l)).

Coastal localities should seek to harmonize the goals of protecting coastal resources and addressing housing needs of Californians. For example, where appropriate, localities should amend Local Coastal Programs for California Coastal Commission review to comply with the California Coastal Act and new ADU laws. For more information, see the [California Coastal Commission 2020 Memo](#) and reach out to the locality’s local Coastal Commission district office.

- **What is considered a multifamily dwelling?**

For the purposes of state ADU law, a structure with two or more attached dwellings on a single lot is considered a multifamily dwelling structure. Multiple detached single-unit dwellings on the same lot are not considered multifamily dwellings for the purposes of state ADU law.

# Resources



## Attachment 1: Statutory Changes (Strikeout/Italics and Underline)

### GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 4, ARTICLE 2

#### Combined changes from (AB 3182 Accessory Dwelling Units)

#### and (AB 881, AB 68 and SB 13 Accessory Dwelling Units)

(Changes noted in ~~strikeout~~, underline/*italics*)

Effective January 1, 2021, Section 65852.2 of the Government Code is amended to read:

#### **65852.2.**

- (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:
- (A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.
- (B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. These standards shall not include requirements on minimum lot size.
- (ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.
- (C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.
- (D) Require the accessory dwelling units to comply with all of the following:
- (i) The accessory dwelling unit may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence.
- (ii) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.
- (iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.
- (iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.
- (v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.
- (vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.
- (vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.
- (viii) Local building code requirements that apply to detached dwellings, as appropriate.
- (ix) Approval by the local health officer where a private sewage disposal system is being used, if required.
- (x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway. (II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.
- (III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).
- (xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.
- (xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.



(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. *If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.* A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(5) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.

(6) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or imposed, including any owner-occupant requirement, except that a local agency may require that the property be used for rentals of terms longer than 30 days.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a). The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.

(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.

(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:

(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.

(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:

(i) 850 square feet.

(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.

(C) Any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile walking distance of public transit.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

(3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.

(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:

(A) One accessory dwelling unit ~~or~~ *and* one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:

(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

(ii) The space has exterior access from the proposed or existing single-family dwelling.

(iii) The side and rear setbacks are sufficient for fire and safety.

(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.

(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:

(i) A total floor area limitation of not more than 800 square feet.

(ii) A height limitation of 16 feet.

(C) (i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.

(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.

(D) Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.

(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.

(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.

(4) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.

(5) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite wastewater treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.

(6) Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.

- (f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).
- (2) An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.
- (3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.
- (B) For purposes of this paragraph, "impact fee" has the same meaning as the term "fee" is defined in subdivision (b) of Section 66000, except that it also includes fees specified in Section 66477. "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.
- (4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family home.
- (5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.
- (g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.
- (h) (1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.
- (2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.
- (B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:
- (i) Amend the ordinance to comply with this section.
- (ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.
- (3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.
- (B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.
- (i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.
- (j) As used in this section, the following terms mean:
- (1) "Accessory dwelling unit" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:
- (A) An efficiency unit.
- (B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

- (2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.
- (3) "Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.
- (4) "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.
- (5) "Local agency" means a city, county, or city and county, whether general law or chartered.
- (6) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.
- (7) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.
- (8) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.
- (9) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.
- (10) "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.
- (k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.
- (l) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.
- (m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.
- (n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2) below, a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:
  - (1) The accessory dwelling unit was built before January 1, 2020.
  - (2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.
- (o) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.  
**(Becomes operative on January 1, 2025)**

Section 65852.2 of the Government Code is amended to read (changes from January 1, 2021 statute noted in underline/italic):

**65852.2.**

- (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:
  - (A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.
  - (B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. These standards shall not include requirements on minimum lot size.
  - (ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.
  - (C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

- (i) The accessory dwelling unit may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence.
  - (ii) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.
  - (iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.
  - (iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.
  - (v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.
  - (vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.
  - (vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.
  - (viii) Local building code requirements that apply to detached dwellings, as appropriate.
  - (ix) Approval by the local health officer where a private sewage disposal system is being used, if required.
  - (x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway. (II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions. (III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).
  - (xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.
  - (xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.
- (2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.
- (3) A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. *If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.* A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.
- (4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.
- (5) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.
- (6) (A) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed

accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or ~~imposed, including any owner-occupant requirement, except that~~ *imposed except that, subject to subparagraph (B),* a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant or that the property be used for rentals of terms longer than 30 days.

*(B) Notwithstanding subparagraph (A), a local agency shall not impose an owner-occupant requirement on an accessory dwelling unit permitted between January 1, 2020, to January 1, 2025, during which time the local agency was prohibited from imposing an owner-occupant requirement.*

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a). The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.

(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.

(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:

(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.

(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:

(i) 850 square feet.

(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.

(C) Any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile walking distance of public transit.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

(3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.

(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:

(A) One accessory dwelling unit ~~or~~ *and* one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:

(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not

more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

(ii) The space has exterior access from the proposed or existing single-family dwelling.

(iii) The side and rear setbacks are sufficient for fire and safety.

(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.

(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:

(i) A total floor area limitation of not more than 800 square feet.

(ii) A height limitation of 16 feet.

(C) (i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.

(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.

(D) Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.

(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.

(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.

(4) A local agency may require owner occupancy for either the primary dwelling or the accessory dwelling unit on a single-family lot, subject to the requirements of paragraph (6) of subdivision (a).

~~(4)~~ (5) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.

~~(5)~~ (6) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite wastewater treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.

~~(6)~~ (7) Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.

(3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.

(B) For purposes of this paragraph, "impact fee" has the same meaning as the term "fee" is defined in subdivision

(b) of Section 66000, except that it also includes fees specified in Section 66477. "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.

(4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family ~~home-~~ dwelling.

(5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the

Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) (1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.

(2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.

(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:

(i) Amend the ordinance to comply with this section.

(ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.

(3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.

(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.

(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

(j) As used in this section, the following terms mean:

(1) "Accessory dwelling unit" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.

(3) "Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.

(4) "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.

(5) "Local agency" means a city, county, or city and county, whether general law or chartered.

(6) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.

(7) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(8) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.

(9) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

(10) "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

(k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.

(l) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit



applications for accessory dwelling units.

(m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.

(n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2) below, a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:

(1) The accessory dwelling unit was built before January 1, 2020.

(2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.

(o) This section shall ~~remain in effect only until January 1, 2025, and as of that date is repealed.~~ *become operative on January 1, 2025.*

Effective January 1, 2021, Section 4740 of the Civil Code is amended to read (changes noted in ~~strikeout~~, underline/italics) (AB 3182 (Ting)):

#### **4740.**

(a) An owner of a separate interest in a common interest development shall not be subject to a provision in a governing document or an amendment to a governing document that prohibits the rental or leasing of any of the separate interests in that common interest development to a renter, lessee, or tenant unless that governing document, or amendment thereto, was effective prior to the date the owner acquired title to ~~his or~~ *her* ~~their~~ separate interest.

~~(b) Notwithstanding the provisions of this section, an owner of a separate interest in a common interest development may expressly consent to be subject to a governing document or an amendment to a governing document that prohibits the rental or leasing of any of the separate interests in the common interest development to a renter, lessee, or tenant.~~

~~(c)~~ *(b)* For purposes of this section, the right to rent or lease the separate interest of an owner shall not be deemed to have terminated if the transfer by the owner of all or part of the separate interest meets at least one of the following conditions:

(1) Pursuant to Section 62 or 480.3 of the Revenue and Taxation Code, the transfer is exempt, for purposes of reassessment by the county tax assessor.

(2) Pursuant to subdivision (b) of, solely with respect to probate transfers, or subdivision (e), (f), or (g) of, Section 1102.2, the transfer is exempt from the requirements to prepare and deliver a Real Estate Transfer Disclosure Statement, as set forth in Section 1102.6.

~~(d)~~ *(c)* Prior to renting or leasing ~~his or her~~ *their* separate interest as provided by this section, an owner shall provide the association verification of the date the owner acquired title to the separate interest and the name and contact information of the prospective tenant or lessee or the prospective tenant's or lessee's representative.

~~(e)~~ *(d)* Nothing in this section shall be deemed to revise, alter, or otherwise affect the voting process by which a common interest development adopts or amends its governing documents.

~~(f) This section shall apply only to a provision in a governing document or a provision in an amendment to a governing document that becomes effective on or after January 1, 2012.~~

Effective January 1, 2021 of the *Section 4741 is added to the Civil Code, to read (AB 3182 (Ting)):*

#### **4741.**

*(a) An owner of a separate interest in a common interest development shall not be subject to a provision in a governing document or an amendment to a governing document that prohibits, has the effect of prohibiting, or unreasonably restricts the rental or leasing of any of the separate interests, accessory dwelling units, or junior accessory dwelling units in that common interest development to a renter, lessee, or tenant.*

*(b) A common interest development shall not adopt or enforce a provision in a governing document or amendment to a governing document that restricts the rental or lease of separate interests within a common interest to less than 25 percent of the separate interests. Nothing in this subdivision prohibits a common interest development from adopting or enforcing a provision authorizing a higher percentage of separate interests to be rented or leased.*

*(c) This section does not prohibit a common interest development from adopting and enforcing a provision in a*

governing document that prohibits transient or short-term rental of a separate property interest for a period of 30 days or less.

(d) For purposes of this section, an accessory dwelling unit or junior accessory dwelling unit shall not be construed as a separate interest.

(e) For purposes of this section, a separate interest shall not be counted as occupied by a renter if the separate interest, or the accessory dwelling unit or junior accessory dwelling unit of the separate interest, is occupied by the owner.

(f) A common interest development shall comply with the prohibition on rental restrictions specified in this section on and after January 1, 2021, regardless of whether the common interest development has revised their governing documents to comply with this section. However, a common interest development shall amend their governing documents to conform to the requirements of this section no later than December 31, 2021.

(g) A common interest development that willfully violates this section shall be liable to the applicant or other party for actual damages, and shall pay a civil penalty to the applicant or other party in an amount not to exceed one thousand dollars (\$1,000).

(h) In accordance with Section 4740, this section does not change the right of an owner of a separate interest who acquired title to their separate interest before the effective date of this section to rent or lease their property.

Effective January 1, 2020, Section 65852.22 of the Government Code is was amended to read (AB 68 (Ting)):  
**65852.22.**

(a) Notwithstanding Section 65852.2, a local agency may, by ordinance, provide for the creation of junior accessory dwelling units in single-family residential zones. The ordinance may require a permit to be obtained for the creation of a junior accessory dwelling unit, and shall do all of the following:

(1) Limit the number of junior accessory dwelling units to one per residential lot zoned for single-family residences with a single-family residence built, or proposed to be built, on the lot.

(2) Require owner-occupancy in the single-family residence in which the junior accessory dwelling unit will be permitted. The owner may reside in either the remaining portion of the structure or the newly created junior accessory dwelling unit. Owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.

(3) Require the recordation of a deed restriction, which shall run with the land, shall be filed with the permitting agency, and shall include both of the following:

(A) A prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers.

(B) A restriction on the size and attributes of the junior accessory dwelling unit that conforms with this section.

(4) Require a permitted junior accessory dwelling unit to be constructed within the walls of proposed or existing single-family residence.

(5) Require a permitted junior accessory dwelling to include a separate entrance from the main entrance to the proposed or existing single-family residence.

(6) Require the permitted junior accessory dwelling unit to include an efficiency kitchen, which shall include all of the following:

(A) A cooking facility with appliances.

(B) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.

(b) (1) An ordinance shall not require additional parking as a condition to grant a permit.

(2) This subdivision shall not be interpreted to prohibit the requirement of an inspection, including the imposition of a fee for that inspection, to determine if the junior accessory dwelling unit complies with applicable building standards.

(c) An application for a permit pursuant to this section shall, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, be considered ministerially, without discretionary review or a hearing. The permitting agency shall act on the application to create a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family dwelling on the lot. If the permit application to create a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. A local agency may charge a fee to reimburse the local agency for costs incurred in connection with the issuance of a permit pursuant to this section.

(d) For purposes of any fire or life protection ordinance or regulation, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit. This section shall not be construed to prohibit a city, county, city and county, or other local public entity from adopting an ordinance or regulation relating to fire and life protection requirements within a single-family residence that contains a junior accessory dwelling unit so long as the ordinance or regulation applies uniformly to all single-family residences within the zone regardless of whether the single-family residence includes a junior accessory dwelling unit or not.

(e) For purposes of providing service for water, sewer, or power, including a connection fee, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit.

(f) This section shall not be construed to prohibit a local agency from adopting an ordinance or regulation, related to parking or a service or a connection fee for water, sewer, or power, that applies to a single-family residence that contains a junior accessory dwelling unit, so long as that ordinance or regulation applies uniformly to all single-family residences regardless of whether the single-family residence includes a junior accessory dwelling unit.

(g) If a local agency has not adopted a local ordinance pursuant to this section, the local agency shall ministerially approve a permit to construct a junior accessory dwelling unit that satisfies the requirements set forth in subparagraph (A) of paragraph (1) of subdivision (e) of Section 65852.2 and the requirements of this section.

(h) For purposes of this section, the following terms have the following meanings:

(1) "Junior accessory dwelling unit" means a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

Effective January 1, 2020 Section 17980.12 is was added to the Health and Safety Code, immediately following Section 17980.11, to read (SB 13 (Wieckowski)):

**17980.12.**

(a) (1) An enforcement agency, until January 1, 2030, that issues to an owner of an accessory dwelling unit described in subparagraph (A) or (B) below, a notice to correct a violation of any provision of any building standard pursuant to this part shall include in that notice a statement that the owner of the unit has a right to request a delay in enforcement pursuant to this subdivision:

(A) The accessory dwelling unit was built before January 1, 2020.

(B) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.

(2) The owner of an accessory dwelling unit that receives a notice to correct violations or abate nuisances as described in paragraph (1) may, in the form and manner prescribed by the enforcement agency, submit an application to the enforcement agency requesting that enforcement of the violation be delayed for five years on the basis that correcting the violation is not necessary to protect health and safety.

(3) The enforcement agency shall grant an application described in paragraph (2) if the enforcement determines that correcting the violation is not necessary to protect health and safety. In making this determination, the enforcement agency shall consult with the entity responsible for enforcement of building standards and other regulations of the State Fire Marshal pursuant to Section 13146.

(4) The enforcement agency shall not approve any applications pursuant to this section on or after January 1, 2030. However, any delay that was approved by the enforcement agency before January 1, 2030, shall be valid for the full term of the delay that was approved at the time of the initial approval of the application pursuant to paragraph (3).

(b) For purposes of this section, "accessory dwelling unit" has the same meaning as defined in Section 65852.2.

(c) This section shall remain in effect only until January 1, 2035, and as of that date is repealed.

**GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 4, ARTICLE 2  
AB 587 Accessory Dwelling Units**

Effective January 1, 2020 Section 65852.26 is was added to the Government Code, immediately following Section 65852.25, to read (AB 587 (Friedman)):

**65852.26.**

(a) Notwithstanding clause (i) of subparagraph (D) of paragraph (1) of subdivision (a) of Section 65852.2, a local agency may, by ordinance, allow an accessory dwelling unit to be sold or conveyed separately from the primary residence to a qualified buyer if all of the following apply:

- (1) The property was built or developed by a qualified nonprofit corporation.
- (2) There is an enforceable restriction on the use of the land pursuant to a recorded contract between the qualified buyer and the qualified nonprofit corporation that satisfies all of the requirements specified in paragraph (10) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code.
- (3) The property is held pursuant to a recorded tenancy in common agreement that includes all of the following:
  - (A) The agreement allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling each qualified buyer occupies.
  - (B) A repurchase option that requires the qualified buyer to first offer the qualified nonprofit corporation to buy the property if the buyer desires to sell or convey the property.
  - (C) A requirement that the qualified buyer occupy the property as the buyer's principal residence.
  - (D) Affordability restrictions on the sale and conveyance of the property that ensure the property will be preserved for low-income housing for 45 years for owner-occupied housing units and will be sold or resold to a qualified buyer.
- (4) A grant deed naming the grantor, grantee, and describing the property interests being transferred shall be recorded in the county in which the property is located. A Preliminary Change of Ownership Report shall be filed concurrently with this grant deed pursuant to Section 480.3 of the Revenue and Taxation Code.
- (5) Notwithstanding subparagraph (A) of paragraph (2) of subdivision (f) of Section 65852.2, if requested by a utility providing service to the primary residence, the accessory dwelling unit has a separate water, sewer, or electrical connection to that utility.

(b) For purposes of this section, the following definitions apply:

- (1) "Qualified buyer" means persons and families of low or moderate income, as that term is defined in Section 50093 of the Health and Safety Code.
- (2) "Qualified nonprofit corporation" means a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has received a welfare exemption under Section 214.15 of the Revenue and Taxation Code for properties intended to be sold to low-income families who participate in a special no-interest loan program.

**CIVIL CODE: DIVISION 4, PART 5, CHAPTER 5, ARTICLE 1  
AB 670 Accessory Dwelling Units**

Effective January 1, 2020, Section 4751 is was added to the Civil Code, to read (AB 670 (Friedman)):

**4751.**

- (a) Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a planned development, and any provision of a governing document, that either effectively prohibits or unreasonably restricts the construction or use of an accessory dwelling unit or junior accessory dwelling unit on a lot zoned for single-family residential use that meets the requirements of Section 65852.2 or 65852.22 of the Government Code, is void and unenforceable.
- (b) This section does not apply to provisions that impose reasonable restrictions on accessory dwelling units or junior accessory dwelling units. For purposes of this subdivision, "reasonable restrictions" means restrictions that do not unreasonably increase the cost to construct, effectively prohibit the construction of, or extinguish the ability

to otherwise construct, an accessory dwelling unit or junior accessory dwelling unit consistent with the provisions of Section 65852.2 or 65852.22 of the Government Code.

**GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 3, ARTICLE 10.6**

**AB 671 Accessory Dwelling Units**

Effective January 1, 2020, Section 65583(c)(7) of the Government Code ~~is~~ was added to read (sections of housing element law omitted for conciseness) (AB 671 (Friedman)):

**65583(c)(7).**

Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent, as defined in Section 50053 of the Health and Safety Code, for very low, low-, or moderate-income households. For purposes of this paragraph, "accessory dwelling units" has the same meaning as "accessory dwelling unit" as defined in paragraph (4) of subdivision (i) of Section 65852.2.

Effective January 1, 2020, Section 50504.5 ~~is~~ was added to the Health and Safety Code, to read (AB 671 (Friedman)):

**50504.5.**

(a) The department shall develop by December 31, 2020, a list of existing state grants and financial incentives for operating, administrative, and other expenses in connection with the planning, construction, and operation of an accessory dwelling unit with affordable rent, as defined in Section 50053, for very low, low-, and moderate-income households.

(b) The list shall be posted on the department's internet website by December 31, 2020.

(c) For purposes of this section, "accessory dwelling unit" has the same meaning as defined in paragraph (4) of subdivision (i) of Section 65852.2 of the Government Code.

**Attachment 2: State Standards Checklist**

| YES/NO | STATE STANDARD*                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | GOVERNMENT CODE SECTION             |
|--------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|
|        | Unit is not intended for sale separate from the primary residence and may be rented.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 65852.2(a)(1)(D)(i)                 |
|        | Lot is zoned for single-family or multifamily use and contains a proposed, or existing, dwelling.                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 65852.2(a)(1)(D)(ii)                |
|        | The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure, or detached from the proposed or existing dwelling and located on the same lot as the proposed or existing primary dwelling.                                                                                                                                                                                                                                 | 65852.2(a)(1)(D)(iii)               |
|        | Increased floor area of an attached accessory dwelling unit does not exceed 50 percent of the existing primary dwelling but shall be allowed to be at least 800/850/1000 square feet.                                                                                                                                                                                                                                                                                                                                                                               | 65852.2(a)(1)(D)(iv), (c)(2)(B) & C |
|        | Total area of floor area for a detached accessory dwelling unit does not exceed 1,200 square feet.                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 65852.2(a)(1)(D)(v)                 |
|        | Passageways are not required in conjunction with the construction of an accessory dwelling unit.                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 65852.2(a)(1)(D)(vi)                |
|        | Setbacks are not required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure. | 65852.2(a)(1)(D)(vii)               |
|        | Local building code requirements that apply to detached dwellings are met, as appropriate.                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 65852.2(a)(1)(D)(viii)              |
|        | Local health officer approval where a private sewage disposal system is being used, if required.                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 65852.2(a)(1)(D)(ix)                |
|        | Parking requirements do not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on an existing driveway.                                                                                                                                                                                                                                                                                                                                                                         | 65852.2(a)(1)(D)(x)(I)              |

## Attachment 3: Bibliography

### [ACCESSORY DWELLING UNITS: CASE STUDY](#) (26 pp.)

By the United States Department of Housing and Urban Development, Office of Policy Development and Research. (2008)

Introduction: Accessory dwelling units (ADUs) — also referred to as accessory apartments, ADUs, or granny flats — are additional living quarters on single-family lots that are independent of the primary dwelling unit. The separate living spaces are equipped with kitchen and bathroom facilities and can be either attached or detached from the main residence. This case study explores how the adoption of ordinances, with reduced regulatory restrictions to encourage ADUs, can be advantageous for communities. Following an explanation of the various types of ADUs and their benefits, this case study provides examples of municipalities with successful ADU legislation and programs. Section titles include: History of ADUs; Types of Accessory Dwelling Units; Benefits of Accessory Dwelling Units; and Examples of ADU Ordinances and Programs.

### [THE MACRO VIEW ON MICRO UNITS](#) (46 pp.)

By Bill Whitlow, et al. – Urban Land Institute (2014)  
Library Call #: H43 4.21 M33 2014

The Urban Land Institute Multifamily Housing Councils were awarded a ULI Foundation research grant in fall 2013 to evaluate from multiple perspectives the market performance and market acceptance of micro and small units.

### [SECONDARY UNITS AND URBAN INFILL: A Literature Review](#) (12 pp.)

By Jake Wegmann and Alison Nemirow (2011)  
UC Berkeley: IURD  
Library Call # D44 4.21 S43 2011

This literature review examines the research on both infill development in general, and secondary units in particular, with an eye towards understanding the similarities and differences between infill as it is more traditionally understood – i.e., the development or redevelopment of entire parcels of land in an already urbanized area – and the incremental type of infill that secondary unit development constitutes.

### [RETHINKING PRIVATE ACCESSORY DWELLINGS](#) (5 pp.)

By William P. Macht. Urbanland online. (March 6, 2015)  
Library Location: Urbanland 74 (1/2) January/February 2015, pp. 87-91.

One of the large impacts of single-use, single-family detached zoning has been to severely shrink the supply of accessory dwellings, which often were created in or near primary houses. Detached single-family dwelling zones—the largest housing zoning category—typically preclude more than one dwelling per lot except under stringent regulation, and then only in some jurisdictions. Bureaucratically termed “accessory dwelling units” that are allowed by some jurisdictions may encompass market-derived names such as granny flats, granny cottages, mother-in-law suites, secondary suites, backyard cottages, casitas, carriage flats, sidekick houses, basement apartments, attic apartments, laneway houses, multigenerational homes, or home-within-a-home.

[Regulating ADUs in California: Local Approaches & Outcomes](#) (44 pp.)

By Deidra Pfeiffer  
 Turner Center for Housing and Innovation, UC Berkeley

Accessory dwelling units (ADU) are often mentioned as a key strategy in solving the nation's housing problems, including housing affordability and challenges associated with aging in place. However, we know little about whether formal ADU practices—such as adopting an ordinance, establishing regulations, and permitting—contribute to these goals. This research helps to fill this gap by using data from the Turner California Residential Land Use Survey and the U.S. Census Bureau to understand the types of communities engaging in different kinds of formal ADU practices in California, and whether localities with adopted ordinances and less restrictive regulations have more frequent applications to build ADUs and increasing housing affordability and aging in place. Findings suggest that three distinct approaches to ADUs are occurring in California: 1) a more restrictive approach in disadvantaged communities of color, 2) a moderately restrictive approach in highly advantaged, predominately White and Asian communities, and 3) a less restrictive approach in diverse and moderately advantaged communities. Communities with adopted ordinances and less restrictive regulations receive more frequent applications to build ADUs but have not yet experienced greater improvements in housing affordability and aging in place. Overall, these findings imply that 1) context-specific technical support and advocacy may be needed to help align formal ADU practices with statewide goals, and 2) ADUs should be treated as one tool among many to manage local housing problems.

[ADU Update: Early Lessons and Impacts of California's State and Local Policy Changes](#) (8 p.)

By David Garcia (2017)  
 Turner Center for Housing and Innovation, UC Berkeley

As California's housing crisis deepens, innovative strategies for creating new housing units for all income levels are needed. One such strategy is building Accessory Dwelling Units (ADUs) by private homeowners. While large scale construction of new market rate and affordable homes is needed to alleviate demand-driven rent increases and displacement pressures, ADUs present a unique opportunity for individual homeowners to create more housing as well. In particular, ADUs can increase the supply of housing in areas where there are fewer opportunities for larger-scale developments, such as neighborhoods that are predominantly zoned for and occupied by single-family homes.

In two of California's major metropolitan areas -- Los Angeles and San Francisco -- well over three quarters of the total land area is comprised of neighborhoods where single-family homes make up at least 60 percent of the community's housing stock. Across the state, single-family detached units make up 56.4 percent of the overall housing stock. Given their prevalence in the state's residential land use patterns, increasing the number of single-family homes that have an ADU could contribute meaningfully to California's housing shortage.

[Jumpstarting the Market for Accessory Dwelling Units: Lessons Learned from Portland, Seattle and Vancouver](#) (29 pp.)

By Karen Chapple et al (2017)  
 Turner Center for Housing and Innovation, UC Berkeley

Despite government attempts to reduce barriers, a widespread surge of ADU construction has not materialized. The ADU market remains stalled. To find out why, this study looks at three cities in the Pacific Northwest of the United States and Canada that have seen a spike in construction in recent years: Portland, Seattle, and Vancouver. Each city has adopted a set of zoning reforms, sometimes in combination with financial incentives and outreach programs, to spur ADU construction. Due to these changes, as well as the acceleration of the housing crisis in each city, ADUs have begun blossoming.



[Accessory Dwelling Units as Low-Income Housing: California's Faustian Bargain](#) (37 pp.)

By Darrel Ramsey-Musolf (2018)

University of Massachusetts Amherst, ScholarWorks@UMass Amherst

In 2003, California allowed cities to count accessory dwelling units (ADU) towards low-income housing needs. Unless a city's zoning code regulates the ADU's maximum rent, occupancy income, and/or effective period, then the city may be unable to enforce low-income occupancy. After examining a stratified random sample of 57 low-, moderate-, and high-income cities, the high-income cities must proportionately accommodate more low-income needs than low-income cities. By contrast, low-income cities must quantitatively accommodate three times the low-income needs of high-income cities. The sample counted 750 potential ADUs as low-income housing. Even though 759 were constructed, no units were identified as available low-income housing. In addition, none of the cities' zoning codes enforced low-income occupancy. Inferential tests determined that cities with colleges and high incomes were more probable to count ADUs towards overall and low-income housing needs. Furthermore, a city's count of potential ADUs and cities with high proportions of renters maintained positive associations with ADU production, whereas a city's density and prior compliance with state housing laws maintained negative associations. In summary, ADUs did increase local housing inventory and potential ADUs were positively associated with ADU production, but ADUs as low-income housing remained a paper calculation.

**ANNOTATED AGENDA**  
**BERKELEY CITY COUNCIL MEETING**  
**Tuesday, January 26, 2021**  
**6:00 PM**

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI  
 DISTRICT 2 – TERRY TAPLIN  
 DISTRICT 3 – BEN BARTLETT  
 DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN  
 DISTRICT 6 – SUSAN WENGRAF  
 DISTRICT 7 – RIGEL ROBINSON  
 DISTRICT 8 – LORI DROSTE

**PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE**

*Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.*

*Live audio is available on KPFB Radio 89.3. Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at <http://www.cityofberkeley.info/CalendarEventWebcastMain.aspx>.*

*To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/87354849181>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.*

*To join by phone: Dial **1-669-900-9128** or **1-877-853-5257 (Toll Free)** and enter Meeting ID: **873 5484 9181**. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Chair.*

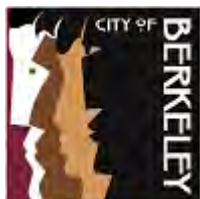
*To submit an e-mail comment during the meeting to be read aloud during public comment, email [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) with the Subject Line in this format: "PUBLIC COMMENT ITEM ##." Please observe a 150 word limit. Time limits on public comments will apply. Written comments will be entered into the public record.*

*Please be mindful that the teleconference will be recorded as any Council meeting is recorded, and all other rules of procedure and decorum will apply for Council meetings conducted by teleconference or videoconference.*

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900. The City Council may take action related to any subject listed on the Agenda. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.*

## Council Consent Items

10. **Budget Referral to Reinstate Partial Funding for the Gun Buyback Program Previously Authorized by City Council** (*Continued from November 10, 2020*)  
**From: Councilmember Kesarwani (Author), Mayor Arreguin (Co-Sponsor), Councilmember Davila (Co-Sponsor)**  
**Recommendation:** Refer to the FY 2020-21 November Amendment to the Annual Appropriations Ordinance (AAO #1) \$40,000 to reinstate partial funding for the Gun Buyback Program—originally proposed by Councilmember Cheryl Davila and authorized by the City Council on Nov. 27, 2018.  
**Financial Implications:** \$40,000  
 Contact: Rashi Kesarwani, Councilmember, District 1 (510) 981-7110  
**Action:** Approved recommendation revised to be a referral to the FY 2022 budget process.
11. **Short Term Referral to City Manager, Disaster and Fire Safety Commission and Planning Commission to Amend Local Accessory Dwelling Unit (ADU) Zoning Ordinance and Berkeley's Fire Code**  
**From: Councilmember Wengraf (Author), Councilmember Hahn (Co-Sponsor)**  
**Recommendation:** Refer to the City Manager, the Disaster and Fire Safety Commission and the Planning Commission to evaluate and recommend to Council within 90 days, a set of ordinance amendments and implementation programs to address emergency access and egress, parking and objective development standards to address the constraints presented by high fire hazard conditions and narrow and curving roadways in Fire Zones 2 and 3. (Attachment 1 to the report). Recommendations to Additional Objective Development Standards in Zones 2 and 3:  
 -Zone 2 and 3 - limit the base maximum size of newly constructed, detached ADUs to 850 sq. feet. -Zone 2 and 3 – require compliance with front yard, side yard and open space and coverage requirements of the applicable zoning district. Recommendations to amend the Fire Code: -Prohibit parking on streets where egress and ingress will be adversely impacted by additional vehicles and increased population. -Require sprinklers in new construction, consistent with local Fire Code. - Explore their authority under California Health and Safety Code Sec. 13869.7 to mitigate the adverse impacts of ADU creation in requiring safe and adequate ingress and egress routes and sufficient off-street parking.  
**Financial Implications:** Staff time  
 Contact: Susan Wengraf, Councilmember, District 6 (510) 981-7160  
**Action:** Approved recommendation revised to add the underlined phrase, “...and objective development standards for ADUs in all districts with expedited consideration to address the constraints presented by high fire hazard conditions and narrow and curving roadways in Fire Zones 2 and 3.”



Planning Commission

## FINAL MINUTES OF THE REGULAR PLANNING COMMISSION MEETING APRIL 7, 2021

The meeting was called to order at 7:02 p.m.

**Location:** Virtual meeting via Zoom

### 1. ROLL CALL:

**Commissioners Present:** Janis Ching, Barnali Ghosh, Savlan Hauser, Robb Kapla, Shane Krpata, Christine Schildt, Jeff Vincent, and Brad Wiblin.

**Commissioners Absent:** Benjamin Beach and Mary Kay Lacey.

**Staff Present:** Secretary Alene Pearson, Katrina Lapira, Steve Buckley, Chris Jensen, Paola Boylan, and Kieron Slaughter.

2. **ORDER OF AGENDA:** No changes.

3. **PUBLIC COMMENT PERIOD:** 1

4. **PLANNING STAFF REPORT:**

- Please refer to information items.

#### **Information Items:**

- City Council – Objective Standards Recommendations for Density, Design and Shadows
- City Council – Initiation of Public Process and Zoning Concepts for 2023-2031 Housing Element

#### **Communications:**

- March 30 – CA Department of Food and Agriculture – Cannabis Appellations Program
- March 31 – Business Owner – Berkeley Marina Kosher Market

**Late Communications:** *See agenda for links.*

- Supplemental Packet One
- Supplemental Packet Two
- Supplemental Packet Three

5. **CHAIR REPORT:**

- None.

**6. COMMITTEE REPORT:** Reports by Commission committees or liaisons. In addition to the items below, additional matters may be reported at the meeting.

- BART Community Advisory Group (CAG) – Held a meeting on March 22 to further the discussion about the vision and priorities document. A draft zoning document is now available for public review on the CAG website. The next meeting will be about access planning to the respective BART sites.

**7. APPROVAL OF MINUTES:**

Motion/Second/Carried (Wiblin/Krpata) to approve the Planning Commission Meeting Minutes from March 17, 2021, with incorporated amendments to lines 82 and 90.

Ayes: Ghosh, Hauser, Kapla, Krpata, Schildt, and Wiblin. Noes: None. Abstain: Vincent and Ching. Absent: Beach. (6-0-2-1)

**8. FUTURE AGENDA ITEMS AND OTHER PLANNING:**

- May 5
  - Re-zone of Parcels to Commercial Adeline Corridor (C-AC)
  - Presentation on City-Wide Affordable Housing Requirements by Rick Jacobus

**AGENDA ITEMS**

**9. Action: Response to Short Term Referral for Amendments to the ADU Ordinance and Related Definitions to Address Public Safety Concerns**

Staff shared the proposed amendments to the local ADU Ordinance in response to the Council's Short Term referral. The proposed amendments focused on codifying State ADU regulations and modifications to ADU size and front yard setbacks to address public safety concerns. Commission discussion focused primarily on clarification of State ADU law and options for local changes to ADU size, setbacks, height and neighbor noticing. An additional two feet of height was incorporated into the final motion for Council consideration to allow design flexibility. The rationale for a Maximum Height of 18 feet -- without an increase in Maximum Size -- is that two-story ADUs reduce the ADU footprint, increasing Open Space, decreasing Lot Coverage and allowing flexible configurations on smaller lots.

Motion/Second/Carried (Barnali/Vincent) to close the public hearing on the Response to Short Term Referral for Amendments to the ADU Ordinance and Related Definitions to Address Public Safety at 8:55pm.

Ayes: Ching, Ghosh, Hauser, Kapla, Krpata, Schildt, Vincent, and Wiblin. Noes: None. Abstain: None. Absent: Beach. (8-0-0-1)

Motion/Second/Carried (Kapla/Schildt) to adopt staff's recommendation with the following edits and a request to add neighbor notification of Building Permit issuance to the administrative process of application approval:

- Amend 23C.24.010.B.1 to read: *One ADU and/or one JADU is allowed on a lot with one Single Family Dwelling.*
- Delete 23C.24.010.B.5: *One JADU is allowed on a lot with one Single Family Dwelling.*
- Add 23C.24.040.A.6 to read: *A JADU is subject to the Development Standards in paragraph B and G.*
- Amend 23C.24.040.C to read:
  1. *Maximum Height of a ~~free-standing detached~~, new construction ADU is 16-18 feet.*
  2. *Maximum Height of new square footage added to a Single Family Dwelling, Accessory Building or Accessory Structure to create an ADU is 16 18 feet.*

Ayes: Ching, Ghosh, Hauser, Kapla, Krpata, Schildt, Vincent, and Wiblin. Noes: None. Abstain: None. Absent: Beach. (8-0-0-1)

**Public Comments: 10**

#### **10. Action: Response to Support Small Businesses Referral: Amendments to the Sign Ordinance to Establish a Master Sign Program**

Staff presented proposed modifications to the Sign Ordinance, which included establishing a Master Sign Program, clarifying ordinance language, and exempting in-kind replacement of signs. The Commission discussed minor amendments the Zoning Ordinance to maintain consistency with the Sign Ordinance. Corresponding references to the Zoning Ordinance were highlighted by staffs and commission discussion centered on clarifying ordinance language to improve readability.

Motion/Second/Carried (Wiblin/Krpata) to adopt staff's recommendations with suggested edits to 23E.08.020.C [Applicability] as follows:

*C. Permits Zoning Certificates, Administrative Use Permits, Use Permits, and Variances for projects that are subject to design review ~~may not be issued without design review approval, except that they may be issued~~ may be approved conditional upon final design review such approval occurring before the issuance a building permit or for a permit for a sign permit (as set forth in ~~BMC Chapter 20.12.010~~ of the Sign Ordinance).*

Ayes: Ching, Ghosh, Hauser, Kapla, Krpata, Schildt, Vincent, and Wiblin. Noes: None. Abstain: None. Absent: Beach (8-0-0-1)

**Public Comments: 1**

Motion/Second/Carried (Kapla/Ghosh) to adjourn the Planning Commission meeting at 10:10pm.

Ayes: Ching, Ghosh, Hauser, Kapla, Krpata, Schildt, Vincent, and Wiblin. Noes: None.  
Abstain: None. Absent: Beach (8-0-0-1)

**Members in the public in attendance: 23**

**Public Speakers: 11 speakers**

**Length of the meeting: 3hr 8 minutes**

**NOTICE OF PUBLIC HEARING - BERKELEY CITY COUNCIL  
AMENDMENTS TO ACCESSORY DWELLING UNIT (ADU) ORDINANCE TO ADDRESS  
PUBLIC SAFETY CONCERNS**

The Department of Planning and Development is proposing that the City Council adopt a local Accessory Dwelling Unit (ADU) Ordinance that complies with State ADU law. The proposed Zoning Ordinance amendments are consistent with Government Code Sections 65852.2 and 65852.22 and include local regulations for the size, location, and other development standards for ADUs. The proposed Zoning Ordinance amendments also address public safety measures to the extent they are allowable by State law.

**Public Hearing Information**

The hearing will be held on September 28, 2021 at 6:00 p.m. The hearing will be held via videoconference pursuant to Governor’s Executive Order N-29-20.

A copy of the agenda material for this hearing will be available on the City’s website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of **September 16, 2021**. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology.**

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

For further information, please contact Alene Pearson, Principal Planner, Planning and Development Department at (510) 981-7489.

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](mailto:clerk@cityofberkeley.info) for further information.

**Published:** September 3, 2021 – The Berkeley Voice

City Clerk shall publish a notice at least 10 days prior to the date of the public hearing with the date, hour, and place of the public hearing for annual levy and collection of assessments in accordance with Streets and Highway Code Sections 22625, 22626, 22552, and 22553 and Section 6061 of the Government Code.

~~~~~  
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 September 16, 2021.



Mark Numainville, City Clerk



Office of the City Manager

PUBLIC HEARING
September 28, 2021

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Liam Garland, Director, Department of Public Works
 Subject: Adopt a Resolution and Ordinance for a Shared Electric Micromobility Permit Program

RECOMMENDATION

Conduct a public hearing and upon its conclusion:

1. Adopt a Resolution approving a Shared Electric Micromobility Permit Program, establishing fees for the program, and designating the City Manager as custodian of the program; and
2. Adopt the first reading of an Ordinance adding Berkeley Municipal Code Chapter 14.63 and amending Chapter 14.68 to establish the Shared Electric Micromobility Permit Program and related parking regulations.

FISCAL IMPACTS OF RECOMMENDATION

The program fee structure results in cost-neutrality. The program has three types of fees: an Application Fee of \$1,500 per organization applying for a Permit, an Annual Permit Fee of \$15,000 per organization receiving a Permit, and a Permitted Device Fee of \$64 per electric micromobility device to be deployed by the organization receiving a Permit. The Application Fee covers the staffing cost for reviewing Permit applications and processing Permit issuance. The Annual Permit Fee and Permitted Device Fee cover the staffing cost to administer and monitor the Program, with the amount of the latter fee being relative to the number of devices to be deployed.

The fees will be deposited into a Public Works Department General Fund (Fund 011) revenue account for use in covering the costs of managing the program. The fee level relative to program management costs will be monitored by staff and adjusted administratively as needed.

CURRENT SITUATION AND ITS EFFECTS

The Shared Electric Micromobility Permit Program would enable private operators to make shared electric devices (electric scooters and electric-assist bicycles) available to the public in Berkeley. The program is anticipated to complement the City's current station-based bike sharing network by providing a shared mobility option that extends into areas of Berkeley not served by a bike share station.

Permits would be issued on an annual basis to up to three (3) companies (“Operators”) in the first year, with this number potentially increasing thereafter as demand warrants and at the discretion of the City Manager. The key proposed terms and conditions for initiation of the Shared Electric Micromobility Permit Program are as follows.

- Riding on sidewalks is prohibited at all times. “No Riding On Sidewalks”, in no less than 48-point font, shall be printed on every device.
- The operating speed of Devices is limited to no more than 15 mph. The City reserves the right to “geofence” zones to further restrict operating speeds if found to be needed for public safety.
- Operator shall deploy devices with locking mechanisms that attach to bike racks and devices may not be parked in any way that obstructs curb ramps, loading zones, access to disabled parking zones or the pedestrian path of travel.
- Operators must provide a customer service contact line, available twenty-four (24) hours a day, seven (7) days a week, for complaints regarding improper parking; and display that contact information clearly on each device, along with a unique identifying number assigned to and displayed on each device.
- Operators must remove improperly parked devices within three (3) hours of receipt of a public complaint.
- Preference in Permit issuance is given to companies that employ their own workers, rather than using contract “gig” workers, and that provide devices with a seat for accessibility to those who cannot stand for prolonged periods. To accomplish this, the first two Permits issued are reserved for Operators that use their own employees (with wages from the Operator reported on a federal W-2 Form) for device recharging and deployment. The third Permit is reserved for an Operator that deploys devices outfitted with a seat. If the above-described Permit applications are not received within three (3) months of the initiation of the Permit Program, the City may consider issuing Permits to up to two (2) other Operators that qualify under the other terms and conditions of the Program, in the order in which qualifying Permit applications are received.
- Operators must provide adaptive devices for persons with disabilities within nine (9) months of the Permit issuance. The total percentage of adaptive devices shall be based on expected need, performance, and usage.
- Operators shall offer a discounted membership for those with low-income, equivalent to \$5 for one year of unlimited 30 minute rides, for those who participate in the Supplemental Nutritional Assistance Program (SNAP) or California Alternative Rates for Energy (CARE).

- Devices should be distributed equally throughout Berkeley. More than 50% of devices must be deployed in the Berkeley Equity Priority Communities designated by the Metropolitan Transportation Commission.

BACKGROUND

In response to demand from scooter sharing companies and the public, the greater Bay Area cities have implemented permit programs for the provision of shared electric scooters and bicycles. On July 10, 2018, City Council approved a referral to the City Manager to look into adopting an ordinance establishing a permit process for electric scooter sharing companies to operate in the public right-of-way. In response to this Referral, staff developed proposed Terms and Conditions for a Shared Electric Scooter Pilot Franchise Program, which were adopted by City Council on December 4, 2018.

The City issued a Request for Proposals (RFP) in January 2019 to solicit Shared Electric Scooter Pilot Franchise applications. Ten (10) applications were received in response to the RFP. Staff convened a review committee consisting of staff representatives from Public Works, the Office of Economic Development, the Police Department, the 311 Program, and the University of California Berkeley. Before the conclusion of the process of selecting the top-scoring applicants, the City Attorney's Office learned of multiple class action lawsuits that had been filed in California in spring and summer 2019 against various cities alleging disabled accessibility impacts from the shared electric scooters permitted in those cities. In response to this situation, the Shared Electric Scooter Pilot Franchise Program was put on hold pending the outcome of any legal settlements or litigation. The suit against the City of Oakland reached a final Settlement Agreement in April 2021, the terms of which have been incorporated into the proposed Berkeley Shared Electric Micromobility Permit Program.

At the time that the Shared Electric Scooter Pilot Franchise Program terms and conditions were adopted by City Council (December 2018), Bay Area Motivate LLC ("Motivate"), a subsidiary of Lyft Incorporated, had right of first offer to provide shared electric bicycles to the City of Berkeley per the terms of the Bay Area Bike Share Franchise Agreement between the City and Motivate. This was the reason why the Pilot Franchise Program was limited to the provision of shared electric scooters. In August 2020, Lyft relinquished its right of first offer for shared electric bicycles. Therefore, Berkeley staff developed the proposed Shared Electric Micromobility Permit Program to cover shared electric bicycles as well as scooters.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Increasing the number of Berkeley residents and visitors who utilize shared electric scooters and bicycles, as an alternative to single-occupant automobile travel, will decrease greenhouse gas emissions. This will help the City achieve the Berkeley Climate Action Plan target of reducing greenhouse gas emissions by 80% below year 2000 levels by 2050.

RATIONALE FOR RECOMMENDATION

The Shared Electric Micromobility Permit Program would provide a mobility alternative for Berkeley residents. The devices deployed under the Program could reach neighborhoods not currently serviced by the City's existing station-based bicycle sharing network. Not all Berkeley residents are physically able to ride a manually powered bicycle, so the electric propulsion of the scooters and bicycles deployed through the Program could provide a viable transportation alternative for some residents.

ALTERNATIVE ACTIONS CONSIDERED

The City of Berkeley could opt to not have a Shared Electric Micromobility Permit Program, which would potentially position the City behind the region in terms of offering alternative modes of transportation to its residents. Berkeley already sees spillover usage of shared electric scooters from neighboring cities. Operators have been fairly diligent in removing unsanctioned scooters from Berkeley, resulting in a gap in service for many residents that reside near the Berkeley/Oakland border. By not having a Shared Electric Micromobility Permit Program, Berkeley may potentially have a more difficult time in meeting its Climate Action Plan targets, while denying continuity of service for residents making trips between municipal borders.

CONTACT PERSON

Farid Javandel, Deputy Director, Public Works, (510) 981-7061

Beth Thomas, Principal Planner, Public Works, (510) 981-7068

Ryan P. Murray, Associate Planner, Public Works, (510) 981-7066

Attachment:

1: Resolution

Exhibit A: Shared Electric Micromobility Principles

2: Ordinance

3: Public Hearing Notice

RESOLUTION NO. ##,###-N.S.

ESTABLISHING A SHARED ELECTRIC MICROMOBILITY PERMIT PROGRAM

WHEREAS, the term “shared electric micromobility” refers to electric-assist bicycles and electric scooters, which do not require a Driver’s License for operation, deployed within permitted areas of the public right-of-way for use by the public; and

WHEREAS, the City of Berkeley recognizes the practice of shared electric micromobility as a beneficial mode of transportation that reduces demand for private vehicles, decreases per capita greenhouse-gas emissions, and creates more affordable mobility options for all of Berkeley’s residents; and

WHEREAS, the Berkeley Climate Action Plan (Resolution No. 64,480-N.S.) sets a goal of reducing transportation-related greenhouse gas emission levels by 80% from year 2000 levels by 2050; and

WHEREAS, one of the stated objectives in the Berkeley General Plan Transportation Element is to reduce automobile use and vehicle miles traveled by providing and advocating for transportation alternatives that facilitate voluntary decisions to drive less; and

WHEREAS, use of electric micromobility devices for transportation reduces overall vehicle-miles traveled and greenhouse gas emissions; and

WHEREAS, numerous municipalities in California have adopted shared electric micromobility programs and legislation to facilitate micromobility device sharing in the public right-of-way; and

WHEREAS, the adoption of a formal Shared Electric Micromobility Permit Program will allow the City of Berkeley to standardize shared electric micromobility policies; and

WHEREAS, adoption of a Shared Electric Micromobility Permit Program is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15301 (existing facilities) and 15061(b) (3) (no significant effect on the environment).

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley adopt the Shared Electric Micromobility Principles contained in Exhibit A, attached hereto and incorporated herein by reference; and

BE IT FURTHER RESOLVED by the Council of the City of Berkeley that the Shared Electric Micromobility Permit Program includes an Application Fee of \$1,500 per organization applying for a Permit; and

BE IT FURTHER RESOLVED by the Council of the City of Berkeley that the Shared Electric Micromobility Permit Program includes an Annual Permit Fee of \$15,000 per organization receiving a Permit; and

BE IT FURTHER RESOLVED by the Council of the City of Berkeley that the Shared Electric Micromobility Permit Program includes a Permitted Device Fee of \$64 per electric micromobility device to be deployed by the organization receiving a Permit; and

BE IT FURTHER RESOLVED that the City Manager or her designee will administer the Shared Electric Micromobility Permit Program on behalf of the City, issuing permits such that up to three (3) shared electric micromobility operators may hold active permits at any given time; and

BE IT FURTHER RESOLVED, that the Shared Electric Micromobility Permit Program permits will have a term of one (1) year, with shared electric micromobility operators having the option to reapply each year for a new permit under the Program and pay associated fees; and

BE IT FURTHER RESOLVED that the City Manager or her designee may administratively update the rules, regulations, and fees associated with the Shared Electric Micromobility Permit Program, consistent with the Shared Electric Micromobility Principles, without returning to City Council for approval of these changes; and

BE IT FURTHER RESOLVED that the Shared Electric Micromobility Permit Program fees will accrue to a General Fund Revenue Account for use in covering Program management costs.

Exhibit A

SHARED ELECTRIC MICROMOBILITY PRINCIPLES

The following principles are intended to guide the City of Berkeley in implementation of the Shared Electric Micromobility Permit Program. As needed, staff will 1) recommend changes to the Berkeley Municipal Code and fees related to permits for the use of shared electric micromobility services in the public right-of-way, 2) monitor the use of shared electric micromobility within Berkeley, and 3) make future recommendations about the role of shared electric micromobility in Berkeley.

Definitions

- “Equity Priority Communities” means the most recent census tracts or block groups designated as Equity Priority Communities by the Metropolitan Transportation Commission.
- “Deployment” means the placement of devices by the Shared Electric Micromobility system operator.
- “Shared Electric Micromobility Device” or “Device” means an electrically-powered device for short-term rental for point-to-point trips where, by design of the shared electric micromobility operator, the device is intended to remain in the public-right-of-way, even when not being rented, and is not required to be docked in a designated docking station for rental.
 - “Device(s)” may include:
 - (a) “Electric Scooter” – any two-wheeled device that has handlebars, has a floorboard that is designed to be stood upon when riding, and is powered by an electric motor, as defined in Section 407.5 of the California Vehicle Code;
 - (b) “Electric Bicycle” – A Class 1 Electric Bicycle or Class 2 Electric Bicycle as defined in Section 312.5 of the California Vehicle Code;
 - (c) “Electric Motorized Bicycle” – A fully motorized two-wheeled device with a seat and footrest and an electric motor of no more than 750 watts;
 - (d) “Electric Tricycle” – a three-wheeled device with a seat and an electric motor of no more than 750 watts;
 - (e) “Adaptive Shared Electric Micromobility Device” or “Adaptive Device” – an electric scooter, tricycle, or bicycle that is accessible to people with various physical disabilities. Adaptive Devices must include three wheels (or be self-balancing), a seat, and a basket or storage area large enough to hold a cane.

- “Shared Electric Micromobility System Operator” or “Operator” is an entity that owns and/or operates a Shared Electric Micromobility System in the public-right-of-way. The term includes any employee, agent, or independent contractor hired or retained by the Operator.
- “Shared Electric Micromobility Permittee” or “Permittee” is an entity that is issued a Permit by the City to operate a Shared Electric Micromobility System in the public-right-of-way.
- “Shared Electric Micromobility Permit Program” or “Program” means the program under which the permit system is regulated.

Goals

- Provide shared electric micromobility devices as an option for City of Berkeley residents.
- Diversify mobility options of residents, employees, and visitors to Berkeley.
- Protect public health and safety.
- Avoid waste by ensuring the Devices in Berkeley are robust enough for commercial use.
- Avoid sidewalk, pathway, and pedestrian ramp blockages.
- Reduce emissions from short trips and connections to transit.
- Maximize user awareness of safe and legal behaviors for operating shared mobility devices.
- Create an enforceable framework for managing shared mobility services.
- Ensure use of the Public Right of Way (PROW) benefits public mobility.
- Ensure private operators respond to pervasive issues and service complaints.

Implementation

The City Manager or designee is responsible for setting and publishing administrative rules that establish requirements for eligible shared electric micromobility operators in Berkeley. The Director of Public Works or designee will make the shared electric micromobility program rules easily accessible, create permits, and monitor resident feedback and complaints for the duration of the City's shared electric micromobility program.

- Riding on sidewalks is prohibited at all times. “No Riding On Sidewalks” shall be prominently printed on every Device.
- The operating speed of Devices is limited to no more than 15 mph. The City reserves the right to “geofence” zones to further restrict operating speeds if found to be needed for public safety.

- Operator shall deploy Devices with locking mechanisms that attach to bike racks and Devices may not be parked in any way that obstructs curb ramps, loading zones, access to disabled parking zones or the pedestrian path of travel.
- Operators must provide a customer service contact line, available twenty-four (24) hours per day, seven (7) days per week, for complaints regarding improper parking; and display that contact information clearly on each Device, along with a unique identifying number assigned to and displayed on each Device.
- Operators must remove improperly parked Devices within three (3) hours of receipt of a public complaint.
- Preference in Permit issuance is given to companies that employ their own workers, rather than using contract “gig” workers, and that provide devices with a seat for accessibility to those who cannot stand for prolonged periods.
- Operators must provide Adaptive Devices for persons with disabilities within nine (9) months of the Permit issuance. The total percentage of Adaptive Devices shall be based on expected need, performance, and usage.
- Operators shall offer a deeply discounted membership for those who participate in the Supplemental Nutritional Assistance Program (SNAP) or California Alternative Rates for Energy (CARE).
- Devices should be distributed equally throughout Berkeley. More than 50% of Devices must be deployed in the Berkeley Equity Priority Communities designated by the Metropolitan Transportation Commission.
- Each Operator/Permittee shall indemnify and hold harmless the City against any and all liabilities associated with the Operator’s/Permittee’s Shared Electric Micromobility operations.

ORDINANCE NO. –N.S

AMENDING BERKELEY MUNICIPAL CODE TO ESTABLISH CHAPTER 14.63, AMENDING SECTION 14.68.010 DEFINING “MOTORIZED SCOOTER” AND AMENDING SECTIONS 14.68.120 AND 14.68.180 TO INCLUDE LANGUAGE FOR MOTORIZED SCOOTERS

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

Chapter 14.63
Shared Electric Micromobility

Sections:

- 14.63.010 Findings and purpose.**
- 14.63.020 Definitions.**
- 14.63.030 Term.**
- 14.63.040 Shared electric micromobility parking zone.**
- 14.63.050 Issuance of permits.**
- 14.63.060 Permit fees.**
- 14.63.070 Suspension or revocation.**
- 14.63.080 Penalties, liability and enforcement.**

14.63.010 Findings and purpose

The Council finds that the use of shared electric micromobility device sharing within Berkeley has numerous benefits, including improved mobility for residents, reduced personal vehicle ownership and vehicle miles traveled, and overall reduction in greenhouse gas emissions. The purpose of this Chapter is to facilitate shared micromobility within Berkeley by establishing a program under which permitted devices may operate within the City of Berkeley’s right-of-way, establish device parking requirements, and associated fees.

14.63.020 Definitions

A. “Shared electric micromobility device” or “device” means an electrically-powered device for short-term rental for point-to-point trips where, by design of the shared electric micromobility operator, the device is intended to remain in the public-right-of-way, even when not being rented, and is not required to be docked in a designated docking station for rental. “Devices” include electric scooters and electric-assisted bicycles.

a. “Device(s)” may include:

- i. “Electric Scooter” – any two-wheeled device that has handlebars, has a floorboard that is designed to be stood upon when riding, and is

powered by an electric motor, as defined in Section 407.5 of the California Vehicle Code.

- ii. “Electric Bicycle” – A Class 1 Electric Bicycle or Class 2 Electric Bicycle as defined in Section 312.5 of the California Vehicle Code.
- iii. “Electric Motorized Bicycle” – A fully motorized two-wheeled device with a seat and footrest and an electric motor of no more than 750 watts.
- iv. “Electric Tricycle” – a three-wheeled device with a seat and an electric motor of no more than 750 watts.
- v. “Adaptive Shared Electric Micromobility Device” or “Adaptive Device” – an electric scooter, tricycle, or bicycle that is accessible to people with various physical disabilities. Adaptive Devices must include three wheels (or be self-balancing), a seat, and a basket or storage area large enough to hold a cane.

- B. “Shared electric micromobility system operator” or “operator” is an entity that owns and/or operates a Shared Electric Micromobility System in the public-right-of-way. The term includes any employee, agent, or independent contractor hired or retained by the operator.
- C. “Shared electric micromobility permittee” or “permittee” is an entity that is issued a Permit by the City to operate a Shared Electric Micromobility System in the public-right-of-way.
- D. “Shared electric micromobility permit program” or “program” means the program under which the permit system is regulated.
- E. “Shared electric micromobility system” or “system” means a system providing Devices as defined above.
- F. “Shared electric micromobility user”, “user” or “customer” is any person that uses, rents, or rides a shared electric micromobility device or is a customer of the operator.

14.63.030 Term

Reserved

14.63.040 Shared electric micromobility parking zone

The shared micromobility parking zone boundaries will be established by a shared electric micromobility operator in consultation with the Public Works Department. Current and updated maps of the operator’s parking zones will be made available

through the operator's website and cell phone application. Individual devices must be parked at locations as permissible and described in BMC 14.68.180.

14.63.050 Issuance of permits

A. Permits to operate a shared electric micromobility system within the City of Berkeley shall be issued by the Public Works Department in accordance with requirements set forth in this chapter.

B. The Public Works Department shall issue rules and regulations consistent with this Chapter governing the issuance of permits, as well as the terms and conditions that define and regulate the program.

C. A shared electric micromobility operator may apply for any amount of devices they wish to deploy; however the City retains the right to cap or reduce that number at any time. The Public Works Department will make fleet size cap and reduction decisions based on device usage data and responsiveness of the operator in maintaining the organization and clear use of the public right-of-way.

D. The Public Works Department shall issue the permits with a maximum term of one year. Permits may be granted annually through the end of the City's fiscal year.

14.63.060 Permit fees.

Fees for Permits for the implementation and administration of this Chapter may be adopted by resolution of the City Council.

14.63.070 Suspension or revocation.

A. The City may suspend or revoke the status of any qualified operator for any violation of the provisions of this Chapter or regulations promulgated to implement this Chapter. During the time that the permit is suspended or revoked, it shall be unlawful for the Operator to exercise any of the rights granted under this Chapter.

B. The permittee shall be entitled to appeal the City's decision to suspend or revoke its Permit by filing a written notice of appeal with the City Manager within ten days from the date the notice of suspension or revocation is mailed.

C. The appeal shall clearly and concisely set forth the grounds upon which it is based.

D. If the permittee files a timely request for appeal, a hearing shall be held before the City Manager or their designee. The decision of the City Manager or their designee shall be final.

E. Pending the appeal hearing it shall be unlawful for the permittee to exercise its rights under this chapter.

14.63.080 Penalties, liability, and enforcement.

A. Every person who violates any provision of this chapter may be subject to administrative citations pursuant to Chapter 1.28.

B. Each violation of this chapter and each day of violation of this chapter shall be considered a separate and distinct violation thereof and the imposition of a penalty shall be as set forth in subsection A of this section for each and every separate violation and each and every day of violation.

Section 2. That Berkeley Municipal Code Title 14 "Division II. Bicycles" be amended to read as follows:

Div. II Bicycles and Motorized Scooters

Section 3. That Berkeley Municipal Code Section 14.68.010 is amended to read as follows:

14.68.010 Definitions.

A. "Bicycle" means a device upon which any person may ride, propelled exclusively by human power through a belt, chain or gears, and having either two or three wheels in a tandem or tricycle arrangement.

B. "Bicycle establishment" means and includes a business operated by any person, partnership, association or corporation, wherein new or used bicycles or bicycle parts are purchased, sold, dismantled or junked

C. "Motorized bicycle" means any two-wheeled or three-wheeled device having fully operative pedals for propulsion by human power, or having no pedals if powered solely by electrical energy, and an automatic transmission and a motor which produces less than two gross brake horsepower and is capable of propelling the device at a maximum speed of not more than thirty miles per hour on level ground. (Ord. 4957-NS §§ 1-3, 1976)

D. "Motorized scooter" means any two--wheeled device that has handlebars, has a floorboard that is designed to be stood upon when riding and is powered by a motor.

Section 4. That Berkeley Municipal Code Section 14.68.120 is amended to read as follows:

14.68.120 Riding motorized bicycles and motorized scooters on sidewalk prohibited.

No person shall ride or operate a motorized bicycle or motorized scooter on any sidewalk in the City. (Ord. 4957-NS § 14, 1976)

Section 5. That Berkeley Municipal Code Section 14.68.180 is amended to read as follows:

14.68.180 Parking Restrictions

No person shall park any bicycle, motorized bicycle, or motorized scooter against windows or parking meters or on the main-traveled portion of the sidewalk, nor in such manner as to constitute a hazard to pedestrians, traffic or property. (Ord. 4957-NS § 20, 1976)

Section 5. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL**

SHARED ELECTRIC MICROMOBILITY PERMIT PROGRAM

Notice is hereby given by the City Council of the City of Berkeley that a public hearing will be conducted by said City Council of the City of Berkeley at which time and place all persons may attend and be heard upon the following:

The Department of Public Works is proposing to establish fees for permits for qualified organizations to provide a shared electric micromobility service in the City. Shared electric micromobility is a service in which small electric transportation devices are made available in the public right-of-way for short-term rental by the public. Two of the most common electric micromobility devices are electric-assist bicycles and electric scooters which do not require a Driver’s License for their operation.

The proposed Application Fee is \$1,500 per permit application, which is equal to the estimated cost for staff to review and select applications from eligible and qualified operators.

The proposed Annual Permit Fee is \$15,000 and would be paid by each shared electric micromobility operator issued a permit. This fee is calculated based on the estimated staff time required to administer the program. This fee would be fixed and would be paid yearly by the operator if they wished to continue providing a shared electric micromobility service within the City.

The proposed Permitted Device Fee is \$64 per device (for example, per electric scooter or electric-assist bicycle) that the shared electric micromobility operator deploys within the City of Berkeley. This fee is designed to compensate for the staff time to manage the program relative to the number of devices deployed.

	<u>Proposed Fees</u>
Application Fee (per organization)	\$ 1,500
Annual Permit Fee (per organization)	\$15,000
Permitted Device Fee (per device)	\$ 64

The Berkeley Municipal Code would be amended to incorporate the Shared Electric Micromobility Permit Program.

The hearing will be held on, SEPTEMBER 28, 2021 at 6:00 p.m. The hearing will be held via videoconference pursuant to Governor’s Executive Order N-29-20.

A copy of the agenda material for this hearing will be available on the City’s website at www.CityofBerkeley.info as of **September 16, 2021**.

For further information, please contact Ryan P. Murray, Associate Planner, Department of Public Works at 510-981-7056.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, 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 or in person to the City Clerk. 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: Friday, September 17, 2021 and Friday, September 24, 2021 – The Berkeley Voice
Published pursuant to California Government Code Section 6062a

~~~~~  
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 September 16, 2021.

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





Office of the Director  
of Police Accountability

ACTION CALENDAR  
September 28, 2021

To: Honorable Mayor and Members of the City Council

From: Police Accountability Board and  
Office of the Director of Police Accountability

Submitted by: Katherine J. Lee, Interim Director of Police Accountability

Subject: Approval of Interim Regulations for the Police Accountability Board and Office  
of the Director of Police Accountability for Handling Complaints Against  
Sworn Officers of the Police Department

RECOMMENDATION

Approve Interim Regulations to be used by the Police Accountability Board and Director of Police Accountability for Handling Complaints Against Sworn Officers of the Police Department under City Charter Article XVIII, Section 125 (Measure II). The City Council is asked to choose between the Board's modified proposal, conditioned upon City Attorney approval, or the Interim Director's preferred version.

SUMMARY

Ballot Measure II, passed in November 2020, amended the City Charter to establish a Police Accountability Board (Board) and Director of Police Accountability (Director) to perform civilian oversight of the Berkeley Police Department. (Measure II was codified as City Charter Article XVIII, Section 125 [Attachment 1].) The Board and the Office of the Director of Police Accountability became operational in July 2021, and need procedures in place to receive and process complaints from members of the public alleging misconduct against Berkeley police officers. Because establishing a permanent set of policies and procedures will take several months, Interim Regulations are needed so that complaint processing may continue. Under Section 125(13)(c) of the City Charter, the City Council must ratify rules of conduct governing the Board's conduct of business.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

Several complaints alleging police misconduct have been filed with the Office of the Director of Police Accountability since it began operations on July 1, 2021. Despite the fact that no regulations have been adopted, the Berkeley Police Department and its sworn members were cooperating with the Office of the Director in good faith in the

handling of these complaints. The BPD has responded, and continues to respond, to requests for police reports and body-worn camera footage related to the incidents in question. However, DPA Investigator interviews of subject officers and witness officers have been suspended.

To ensure that Interim Regulations were formalized as quickly as possible, the Interim Director agendaized for the first meeting of the Police Accountability Board the establishment of a Regulations Subcommittee. The Subcommittee was formed, and had time to meet once to consider Interim Regulations proposed by the Interim Director. The Subcommittee modified the proposed draft in significant ways, however. The Board approved the Subcommittee's proposal with a modification to one provision.

Subsequently, the City and the Berkeley Police Association began the meet-and-confer process as provided for under the Meyers-Milias-Brown Act for those matters that affect wages, hours, and other conditions of employment.

## BACKGROUND

### **Overview**

The purpose of the Charter amendment creating the Police Accountability Board and Director of Police Accountability is promote public trust through independent, objective, civilian oversight of the Berkeley Police Department, provide for community participation in setting and reviewing Police Department policies, practices, and procedures, and to provide a means for prompt, impartial and fair investigation of complaints brought by members of the public against sworn employees of the Berkeley Police Department. The Board replaced the Police Review Commission and created a new position, the Director of Police Accountability.

The Charter amendment language was the culmination of a lengthy meet-and-confer process between City staff and the Berkeley Police Association, who bargained in good faith over the impacts of the proposed Charter amendment.

Under the Charter amendment, the functions of the new Board and Director were to go into operation no later than January 1, 2022. Under Resolution No. 69,531-N.S., the City Council directed that the functions, duties, and responsibilities of the Board and Director be implemented by July 1, 2021, six months earlier than the timeline set forth in the Charter amendment. The Office of the Director of Police Accountability became operational on July 1, 2021, with Police Review Commission staff serving as interim staff of the new Office. The Mayor and City Councilmembers appointed Police Accountability Board members on June 1, 2021, and appointed the Interim Director on June 29, 2021. The Board held its first meeting on July 7, 2021.

### **Interim Regulations Proposed by Interim Director of Police Accountability**

Under Section 125(18)(a) of the Charter amendment, the Director and Board shall adopt regulations for handling complaints filed by any member of the public alleging misconduct by sworn employees of the Police Department. However, it will take time for the Board to develop permanent regulations due to their detailed nature. For this reason, the Interim Director developed proposed Interim Regulations so that the Office of the Director of Police Accountability could expeditiously commence investigations on complaints filed before a complete set of permanent regulations is finalized. [Attachment 2, before redlines.]

The Interim Director's proposal implements the new provisions and procedures put into place by the Charter amendment. Among the most significant are:

- **Timeframe.** The time to complete investigations and notify a sworn officer of discipline is 240 days, instead of the previous 120-day limit.
- **Standard of proof.** The standard of proof applied in determining whether a sworn officer can be charged with committing misconduct is "preponderance of the evidence," rather than the more stringent "clear and convincing evidence."
- **Findings and recommendations; hearings.** For cases filed with the Office of the Director of Police Accountability, following an investigation, the Director will present to the Board investigative findings and, if warranted, disciplinary recommendations; in certain cases, a recommendation on the level of discipline will be made. The Board then decides whether to accept the Director's recommendation or hold a confidential personnel hearing. The findings and recommendations of the Director or the Board are sent to the Chief of Police, who may agree or disagree. If the Chief disagrees, a process for the Director to request City Manager review follows.
- **Review of Internal Affairs (IA) investigative record if complainant objects.** For cases filed with the Berkeley Police Department and not the Office of the Director, a complainant may contest a finding other than a "sustained" finding on a misconduct allegation to the Director. The Director may dismiss the objection or convene a review panel of the Board to review IA's investigative record. The Board may dismiss the case, agree with IA's decision, or disagree with IA on certain grounds. If the Board disagrees with IA, the Chief may send a report to the City Manager, who will make a final decision.

As the Charter amendment does not address many of the details of the process for handling complaints from the public, the Interim Director recommends for the most part that many of the provisions of the former Police Review Commission's Regulations be used, to the extent they are not inconsistent with the Charter amendment. The PRC Regulations are the product of periodic negotiations with the Berkeley Police Association over many years.

## Police Accountability Board Revisions

At its first meeting, the Police Accountability Board established a Regulations Subcommittee. This Subcommittee met on July 28, 2021, to consider the Interim Regulations proposed by the Interim Director. [Attachment 2. Redlines show Board's changes to Interim Director's proposal.] In addition to her proposed draft, the Interim Director submitted to the Subcommittee a memorandum with an overview of her work [Attachment 5] and a copy of the Police Review Commission Regulations, annotated for reference [Attachment 6]. The Subcommittee approved the recommended Interim Regulations in large part, but decided to enact three significant changes. The full Board, at its August 4, 2021 meeting, accepted the Subcommittee's recommendations, except that it modified one of the changes. Other, minor changes were made for clarity, as were the Interim Director's corrections to her own erroneous cross-references.

The Board's major changes to the proposed Interim Regulations are as follows:

1. Expanding who may file a complaint. Formerly limited to "aggrieved parties" – those directly affected by alleged police misconduct, the Board proposes that eyewitnesses to alleged misconduct be allowed to file complaints. The Board further expanded their own ability to initiate an investigation, to do so upon a vote of five Board members. Previously the Board could initiate an investigation only in cases involving a death or if no complainant was available to file a complaint. (Interim Regs., Sections I.A.8 and II.A.2.)
2. Extending the filing deadline. The proposed Interim Regulations provide for a 90-day time limitation for filing complaints and a late-filing period, for those who can show good cause for not filing earlier, for complaints filed between 91 and 180 days. The Board instead proposes a 180-day filing period, with no provision for filing after that date. (Interim Regs., Section II.A.3.)
3. How testimony is taken at hearings. The procedures the Interim Director proposed adhere to the process used by the Police Review Commission. At hearings, the complainant must answer questions from the Board and the subject officer or their representative, but is then excused from the hearing. The complainant and their representative are not allowed to question the subject officer or even to be present while the subject officer testifies and is questioned by the Board. These provisions were enacted as a result of the Berkeley Police Association's successful lawsuit against the City (*Berkeley Police Association v. City of Berkeley* (2008) 167 Cal.App.4<sup>th</sup> 385) that required the PRC's investigative records and hearing process to comport with the Public Safety Officers Procedural Bill of Rights Act ("POBRA") and confidentiality provisions of Penal Code section 832.5, 832.7, and 832.8.

The Board revised the Interim Director's proposal to place the complainant and subject officers on equal footing with respect to asking questions and being present during the hearing. (Interim Regs., Section II.I.6.) However, the Board understands that the City Attorney's opinion is needed regarding whether the Board's proposal comports with state law and case law. The Interim Director has sought the City Attorney's legal advice on this matter, which may be completed by the time Council is considering this item.

The Board voted unanimously at its August 4, 2021 meeting to recommend that the Council approve the Interim Regulations as shown on Attachment 3, with its recommendation of the changes in how testimony is taken conditioned on the City Attorney's opinion that they are lawful. M/S/C (Calavita/Leftwich): Ayes – Calavita, Chang, Harris, Leftwich, Levine, Mizell, Moore, Owens, and Ramsey; Noes – None; Abstentions – None; Absent – None. The Board was prepared to modify the language regarding the taking of testimony at its September 8, 2021 meeting consistent with the City Attorney's opinion, but the legal analysis was not yet final.

The Interim Director respectfully disagrees that the above three major changes should be approved at this time, and accepts all other modifications to the draft that were approved by the Board. The Interim Director's proposed version is shown in Attachment 4.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

No environmental or climate impacts.

#### RATIONALE FOR RECOMMENDATIONS

##### **Board's rationale**

Regarding expanding the group of people who may file, the Board points out that other civilian oversight agencies allow eyewitnesses to misconduct to file complaints. Additionally, this is a "best practice" according to the National Association for Civilian Oversight of Law Enforcement (NACOLE).

As for the timeline for filing complaints, the Board believes that 90 days is too short, and referenced a 180-day timeline typical in the federal system. The Board also believes that the current 91- to 180-day deadline for a "late-filed" complaint, which the Board may accept upon the complainant's showing of good cause for filing late, is virtually a de facto 180-day deadline, save for the obligation to explain the reason for the lateness.

Finally, with respect to complainants' presence throughout the hearing and ability to question the subject officer, the Board feels strongly that maintaining the former Police Review Commission process is lopsided and unfair to complainants, and that state law and case law could be interpreted differently than they were in 2007 and 2008.

Overall, the Board believes that, as a new body created with overwhelming support of Berkeley voters, it need not be beholden to the rules of the body it replaced, and should instead be responsive to the community's desires without delay.

### **Interim Director's rationale**

The Interim Director does not disagree with the sentiment behind the three major changes proposed by the Board, and understands the eagerness to make the process more accessible and friendly to complainants. However, if any of the major changes are subject to meet-and-confer with the Berkeley Police Association, that will delay adoption of Interim Regulations, and could cause a delay or temporary suspension of investigations of pending and future complaints filed with the Office of the Director.

### ALTERNATIVE ACTIONS CONSIDERED

Two alternatives are being presented for Council's consideration.

### CONTACT PERSON

Katherine J. Lee, Interim Director, Office of the Director of Police Accountability  
(510) 981-4950

### Attachments:

- 1: City Charter, Article XVIII, Section 125
- 2: Proposed Interim Regulations, redlined
- 3: Proposed Interim Regulations, clean, Board version
4. Proposed Interim Regulations, clean, Interim Director version
- 5: July 20, 2021 Memorandum from Interim Director Lee to Police Accountability Board Regulations Subcommittee, Lt. Dan Montgomery (BPD), and Sgt. Scott Castle (BPA) regarding Draft Interim Regulations
- 6: Annotated PRC Regulations, dated April 4, 2018.

**CHARTER OF THE CITY OF BERKELEY  
Section 125, Article XVIII**

**ARTICLE XVIII  
POLICE ACCOUNTABILITY BOARD AND DIRECTOR OF POLICE  
ACCOUNTABILITY**

**Section 125. Police Accountability Board and Director of Police Accountability**

**(1) Establishment and purpose.**

A Police Accountability Board is hereby established in the City of Berkeley. The purpose of the Police Accountability Board is to promote public trust through independent, objective, civilian oversight of the Berkeley Police Department, provide community participation in setting and reviewing Police Department policies, practices, and procedures, and to provide a means for prompt, impartial and fair investigation of complaints brought by members of the public against sworn employees of the Berkeley Police Department.

The Office of the Director of Police Accountability is hereby established. The purpose of the Director of Police Accountability is to investigate complaints filed against sworn employees of the Berkeley Police Department, to reach an independent finding as to the facts and recommend corrective action where warranted. The Director of Police Accountability may also serve as the Secretary to the Police Accountability Board and assist the Board in carrying out the duties prescribed herein.

**(2) Definitions.**

The following definitions apply to this Article:

(a) "Commissioners' Manual" refers to the most current manual adopted by the City Council that consists of the policies and procedures regarding the service of board members and commissioners, board and commission procedures, and conduct of meetings.

(b) "Complainant" shall refer to a member of the public that files a complaint with either the Director of Police Accountability, Police Accountability Board, or the Police Department.

(c) "Director of Police Accountability" or "DPA" refers to an individual fulfilling the police oversight role established pursuant to section 1 of this Article.

(d) "Effective Date" shall be the date that the Secretary of State accepts and files this Article.

(e) "Police Accountability Board" or "Board" refers to the Police Accountability Board established in Section 1 of this Article, which shall be the successor agency to the Berkeley Police Review Commission in accordance with Section 27.

**CHARTER OF THE CITY OF BERKELEY**  
**Section 125, Article XVIII**

---

(f) Except as otherwise specifically provided, all references in this Article to California code sections shall refer to such Code sections as they may be amended or re-codified from time to time.

**(3) Police Accountability Board powers and duties.**

(a) The Police Accountability Board has the following powers and duties:

(1) To advise and make recommendations to the public, City Council, and City Manager regarding the operation of the Berkeley Police Department, including all written policies, practices, and procedures in relation to the Berkeley Police Department;

(2) Review and recommend for City Council approval all agreements, letters, memoranda of understanding, or policies which express terms and conditions of mutual aid, information sharing, cooperation and assistance between the Berkeley Police Department and all other local, state and federal law enforcement, intelligence, and military agencies or private security organizations;

(3) To receive and consider the findings and recommendations of the Director of Police Accountability regarding complaints filed by members of the public against sworn employees of the Police Department and to recommend if discipline is warranted when misconduct is found and, pursuant to Section 18, the level of discipline for sustained findings of misconduct;

(4) To participate in the hiring of the Chief of Police as set forth in Section 22;

(5) To access records of City Departments, compel attendance of sworn employees of the Police Department, and exercise the power of subpoena as necessary to carry out its functions;

(6) To adopt rules and regulations necessary for the conduct of its business; and

(7) Any other powers and duties as the City Council may assign it by Ordinance.

(b) Nothing in this chapter granting powers and duties to the Police Accountability Board shall limit the City Council's, Chief of Police's or City Manager's authority derived from other provisions of this Charter to act on policing matters, unless explicitly stated.



**CHARTER OF THE CITY OF BERKELEY**  
**Section 125, Article XVIII**

---

(c) The Police Accountability Board, Director of Police Accountability and their respective agents, assigns, employees and representatives shall have no authority to restrict, modify, supersede, negate, supplant or contravene the authority granted to the City Manager and/or Chief of Police by way of the City Charter or operation of state or federal law to engage in collective bargaining activities or enter into agreements or understandings with the designated bargaining unit representative or representatives of the sworn employees of the Police Department unless such agreements or understandings contravene this Article.

(d) The Police Accountability Board, Director of Police Accountability and their respective agents, assigns, employees and representatives shall not undertake nor sanction any actions which would:

(1) Restrict, violate, or abridge the collective bargaining rights of the designated bargaining unit representative of the sworn employees of the Police Department or their individual members;

(2) Restrict, violate or abridge the terms and conditions of a collective bargaining agreement, understanding or practice with the designated bargaining unit representative of the sworn employees of the Police Department, except for those provisions provided for in this Article; and

(3) Restrict, violate or abridge any legal rights of individual sworn employees of the Police Department, including but not limited to those set forth in the Public Safety Officers' Procedural Bill of Rights Act ("POBRA"), Government Code section 3300 et seq., and sworn employees' right to maintain the confidentiality of their personnel file information (including, but not limited to Penal Code §§ 832.7, 832.8.), except as required under Section 20 of Article XVIII of the City Charter.

**(4) Independent agency; budget authority and allocation.**

(a) Notwithstanding Article VII of the Charter, and except as provided in section 14(b), 14(i) or 14(k), the Police Accountability Board, its staff and the Director of Police Accountability shall be independent of the City Manager.

(b) The Board is authorized to propose a budget to the City Council for its operations, and the City Council may allocate to the Police Accountability Board and Director of Police Accountability, as the City Council determines resources allow, a budget sufficient to provide for a process that protects the rights of complainants and sworn employees of the Police Department, for the Board and its staff to carry out the investigative and policy responsibilities stated herein, and to ensure the independence of the Board.

**CHARTER OF THE CITY OF BERKELEY**  
**Section 125, Article XVIII**

---

**(5) Composition of Police Accountability Board; eligibility.**

(a) The Police Accountability Board shall be composed of nine (9) Board members selected by the Mayor and City Council. Each member of the Board must:

- (1) Be a resident of the City;
- (2) Be at least 18 years old;
- (3) Not be an employee, officer, or contractor with the City, a current sworn police officer from any agency, or a current employee, official, or representative of an employee association representing sworn police officers; and
- (4) Be fair minded and objective with a demonstrated commitment to community service.

(b) Desirable qualities of a Board member are familiarity with human resources, law, police procedures, police oversight, or involvement in civil rights or community organizations.

(c) All appointees to the Board shall be subject to background checks before final appointment.

**(6) Board member selection.**

(a) Candidates for the Board must complete and file with the City Clerk an application form and an affidavit of residency required by Berkeley Municipal Code Section 2.04.145. Board vacancies shall be widely advertised and publicly posted. The Mayor and each City Councilmember shall nominate one candidate from an applicant pool at a meeting of the City Council. Each individual nominee must be approved by a majority vote of the City Council.

(b) The City Council shall endeavor to establish a Board that is broadly inclusive and reflective of race, ethnicity, age, gender identity, sexual orientation, economic status, neighborhoods, and various communities of interest in the City. Toward that end, in soliciting applications for the position of Board member, the Director of Police Accountability shall reach out to civic, community, and civil rights organizations, among others.

**(7) Terms; term limits.**

(a) Board member terms end four years after appointment, or upon the expiration of the nominating City Councilmember's term, whichever is earlier. Board members are limited to serving eight consecutive years and may be reappointed following a break in service of at least two years.

**CHARTER OF THE CITY OF BERKELEY**  
**Section 125, Article XVIII**

---

(b) To the extent not in conflict with subsection (a) above, the provisions of Berkeley Municipal Code Section 3.02.040, regarding Board member term limits and the effect of interruption in service, apply.

**(8) Conflicts of interest and Avoiding Bias.**

(a) Board members shall be subject to the requirements of the California Political Reform Act and other state and local conflict of interest codes.

(b) Board members shall maintain basic standards of fair play, impartiality, and avoid bias and the appearance of bias. In instances where the Board acts in a quasi-judicial capacity, as in a confidential personnel hearing, as described below, Board members have the responsibility to hear all viewpoints. To ensure that all parties are afforded an opportunity to be heard, Board members shall observe the following:

(1) Board members recused for a conflict of interest must do so immediately when an item is taken up.

(2) Board members shall verbally disclose all ex parte contacts concerning the subject of the hearing. Board members shall also submit a report of such contacts in writing prior to the commencement of the hearing. Ex parte contacts include, but are not limited to, any contact between a Board member and any party involved in the complaint prior to the public hearing.

(3) Board members shall be recused from taking any action on or participating in a matter before the Police Accountability Board if they are related to a party to, advocate for, or represent a member of the public who has a pending or anticipated claim of any kind arising out of alleged misconduct of a sworn employee of the Police Department. For the purpose of this subsection, "related to" shall include a spouse, child, sibling, parent or other person related to the complainant or the complainant's spouse within the third degree of relationship.

**(9) Expiration of term; termination; leaves of absence; removal.**

(a) A Board member whose term has expired may continue to serve until a successor Board member is appointed, unless the sitting Board member's term expires due to term limits, as provided in Section 7.

(b) The term of a Board member who fails to remain eligible to serve on the Board (e.g., by moving out of the City of Berkeley, or becoming an employee of the City) expires automatically as of the date the reason for ineligibility arises.

**CHARTER OF THE CITY OF BERKELEY**  
**Section 125, Article XVIII**

---

(c) The provisions of Berkeley Municipal Code Section 3.02.020, establishing a termination procedure for absence from meetings, Section 3.02.030, leaves of absence, and Section 3.02.035, regarding alternate Board members, apply to the Police Accountability Board.

(d) A Board member may either be replaced by the City Council if their term has expired or may be removed during their term as provided in Section 12.

**(10) Board Chairperson and Vice-Chairperson.**

(a) The Board shall elect one of its members as chairperson and one as vice-chairperson, whose terms shall be one year each, or until their successor is elected. No chairperson is eligible to serve more than two consecutive terms, or portions thereof.

(b) Following election of the initial chairperson and vice-chairperson, the Board shall elect subsequent officers each January.

**(11) Board member stipends.**

(a) Each Board member is entitled to receive a stipend of \$100.00 for each regular and special Board meeting attended, and \$20.00 per hour for each hour of training attended as provided in Section 12 and each subcommittee meeting attended as a member of a subcommittee. Excluding participation in trainings, the total stipend paid may not exceed \$300.00 per month per Board member.

(b) Board member stipends and the total monthly stipend paid may be adjusted from time to time by the City Council. Adjustments to Board member stipends shall occur no more than once in a fiscal year and in no event shall an increase in Board member stipends exceed the change in the cost of living for the San Francisco Bay Area as measured by official United States economic reports.

**(12) Board member training; At will Status; Oath of Maintaining Confidentiality.**

(a) The Director of Police Accountability shall establish mandatory training requirements for Board members. Within the first six (6) months of appointment, at a minimum, each Board member shall receive forty (40) hours of training on the following:

- (1) Quasi-judicial duties and obligations of the Board;
- (2) Constitutional rights and civil liberties;
- (3) Fundamentals of procedure, evidence and due process;
- (4) The Public Safety Officers Procedural Bill of Rights Act;

**CHARTER OF THE CITY OF BERKELEY**  
**Section 125, Article XVIII**

---

(5) Police Department operations, policies, practices, and procedures;  
and

(6) Duties, responsibilities, procedures and requirements associated with all ranks and assignments.

The Director of Police Accountability shall develop training provided to Board members. The Chief of Police and a representative from the Berkeley Police Association shall have input on training provided to Board members and shall have the opportunity to attend all training provided.

(b) All Board members shall serve at the pleasure of the City Council and may be removed by a two-thirds vote of the City Council for any reason, including but not limited to misconduct or violations of state and federal confidentiality laws.

(c) Board members shall, upon appointment, take an oath to abide by and maintain the confidentiality of the personnel files of sworn employees of the Police Department and all other matters that are confidential pursuant to state and federal law.

**(13) Board meetings; quorum; rules of procedure; subcommittees.**

(a) At the beginning of each calendar year, the Board shall establish a regular meeting schedule consisting of at least eighteen (18) meetings. Special meetings may be called by the chairperson of the Board or by a majority of the Board.

(b) A majority of appointed Board members constitutes a quorum to conduct business and take any action.

(c) The Board shall establish rules of procedure governing the conduct of its business, which shall be subject to ratification by the City Council.

(d) The Board may establish policy subcommittees that it deems necessary to carry out its functions. The Chairperson shall appoint policy subcommittee members at a Board meeting. Policy subcommittees may include non-voting members of the public who express an interest in the business of the subcommittee. Members of the public that are appointed to a policy subcommittee shall serve in an advisory capacity without compensation. The Board may establish further rules and procedures for the appointment and removal of members of the public to policy subcommittees. Policy subcommittee members shall not have access to confidential personnel file information or any other confidential information.

(e) Unless otherwise specified in this Article, rules of procedure governing the conduct of the Board, or Ordinance, the Board shall comply with the Commissioners' Manual.

**CHARTER OF THE CITY OF BERKELEY**  
**Section 125, Article XVIII**

---

**(14) Office of the Director of Police Accountability.**

(a) To the extent possible, the City Manager shall recommend three (3) candidates for consideration by the City Council. The City Council shall appoint the Director of Police Accountability at a noticed public meeting.

(b) The Director of Police Accountability shall carry out the work of the Board as described herein, which may include the day-to-day operations of the Board office and staff, and performance appraisals and discipline of all subordinate employees of the Board. All such individuals, to the extent that they are employees of the City of Berkeley, shall be subject to the personnel rules governing City of Berkeley employees.

(c) Within the first six (6) months of appointment, the Director of Police Accountability shall receive training on the following:

- (1) Quasi-judicial duties and obligations of the Board;
- (2) Constitutional rights and civil liberties;
- (3) Fundamentals of procedure, evidence and due process;
- (4) The Public Safety Officers Procedural Bill of Rights;
- (5) Police Department operations, policies, practices, and procedures;

and

(6) Duties, responsibilities, procedures and requirements associated with all ranks and assignments.

(d) By majority vote, the Police Accountability Board may recommend removal for cause of the Director of Police Accountability to the City Council.

(e) The City Council may remove the Director of Police Accountability by a two-thirds vote either on its own motion or based on the recommendation of the Police Accountability Board.

(f) In addition to the duties prescribed, upon receipt of a complaint by the Police Accountability Board, the Director of Police Accountability shall ensure a timely, thorough, complete, objective and fair investigation into the complaint.

(g) The Director of Police Accountability shall assess the conduct of the sworn employee of the Police Department in light of the facts discovered through the investigation, state and federal law, and the policies, practices, procedures, and personnel rules of the City and Berkeley Police Department.

**CHARTER OF THE CITY OF BERKELEY**  
**Section 125, Article XVIII**

---

(h) The Director of Police Accountability shall present the results of their investigative findings and recommendations to the Police Accountability Board who shall make a recommendation to the Chief of Police regarding the specific complaint.

(i) The Director of Police Accountability may hire a Chief Investigator and, when there is a conflict of interest pursuant to Section 15, outside legal counsel, subject to receiving budgetary authority from the City Council.

(j) Subject to the budgetary authority of the City Council, the provisions of the City's charter related to personnel, the City's personnel rules, state and federal law, the Director of Police Accountability shall have the authority to hire and dismiss consultants and additional investigators. Subject to City Council approval, the Director of Police Accountability may also enter into contracts for investigative services, provided, however, that with respect to the procurement of supplies and services, the Director of Police Accountability shall comply with the Charter and City purchasing policies and procedures

(k) The powers in this Section 14 are conferred notwithstanding Article VII, Sections 28(b) and (c) and Article XVI, Section 119 of this Charter.

(l) The Board and Director of Police Accountability shall use the City's Human Resources Department for all human resource matters including, but not limited to hiring, performance evaluation, discipline, and removal of employees.

(m) The Director of Police Accountability shall meet periodically with stakeholders, including but not limited to employee organizations representing officers, organizations promoting civil rights and liberties, and organizations representing communities of color, and solicit from them input regarding the work of the Police Accountability Board and the Office of the Director of Police Accountability.

**(15) Legal counsel.**

(a) The Board and the Director of Police Accountability shall use the services of the City Attorney's Office for legal advice.

(b) In the event the City Attorney has a prohibited conflict of interest under the California Rules of Professional Conduct with regard to a specified matter, the City Attorney shall provide the Director of Police Accountability with separate legal counsel. Pursuant to Section 14, when the City Attorney has determined that a conflict of interest exists, the Director of Police Accountability may engage legal counsel other than the City Attorney for legal advice regarding a specific case or matter.

**CHARTER OF THE CITY OF BERKELEY**  
**Section 125, Article XVIII**

---

**(16) Board reports.**

(a) All Board reports shall maintain the confidentiality of personnel file information and other confidential information as required by state and federal law.

(b) The Director of Police Accountability shall prepare an annual report to the public, including but not limited to the following:

- (1) A description of the Board's activities during the year, including:
  - i. A summary of the number, type, and disposition of complaints filed with the Board;
  - ii. A summary of the number, type, and disposition of complaints filed with the Police Department by members of the public;
  - iii. Policy complaints undertaken; and
  - iv. Other such information that the Board or City Council has requested.

(2) The Department's and the Board's processes and procedures for investigating alleged misconduct, and for determining whether or not discipline is warranted and / or the level of discipline, for sustained findings of misconduct.

(3) Training and education, and any early warning system utilized by the Department.

(4) Training and/or policy issues that arise during the investigations of complaints by the Department, Director of Police Accountability, or Police Accountability Board.

(5) Trends and patterns in vehicle and pedestrian stops, citations, arrests, searches and seizures or other patterns by the Berkeley Police Department. Statistical data shall include the demographics of the complainant, reason for the stop, purpose of the stop and disposition, and location of stop, in compliance with policies, practices, and procedures of the City and Police Department, and the Police Department General Order on Fair and Impartial Policing.

(6) Trends and patterns regarding use of force and officer-involved shootings.

(c) This annual report shall be presented to the Board for approval. Upon adoption by the Board, it shall be presented to the Mayor and City Council, City Manager, and the Chief of Police at a City Council meeting, and shall include, where appropriate, recommendations for changes in the processes and procedures that were reviewed.



**CHARTER OF THE CITY OF BERKELEY**  
**Section 125, Article XVIII**

---

(d) Prior to being made available to any member of the public, all Board reports shall be subject to the review of the City Attorney to ensure compliance with all applicable state and federal confidentiality laws.

**(17) Policy review and approval.**

(a) The Chief of Police shall submit all newly adopted Departmental policies and revisions to the Board within thirty (30) days of implementation. The Board may review policies, practices, and procedures of the Police Department in its discretion or at the request of a member of the public, due to a policy complaint, or due to a complaint from a member of the public against an officer.

(b) If the Police Department and the Board are unable to reconcile their differences about a policy within sixty (60) days from the date that the Chief of Police submits a policy to the Director of Police Accountability, the policy shall be sent to the City Manager for a final decision which shall be reported to the City Council. Nothing in this section shall limit the authority of the City Council under this Charter to enact legislation within its Charter authority or direct the City Manager to implement adopted City Council policy.

**(18) Complaints filed with the Director of Police Accountability.**

(a) The Director of Police Accountability and Board shall adopt regulations for handling complaints filed with the Director of Police Accountability by any member of the public alleging misconduct by sworn employees of the Police Department and undertake investigations of complaints as they deem warranted. The regulations shall include the following:

- (1) What constitutes a complaint; and
- (2) A provision for voluntary mediation of complaints in lieu of an investigation.

(b) The Police Accountability Board shall hear and decide findings on allegations of misconduct, at which subject sworn employees of the Police Department must appear to testify and answer questions consistent with their rights pursuant to state and federal law.

(c) In determining whether a sworn employee of the Police Department has committed misconduct, the standard of proof for the Board shall be "preponderance of the evidence". The investigation and decision on findings shall be fair, unbiased, and evidence based.

**CHARTER OF THE CITY OF BERKELEY**  
**Section 125, Article XVIII**

---

(d) The time limit for investigations and notification of discipline shall be two hundred and forty (240) days from the date of the City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct, unless a Government Code section 3304(d) exception applies.

(e) Investigation of all complaints filed with the Director of Police Accountability shall begin immediately and proceed as expeditiously as possible. The time limit for completion of an investigation shall be one hundred and twenty (120) days of the City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct, unless a Government Code section 3304(d) exception applies.

(f) No City employee, officer, official or member of the Police Accountability Board shall attempt to interfere or undermine the work of the Director of Police Accountability or any employee of the Office of the Director of Police Accountability in the performance of the duties and responsibilities set forth in this Charter or by Ordinance.

(g) Complaints accepted by the Director of Police Accountability shall be sent in hard copy or electronically to the Chief of Police and Police Department Internal Affairs, members of the Police Accountability Board, and to each identified sworn employee of the Police Department against whom the complaint has been filed.

(h) For complaints being investigated by the Police Department, the Director of Police Accountability shall not participate in the Police Department's Board of Review or any subsequent internal process established by the Police Department to review a complaint filed by any member of the public.

(i) Within sixty (60) days of completing the investigation into allegations of misconduct by sworn employees of the Police Department, the Director of Police Accountability shall submit and present investigative findings to the Police Accountability Board and, if warranted, the Board may agree to hold a personnel hearing which shall be confidential. The Director of Police Accountability shall provide the Board with all evidence and documentation obtained or produced during the course of the investigation to enable its review of the complaint. At said meeting, both the sworn employee of the Police Department who is the subject of the investigation and the complainant shall be present to answer questions from Board members, subject to applicable state and federal law. In addition to submitting and presenting investigative findings to the Police Accountability Board in a confidential personnel hearing, the Director of Police Accountability shall include a recommendation of whether disciplinary action is warranted. For only those cases where an allegation of misconduct, if sustained, would involve any of the classes of conduct described in Penal Code 832.7, as enacted pursuant to Senate Bill 1421 on January 1, 2019, and any other classes of police conduct added in any subsequent amendment to, or successor provision, the Director of Police Accountability shall recommend the level of discipline, if warranted.

**CHARTER OF THE CITY OF BERKELEY**  
**Section 125, Article XVIII**

---

(j) Within fifteen (15) days of the confidential personnel hearing, the Board may affirm, modify or reject the findings and recommendation of the Director of Police Accountability.

(1) Should the Police Accountability Board agree with the findings and recommendation of the Director of Police Accountability, the Director of Police Accountability's findings and recommendations shall be submitted to the Chief of Police.

(2) If the Board modifies or rejects the findings and recommendations of the Director of Police Accountability, it shall issue a written explanation for its decision and shall forward it to the Chief of Police.

(k) Within ten (10) days of receiving the findings and recommendation of the Director of Police Accountability or Police Accountability Board, if the Chief of Police and Director of Police Accountability or Police Accountability Board are in accord, the Chief of Police shall issue a final decision. If the Chief of Police disagrees with the findings and/or recommendation of the Director of Police Accountability or the Police Accountability Board, the Chief of Police shall issue a tentative decision, which shall be forwarded to the Director of Police Accountability and Police Accountability Board. Within ten (10) days of receipt of that tentative determination, the Director of Police Accountability may request that the Chief of Police submit the decision to the City Manager or City Manager's Designee who shall make the final determination along with a written explanation to the Director of Police Accountability, Police Accountability Board, and Chief of Police within twenty-five (25) days.

(l) In any conflict between the provisions of this Article and the disciplinary appeal process in an applicable collective bargaining agreement, the collective bargaining agreement shall prevail; provided, however, that no City official is authorized to enter into a collective bargaining agreement or an extension of a collective bargaining agreement that contains provisions contrary to this Article after its Effective Date. Except as expressly provided herein, nothing shall limit the authority of the Chief of Police or City Manager to conduct investigations, make findings, and impose discipline or corrective action, or of an arbitrator charged with adjudicating disciplinary appeals, based upon such standards as each may apply consistent with and subject to the Charter, Ordinance, and personnel rules, the collective bargaining agreement, due process requirements, state labor laws, and Police Department policies and procedures.

(m) Except for the time limit set forth in Section 18(d), the timelines set forth in this section are advisory, and may be adjusted by the Director of Police Accountability after consulting with the City Manager and Chief of Police, to ensure that all investigations and notifications are completed in accordance with the limits of Section 18(d). In the event that the timeline set forth in Section 18(e) is extended, it shall not exceed 195 days.

**CHARTER OF THE CITY OF BERKELEY**  
**Section 125, Article XVIII**

---

**(19) Review of complaints filed with the Berkeley Police Department.**

(a) The Police Department shall ensure that any member of the public that files a complaint with the Police Department shall be provided written information and instructions on how to file a complaint with the Director of Police Accountability and Board.

(b) For all complaints filed with the Police Department by any member of the public, the time limit for investigations and notification of discipline shall be two hundred and forty (240) days from the date of the City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct, unless a Government Code section 3304(d) exception applies.

(c) Investigation of all complaints filed with the Police Department shall begin immediately and proceed as expeditiously as possible. The time limit for completion of the initial investigation shall be one hundred and twenty (120) days of the City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct, unless a Government Code section 3304(d) exception applies.

(d) Upon completion of the Chief of Police's investigation, the Chief of Police shall issue a letter of disposition to the sworn employee of the Police Department. On all complaints initiated by a member of the public, at the conclusion of the Department's internal affairs investigation, the Chief of Police shall also notify the Director of Police Accountability in writing of the disposition. In addition, the Chief of Police shall notify the complainant of the disposition of the complaint in accordance with the Penal Code.

(e) In cases where the finding is "not sustained", "unfounded" or "exonerated", within twenty (20) days after notification to the complainant is mailed or provided by other reasonable means as specified by complainant, the complainant shall have the option to contest the Chief of Police's determination to the Director of Police Accountability.

(1) If a complainant contests the Chief of Police's determination, the Director of Police Accountability, if appropriate, may request to review all files, transcripts and records related to the complaint. Within fifteen (15) days of either receiving an objection from a complainant or notice from the Chief of Police that a complainant has filed an objection, the Director of Police Accountability may, in the exercise of the Director of Police Accountability's discretion:

i. Notify the complainant that the objection has been accepted and that the Police Accountability Board will convene to conduct a review based upon the investigative record provided by the Department; or

**CHARTER OF THE CITY OF BERKELEY**  
**Section 125, Article XVIII**

---

ii. Notify the complainant that the objection has been dismissed. If the Director of Police Accountability dismisses an objection filed by a complainant, the Director of Police Accountability must provide written notice to the Board within thirty (30) days following the Director of Police Accountability's notification to complainant that the objection was dismissed.

(f) Within forty five (45) days of when the Director of Police Accountability notifies the complainant that the objection has been accepted, the Board may dismiss the complainant's objection, issue a report agreeing with the Chief of Police's determination or issue a report disagreeing with the Chief of Police's determination if (1) the Department failed to proceed in a manner required by state and federal law, or (2) the Chief of Police's decision is not supported by the evidence in the record.

(g) If the Police Accountability Board disagrees with the Chief of Police's determination, it shall submit its report to the Chief of Police and the City Manager. The Chief of Police may prepare a report for the City Manager within fifteen (15) days of receiving the Police Accountability Board's recommendation addressing any concerns or objections. Within twenty five (25) days of receiving the report from the Chief of Police, the City Manager or City Manager's Designee, considering the reports of both the Board and Chief of Police, shall make a final determination along with a written explanation to the Director of Police Accountability, Police Accountability Board, and Chief of Police.

(h) The Chief of Police's determination shall not become final, and no discipline shall be administered in any case in which the complainant has contested the Chief of Police's determination until the objection is dismissed or otherwise concluded; provided, however, that a final determination in all cases shall be rendered by the Chief of Police or City Manager not later than two hundred and forty days (240) days, unless a Government Code section 3304(d) exception applies.

(i) Except for the time limit set forth in Sections 19(b) and 19(c), the timelines set forth in this section are advisory, and may be adjusted to ensure that all investigations are completed in accordance with the limits of Section 19(b) and 19(c), and by mutual agreement between the City Manager, Director of Police Accountability, and the Chief of Police, as applicable.

## CHARTER OF THE CITY OF BERKELEY

### Section 125, Article XVIII

---

**(20) Access to records of City departments; compelling testimony and attendance.**

(a) Notwithstanding Article VII, Section 28 of this Charter, all departments, officers, and employees of the City shall cooperate with and assist the Director of Police Accountability, Police Accountability Board and its staff and, unless prohibited by state or federal law, produce all records and written and unwritten information, documents, materials and evidence the Board or its staff requests for the purpose of carrying out its duties and functions. Unless otherwise required by state and federal law, the records and information include without redaction or limitation:

- (1) Records relevant to Police Department policies, practices, or procedures;
- (2) Personnel and disciplinary records of sworn employees of the Police Department; and
- (3) Police Department investigative records.

Responding departments or employees of the City shall maintain the confidentiality of any records and information provided consistent with state or federal law governing such records or information and comply promptly, but in no event later than ten (10) business days from the date of request, unless additional time is needed to locate or review records. If additional time is needed to comply, the responding departments, officers or employees shall specify how much time up to thirty (30) additional business days is needed and explain the reasons for delay in producing the necessary records and information.

(b) The Director of Police Accountability, Police Accountability Board and its staff, and their agents and representatives shall maintain the confidentiality of any records and information it receives consistent with state or federal law governing such records or information.

(c) The Director of Police Accountability and Police Accountability Board may issue subpoenas to compel the production of books, papers, and documents, and the attendance of persons to take testimony, as needed to carry out its duties and functions. The testimony of any sworn employee of the Police Department is subject to the due process and confidentiality provisions of applicable state and federal law.

**(21) Advice regarding Police Department budget.**

The Board is empowered to review and make recommendations to the City Council regarding the Police Department budget. The Chief of Police shall submit a final budget proposal to the Board for review and recommendations, but the Board's failure to complete that review and make recommendations in a timely manner shall not delay the budget process.

**CHARTER OF THE CITY OF BERKELEY**  
**Section 125, Article XVIII**

---

**(22) Hiring of Chief of Police.**

Notwithstanding Article VII, Section 28 of this Charter, upon the notice of vacancy of the position of Chief of Police, the City Manager shall consult with the Police Accountability Board (or subcommittee of the Board) on the job requirements, application process, and evaluation of candidates for the Chief of Police.

**(23) Chief of Police or command staff to attend Board meetings.**

To the maximum extent possible, the Chief of Police shall attend at least one regular Board meeting per month, for each month a regular meeting is held and attend a minimum of twelve (12) meetings per year. The Chief of Police shall send a member of the Police Department's command staff to any regular Board meeting that the Chief of Police does not attend.

**(24) Berkeley Police Department written reports to the Board.**

The Chief of Police shall submit reports to the Board on such subjects and at such intervals as the Board, in consultation with the Chief of Police, may prescribe. At least one report per year shall provide information on all use of force statistics, and the number of complaints filed with Internal Affairs, the allegations in each complaint, and the disposition of closed complaints, including any discipline imposed.

**(25) Contract negotiations.**

The City Manager shall inform the Police Accountability Board of any changes agreed in contract negotiations and adopted by City Council that may directly affect the work, duties, or responsibilities of the Board.

**(26) Commendation program.**

The Board shall establish a regular means of recognizing sworn employees of the Police Department for instances of outstanding service to members of the public, the community at large, or the Department.

**(27) Transition from Police Review Commission to Police Accountability Board.**

(a) The Police Review Commission established by Ordinance No. 4,644-N.S., as amended, shall continue in existence until its functions are transferred to the Police Accountability Board, but no later than January 3, 2022

**CHARTER OF THE CITY OF BERKELEY**  
**Section 125, Article XVIII**

---

(b) To assist in an orderly transition between the Police Review Commission and the Police Accountability Board established by this Article, Police Review Commission staff shall serve as interim Police Accountability Board staff until the City hires a Director of Police Accountability.

(c) The Police Review Commission staff shall transfer all Police Review Commission files, records, books, publications, and documents of whatever kind to, and for the use and benefit of, the newly created Police Accountability Board.

**(28) Review of processes.**

The Board shall conduct a review of its processes every two years after the Effective Date in order to ascertain the efficacy of its processes.

**(29) Enabling Legislation.**

The Board may make recommendations to the City Council for enacting legislation or regulations that will further the goals and purposes of Article XVIII of this Charter. The City Council may, based on such recommendations or on its own initiative, enact ordinances that will further the goals and purpose of this Article.

The Board shall have forty-five (45) business days to submit its comments to the City Council, such time to be extended only by agreement of the City Council.

**(30) Repeal of Ordinance No. 4,644-N.S., as amended.**

Ordinance No. 4,644-N.S., all amendments thereto, and all rules and regulations promulgated pursuant thereto, shall cease to be operative and are repealed as of the date of the first meeting of the Police Accountability Board established by this Article.

**(31) Severability.**

If any word, phrase, sentence, part, section, subsection, or other portion of this Article, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Article, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The People of the City of Berkeley declare that it would have passed this title, and each section, subsection, sentence, clause and phrase of this Article, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases is declared invalid or unconstitutional.



**CHARTER OF THE CITY OF BERKELEY  
Section 125, Article XVIII**

**ARTICLE XVIII  
POLICE ACCOUNTABILITY BOARD AND DIRECTOR OF POLICE  
ACCOUNTABILITY**

**Section 125. Police Accountability Board and Director of Police Accountability**

**(1) Establishment and purpose.**

A Police Accountability Board is hereby established in the City of Berkeley. The purpose of the Police Accountability Board is to promote public trust through independent, objective, civilian oversight of the Berkeley Police Department, provide community participation in setting and reviewing Police Department policies, practices, and procedures, and to provide a means for prompt, impartial and fair investigation of complaints brought by members of the public against sworn employees of the Berkeley Police Department.

The Office of the Director of Police Accountability is hereby established. The purpose of the Director of Police Accountability is to investigate complaints filed against sworn employees of the Berkeley Police Department, to reach an independent finding as to the facts and recommend corrective action where warranted. The Director of Police Accountability may also serve as the Secretary to the Police Accountability Board and assist the Board in carrying out the duties prescribed herein.

**(2) Definitions.**

The following definitions apply to this Article:

(a) "Commissioners' Manual" refers to the most current manual adopted by the City Council that consists of the policies and procedures regarding the service of board members and commissioners, board and commission procedures, and conduct of meetings.

(b) "Complainant" shall refer to a member of the public that files a complaint with either the Director of Police Accountability, Police Accountability Board, or the Police Department.

(c) "Director of Police Accountability" or "DPA" refers to an individual fulfilling the police oversight role established pursuant to section 1 of this Article.

(d) "Effective Date" shall be the date that the Secretary of State accepts and files this Article.

(e) "Police Accountability Board" or "Board" refers to the Police Accountability Board established in Section 1 of this Article, which shall be the successor agency to the Berkeley Police Review Commission in accordance with Section 27.

**CHARTER OF THE CITY OF BERKELEY**  
**Section 125, Article XVIII**

---

(f) Except as otherwise specifically provided, all references in this Article to California code sections shall refer to such Code sections as they may be amended or re-codified from time to time.

**(3) Police Accountability Board powers and duties.**

(a) The Police Accountability Board has the following powers and duties:

(1) To advise and make recommendations to the public, City Council, and City Manager regarding the operation of the Berkeley Police Department, including all written policies, practices, and procedures in relation to the Berkeley Police Department;

(2) Review and recommend for City Council approval all agreements, letters, memoranda of understanding, or policies which express terms and conditions of mutual aid, information sharing, cooperation and assistance between the Berkeley Police Department and all other local, state and federal law enforcement, intelligence, and military agencies or private security organizations;

(3) To receive and consider the findings and recommendations of the Director of Police Accountability regarding complaints filed by members of the public against sworn employees of the Police Department and to recommend if discipline is warranted when misconduct is found and, pursuant to Section 18, the level of discipline for sustained findings of misconduct;

(4) To participate in the hiring of the Chief of Police as set forth in Section 22;

(5) To access records of City Departments, compel attendance of sworn employees of the Police Department, and exercise the power of subpoena as necessary to carry out its functions;

(6) To adopt rules and regulations necessary for the conduct of its business; and

(7) Any other powers and duties as the City Council may assign it by Ordinance.

(b) Nothing in this chapter granting powers and duties to the Police Accountability Board shall limit the City Council's, Chief of Police's or City Manager's authority derived from other provisions of this Charter to act on policing matters, unless explicitly stated.

**CHARTER OF THE CITY OF BERKELEY**  
**Section 125, Article XVIII**

---

(c) The Police Accountability Board, Director of Police Accountability and their respective agents, assigns, employees and representatives shall have no authority to restrict, modify, supersede, negate, supplant or contravene the authority granted to the City Manager and/or Chief of Police by way of the City Charter or operation of state or federal law to engage in collective bargaining activities or enter into agreements or understandings with the designated bargaining unit representative or representatives of the sworn employees of the Police Department unless such agreements or understandings contravene this Article.

(d) The Police Accountability Board, Director of Police Accountability and their respective agents, assigns, employees and representatives shall not undertake nor sanction any actions which would:

(1) Restrict, violate, or abridge the collective bargaining rights of the designated bargaining unit representative of the sworn employees of the Police Department or their individual members;

(2) Restrict, violate or abridge the terms and conditions of a collective bargaining agreement, understanding or practice with the designated bargaining unit representative of the sworn employees of the Police Department, except for those provisions provided for in this Article; and

(3) Restrict, violate or abridge any legal rights of individual sworn employees of the Police Department, including but not limited to those set forth in the Public Safety Officers' Procedural Bill of Rights Act ("POBRA"), Government Code section 3300 et seq., and sworn employees' right to maintain the confidentiality of their personnel file information (including, but not limited to Penal Code §§ 832.7, 832.8.), except as required under Section 20 of Article XVIII of the City Charter.

**(4) Independent agency; budget authority and allocation.**

(a) Notwithstanding Article VII of the Charter, and except as provided in section 14(b), 14(i) or 14(k), the Police Accountability Board, its staff and the Director of Police Accountability shall be independent of the City Manager.

(b) The Board is authorized to propose a budget to the City Council for its operations, and the City Council may allocate to the Police Accountability Board and Director of Police Accountability, as the City Council determines resources allow, a budget sufficient to provide for a process that protects the rights of complainants and sworn employees of the Police Department, for the Board and its staff to carry out the investigative and policy responsibilities stated herein, and to ensure the independence of the Board.

**CHARTER OF THE CITY OF BERKELEY**  
**Section 125, Article XVIII**

---

**(5) Composition of Police Accountability Board; eligibility.**

(a) The Police Accountability Board shall be composed of nine (9) Board members selected by the Mayor and City Council. Each member of the Board must:

- (1) Be a resident of the City;
- (2) Be at least 18 years old;
- (3) Not be an employee, officer, or contractor with the City, a current sworn police officer from any agency, or a current employee, official, or representative of an employee association representing sworn police officers; and
- (4) Be fair minded and objective with a demonstrated commitment to community service.

(b) Desirable qualities of a Board member are familiarity with human resources, law, police procedures, police oversight, or involvement in civil rights or community organizations.

(c) All appointees to the Board shall be subject to background checks before final appointment.

**(6) Board member selection.**

(a) Candidates for the Board must complete and file with the City Clerk an application form and an affidavit of residency required by Berkeley Municipal Code Section 2.04.145. Board vacancies shall be widely advertised and publicly posted. The Mayor and each City Councilmember shall nominate one candidate from an applicant pool at a meeting of the City Council. Each individual nominee must be approved by a majority vote of the City Council.

(b) The City Council shall endeavor to establish a Board that is broadly inclusive and reflective of race, ethnicity, age, gender identity, sexual orientation, economic status, neighborhoods, and various communities of interest in the City. Toward that end, in soliciting applications for the position of Board member, the Director of Police Accountability shall reach out to civic, community, and civil rights organizations, among others.

**(7) Terms; term limits.**

(a) Board member terms end four years after appointment, or upon the expiration of the nominating City Councilmember's term, whichever is earlier. Board members are limited to serving eight consecutive years and may be reappointed following a break in service of at least two years.

**CHARTER OF THE CITY OF BERKELEY**  
**Section 125, Article XVIII**

---

(b) To the extent not in conflict with subsection (a) above, the provisions of Berkeley Municipal Code Section 3.02.040, regarding Board member term limits and the effect of interruption in service, apply.

**(8) Conflicts of interest and Avoiding Bias.**

(a) Board members shall be subject to the requirements of the California Political Reform Act and other state and local conflict of interest codes.

(b) Board members shall maintain basic standards of fair play, impartiality, and avoid bias and the appearance of bias. In instances where the Board acts in a quasi-judicial capacity, as in a confidential personnel hearing, as described below, Board members have the responsibility to hear all viewpoints. To ensure that all parties are afforded an opportunity to be heard, Board members shall observe the following:

(1) Board members recused for a conflict of interest must do so immediately when an item is taken up.

(2) Board members shall verbally disclose all ex parte contacts concerning the subject of the hearing. Board members shall also submit a report of such contacts in writing prior to the commencement of the hearing. Ex parte contacts include, but are not limited to, any contact between a Board member and any party involved in the complaint prior to the public hearing.

(3) Board members shall be recused from taking any action on or participating in a matter before the Police Accountability Board if they are related to a party to, advocate for, or represent a member of the public who has a pending or anticipated claim of any kind arising out of alleged misconduct of a sworn employee of the Police Department. For the purpose of this subsection, "related to" shall include a spouse, child, sibling, parent or other person related to the complainant or the complainant's spouse within the third degree of relationship.

**(9) Expiration of term; termination; leaves of absence; removal.**

(a) A Board member whose term has expired may continue to serve until a successor Board member is appointed, unless the sitting Board member's term expires due to term limits, as provided in Section 7.

(b) The term of a Board member who fails to remain eligible to serve on the Board (e.g., by moving out of the City of Berkeley, or becoming an employee of the City) expires automatically as of the date the reason for ineligibility arises.

**CHARTER OF THE CITY OF BERKELEY**  
**Section 125, Article XVIII**

---

(c) The provisions of Berkeley Municipal Code Section 3.02.020, establishing a termination procedure for absence from meetings, Section 3.02.030, leaves of absence, and Section 3.02.035, regarding alternate Board members, apply to the Police Accountability Board.

(d) A Board member may either be replaced by the City Council if their term has expired or may be removed during their term as provided in Section 12.

**(10) Board Chairperson and Vice-Chairperson.**

(a) The Board shall elect one of its members as chairperson and one as vice-chairperson, whose terms shall be one year each, or until their successor is elected. No chairperson is eligible to serve more than two consecutive terms, or portions thereof.

(b) Following election of the initial chairperson and vice-chairperson, the Board shall elect subsequent officers each January.

**(11) Board member stipends.**

(a) Each Board member is entitled to receive a stipend of \$100.00 for each regular and special Board meeting attended, and \$20.00 per hour for each hour of training attended as provided in Section 12 and each subcommittee meeting attended as a member of a subcommittee. Excluding participation in trainings, the total stipend paid may not exceed \$300.00 per month per Board member.

(b) Board member stipends and the total monthly stipend paid may be adjusted from time to time by the City Council. Adjustments to Board member stipends shall occur no more than once in a fiscal year and in no event shall an increase in Board member stipends exceed the change in the cost of living for the San Francisco Bay Area as measured by official United States economic reports.

**(12) Board member training; At will Status; Oath of Maintaining Confidentiality.**

(a) The Director of Police Accountability shall establish mandatory training requirements for Board members. Within the first six (6) months of appointment, at a minimum, each Board member shall receive forty (40) hours of training on the following:

- (1) Quasi-judicial duties and obligations of the Board;
- (2) Constitutional rights and civil liberties;
- (3) Fundamentals of procedure, evidence and due process;
- (4) The Public Safety Officers Procedural Bill of Rights Act;

**CHARTER OF THE CITY OF BERKELEY**  
**Section 125, Article XVIII**

---

(5) Police Department operations, policies, practices, and procedures;  
and

(6) Duties, responsibilities, procedures and requirements associated with all ranks and assignments.

The Director of Police Accountability shall develop training provided to Board members. The Chief of Police and a representative from the Berkeley Police Association shall have input on training provided to Board members and shall have the opportunity to attend all training provided.

(b) All Board members shall serve at the pleasure of the City Council and may be removed by a two-thirds vote of the City Council for any reason, including but not limited to misconduct or violations of state and federal confidentiality laws.

(c) Board members shall, upon appointment, take an oath to abide by and maintain the confidentiality of the personnel files of sworn employees of the Police Department and all other matters that are confidential pursuant to state and federal law.

**(13) Board meetings; quorum; rules of procedure; subcommittees.**

(a) At the beginning of each calendar year, the Board shall establish a regular meeting schedule consisting of at least eighteen (18) meetings. Special meetings may be called by the chairperson of the Board or by a majority of the Board.

(b) A majority of appointed Board members constitutes a quorum to conduct business and take any action.

(c) The Board shall establish rules of procedure governing the conduct of its business, which shall be subject to ratification by the City Council.

(d) The Board may establish policy subcommittees that it deems necessary to carry out its functions. The Chairperson shall appoint policy subcommittee members at a Board meeting. Policy subcommittees may include non-voting members of the public who express an interest in the business of the subcommittee. Members of the public that are appointed to a policy subcommittee shall serve in an advisory capacity without compensation. The Board may establish further rules and procedures for the appointment and removal of members of the public to policy subcommittees. Policy subcommittee members shall not have access to confidential personnel file information or any other confidential information.

(e) Unless otherwise specified in this Article, rules of procedure governing the conduct of the Board, or Ordinance, the Board shall comply with the Commissioners' Manual.

**CHARTER OF THE CITY OF BERKELEY**  
**Section 125, Article XVIII**

---

**(14) Office of the Director of Police Accountability.**

(a) To the extent possible, the City Manager shall recommend three (3) candidates for consideration by the City Council. The City Council shall appoint the Director of Police Accountability at a noticed public meeting.

(b) The Director of Police Accountability shall carry out the work of the Board as described herein, which may include the day-to-day operations of the Board office and staff, and performance appraisals and discipline of all subordinate employees of the Board. All such individuals, to the extent that they are employees of the City of Berkeley, shall be subject to the personnel rules governing City of Berkeley employees.

(c) Within the first six (6) months of appointment, the Director of Police Accountability shall receive training on the following:

- (1) Quasi-judicial duties and obligations of the Board;
- (2) Constitutional rights and civil liberties;
- (3) Fundamentals of procedure, evidence and due process;
- (4) The Public Safety Officers Procedural Bill of Rights;
- (5) Police Department operations, policies, practices, and procedures;

and

(6) Duties, responsibilities, procedures and requirements associated with all ranks and assignments.

(d) By majority vote, the Police Accountability Board may recommend removal for cause of the Director of Police Accountability to the City Council.

(e) The City Council may remove the Director of Police Accountability by a two-thirds vote either on its own motion or based on the recommendation of the Police Accountability Board.

(f) In addition to the duties prescribed, upon receipt of a complaint by the Police Accountability Board, the Director of Police Accountability shall ensure a timely, thorough, complete, objective and fair investigation into the complaint.

(g) The Director of Police Accountability shall assess the conduct of the sworn employee of the Police Department in light of the facts discovered through the investigation, state and federal law, and the policies, practices, procedures, and personnel rules of the City and Berkeley Police Department.



**CHARTER OF THE CITY OF BERKELEY**  
**Section 125, Article XVIII**

---

(h) The Director of Police Accountability shall present the results of their investigative findings and recommendations to the Police Accountability Board who shall make a recommendation to the Chief of Police regarding the specific complaint.

(i) The Director of Police Accountability may hire a Chief Investigator and, when there is a conflict of interest pursuant to Section 15, outside legal counsel, subject to receiving budgetary authority from the City Council.

(j) Subject to the budgetary authority of the City Council, the provisions of the City's charter related to personnel, the City's personnel rules, state and federal law, the Director of Police Accountability shall have the authority to hire and dismiss consultants and additional investigators. Subject to City Council approval, the Director of Police Accountability may also enter into contracts for investigative services, provided, however, that with respect to the procurement of supplies and services, the Director of Police Accountability shall comply with the Charter and City purchasing policies and procedures

(k) The powers in this Section 14 are conferred notwithstanding Article VII, Sections 28(b) and (c) and Article XVI, Section 119 of this Charter.

(l) The Board and Director of Police Accountability shall use the City's Human Resources Department for all human resource matters including, but not limited to hiring, performance evaluation, discipline, and removal of employees.

(m) The Director of Police Accountability shall meet periodically with stakeholders, including but not limited to employee organizations representing officers, organizations promoting civil rights and liberties, and organizations representing communities of color, and solicit from them input regarding the work of the Police Accountability Board and the Office of the Director of Police Accountability.

**(15) Legal counsel.**

(a) The Board and the Director of Police Accountability shall use the services of the City Attorney's Office for legal advice.

(b) In the event the City Attorney has a prohibited conflict of interest under the California Rules of Professional Conduct with regard to a specified matter, the City Attorney shall provide the Director of Police Accountability with separate legal counsel. Pursuant to Section 14, when the City Attorney has determined that a conflict of interest exists, the Director of Police Accountability may engage legal counsel other than the City Attorney for legal advice regarding a specific case or matter.

**CHARTER OF THE CITY OF BERKELEY**  
**Section 125, Article XVIII**

---

**(16) Board reports.**

(a) All Board reports shall maintain the confidentiality of personnel file information and other confidential information as required by state and federal law.

(b) The Director of Police Accountability shall prepare an annual report to the public, including but not limited to the following:

- (1) A description of the Board's activities during the year, including:
  - i. A summary of the number, type, and disposition of complaints filed with the Board;
  - ii. A summary of the number, type, and disposition of complaints filed with the Police Department by members of the public;
  - iii. Policy complaints undertaken; and
  - iv. Other such information that the Board or City Council has requested.

- (2) The Department's and the Board's processes and procedures for investigating alleged misconduct, and for determining whether or not discipline is warranted and / or the level of discipline, for sustained findings of misconduct.

- (3) Training and education, and any early warning system utilized by the Department.

- (4) Training and/or policy issues that arise during the investigations of complaints by the Department, Director of Police Accountability, or Police Accountability Board.

- (5) Trends and patterns in vehicle and pedestrian stops, citations, arrests, searches and seizures or other patterns by the Berkeley Police Department. Statistical data shall include the demographics of the complainant, reason for the stop, purpose of the stop and disposition, and location of stop, in compliance with policies, practices, and procedures of the City and Police Department, and the Police Department General Order on Fair and Impartial Policing.

- (6) Trends and patterns regarding use of force and officer-involved shootings.

(c) This annual report shall be presented to the Board for approval. Upon adoption by the Board, it shall be presented to the Mayor and City Council, City Manager, and the Chief of Police at a City Council meeting, and shall include, where appropriate, recommendations for changes in the processes and procedures that were reviewed.

**CHARTER OF THE CITY OF BERKELEY**  
**Section 125, Article XVIII**

---

(d) Prior to being made available to any member of the public, all Board reports shall be subject to the review of the City Attorney to ensure compliance with all applicable state and federal confidentiality laws.

**(17) Policy review and approval.**

(a) The Chief of Police shall submit all newly adopted Departmental policies and revisions to the Board within thirty (30) days of implementation. The Board may review policies, practices, and procedures of the Police Department in its discretion or at the request of a member of the public, due to a policy complaint, or due to a complaint from a member of the public against an officer.

(b) If the Police Department and the Board are unable to reconcile their differences about a policy within sixty (60) days from the date that the Chief of Police submits a policy to the Director of Police Accountability, the policy shall be sent to the City Manager for a final decision which shall be reported to the City Council. Nothing in this section shall limit the authority of the City Council under this Charter to enact legislation within its Charter authority or direct the City Manager to implement adopted City Council policy.

**(18) Complaints filed with the Director of Police Accountability.**

(a) The Director of Police Accountability and Board shall adopt regulations for handling complaints filed with the Director of Police Accountability by any member of the public alleging misconduct by sworn employees of the Police Department and undertake investigations of complaints as they deem warranted. The regulations shall include the following:

- (1) What constitutes a complaint; and
- (2) A provision for voluntary mediation of complaints in lieu of an investigation.

(b) The Police Accountability Board shall hear and decide findings on allegations of misconduct, at which subject sworn employees of the Police Department must appear to testify and answer questions consistent with their rights pursuant to state and federal law.

(c) In determining whether a sworn employee of the Police Department has committed misconduct, the standard of proof for the Board shall be "preponderance of the evidence". The investigation and decision on findings shall be fair, unbiased, and evidence based.

**CHARTER OF THE CITY OF BERKELEY**  
**Section 125, Article XVIII**

---

(d) The time limit for investigations and notification of discipline shall be two hundred and forty (240) days from the date of the City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct, unless a Government Code section 3304(d) exception applies.

(e) Investigation of all complaints filed with the Director of Police Accountability shall begin immediately and proceed as expeditiously as possible. The time limit for completion of an investigation shall be one hundred and twenty (120) days of the City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct, unless a Government Code section 3304(d) exception applies.

(f) No City employee, officer, official or member of the Police Accountability Board shall attempt to interfere or undermine the work of the Director of Police Accountability or any employee of the Office of the Director of Police Accountability in the performance of the duties and responsibilities set forth in this Charter or by Ordinance.

(g) Complaints accepted by the Director of Police Accountability shall be sent in hard copy or electronically to the Chief of Police and Police Department Internal Affairs, members of the Police Accountability Board, and to each identified sworn employee of the Police Department against whom the complaint has been filed.

(h) For complaints being investigated by the Police Department, the Director of Police Accountability shall not participate in the Police Department's Board of Review or any subsequent internal process established by the Police Department to review a complaint filed by any member of the public.

(i) Within sixty (60) days of completing the investigation into allegations of misconduct by sworn employees of the Police Department, the Director of Police Accountability shall submit and present investigative findings to the Police Accountability Board and, if warranted, the Board may agree to hold a personnel hearing which shall be confidential. The Director of Police Accountability shall provide the Board with all evidence and documentation obtained or produced during the course of the investigation to enable its review of the complaint. At said meeting, both the sworn employee of the Police Department who is the subject of the investigation and the complainant shall be present to answer questions from Board members, subject to applicable state and federal law. In addition to submitting and presenting investigative findings to the Police Accountability Board in a confidential personnel hearing, the Director of Police Accountability shall include a recommendation of whether disciplinary action is warranted. For only those cases where an allegation of misconduct, if sustained, would involve any of the classes of conduct described in Penal Code 832.7, as enacted pursuant to Senate Bill 1421 on January 1, 2019, and any other classes of police conduct added in any subsequent amendment to, or successor provision, the Director of Police Accountability shall recommend the level of discipline, if warranted.

**CHARTER OF THE CITY OF BERKELEY**  
**Section 125, Article XVIII**

---

(j) Within fifteen (15) days of the confidential personnel hearing, the Board may affirm, modify or reject the findings and recommendation of the Director of Police Accountability.

(1) Should the Police Accountability Board agree with the findings and recommendation of the Director of Police Accountability, the Director of Police Accountability's findings and recommendations shall be submitted to the Chief of Police.

(2) If the Board modifies or rejects the findings and recommendations of the Director of Police Accountability, it shall issue a written explanation for its decision and shall forward it to the Chief of Police.

(k) Within ten (10) days of receiving the findings and recommendation of the Director of Police Accountability or Police Accountability Board, if the Chief of Police and Director of Police Accountability or Police Accountability Board are in accord, the Chief of Police shall issue a final decision. If the Chief of Police disagrees with the findings and/or recommendation of the Director of Police Accountability or the Police Accountability Board, the Chief of Police shall issue a tentative decision, which shall be forwarded to the Director of Police Accountability and Police Accountability Board. Within ten (10) days of receipt of that tentative determination, the Director of Police Accountability may request that the Chief of Police submit the decision to the City Manager or City Manager's Designee who shall make the final determination along with a written explanation to the Director of Police Accountability, Police Accountability Board, and Chief of Police within twenty-five (25) days.

(l) In any conflict between the provisions of this Article and the disciplinary appeal process in an applicable collective bargaining agreement, the collective bargaining agreement shall prevail; provided, however, that no City official is authorized to enter into a collective bargaining agreement or an extension of a collective bargaining agreement that contains provisions contrary to this Article after its Effective Date. Except as expressly provided herein, nothing shall limit the authority of the Chief of Police or City Manager to conduct investigations, make findings, and impose discipline or corrective action, or of an arbitrator charged with adjudicating disciplinary appeals, based upon such standards as each may apply consistent with and subject to the Charter, Ordinance, and personnel rules, the collective bargaining agreement, due process requirements, state labor laws, and Police Department policies and procedures.

(m) Except for the time limit set forth in Section 18(d), the timelines set forth in this section are advisory, and may be adjusted by the Director of Police Accountability after consulting with the City Manager and Chief of Police, to ensure that all investigations and notifications are completed in accordance with the limits of Section 18(d). In the event that the timeline set forth in Section 18(e) is extended, it shall not exceed 195 days.

**CHARTER OF THE CITY OF BERKELEY**  
**Section 125, Article XVIII**

---

**(19) Review of complaints filed with the Berkeley Police Department.**

(a) The Police Department shall ensure that any member of the public that files a complaint with the Police Department shall be provided written information and instructions on how to file a complaint with the Director of Police Accountability and Board.

(b) For all complaints filed with the Police Department by any member of the public, the time limit for investigations and notification of discipline shall be two hundred and forty (240) days from the date of the City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct, unless a Government Code section 3304(d) exception applies.

(c) Investigation of all complaints filed with the Police Department shall begin immediately and proceed as expeditiously as possible. The time limit for completion of the initial investigation shall be one hundred and twenty (120) days of the City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct, unless a Government Code section 3304(d) exception applies.

(d) Upon completion of the Chief of Police's investigation, the Chief of Police shall issue a letter of disposition to the sworn employee of the Police Department. On all complaints initiated by a member of the public, at the conclusion of the Department's internal affairs investigation, the Chief of Police shall also notify the Director of Police Accountability in writing of the disposition. In addition, the Chief of Police shall notify the complainant of the disposition of the complaint in accordance with the Penal Code.

(e) In cases where the finding is "not sustained", "unfounded" or "exonerated", within twenty (20) days after notification to the complainant is mailed or provided by other reasonable means as specified by complainant, the complainant shall have the option to contest the Chief of Police's determination to the Director of Police Accountability.

(1) If a complainant contests the Chief of Police's determination, the Director of Police Accountability, if appropriate, may request to review all files, transcripts and records related to the complaint. Within fifteen (15) days of either receiving an objection from a complainant or notice from the Chief of Police that a complainant has filed an objection, the Director of Police Accountability may, in the exercise of the Director of Police Accountability's discretion:

i. Notify the complainant that the objection has been accepted and that the Police Accountability Board will convene to conduct a review based upon the investigative record provided by the Department; or

**CHARTER OF THE CITY OF BERKELEY**  
**Section 125, Article XVIII**

---

ii. Notify the complainant that the objection has been dismissed. If the Director of Police Accountability dismisses an objection filed by a complainant, the Director of Police Accountability must provide written notice to the Board within thirty (30) days following the Director of Police Accountability's notification to complainant that the objection was dismissed.

(f) Within forty five (45) days of when the Director of Police Accountability notifies the complainant that the objection has been accepted, the Board may dismiss the complainant's objection, issue a report agreeing with the Chief of Police's determination or issue a report disagreeing with the Chief of Police's determination if (1) the Department failed to proceed in a manner required by state and federal law, or (2) the Chief of Police's decision is not supported by the evidence in the record.

(g) If the Police Accountability Board disagrees with the Chief of Police's determination, it shall submit its report to the Chief of Police and the City Manager. The Chief of Police may prepare a report for the City Manager within fifteen (15) days of receiving the Police Accountability Board's recommendation addressing any concerns or objections. Within twenty five (25) days of receiving the report from the Chief of Police, the City Manager or City Manager's Designee, considering the reports of both the Board and Chief of Police, shall make a final determination along with a written explanation to the Director of Police Accountability, Police Accountability Board, and Chief of Police.

(h) The Chief of Police's determination shall not become final, and no discipline shall be administered in any case in which the complainant has contested the Chief of Police's determination until the objection is dismissed or otherwise concluded; provided, however, that a final determination in all cases shall be rendered by the Chief of Police or City Manager not later than two hundred and forty days (240) days, unless a Government Code section 3304(d) exception applies.

(i) Except for the time limit set forth in Sections 19(b) and 19(c), the timelines set forth in this section are advisory, and may be adjusted to ensure that all investigations are completed in accordance with the limits of Section 19(b) and 19(c), and by mutual agreement between the City Manager, Director of Police Accountability, and the Chief of Police, as applicable.

## CHARTER OF THE CITY OF BERKELEY

### Section 125, Article XVIII

---

**(20) Access to records of City departments; compelling testimony and attendance.**

(a) Notwithstanding Article VII, Section 28 of this Charter, all departments, officers, and employees of the City shall cooperate with and assist the Director of Police Accountability, Police Accountability Board and its staff and, unless prohibited by state or federal law, produce all records and written and unwritten information, documents, materials and evidence the Board or its staff requests for the purpose of carrying out its duties and functions. Unless otherwise required by state and federal law, the records and information include without redaction or limitation:

- (1) Records relevant to Police Department policies, practices, or procedures;
- (2) Personnel and disciplinary records of sworn employees of the Police Department; and
- (3) Police Department investigative records.

Responding departments or employees of the City shall maintain the confidentiality of any records and information provided consistent with state or federal law governing such records or information and comply promptly, but in no event later than ten (10) business days from the date of request, unless additional time is needed to locate or review records. If additional time is needed to comply, the responding departments, officers or employees shall specify how much time up to thirty (30) additional business days is needed and explain the reasons for delay in producing the necessary records and information.

(b) The Director of Police Accountability, Police Accountability Board and its staff, and their agents and representatives shall maintain the confidentiality of any records and information it receives consistent with state or federal law governing such records or information.

(c) The Director of Police Accountability and Police Accountability Board may issue subpoenas to compel the production of books, papers, and documents, and the attendance of persons to take testimony, as needed to carry out its duties and functions. The testimony of any sworn employee of the Police Department is subject to the due process and confidentiality provisions of applicable state and federal law.

**(21) Advice regarding Police Department budget.**

The Board is empowered to review and make recommendations to the City Council regarding the Police Department budget. The Chief of Police shall submit a final budget proposal to the Board for review and recommendations, but the Board's failure to complete that review and make recommendations in a timely manner shall not delay the budget process.



**CHARTER OF THE CITY OF BERKELEY**  
**Section 125, Article XVIII**

---

**(22) Hiring of Chief of Police.**

Notwithstanding Article VII, Section 28 of this Charter, upon the notice of vacancy of the position of Chief of Police, the City Manager shall consult with the Police Accountability Board (or subcommittee of the Board) on the job requirements, application process, and evaluation of candidates for the Chief of Police.

**(23) Chief of Police or command staff to attend Board meetings.**

To the maximum extent possible, the Chief of Police shall attend at least one regular Board meeting per month, for each month a regular meeting is held and attend a minimum of twelve (12) meetings per year. The Chief of Police shall send a member of the Police Department's command staff to any regular Board meeting that the Chief of Police does not attend.

**(24) Berkeley Police Department written reports to the Board.**

The Chief of Police shall submit reports to the Board on such subjects and at such intervals as the Board, in consultation with the Chief of Police, may prescribe. At least one report per year shall provide information on all use of force statistics, and the number of complaints filed with Internal Affairs, the allegations in each complaint, and the disposition of closed complaints, including any discipline imposed.

**(25) Contract negotiations.**

The City Manager shall inform the Police Accountability Board of any changes agreed in contract negotiations and adopted by City Council that may directly affect the work, duties, or responsibilities of the Board.

**(26) Commendation program.**

The Board shall establish a regular means of recognizing sworn employees of the Police Department for instances of outstanding service to members of the public, the community at large, or the Department.

**(27) Transition from Police Review Commission to Police Accountability Board.**

(a) The Police Review Commission established by Ordinance No. 4,644-N.S., as amended, shall continue in existence until its functions are transferred to the Police Accountability Board, but no later than January 3, 2022

**CHARTER OF THE CITY OF BERKELEY**  
**Section 125, Article XVIII**

---

(b) To assist in an orderly transition between the Police Review Commission and the Police Accountability Board established by this Article, Police Review Commission staff shall serve as interim Police Accountability Board staff until the City hires a Director of Police Accountability.

(c) The Police Review Commission staff shall transfer all Police Review Commission files, records, books, publications, and documents of whatever kind to, and for the use and benefit of, the newly created Police Accountability Board.

**(28) Review of processes.**

The Board shall conduct a review of its processes every two years after the Effective Date in order to ascertain the efficacy of its processes.

**(29) Enabling Legislation.**

The Board may make recommendations to the City Council for enacting legislation or regulations that will further the goals and purposes of Article XVIII of this Charter. The City Council may, based on such recommendations or on its own initiative, enact ordinances that will further the goals and purpose of this Article.

The Board shall have forty-five (45) business days to submit its comments to the City Council, such time to be extended only by agreement of the City Council.

**(30) Repeal of Ordinance No. 4,644-N.S., as amended.**

Ordinance No. 4,644-N.S., all amendments thereto, and all rules and regulations promulgated pursuant thereto, shall cease to be operative and are repealed as of the date of the first meeting of the Police Accountability Board established by this Article.

**(31) Severability.**

If any word, phrase, sentence, part, section, subsection, or other portion of this Article, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Article, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The People of the City of Berkeley declare that it would have passed this title, and each section, subsection, sentence, clause and phrase of this Article, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases is declared invalid or unconstitutional.

## **Police Accountability Board**

### **Office of the Director of Police Accountability**

#### **Interim Regulations for Handling Complaints Against Sworn Officers of the Police Department under City Charter Article XVIII, Section 125 (Measure II)**

##### **Preamble**

These interim regulations for handling complaints against sworn members of the Berkeley Police Department are issued in accordance with an amendment to the Charter of the City of Berkeley adding Article XVIII, Section 125, approved by the voters of the City as Measure II on November 3, 2020. Measure II establishes a Police Accountability Board (Board) and a Director of Police Accountability (Director), and is intended to promote public trust by providing for prompt, impartial and fair investigations of complaints by members of the public against sworn employees of the Berkeley Police Department. The Board and Director replace the Police Review Commission (PRC), established by Ordinance No. 4,644-N.S.

Under Resolution No. 69,531 N.S., the City Council directed that the core functions of the Board and Director be implemented by July 1, 2021. Under Article XVIII, Section 125(13)(c) of the City Charter, the Board must establish rules of procedure governing the conduct of its business, which are subject to ratification by the City Council. In order for the Director to accept and investigate complaints filed against sworn members of the Police Department beginning July 1, 2021, interim regulations are needed until such time as the Board adopts permanent regulations and the Council ratifies them.

These interim regulations reflect the procedures for handling complaints against police officers as set forth in Measure II as well as the provisions of the PRC Regulations for Handling Complaints Against Members of the Police Department (effective April 4, 2018) that are not in conflict with Measure II. They shall apply to all complaints that were pending with the PRC as of July 1, 2021, and all complaints filed with the Office of the Director of Police Accountability on and after July 1, 2021. Applicability of permanent regulations to these pending cases will be determined later.

#### **I. GENERAL PROVISIONS**

##### **A. Definitions**

The following definitions shall apply in these interim regulations:

1. **Administrative Closure:** Closure of a complaint before a confidential personnel hearing is held.
2. **Aggrieved Party:** Any person directly affected by the alleged police misconduct.
3. **Allegation:** An assertion of specific police misconduct.

## Section I.A.

4. Board Member: A member of the Police Accountability Board appointed by the City Council.
5. Chief; Police Chief: Chief of the Berkeley Police Department.
6. City's discovery of alleged misconduct: The City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct.
7. Complaint: A declaration that alleges misconduct by a sworn employee of the Berkeley Police Department.
8. Complainant: ~~An aggrieved party~~ A member of the public who files a complaint with the Office of the Director of Police Accountability.
9. Days: Means calendar days unless otherwise specified.
10. Director of Police Accountability (Director): The individual appointed by the City Council to investigate complaints and carry out the operations of the Police Accountability Board and the Office of the Director of Police Accountability (ODPA).
11. Duty Command Officer (DCO): A sworn employee of the Berkeley Police Department designated by the Chief of Police to appear at a hearing or review proceeding to answer questions clarifying BPD policy.
12. Hearing Panel: Three Board members impaneled to conduct a confidential personnel hearing.
13. Investigator: Employee of the Office of Director of Police Accountability whose primary role is to investigate complaints filed with the ODP.
14. Mediation: A process of attempting to reach a mutually agreeable resolution, facilitated by a trained, neutral third party.
15. Police Accountability Board (Board): The body established by City Charter Article XVIII, Section 125.
16. Review Panel: Three Board members impaneled to conduct a review of a BPD investigative record.
17. Subject Officer: A sworn employee of the Berkeley Police Department against whom a complaint is filed.
18. Witness Officer: A sworn employee of the Berkeley Police Department who has personal knowledge of events described in a complaint, but is not a subject officer.

(PRC Reg. Sec. II.B., modified.)

## **B. Confidentiality**

1. Importance. In their capacity as Board members, each Board member will have access to confidential data or information related to Berkeley Police Department personnel. ODP staff will likewise have access to

## Section I.B.

such confidential information. It is vitally important to the integrity of the complaint process under Measure II that all parties involved understand and adhere to the confidentiality of the process, and do all in their power to protect the privacy rights of Berkeley Police Department employees as required by law. (PRC Reg. Preamble.)

2. Duty. Board members, ODPa staff, and their agents and representatives shall protect and maintain the confidentiality of any records and information they receive consistent with state or federal law governing such records or information. (Art. XVIII, Sec. 125(20)(b).) In particular, such persons shall not violate the rights of sworn officers to confidentiality of personnel file information under Penal Code secs. 832.7, 832.8 (3(d)), and state law. Confidential information may be provided through witness testimony or through electronic or hard-copy transmission, and the obligation to maintain confidentiality applies, regardless of how the information is communicated. (PRC Reg. Sec. IV.A.)
3. Closed hearings; effect on public records. All confidential personnel hearings and closed session meetings relating to the investigation of complaints against sworn officers will be closed to the public. Records of these investigations are confidential and will not be disclosed to members of the public. However, any public records included in, or attached to, investigative reports shall remain public records. (PRC Reg. Sec. 1.A.)
4. Handling confidential information. For any proceeding in which hard copies of confidential information are distributed to Board members, each Board member shall return all confidential material to ODPa staff at the close of the proceedings, or as soon thereafter as practicable. (PRC Reg. Sec. IV.B.2.) For any proceeding in which electronic copies of confidential information are distributed to Board members, each Board member shall delete all confidential information as soon as the information is no longer needed, and promptly inform ODPa staff that they have done so. (NEW)
5. Effect of violation. A Board member who violates confidentiality before or during a confidential personnel hearing shall be automatically disqualified from further participation in the hearing. Additionally, a Board member or the Director may agendize an alleged violation of confidentiality for discussion and action at a regular meeting of the Board, which may take adverse action upon a two-thirds vote of those present. Such adverse action may include: notice of the violation to the Board member's nominating Councilmember or to the City Council, or a prohibition from participating in future confidential personnel hearings for the remainder of the Board member's term. (PRC Reg. VI.D.3.)

## Section II.A.

## II. COMPLAINTS FILED WITH THE OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY

### A. Initiating a complaint

1. Complaint form. A complaint alleging misconduct by one or more sworn officers of the Berkeley Police Department must be filed on a form provided by the Office of the Director of Police Accountability. (Art. XVIII, Sec. 125(18)(a)(1); PRC Reg. Secs. I.B.7, II.A.1.) Complaint packets must include information about the difference between mediation and an investigation; language advising a complainant who is the subject of, or has commenced, litigation relating to the incident that gave rise to the complaint to consult an attorney before filing a complaint; and conclude with the following: "I hereby certify that, to the best of my knowledge, the statements made herein are true. I also understand that my oral testimony before the Board shall be given under oath." Complaints shall be signed by the complainant, except for complaints initiated by the Board. (PRC Reg. Sec. II.A.1.)
2. Who may file. ~~Only an "aggrieved party"ies, as well as eyewitnesses to alleged police misconduct,~~ may file a complaint, ~~except that if no complainant is available to initiate a complaint, and in any case involving a death, 5 Board members may vote to authorize an investigation or take other such action they deem appropriate.~~ Complaints may also be initiated by the Board upon a vote of five Board members to authorize an investigation. (PRC Reg. Secs. I.B.2., II. A.3.)
3. Filing period. A complaint must be filed within ~~180~~ days of the alleged misconduct, except that the ~~180~~ days shall be tolled if:
  - a) the complainant is incapacitated or otherwise prevented from filing a complaint; or
  - b) the complainant is the subject of a criminal proceeding related to the subject matter of the complaint, in which case the time for the complainant to file is tolled until the criminal matter has been adjudicated or dismissed.
 (PRC Reg. Sec. II.A.2.)
- ~~4. Late-filed complaints. Complaints filed between 91 and 180 days of the alleged misconduct must be reviewed by the Police Accountability Board in a closed session meeting. Six Board members must find good cause for the late filing, by clear and convincing evidence, to accept the complaint. A complaint filed after 180 days after the alleged misconduct will not be accepted. (PRC Reg. Sec. II.A.2.a)~~
- ~~5.4.~~ Sufficiency of complaint. Complaints must allege facts that, if true, would establish that misconduct occurred. Complaints that do not allege prima facie misconduct, or are frivolous or retaliatory, shall be

## Section II.A.

submitted by the Director to the Board for administrative closure at the next regular meeting that allows the complainant to be provided at least 5 days' notice. If a majority of Board members agree, the case will be closed; if the Board rejects the Director's recommendation, the Notice of Complaint and Allegations must be issued within 10 days, unless the complainant has elected mediation. This section does not apply to complaints initiated by the Board under Section II.A.2. (PRC Reg. Sec. II.A.4.a.)

6-5. Right to representation. Complainants and subject officers have the right to consult with, and be represented by, an attorney or other representative, but a representative is not required. If the ODPA is notified that a complainant or subject officer is represented, then the ODPA shall thereafter send copies of any materials or notices provided to the complainant or subject officer(s) to their representatives. (PRC Reg. Sec. II.A.5.)

**B. Mediation**

## 1. Election

- a. ODPA staff shall provide every complainant with information about the option to select mediation, and make every effort to ensure complainants understand this option. The complainant may elect to enter into mediation up until they are notified that the Director has submitted findings and recommendations as set forth in Section II. G.1 below.
- b. If the complainant elects mediation, ODPA staff shall notify the subject officer within 7 days that the complainant has opted for mediation, and include a copy of the complaint if not previously provided. This notice shall also inform the subject officer of their right to agree to or reject mediation within 10 days.
- c. A subject officer who agrees to mediation must agree to toll the City's 240-day disciplinary deadline if the officer later withdraws from mediation before mediation session begins.
- d. Once both parties agree to mediation, the complainant no longer has the option to have their complaint investigated and to proceed to a confidential personnel hearing, unless the subject officer withdraws from mediation.

## 2. Completion

After receiving notice from the mediator that a mediation has concluded, ODPA staff shall close the case and inform the Board.

(Art. XVIII, Sec. 125(18)(a)(2); PRC Reg. Sec. II.B., modified)

**C. Complaint investigation**

## Section II.C.

1. Time for completion. Complaint investigations must begin immediately, proceed expeditiously, and be completed within 120 days of the City's discovery of the alleged misconduct, unless a Government Code sec. 3304(d) applies (Art. XVIII, Sec. 125(18)(e)), except:
  - a. If the complainant or subject officer is the subject of criminal proceedings related to the complaint, the ODPA shall not commence an investigation until the criminal matter is adjudicated or dismissed. All time limits for processing the complaint shall be tolled during the pendency of the proceedings. As soon as practicable after the filing of a complaint, the ODPA shall contact the District Attorney's Office to determine the status and anticipated resolution of the criminal proceeding (PRC Reg. Sec. III.C.3.).
  - b. A longer time period for the investigation, not to exceed 195 days, may be agreed upon as provided under Section II.O.
2. Transmittal of complaint. Complaints accepted by the Director shall be sent by hard copy or electronically to the Chief of Police, BPD Internal Affairs, Board members, and each sworn officer against whom the complaint is filed. (Art. XVIII, Sec. 125(18)(g).)
3. Notice of Complaint and Allegations. Within 28 days of a complaint filing or the acceptance of a late-filed complaint, the ODPA shall prepare and send a Notice of Complaint and Allegations by hard copy or electronically to the complainant, the Chief of Police or BPD Internal Affairs, and each identified subject officer. The Notice of Complaint and Allegations need not be sent if the complaint requests mediation, or the Director recommends administrative closure. (PRC Reg. Sec. III.B.1, modified.)
4. Sworn officers' schedules. The Chief of Police or their designee shall provide ODPA staff with the schedules of all sworn employees of the Police Department. (PRC Reg. Sec. VII.A.1.)
5. Nature of investigation. The investigation shall consist of conducting recorded interviews with the complainant, subject officers, witness officers, and civilian witnesses; and collecting relevant documentary evidence, including, but not limited to, photographic, audio, and video evidence. (PRC Reg. Sec. III.C.1.)
6. Production, subpoena, and preservation of records. The Berkeley Police Department and all other City departments must produce records and information requested by the Office of the Director of Police Accountability and Board in connection with investigations, without redaction or limitation, unless required by state or federal law. (Art. XVIII, Sec. 125(20)(a).)
  - a. The Director may issue subpoenas to compel the production of books, papers, and documents as needed to carry out their duties and functions. (Art. XVIII, Sec. 125(20)(c).)



## Section II.C.

- b. Whenever a PRC investigation is tolled, the Chief of Police shall take appropriate steps to assure preservation of the following items of evidence:
  - I. The original Communications Center tapes relevant to the complaint.
  - II. All police reports, records, and documentation, including body-worn camera video.
  - III. Names, addresses, telephone numbers, and statements of all witnesses. (PRC Reg. Sec. II.E.2.)
7. Interview notices. Subject officers and witness officers must appear for interviews related to complaints. (Art. XVIII, Sec. 125(20)(c); PRC Reg. Exhibit A.) ODPa staff shall notify subject and witness officers at least 9 days before a scheduled interview date by hard copy or, when feasible, email. An officer who is unavailable for an interview shall contact the Director or the Investigator immediately to state the reason for their unavailability. (PRC Reg. Sec. III.D.2.)
8. Conduct of interviews, exercise of Constitutional rights. Interviews should be conducted such that they produce a minimum of inconvenience and embarrassment to all parties. Subject and witness officer interviews shall be conducted in compliance with the Public Safety Officers' Procedural Bill of Rights Act<sup>1</sup> ("POBRA"). When possible, ODPa staff shall avoid contacting BPD employees at home, and avoid contacting others at their place of employment. (PRC Reg. Sec. III.D.1.) While all officers have a right to invoke the Fifth Amendment, they also have a duty to answer questions before the ODPa regarding conduct and observations that arise in the course of their employment, and are subject to discipline for failure to respond. The exercise of any constitutional rights shall not be considered by the Board in its disposition of a complaint (PRC Reg. Sec. III.D.3.)

**D. Pre-hearing complaint disposition.**

1. Administrative Closure
  - a. Grounds

The grounds upon which a complaint may be administratively closed include but are not limited to the following:

    - i. Complaint does not allege prima facie misconduct or is frivolous or retaliatory.
    - ii. Request for closure by complainant.

---

<sup>1</sup> Government Code Sec. 3300 et seq.

## Section II.D.1.

- iii. Unavailability of complainant where staff has attempted at least 3 telephone, electronic mail and/or regular mail contacts. Attempts to reach the complainant by telephone and/or mail shall be documented in the recommendation for Administrative Closure.
- iv. Mootness of the complaint including but not limited to situations where the subject officer's employment has been terminated or where the complaint has been resolved by other means.
- v. Failure of the complainant to cooperate, including but not limited to: refusal to submit to an interview, to make available essential evidence, to attend a hearing, and similar action or inaction by a complainant that compromises the integrity of the investigation or has a significant prejudicial effect.
- vi. Failure of ODP staff to timely complete its investigation, as set forth in Section II.C.1.

b. Procedure

A complaint may be administratively closed by a majority vote of Board members during closed session at a regularly scheduled meeting. The complainant shall be notified of the opportunity to address the Board during the meeting no later than 7 days before the meeting. Cases closed pursuant to this section shall be deemed "administratively closed" and the complainant, the subject officer, and the Chief of Police shall be notified by mail.

c. Effect of Administrative Closure

Administrative Closure does not constitute a judgment on the merits of the complaint.

(PRC Reg. Sec. V.A.)

## 2. No Contest Response

A subject officer who accepts the allegations of the complaint as substantially true may enter a written response of "no contest" at any time before the Director submits their findings and recommendations to the Board under Section II.G.1. If the subject officer sends a "no contest" response, the Director shall so notify the Board when findings and recommendations are sent to them. (PRC Reg. Sec. V.B., modified)

**E. Initial submission and consideration of investigative findings and recommendations.**

1. Time to submit. Within 60 days of completing an investigation, the Director must submit and present investigative findings and recommendations to the Board in a closed session and convene a confidential personnel hearing if the Board requests it. (Art. XVIII, Sec.

## Section II.E.

125(18)(i.) This deadline may be extended as provided under Section II.O.

2. Standard of proof. In determining whether a sworn officer has committed misconduct, the standard is “preponderance of the evidence.” (Art. XVIII, Sec. 125(18)(c).)
3. Categories of Findings
  - a. If the evidence shows that the alleged act did not occur, the finding shall be “Unfounded.”
  - b. If the evidence fails to support the allegations, but the allegations cannot be shown as false, the finding shall be “Not Sustained.”
  - c. If the evidence shows that the alleged act did occur, but was lawful, justified, and proper, the finding shall be “Exonerated.”
  - d. If the evidence shows that the alleged act did occur and the action was not justified, the finding shall be “Sustained.”

(PRC Regs., Sec. VIII.B.)

4. Recommendation of discipline and level of discipline. If the Director recommends a “sustained” finding on any allegation of misconduct, a recommendation of whether discipline is warranted must also be included. For those cases where an allegation of misconduct, if sustained, would involve any of the classes of conduct described in Penal Code 832.7, as enacted pursuant to Senate Bill 1421, the Director must include a recommendation regarding the level of discipline. (Art. XVIII, Sec. 125(18)(i).)
5. Board decision. Upon reviewing the Director’s investigative findings, the Board must then decide whether to hold a confidential personnel hearing.
  - a. If the Board agrees with the Director on all findings and recommendations, (i.e., no need for hearing), the Director shall send the findings and recommendations to the Chief of Police. The findings and recommendations must be sent within 195 days of the City’s discovery of alleged misconduct, except if extended as provided under Section II. ~~OM.2~~.
  - b. If the Board decides that further fact-finding is needed, the Board may vote to hold a confidential personnel hearing.

(Art. XVIII, Sec. 125(18)(i).)

#### **F. Scheduling a hearing, assigning Hearing Panel members, distributing hearing packet.**

1. Time. If the Board decides to move forward with a confidential personnel hearing, it must be held within 60 days of the date the ODPa has completed its investigation. (Art. XVIII, Sec. 125(18)(i).)

## Section II.F.

2. Scheduling hearing. ODPa staff shall determine the availability of subject officers before setting a hearing date and time. Hearings are not to be scheduled on an officer's day off or during vacation or other leave, unless two or more subject officers on same complaint do not share a common day on duty. (PRC Reg. Sec. VII.A.1.)
3. Hearing Panel. ODPa staff shall secure a Hearing Panel to conduct the confidential personnel hearing. A Hearing Panel shall consist of three Board members, except that in death cases and any cases in which six Board members vote to sit as a whole, the entire Board, with a minimum of six Board members, will constitute the Hearing Panel. (PRC Reg. Sec. VI.A.)
4. Obligation to serve; unavailability. Board members must serve on roughly an equal number of Hearing Panels each year. (PRC Reg. Sec. VI.B.1.) If a Hearing Panel member becomes unavailable, they shall be replaced by another Board member, and notice of substitution shall issue as soon as possible. If substituted within 7 days of a hearing, the subject officer retains the right to challenge the Board member for cause. The notice of challenge of a substituted Board member must be made at least 3 business days before convening the hearing and constitutes good cause for continuing the hearing. (PRC Reg. Sec. VI.B.2.)
5. Effect of continuance. If a hearing is rescheduled due to unavailability of the complainant, a subject officer, or either party's attorney, another Hearing Panel may be assigned. However, the Hearing Panel composition shall not change after the hearing has been convened. (PRC Reg. Sec. VI.B.3)
6. Notice of hearing. The ODPa must issue a written hearing notice at least 14 days before the hearing to all parties, witnesses, representatives, Hearing Panel members, and the Police Chief. This notice must include the time, date, and location of the hearing, and the composition of the Hearing Panel. (PRC Reg. Sec. VII. A.2)
7. Hearing Packet. The ODPa shall provide the Hearing Panel with a Hearing Packet, which shall contain the Director's findings and recommendations, and all evidence and documentation obtained or produced during the investigation (Art. XVIII, Sec. 125(18)(i)), at least 14 days before the hearing date. The Hearing Packet shall also be sent to the subject officer(s), any representatives, the Duty Command Officer, and the Police Chief. The complainant shall receive a Hearing Packet without documents containing confidential investigatory materials or findings and recommendations. Witness officers and civilian witnesses shall receive a copy of only their interview transcript. (PRC Reg. Sec. VII.B., modified.)

## Section II.G.

**G. Board member impartiality; recusals; challenges**

1. Conduct.
  - a. Board members shall maintain basic standards of fair play and impartiality, and avoid bias and the appearance of bias. In confidential personnel hearings, they shall hear all viewpoints. (Art. XVIII, Sec. 125(8)(b).)
  - b. No member of a Hearing Panel shall publicly state an opinion regarding policies directly related to the subject matter of a pending complaint; publicly comment on any of the facts or analysis of a pending complaint; or pledge or promise to vote in any particular manner in a pending complaint. (PRC Reg. Sec. VI.D.2.)
  - c. A Board member who violates Section G.1.b above, before or during a confidential personnel hearing, shall be automatically disqualified from further participation in the hearing. Additionally, a Board member or the Director may agendaize an alleged violation of that Section for discussion and action at a regular meeting of the Board, which may take adverse action upon a two-thirds vote of those present. Such adverse action may include: notice of the violation to the Board member's nominating Councilmember or to the City Council, or a prohibition from participating in future confidential personnel hearings for the remainder of the Board member's term. (PRC Reg. VI.D.3.)
2. Recusal; disclosure of ex parte contacts. Board members recused for a conflict of interest must do so immediately when an item is taken up. Board members shall verbally disclose all ex parte contacts concerning the subject of the hearing and shall submit a written report of such contacts before the hearing begins. Ex parte contacts include any contact between a Board member and any party involved in the complaint before the public hearing. (Art. XVIII, Sec. 125(8)(b)(2).)
3. Challenges to Hearing Panel member
  - a. Basis for Challenge. A Board member who has a personal interest, or the appearance thereof, in the outcome of a hearing shall not sit on the Board. Personal interest in the outcome of a hearing does not include political or social attitudes or beliefs. Examples of personal bias include, but are not limited to:
    - i. a familial relationship or close friendship with the complainant or subject officer;
    - ii. witnessing events material to the inquiry;
    - iii. a financial interest in the outcome of the inquiry;
    - iv. a bias for or against the complainant or subject officer.

## Section II.G.

b. Procedure

- i. No later than 7 days of the date of mailing of the Hearing Packet, which includes the names of the Board members constituting the Hearing Panel, the complainant or the subject officer(s) may file a written challenge for cause to any Board member. Such challenge must specify the nature of the conflict of interest.
- ii. The Director shall contact the challenged Board member as soon as possible after receipt of the challenge.
- iii. If the Board member agrees to recuse themselves, the Director shall ask another Board member to serve.
- iv. If the Board member disagrees that the challenge is for good cause, they shall state their reasons in writing, and the Director shall make this determination. If the Director finds good cause for the challenge, the Director shall inform the challenged Board member and ask another to serve.
- v. If the Director rejects a challenge to a Board member and the Board member serves, the written challenge and the Board member's written response shall be made part of the hearing record.

- c. Replacement of Board member. Any Board member who is unable to serve for any reason shall be replaced by another Board member, except in cases involving a death.

(PRC Reg. Sec. VI.C., modified.)

**H. Continuance requests; other pre-hearing motions**

1. Pre-hearing continuance requests. Requests to continue a hearing must be made to the Director as soon as the cause for continuance arises. The Director may grant the request only for good cause. Factors in determining good cause include: reason for request, timeliness, prejudice to the other party, filing date of complaint, and previous continuance requests. A request for a continuance made within 3 business days of the hearing date shall not be granted unless the requester cannot attend due to a personal emergency or can demonstrate substantial prejudice if denied. A continuance granted at a subject officer's request shall toll any disciplinary time period under the Memorandum of Understanding between the City of Berkeley and the Berkeley Police Association and the 60-day time limitation under Article XVIII, Section 125(18)(i). (PRC Reg. Sec. VII.C.4., modified)
2. Newly Discovered Evidence or Witnesses. The complainant and subject officer shall provide any newly discovered evidence or witnesses' names to the ODP staff no later than 14 days before the scheduled hearing date, with an explanation as to why the evidence or

## Section II.H.

witnesses could not have been discovered earlier and its significance. ODPa staff shall inform the Hearing Panel of the newly discovered evidence or witnesses as soon as possible.

The Hearing Panel shall decide whether or not to allow the evidence or witnesses no later than 4 business days before the scheduled hearing date, and ODPa staff shall notify both the complainant and the subject officer of the Hearing Panel's decision. (PRC Reg. Sec. VII.C.1.)

3. Procedural issues. The complainant and subject officer shall raise any procedural issues by submitting them in writing to the Director at least 7 days before the hearing date. Procedural issues can include, without limitation,: expiration of the 1-year limitation period under Government Code section 3304, or whether an officer should testify. (PRC Reg. Sec. VII.C.2.)

### I. Hearing procedures

1. Who may or must be present at hearing. Hearings are closed to the public. The Director and Investigator may be present during the entirety of the hearing. The Duty Command Officer may be present for all but the Board members' deliberations. (PRC Reg. VII.D.1.) The complainant and the subject officer shall be present to answer questions from Board members, subject to state law. (Art. XVIII, Sec. 125(18)(i).) An attorney or other representative for the complainant or the subject officer may participate in the hearing, but a representative is not required, and the complainant or subject officer is responsible for ensuring their representative's presence at the hearing. (PRC Reg. VII.D.2.)
2. Continuances. If good cause is shown, the Hearing Panel may continue the hearing due to the unanticipated unavailability of a witness or a representative. (PRC Reg. Sec. VII.D.3.)
3. Party's failure to appear. Absent good cause, if the complainant fails to appear within 30 minutes of the scheduled hearing time, the complaint will be dismissed. Absent good cause, if the subject officer fails to appear within 30 minutes of the scheduled hearing time, the hearing will proceed and the allegations may be sustained. (PRC Reg. Sec. VII.D.4.)
4. Lack of full Hearing Panel. If two Hearing Panel members are present but a third fails to appear within 30 minutes of the scheduled hearing time, the hearing will be continued until a third Hearing Panel member is seated, unless all parties agree to proceed with two Hearing Panel members, in which case all findings must be unanimous. (PRC Reg. Sec. VII.D.5.)
5. Chair of panel. The Hearing Panel shall select one member to serve as the Chairperson of the hearing. (PRC Reg. Sec. VI.A.)

## Section II.I.

~~6. Presentation of findings and recommendations. The Director shall, outside of the presence of the complainant, complainant's representative, and witnesses, present the investigative findings and a recommendation of discipline, if any; and the level of discipline in appropriate cases. (Derived from Art. XVIII, Sec. 125(18)(i).)~~

~~7.6.~~ Taking testimony at the hearing.

- a. The complainant and any civilian witnesses will be called into the hearing room to testify separately; the subject officers and their representatives may be present during their testimony. The complainant or their representative may make a statement or rely on the interview statements. Questioning will then proceed as follows: a) The complainant or the complainant's representative may ask questions; b) Board members may ask questions; ~~b~~c) the subject officer or his or her representative may ask questions; ~~e~~d) Board members may ask follow-up questions. After questioning is completed, the complainant or their representative will have up to 15 minutes to provide a summary of their case and a closing statement. (PRC Reg. Sec. VII.D.7., modified)
  - b. ~~The complainant and their representative, and civilian witnesses will each be excused from the hearing room after their testimony or representation is completed. (PRC Reg. Sec. VII.D.8.)~~
  - c. The subject officers and any witness officers will be called into the hearing room to testify separately. The complainant and their representative may be present during their testimony. Subject officer representatives may be present for all testimony. Each subject officer may make a statement or choose to rely on the interview statements. Questioning will then proceed as follows: 1. Subject officers' representatives may ask questions. 2. Board members may ask questions. The officer may then be questioned by 2 Board members unless the officer waives this requirement. 3. Complainant or their representatives may ask questions. 4. Board members may ask follow up questions. Each subject officer will be questioned by their representative first, after which the officer may be questioned by 2 Board members, unless the officer waives this requirement. After questioning is completed, each subject officer will have up to 15 minutes to provide a summary of their case and a closing statement.
  - d. ~~The subject officers and witness officers will each be excused from the hearing room after their testimony is completed. (PRC Reg. Sec. VII.D.9.) All except Board members and staff will then be excused from the hearing room.~~
- ~~8-7.~~ Subpoenas. The Board may issue subpoenas to compel the production of books, papers, and documents as needed to carry out their duties and functions. (Art. XVIII, Sec. 125(20)(c).)



Section II.I.

9-8. Maintaining order. No person at hearing shall become subject of undue harassment, personal attack, or invective. If the chairperson fails to maintain reasonable order, BPD employees may leave the hearing without prejudice. The burden shall be upon the BPD employee to establish to the City Manager's satisfaction that their reason for leaving was sufficient. (PRC Reg. Sec. VII.D.10.)

*[Formatting issue. Unable to delete section break without causing additional formatting problems.]*

## Section II.J.

**J. Evidence**

1. General. The hearing need not be conducted according to technical rules of evidence. Any relevant evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs.
2. Procedure. Evidence shall be taken in accordance with the following provisions:
  - a. The complainant and subject officers shall have the right to testify and refer to any relevant evidence that has been entered into the record. If the complainant or subject officers do not testify on their own behalf, they may be called and examined as if under cross-examination.;
  - b. Oral evidence shall be taken only under oath.
  - c. The Chairperson shall exclude irrelevant and unduly repetitious evidence.
  - d. The Chairperson shall exclude unruly or disruptive persons from the hearing.
  - e. The Chairperson will conduct the hearing subject to being overruled by a majority of the Hearing Panel members. Hearing Panel members shall be primarily responsible for obtaining testimony. ODPa staff will answer Board members' questions on the evidence, points of law, and procedure.
  - f. The City Attorney's opinion will be sought whenever the interpretation of a City Ordinance or the City Charter is contested and pivotal to the case, or when a case raises substantial legal issues of first impression.
  - g. If the Hearing Panel needs additional evidence or an opinion from the City Attorney to reach its findings, it may continue the hearing to a future date.
  - h. If either party requests that the hearing be continued to consider motions or points of law, any applicable BPD disciplinary time limit shall be tolled for the period of such continuance.
3. Judicial disposition. Either party may present to the Hearing Panel evidence of the disposition of a related matter by any branch of the judiciary (including but not limited to superior court, traffic court, and small claims court), and the Hearing Panel shall accept those findings as true.

(PRC Reg. Sec. VII.E.)

## Section II.K.

**K. Deliberation and Findings**

1. Deliberation. After the hearing has concluded, the Hearing Panel deliberates outside the presence of everyone except ODPA staff. The Hearing Panel shall not consider any information not received in the hearing packet or during the hearing. (PRC Reg. Sec. VIII.A.)
2. Vote. The Hearing Panel shall affirm, modify, or reject the findings and recommendation of the Director of Police Accountability. (Art. XVIII, Sec. 125(18)(j).) All action of the Hearing Panel shall be by majority vote of those Board members present. (PRC Reg. Sec. VIII.B.)
3. Transmittal of findings. The Hearing Panel's decision must be submitted in writing to the Chief of Police within 15 days of the hearing (Art. XVIII, Sec. 125(18)(j)), unless extended as provided under Section II.OM.2. (Art. XVIII, Sec. 125(18)(m).)
4. Content of findings.
  - a. If the Hearing Panel agrees with the findings and recommendations of the Director, no explanation is required.
  - b. If the Hearing Panel modifies or rejects a finding or recommendation of the Director, the Hearing Panel shall provide an explanation of its decision. (Art. XVIII, Sec. 125(18)(j).)
  - c. Any Hearing Panel member dissenting from a finding or recommendation of the majority shall submit a separate written explanation of their reasoning (PRC Reg. Sec. VIII.B.), unless the dissenter agrees with the Director's finding and recommendation. (NEW)

**L. Findings of Chief of Police; tentative decision; final determination by Chief or City Manager.**

1. Chief's decision. Within 10 days of receiving the findings and recommendations from the Director under Section II.GE.5.a. above, or from the Hearing Panel under Section II.MK.3.b. above, the Chief of Police shall take one of the following actions
  - a. Issue a final decision if the Chief agrees with the Director or with the Hearing Panel.
  - b. Submit a tentative decision to the Director and the Police Accountability Board.
2. Director's request to review tentative decision. If the Chief submits a tentative decision, the Director may request, within 10 days of receiving the decision, that the Chief submit the decision to the City Manager. If the Director does not make the request, the Chief's decision becomes final.

## Section II.L.

3. City Manager's final decision. Within 25 days of receiving the submittal from the Chief, the City Manager or their designee shall submit a final determination, with a written explanation, to the Director, the Board, and the Chief.

(Art. XVIII, Sec. 125(18)(k).)

4. Extension of time. The deadlines in this Section II.L may be extended as provided under Section II.OM.2. (Art. XVIII, Sec. 125(18)(m).)

**M. Time limits; extensions.**

1. Overall limit. The time limit for investigations and notification of discipline is 240 days from the date of the City's discovery of alleged misconduct, unless a Government Code section 3304(d) exception applies. (Art. XVIII, Sec.(125)(18)(d).)
2. Other time limits. The deadlines for the Director to complete an investigation, present investigative findings to the Board, submit findings and recommendations to the Chief of Police, or request that the Chief submit a tentative decision to the City Manager; as well as deadlines for the Chief to act on findings and recommendations from the Director or Hearing Panel, and for the City Manager or their designee to make a final decision, are advisory, and may be adjusted by the Director after consulting with the City Manager and Chief, to ensure that all investigations and notifications are completed within 240 days. The timeline for completing an investigation shall not be extended beyond 195 days. (Art. XVIII, Sec.125(18)(m).)

**III. CONTESTING FINDINGS OF DECISION WHEN COMPLAINT FILED WITH THE POLICE DEPARTMENT.****A. Application**

1. This Section III applies to complaints that a member of the public files with the Police Department only.

**B. Procedure**

1. When the Internal Affairs division of the Police Department has completed its investigation of a complaint, the Chief of Police shall issue a letter of disposition to the subject officer and the Director. The Chief shall also issue a letter of disposition to the complainant that complies with the Penal Code. (Art. XVIII, Sec. 125(19)(d).)
2. If a finding is "not sustained," "unfounded," or "exonerated," the complainant has 20 days from the date notice is sent (by mail or other reasonable means that the complainant agrees to), to contest the Chief's determination to the Director. (Art. XVIII, Sec. 125(19)(e).) The Director, if appropriate, may request to review all files, transcripts, and records related to the complaint. (Art. XVIII, Sec. 125(19)(e)(1).)

## Section III.B.

3. Within 15 days of receiving an objection from a complainant or a notice from the Chief that a complainant has objected, the Director, in their discretion, may notify the complainant that either:
  - a. The objection is accepted and the Board will convene a Review Panel to conduct a review based on the investigative record provided by the Department; or
  - b. The objection is dismissed. In such cases, the Director must notify the Board of such dismissal in writing within 30 days of notifying the complainant of the dismissal.

(Art. XVIII, Sec. 125(19)(e)(1); Review Panel added.)
4. If the Director decides that the Board will conduct a review, ODPa staff shall secure a Review Panel of three Board members to conduct a review of the investigative record at a closed session meeting.
  - a. At the meeting, only Review Panel members and ODPa staff will be present. A Duty Command Officer may be present.
  - b. The Review Panel shall evaluate the investigative record to determine whether the complainant's objection has merit, either because the Department failed to proceed in a manner required by state and federal law, or because the Chief's decision is not supported by the evidence in the record.
  - c. All action of the Review Panel must be by majority vote.

(NEW. Details not in Charter and no counterpart in PRC procedures.)
5. The Review Panel must, within 45 days of the date the Director accepts an objection:
  - a. Dismiss the complainant's objection; or
  - b. Issue a report agreeing with the Chief's determination; or
  - c. Issue a report disagreeing with the Chief's determination if the Review Panel finds that: 1) the Department failed to proceed in a manner required by state and federal law; or 2) the Chief's decision is not supported by the evidence in the record. The Director shall submit this report to the Chief and the City Manager.

(Art. XVIII, Secs. 125(19)(f), 125(19)(g).)
6. Within 15 days of receiving a Review Panel's recommendation disagreeing with the Chief, the Chief may prepare a report for the City Manager addressing any concerns or objections. (Art. XVIII, Sec. 125(19)(g).)
7. Within 25 days of receiving the Chief's report, the City Manager or their designee shall consider the reports of both the Board and the Chief,

## Section III.B.

and send a final determination with a written explanation to the Director, the Board, and the Chief. (Art. XVIII, Sec. 125(19)(g).)

8. The deadlines in this Section III are advisory, and may be adjusted by mutual agreement between the City Manager, the Director, and the Chief, to ensure that all investigations are completed such that the time limit for investigations and notification of discipline occurs within 240 days, and investigation of all complaints filed with the Police Department are completed within 120 days of the City's discovery of alleged misconduct, unless a Government Code section 3304(d) exception applies. (Art. XVIII, Sec. 125(19)(i).)

**IV. INFORMAL COMPLAINTS**

- A.** An informal complaint is a communication from a member of the public, not on a complaint form, that identifies an officer or officers by name, badge number, or other identifying features, and alleges any act of misconduct pertaining to the manner in which the officer performs their duties. Such complaints shall be treated confidentially.
- B.** ODPa staff shall contact the complainant to explain the policy complaint and formal individual complaint processes.
- C.** Informal complaints will be agendaized for a closed session at the next regular Board meeting and distributed to the Board in closed session, with notice to the named officer(s).
- D.** The Board shall consider the informal complaint and recommend what additional action, if any, the Director of Police Accountability should take.

(Adopted by the PRC Jan. 8, 2020.)

**V. AVAILABILITY AND AMENDMENT OF REGULATIONS**

- A.** These Interim Regulations shall be posted on the website of the Office of the Director of Police Accountability, and ODPa staff shall furnish them to any person requesting a copy.
- B.** Amendments to these Interim Regulations require a majority vote of the Board and ratification by the City Council.

(PRC Reg. Sec. IX, modified.)

## **Police Accountability Board Office of the Director of Police Accountability**

### **Interim Regulations for Handling Complaints Against Sworn Officers of the Police Department under City Charter Article XVIII, Section 125 (Measure II)**

#### **Preamble**

These interim regulations for handling complaints against sworn members of the Berkeley Police Department are issued in accordance with an amendment to the Charter of the City of Berkeley adding Article XVIII, Section 125, approved by the voters of the City as Measure II on November 3, 2020. Measure II establishes a Police Accountability Board (Board) and a Director of Police Accountability (Director), and is intended to promote public trust by providing for prompt, impartial and fair investigations of complaints by members of the public against sworn employees of the Berkeley Police Department. The Board and Director replace the Police Review Commission (PRC), established by Ordinance No. 4,644-N.S.

Under Resolution No. 69,531 N.S., the City Council directed that the core functions of the Board and Director be implemented by July 1, 2021. Under Article XVIII, Section 125(13)(c) of the City Charter, the Board must establish rules of procedure governing the conduct of its business, which are subject to ratification by the City Council. In order for the Director to accept and investigate complaints filed against sworn members of the Police Department beginning July 1, 2021, interim regulations are needed until such time as the Board adopts permanent regulations and the Council ratifies them.

These interim regulations reflect the procedures for handling complaints against police officers as set forth in Measure II as well as the provisions of the PRC Regulations for Handling Complaints Against Members of the Police Department (effective April 4, 2018) that are not in conflict with Measure II. They shall apply to all complaints that were pending with the PRC as of July 1, 2021, and all complaints filed with the Office of the Director of Police Accountability on and after July 1, 2021. Applicability of permanent regulations to these pending cases will be determined later.

#### **I. GENERAL PROVISIONS**

##### **A. Definitions**

The following definitions shall apply in these interim regulations:

1. Administrative Closure: Closure of a complaint before a confidential personnel hearing is held.
2. Aggrieved Party: Any person directly affected by the alleged police misconduct.
3. Allegation: An assertion of specific police misconduct.

## Section I.A.

4. Board Member: A member of the Police Accountability Board appointed by the City Council.
5. Chief; Police Chief: Chief of the Berkeley Police Department.
6. City's discovery of alleged misconduct: The City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct.
7. Complaint: A declaration that alleges misconduct by a sworn employee of the Berkeley Police Department.
8. Complainant: ~~An aggrieved party~~ A member of the public who files a complaint with the Office of the Director of Police Accountability.
9. Days: Means calendar days unless otherwise specified.
10. Director of Police Accountability (Director): The individual appointed by the City Council to investigate complaints and carry out the operations of the Police Accountability Board and the Office of the Director of Police Accountability (ODPA).
11. Duty Command Officer (DCO): A sworn employee of the Berkeley Police Department designated by the Chief of Police to appear at a hearing or review proceeding to answer questions clarifying BPD policy.
12. Hearing Panel: Three Board members impaneled to conduct a confidential personnel hearing.
13. Investigator: Employee of the Office of Director of Police Accountability whose primary role is to investigate complaints filed with the ODP.
14. Mediation: A process of attempting to reach a mutually agreeable resolution, facilitated by a trained, neutral third party.
15. Police Accountability Board (Board): The body established by City Charter Article XVIII, Section 125.
16. Review Panel: Three Board members impaneled to conduct a review of a BPD investigative record.
17. Subject Officer: A sworn employee of the Berkeley Police Department against whom a complaint is filed.
18. Witness Officer: A sworn employee of the Berkeley Police Department who has personal knowledge of events described in a complaint, but is not a subject officer.

(PRC Reg. Sec. II.B., modified.)

## **B. Confidentiality**

1. Importance. In their capacity as Board members, each Board member will have access to confidential data or information related to Berkeley Police Department personnel. ODP staff will likewise have access to



## Section I.B.

such confidential information. It is vitally important to the integrity of the complaint process under Measure II that all parties involved understand and adhere to the confidentiality of the process, and do all in their power to protect the privacy rights of Berkeley Police Department employees as required by law. (PRC Reg. Preamble.)

2. Duty. Board members, ODPa staff, and their agents and representatives shall protect and maintain the confidentiality of any records and information they receive consistent with state or federal law governing such records or information. (Art. XVIII, Sec. 125(20)(b).) In particular, such persons shall not violate the rights of sworn officers to confidentiality of personnel file information under Penal Code secs. 832.7, 832.8 (3(d)), and state law. Confidential information may be provided through witness testimony or through electronic or hard-copy transmission, and the obligation to maintain confidentiality applies, regardless of how the information is communicated. (PRC Reg. Sec. IV.A.)
3. Closed hearings; effect on public records. All confidential personnel hearings and closed session meetings relating to the investigation of complaints against sworn officers will be closed to the public. Records of these investigations are confidential and will not be disclosed to members of the public. However, any public records included in, or attached to, investigative reports shall remain public records. (PRC Reg. Sec. 1.A.)
4. Handling confidential information. For any proceeding in which hard copies of confidential information are distributed to Board members, each Board member shall return all confidential material to ODPa staff at the close of the proceedings, or as soon thereafter as practicable. (PRC Reg. Sec. IV.B.2.) For any proceeding in which electronic copies of confidential information are distributed to Board members, each Board member shall delete all confidential information as soon as the information is no longer needed, and promptly inform ODPa staff that they have done so. (NEW)
5. Effect of violation. A Board member who violates confidentiality before or during a confidential personnel hearing shall be automatically disqualified from further participation in the hearing. Additionally, a Board member or the Director may agendize an alleged violation of confidentiality for discussion and action at a regular meeting of the Board, which may take adverse action upon a two-thirds vote of those present. Such adverse action may include: notice of the violation to the Board member's nominating Councilmember or to the City Council, or a prohibition from participating in future confidential personnel hearings for the remainder of the Board member's term. (PRC Reg. VI.D.3.)

## Section II.A.

## II. COMPLAINTS FILED WITH THE OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY

### A. Initiating a complaint

1. Complaint form. A complaint alleging misconduct by one or more sworn officers of the Berkeley Police Department must be filed on a form provided by the Office of the Director of Police Accountability. (Art. XVIII, Sec. 125(18)(a)(1); PRC Reg. Secs. I.B.7, II.A.1.) Complaint packets must include information about the difference between mediation and an investigation; language advising a complainant who is the subject of, or has commenced, litigation relating to the incident that gave rise to the complaint to consult an attorney before filing a complaint; and conclude with the following: "I hereby certify that, to the best of my knowledge, the statements made herein are true. I also understand that my oral testimony before the Board shall be given under oath." Complaints shall be signed by the complainant, except for complaints initiated by the Board. (PRC Reg. Sec. II.A.1.)
2. Who may file. ~~Only an "aggrieved party"ies, as well as eyewitnesses to alleged police misconduct,~~ may file a complaint, ~~except that if no complainant is available to initiate a complaint, and in any case involving a death, 5 Board members may vote to authorize an investigation or take other such action they deem appropriate.~~ Complaints may also be initiated by the Board upon a vote of five Board members to authorize an investigation. (PRC Reg. Secs. I.B.2., II. A.3.)
3. Filing period. A complaint must be filed within ~~180~~ days of the alleged misconduct, except that the ~~180~~ days shall be tolled if:
  - a) the complainant is incapacitated or otherwise prevented from filing a complaint; or
  - b) the complainant is the subject of a criminal proceeding related to the subject matter of the complaint, in which case the time for the complainant to file is tolled until the criminal matter has been adjudicated or dismissed.
 (PRC Reg. Sec. II.A.2.)
- ~~4. Late-filed complaints. Complaints filed between 91 and 180 days of the alleged misconduct must be reviewed by the Police Accountability Board in a closed session meeting. Six Board members must find good cause for the late filing, by clear and convincing evidence, to accept the complaint. A complaint filed after 180 days after the alleged misconduct will not be accepted. (PRC Reg. Sec. II.A.2.a)~~
- ~~5.4.~~ Sufficiency of complaint. Complaints must allege facts that, if true, would establish that misconduct occurred. Complaints that do not allege prima facie misconduct, or are frivolous or retaliatory, shall be

## Section II.A.

submitted by the Director to the Board for administrative closure at the next regular meeting that allows the complainant to be provided at least 5 days' notice. If a majority of Board members agree, the case will be closed; if the Board rejects the Director's recommendation, the Notice of Complaint and Allegations must be issued within 10 days, unless the complainant has elected mediation. This section does not apply to complaints initiated by the Board under Section II.A.2. (PRC Reg. Sec. II.A.4.a.)

6-5. Right to representation. Complainants and subject officers have the right to consult with, and be represented by, an attorney or other representative, but a representative is not required. If the ODPA is notified that a complainant or subject officer is represented, then the ODPA shall thereafter send copies of any materials or notices provided to the complainant or subject officer(s) to their representatives. (PRC Reg. Sec. II.A.5.)

**B. Mediation**

## 1. Election

- a. ODPA staff shall provide every complainant with information about the option to select mediation, and make every effort to ensure complainants understand this option. The complainant may elect to enter into mediation up until they are notified that the Director has submitted findings and recommendations as set forth in Section II. G.1 below.
- b. If the complainant elects mediation, ODPA staff shall notify the subject officer within 7 days that the complainant has opted for mediation, and include a copy of the complaint if not previously provided. This notice shall also inform the subject officer of their right to agree to or reject mediation within 10 days.
- c. A subject officer who agrees to mediation must agree to toll the City's 240-day disciplinary deadline if the officer later withdraws from mediation before mediation session begins.
- d. Once both parties agree to mediation, the complainant no longer has the option to have their complaint investigated and to proceed to a confidential personnel hearing, unless the subject officer withdraws from mediation.

## 2. Completion

After receiving notice from the mediator that a mediation has concluded, ODPA staff shall close the case and inform the Board.

(Art. XVIII, Sec. 125(18)(a)(2); PRC Reg. Sec. II.B., modified)

**C. Complaint investigation**

## Section II.C.

1. Time for completion. Complaint investigations must begin immediately, proceed expeditiously, and be completed within 120 days of the City's discovery of the alleged misconduct, unless a Government Code sec. 3304(d) applies (Art. XVIII, Sec. 125(18)(e)), except:
  - a. If the complainant or subject officer is the subject of criminal proceedings related to the complaint, the ODPA shall not commence an investigation until the criminal matter is adjudicated or dismissed. All time limits for processing the complaint shall be tolled during the pendency of the proceedings. As soon as practicable after the filing of a complaint, the ODPA shall contact the District Attorney's Office to determine the status and anticipated resolution of the criminal proceeding (PRC Reg. Sec. III.C.3.).
  - b. A longer time period for the investigation, not to exceed 195 days, may be agreed upon as provided under Section II.O.
2. Transmittal of complaint. Complaints accepted by the Director shall be sent by hard copy or electronically to the Chief of Police, BPD Internal Affairs, Board members, and each sworn officer against whom the complaint is filed. (Art. XVIII, Sec. 125(18)(g).)
3. Notice of Complaint and Allegations. Within 28 days of a complaint filing or the acceptance of a late-filed complaint, the ODPA shall prepare and send a Notice of Complaint and Allegations by hard copy or electronically to the complainant, the Chief of Police or BPD Internal Affairs, and each identified subject officer. The Notice of Complaint and Allegations need not be sent if the complaint requests mediation, or the Director recommends administrative closure. (PRC Reg. Sec. III.B.1, modified.)
4. Sworn officers' schedules. The Chief of Police or their designee shall provide ODPA staff with the schedules of all sworn employees of the Police Department. (PRC Reg. Sec. VII.A.1.)
5. Nature of investigation. The investigation shall consist of conducting recorded interviews with the complainant, subject officers, witness officers, and civilian witnesses; and collecting relevant documentary evidence, including, but not limited to, photographic, audio, and video evidence. (PRC Reg. Sec. III.C.1.)
6. Production, subpoena, and preservation of records. The Berkeley Police Department and all other City departments must produce records and information requested by the Office of the Director of Police Accountability and Board in connection with investigations, without redaction or limitation, unless required by state or federal law. (Art. XVIII, Sec. 125(20)(a).)
  - a. The Director may issue subpoenas to compel the production of books, papers, and documents as needed to carry out their duties and functions. (Art. XVIII, Sec. 125(20)(c).)

## Section II.C.

- b. Whenever a PRC investigation is tolled, the Chief of Police shall take appropriate steps to assure preservation of the following items of evidence:
  - I. The original Communications Center tapes relevant to the complaint.
  - II. All police reports, records, and documentation, including body-worn camera video.
  - III. Names, addresses, telephone numbers, and statements of all witnesses. (PRC Reg. Sec. II.E.2.)
7. Interview notices. Subject officers and witness officers must appear for interviews related to complaints. (Art. XVIII, Sec. 125(20)(c); PRC Reg. Exhibit A.) ODPa staff shall notify subject and witness officers at least 9 days before a scheduled interview date by hard copy or, when feasible, email. An officer who is unavailable for an interview shall contact the Director or the Investigator immediately to state the reason for their unavailability. (PRC Reg. Sec. III.D.2.)
8. Conduct of interviews, exercise of Constitutional rights. Interviews should be conducted such that they produce a minimum of inconvenience and embarrassment to all parties. Subject and witness officer interviews shall be conducted in compliance with the Public Safety Officers' Procedural Bill of Rights Act<sup>1</sup> ("POBRA"). When possible, ODPa staff shall avoid contacting BPD employees at home, and avoid contacting others at their place of employment. (PRC Reg. Sec. III.D.1.) While all officers have a right to invoke the Fifth Amendment, they also have a duty to answer questions before the ODPa regarding conduct and observations that arise in the course of their employment, and are subject to discipline for failure to respond. The exercise of any constitutional rights shall not be considered by the Board in its disposition of a complaint (PRC Reg. Sec. III.D.3.)

**D. Pre-hearing complaint disposition.**

## 1. Administrative Closure

a. Grounds

The grounds upon which a complaint may be administratively closed include but are not limited to the following:

- i. Complaint does not allege prima facie misconduct or is frivolous or retaliatory.
- ii. Request for closure by complainant.

---

<sup>1</sup> Government Code Sec. 3300 et seq.

## Section II.D.1.

- iii. Unavailability of complainant where staff has attempted at least 3 telephone, electronic mail and/or regular mail contacts. Attempts to reach the complainant by telephone and/or mail shall be documented in the recommendation for Administrative Closure.
- iv. Mootness of the complaint including but not limited to situations where the subject officer's employment has been terminated or where the complaint has been resolved by other means.
- v. Failure of the complainant to cooperate, including but not limited to: refusal to submit to an interview, to make available essential evidence, to attend a hearing, and similar action or inaction by a complainant that compromises the integrity of the investigation or has a significant prejudicial effect.
- vi. Failure of ODPa staff to timely complete its investigation, as set forth in Section II.C.1.

b. Procedure

A complaint may be administratively closed by a majority vote of Board members during closed session at a regularly-scheduled meeting. The complainant shall be notified of the opportunity to address the Board during the meeting no later than 7 days before the meeting. Cases closed pursuant to this section shall be deemed "administratively closed" and the complainant, the subject officer, and the Chief of Police shall be notified by mail.

c. Effect of Administrative Closure

Administrative Closure does not constitute a judgment on the merits of the complaint.

(PRC Reg. Sec. V.A.)

## 2. No Contest Response

A subject officer who accepts the allegations of the complaint as substantially true may enter a written response of "no contest" at any time before the Director submits their findings and recommendations to the Board under Section II.G.1. If the subject officer sends a "no contest" response, the Director shall so notify the Board when findings and recommendations are sent to them. (PRC Reg. Sec. V.B., modified)

**E. Initial submission and consideration of investigative findings and recommendations.**

1. Time to submit. Within 60 days of completing an investigation, the Director must submit and present investigative findings and recommendations to the Board in a closed session and convene a confidential personnel hearing if the Board requests it. (Art. XVIII, Sec.

## Section II.E.

125(18)(i.) This deadline may be extended as provided under Section II.O.

2. Standard of proof. In determining whether a sworn officer has committed misconduct, the standard is “preponderance of the evidence.” (Art. XVIII, Sec. 125(18)(c).)
3. Categories of Findings
  - a. If the evidence shows that the alleged act did not occur, the finding shall be “Unfounded.”
  - b. If the evidence fails to support the allegations, but the allegations cannot be shown as false, the finding shall be “Not Sustained.”
  - c. If the evidence shows that the alleged act did occur, but was lawful, justified, and proper, the finding shall be “Exonerated.”
  - d. If the evidence shows that the alleged act did occur and the action was not justified, the finding shall be “Sustained.”

(PRC Regs., Sec. VIII.B.)

4. Recommendation of discipline and level of discipline. If the Director recommends a “sustained” finding on any allegation of misconduct, a recommendation of whether discipline is warranted must also be included. For those cases where an allegation of misconduct, if sustained, would involve any of the classes of conduct described in Penal Code 832.7, as enacted pursuant to Senate Bill 1421, the Director must include a recommendation regarding the level of discipline. (Art. XVIII, Sec. 125(18)(i).)
5. Board decision. Upon reviewing the Director’s investigative findings, the Board must then decide whether to hold a confidential personnel hearing.
  - a. If the Board agrees with the Director on all findings and recommendations, (i.e., no need for hearing), the Director shall send the findings and recommendations to the Chief of Police. The findings and recommendations must be sent within 195 days of the City’s discovery of alleged misconduct, except if extended as provided under Section II. ~~OM.2~~.
  - b. If the Board decides that further fact-finding is needed, the Board may vote to hold a confidential personnel hearing.

(Art. XVIII, Sec. 125(18)(i).)

#### **F. Scheduling a hearing, assigning Hearing Panel members, distributing hearing packet.**

1. Time. If the Board decides to move forward with a confidential personnel hearing, it must be held within 60 days of the date the ODPa has completed its investigation. (Art. XVIII, Sec. 125(18)(i).)

## Section II.F.

2. Scheduling hearing. ODPa staff shall determine the availability of subject officers before setting a hearing date and time. Hearings are not to be scheduled on an officer's day off or during vacation or other leave, unless two or more subject officers on same complaint do not share a common day on duty. (PRC Reg. Sec. VII.A.1.)
3. Hearing Panel. ODPa staff shall secure a Hearing Panel to conduct the confidential personnel hearing. A Hearing Panel shall consist of three Board members, except that in death cases and any cases in which six Board members vote to sit as a whole, the entire Board, with a minimum of six Board members, will constitute the Hearing Panel. (PRC Reg. Sec. VI.A.)
4. Obligation to serve; unavailability. Board members must serve on roughly an equal number of Hearing Panels each year. (PRC Reg. Sec. VI.B.1.) If a Hearing Panel member becomes unavailable, they shall be replaced by another Board member, and notice of substitution shall issue as soon as possible. If substituted within 7 days of a hearing, the subject officer retains the right to challenge the Board member for cause. The notice of challenge of a substituted Board member must be made at least 3 business days before convening the hearing and constitutes good cause for continuing the hearing. (PRC Reg. Sec. VI.B.2.)
5. Effect of continuance. If a hearing is rescheduled due to unavailability of the complainant, a subject officer, or either party's attorney, another Hearing Panel may be assigned. However, the Hearing Panel composition shall not change after the hearing has been convened. (PRC Reg. Sec. VI.B.3)
6. Notice of hearing. The ODPa must issue a written hearing notice at least 14 days before the hearing to all parties, witnesses, representatives, Hearing Panel members, and the Police Chief. This notice must include the time, date, and location of the hearing, and the composition of the Hearing Panel. (PRC Reg. Sec. VII. A.2)
7. Hearing Packet. The ODPa shall provide the Hearing Panel with a Hearing Packet, which shall contain the Director's findings and recommendations, and all evidence and documentation obtained or produced during the investigation (Art. XVIII, Sec. 125(18)(i)), at least 14 days before the hearing date. The Hearing Packet shall also be sent to the subject officer(s), any representatives, the Duty Command Officer, and the Police Chief. The complainant shall receive a Hearing Packet without documents containing confidential investigatory materials or findings and recommendations. Witness officers and civilian witnesses shall receive a copy of only their interview transcript. (PRC Reg. Sec. VII.B., modified.)



## Section II.G.

**G. Board member impartiality; recusals; challenges**

1. Conduct.
  - a. Board members shall maintain basic standards of fair play and impartiality, and avoid bias and the appearance of bias. In confidential personnel hearings, they shall hear all viewpoints. (Art. XVIII, Sec. 125(8)(b).)
  - b. No member of a Hearing Panel shall publicly state an opinion regarding policies directly related to the subject matter of a pending complaint; publicly comment on any of the facts or analysis of a pending complaint; or pledge or promise to vote in any particular manner in a pending complaint. (PRC Reg. Sec. VI.D.2.)
  - c. A Board member who violates Section G.1.b above, before or during a confidential personnel hearing, shall be automatically disqualified from further participation in the hearing. Additionally, a Board member or the Director may agendaize an alleged violation of that Section for discussion and action at a regular meeting of the Board, which may take adverse action upon a two-thirds vote of those present. Such adverse action may include: notice of the violation to the Board member's nominating Councilmember or to the City Council, or a prohibition from participating in future confidential personnel hearings for the remainder of the Board member's term. (PRC Reg. VI.D.3.)
2. Recusal; disclosure of ex parte contacts. Board members recused for a conflict of interest must do so immediately when an item is taken up. Board members shall verbally disclose all ex parte contacts concerning the subject of the hearing and shall submit a written report of such contacts before the hearing begins. Ex parte contacts include any contact between a Board member and any party involved in the complaint before the public hearing. (Art. XVIII, Sec. 125(8)(b)(2).)
3. Challenges to Hearing Panel member
  - a. Basis for Challenge. A Board member who has a personal interest, or the appearance thereof, in the outcome of a hearing shall not sit on the Board. Personal interest in the outcome of a hearing does not include political or social attitudes or beliefs. Examples of personal bias include, but are not limited to:
    - i. a familial relationship or close friendship with the complainant or subject officer;
    - ii. witnessing events material to the inquiry;
    - iii. a financial interest in the outcome of the inquiry;
    - iv. a bias for or against the complainant or subject officer.

## Section II.G.

b. Procedure

- i. No later than 7 days of the date of mailing of the Hearing Packet, which includes the names of the Board members constituting the Hearing Panel, the complainant or the subject officer(s) may file a written challenge for cause to any Board member. Such challenge must specify the nature of the conflict of interest.
- ii. The Director shall contact the challenged Board member as soon as possible after receipt of the challenge.
- iii. If the Board member agrees to recuse themselves, the Director shall ask another Board member to serve.
- iv. If the Board member disagrees that the challenge is for good cause, they shall state their reasons in writing, and the Director shall make this determination. If the Director finds good cause for the challenge, the Director shall inform the challenged Board member and ask another to serve.
- v. If the Director rejects a challenge to a Board member and the Board member serves, the written challenge and the Board member's written response shall be made part of the hearing record.

- c. Replacement of Board member. Any Board member who is unable to serve for any reason shall be replaced by another Board member, except in cases involving a death.

(PRC Reg. Sec. VI.C., modified.)

**H. Continuance requests; other pre-hearing motions**

1. Pre-hearing continuance requests. Requests to continue a hearing must be made to the Director as soon as the cause for continuance arises. The Director may grant the request only for good cause. Factors in determining good cause include: reason for request, timeliness, prejudice to the other party, filing date of complaint, and previous continuance requests. A request for a continuance made within 3 business days of the hearing date shall not be granted unless the requester cannot attend due to a personal emergency or can demonstrate substantial prejudice if denied. A continuance granted at a subject officer's request shall toll any disciplinary time period under the Memorandum of Understanding between the City of Berkeley and the Berkeley Police Association and the 60-day time limitation under Article XVIII, Section 125(18)(i). (PRC Reg. Sec. VII.C.4., modified)
2. Newly Discovered Evidence or Witnesses. The complainant and subject officer shall provide any newly discovered evidence or witnesses' names to the ODP staff no later than 14 days before the scheduled hearing date, with an explanation as to why the evidence or

## Section II.H.

witnesses could not have been discovered earlier and its significance. ODPa staff shall inform the Hearing Panel of the newly discovered evidence or witnesses as soon as possible.

The Hearing Panel shall decide whether or not to allow the evidence or witnesses no later than 4 business days before the scheduled hearing date, and ODPa staff shall notify both the complainant and the subject officer of the Hearing Panel's decision. (PRC Reg. Sec. VII.C.1.)

3. Procedural issues. The complainant and subject officer shall raise any procedural issues by submitting them in writing to the Director at least 7 days before the hearing date. Procedural issues can include, without limitation,: expiration of the 1-year limitation period under Government Code section 3304, or whether an officer should testify. (PRC Reg. Sec. VII.C.2.)

### I. Hearing procedures

1. Who may or must be present at hearing. Hearings are closed to the public. The Director and Investigator may be present during the entirety of the hearing. The Duty Command Officer may be present for all but the Board members' deliberations. (PRC Reg. VII.D.1.) The complainant and the subject officer shall be present to answer questions from Board members, subject to state law. (Art. XVIII, Sec. 125(18)(i).) An attorney or other representative for the complainant or the subject officer may participate in the hearing, but a representative is not required, and the complainant or subject officer is responsible for ensuring their representative's presence at the hearing. (PRC Reg. VII.D.2.)
2. Continuances. If good cause is shown, the Hearing Panel may continue the hearing due to the unanticipated unavailability of a witness or a representative. (PRC Reg. Sec. VII.D.3.)
3. Party's failure to appear. Absent good cause, if the complainant fails to appear within 30 minutes of the scheduled hearing time, the complaint will be dismissed. Absent good cause, if the subject officer fails to appear within 30 minutes of the scheduled hearing time, the hearing will proceed and the allegations may be sustained. (PRC Reg. Sec. VII.D.4.)
4. Lack of full Hearing Panel. If two Hearing Panel members are present but a third fails to appear within 30 minutes of the scheduled hearing time, the hearing will be continued until a third Hearing Panel member is seated, unless all parties agree to proceed with two Hearing Panel members, in which case all findings must be unanimous. (PRC Reg. Sec. VII.D.5.)
5. Chair of panel. The Hearing Panel shall select one member to serve as the Chairperson of the hearing. (PRC Reg. Sec. VI.A.)

## Section II.I.

- ~~6. Presentation of findings and recommendations. The Director shall, outside of the presence of the complainant, complainant's representative, and witnesses, present the investigative findings and a recommendation of discipline, if any; and the level of discipline in appropriate cases. (Derived from Art. XVIII, Sec. 125(18)(i).)~~
- ~~7.6.~~ Taking testimony at the hearing.
- a. The complainant and any civilian witnesses will be called into the hearing room to testify separately; the subject officers and their representatives may be present during their testimony. The complainant or their representative may make a statement or rely on the interview statements. Questioning will then proceed as follows: a) The complainant or the complainant's representative may ask questions; b) Board members may ask questions; ~~b<sub>c</sub>)~~ the subject officer or his or her representative may ask questions; ~~ed)~~ Board members may ask follow-up questions. After questioning is completed, the complainant or their representative will have up to 15 minutes to provide a summary of their case and a closing statement. (PRC Reg. Sec. VII.D.7., modified)
  - b. ~~The complainant and their representative, and civilian witnesses will each be excused from the hearing room after their testimony or representation is completed. (PRC Reg. Sec. VII.D.8.)~~
  - c. The subject officers and any witness officers will be called into the hearing room to testify separately. The complainant and their representative may be present during their testimony. Subject officer representatives may be present for all testimony. Each subject officer may make a statement or choose to rely on the interview statements. Questioning will then proceed as follows: 1. Subject officers' representatives may ask questions. 2. Board members may ask questions. The officer may then be questioned by 2 Board members unless the officer waives this requirement. 3. Complainant or their representatives may ask questions. 4. Board members may ask follow up questions. Each subject officer will be questioned by their representative first, after which the officer may be questioned by 2 Board members, unless the officer waives this requirement. After questioning is completed, each subject officer will have up to 15 minutes to provide a summary of their case and a closing statement.
  - d. ~~The subject officers and witness officers will each be excused from the hearing room after their testimony is completed. (PRC Reg. Sec. VII.D.9.) All except Board members and staff will then be excused from the hearing room.~~
- ~~8-7.~~ Subpoenas. The Board may issue subpoenas to compel the production of books, papers, and documents as needed to carry out their duties and functions. (Art. XVIII, Sec. 125(20)(c).)

Section II.I.

9-8. Maintaining order. No person at hearing shall become subject of undue harassment, personal attack, or invective. If the chairperson fails to maintain reasonable order, BPD employees may leave the hearing without prejudice. The burden shall be upon the BPD employee to establish to the City Manager's satisfaction that their reason for leaving was sufficient. (PRC Reg. Sec. VII.D.10.)

*[Formatting issue. Unable to delete section break without causing additional formatting problems.]*

## Section II.J.

**J. Evidence**

1. General. The hearing need not be conducted according to technical rules of evidence. Any relevant evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs.
2. Procedure. Evidence shall be taken in accordance with the following provisions:
  - a. The complainant and subject officers shall have the right to testify and refer to any relevant evidence that has been entered into the record. If the complainant or subject officers do not testify on their own behalf, they may be called and examined as if under cross-examination.;
  - b. Oral evidence shall be taken only under oath.
  - c. The Chairperson shall exclude irrelevant and unduly repetitious evidence.
  - d. The Chairperson shall exclude unruly or disruptive persons from the hearing.
  - e. The Chairperson will conduct the hearing subject to being overruled by a majority of the Hearing Panel members. Hearing Panel members shall be primarily responsible for obtaining testimony. ODPa staff will answer Board members' questions on the evidence, points of law, and procedure.
  - f. The City Attorney's opinion will be sought whenever the interpretation of a City Ordinance or the City Charter is contested and pivotal to the case, or when a case raises substantial legal issues of first impression.
  - g. If the Hearing Panel needs additional evidence or an opinion from the City Attorney to reach its findings, it may continue the hearing to a future date.
  - h. If either party requests that the hearing be continued to consider motions or points of law, any applicable BPD disciplinary time limit shall be tolled for the period of such continuance.
3. Judicial disposition. Either party may present to the Hearing Panel evidence of the disposition of a related matter by any branch of the judiciary (including but not limited to superior court, traffic court, and small claims court), and the Hearing Panel shall accept those findings as true.

(PRC Reg. Sec. VII.E.)

## Section II.K.

**K. Deliberation and Findings**

1. Deliberation. After the hearing has concluded, the Hearing Panel deliberates outside the presence of everyone except ODPA staff. The Hearing Panel shall not consider any information not received in the hearing packet or during the hearing. (PRC Reg. Sec. VIII.A.)
2. Vote. The Hearing Panel shall affirm, modify, or reject the findings and recommendation of the Director of Police Accountability. (Art. XVIII, Sec. 125(18)(j).) All action of the Hearing Panel shall be by majority vote of those Board members present. (PRC Reg. Sec. VIII.B.)
3. Transmittal of findings. The Hearing Panel's decision must be submitted in writing to the Chief of Police within 15 days of the hearing (Art. XVIII, Sec. 125(18)(j)), unless extended as provided under Section II.~~OM~~.2. (Art. XVIII, Sec. 125(18)(m).)
4. Content of findings.
  - a. If the Hearing Panel agrees with the findings and recommendations of the Director, no explanation is required.
  - b. If the Hearing Panel modifies or rejects a finding or recommendation of the Director, the Hearing Panel shall provide an explanation of its decision. (Art. XVIII, Sec. 125(18)(j).)
  - c. Any Hearing Panel member dissenting from a finding or recommendation of the majority shall submit a separate written explanation of their reasoning (PRC Reg. Sec. VIII.B.), unless the dissenter agrees with the Director's finding and recommendation. (NEW)

**L. Findings of Chief of Police; tentative decision; final determination by Chief or City Manager.**

1. Chief's decision. Within 10 days of receiving the findings and recommendations from the Director under Section II.~~GE~~.5.a. above, or from the Hearing Panel under Section II.~~MK~~.3.b. above, the Chief of Police shall take one of the following actions
  - a. Issue a final decision if the Chief agrees with the Director or with the Hearing Panel.
  - b. Submit a tentative decision to the Director and the Police Accountability Board.
2. Director's request to review tentative decision. If the Chief submits a tentative decision, the Director may request, within 10 days of receiving the decision, that the Chief submit the decision to the City Manager. If the Director does not make the request, the Chief's decision becomes final.

## Section II.L.

3. City Manager's final decision. Within 25 days of receiving the submittal from the Chief, the City Manager or their designee shall submit a final determination, with a written explanation, to the Director, the Board, and the Chief.

(Art. XVIII, Sec. 125(18)(k).)

4. Extension of time. The deadlines in this Section II.L may be extended as provided under Section II.OM.2. (Art. XVIII, Sec. 125(18)(m).)

**M. Time limits; extensions.**

1. Overall limit. The time limit for investigations and notification of discipline is 240 days from the date of the City's discovery of alleged misconduct, unless a Government Code section 3304(d) exception applies. (Art. XVIII, Sec.(125)(18)(d).)
2. Other time limits. The deadlines for the Director to complete an investigation, present investigative findings to the Board, submit findings and recommendations to the Chief of Police, or request that the Chief submit a tentative decision to the City Manager; as well as deadlines for the Chief to act on findings and recommendations from the Director or Hearing Panel, and for the City Manager or their designee to make a final decision, are advisory, and may be adjusted by the Director after consulting with the City Manager and Chief, to ensure that all investigations and notifications are completed within 240 days. The timeline for completing an investigation shall not be extended beyond 195 days. (Art. XVIII, Sec.125(18)(m).)

**III. CONTESTING FINDINGS OF DECISION WHEN COMPLAINT FILED WITH THE POLICE DEPARTMENT.****A. Application**

1. This Section III applies to complaints that a member of the public files with the Police Department only.

**B. Procedure**

1. When the Internal Affairs division of the Police Department has completed its investigation of a complaint, the Chief of Police shall issue a letter of disposition to the subject officer and the Director. The Chief shall also issue a letter of disposition to the complainant that complies with the Penal Code. (Art. XVIII, Sec. 125(19)(d).)
2. If a finding is "not sustained," "unfounded," or "exonerated," the complainant has 20 days from the date notice is sent (by mail or other reasonable means that the complainant agrees to), to contest the Chief's determination to the Director. (Art. XVIII, Sec. 125(19)(e).) The Director, if appropriate, may request to review all files, transcripts, and records related to the complaint. (Art. XVIII, Sec. 125(19)(e)(1).)



## Section III.B.

3. Within 15 days of receiving an objection from a complainant or a notice from the Chief that a complainant has objected, the Director, in their discretion, may notify the complainant that either:
  - a. The objection is accepted and the Board will convene a Review Panel to conduct a review based on the investigative record provided by the Department; or
  - b. The objection is dismissed. In such cases, the Director must notify the Board of such dismissal in writing within 30 days of notifying the complainant of the dismissal.

(Art. XVIII, Sec. 125(19)(e)(1); Review Panel added.)
4. If the Director decides that the Board will conduct a review, ODPa staff shall secure a Review Panel of three Board members to conduct a review of the investigative record at a closed session meeting.
  - a. At the meeting, only Review Panel members and ODPa staff will be present. A Duty Command Officer may be present.
  - b. The Review Panel shall evaluate the investigative record to determine whether the complainant's objection has merit, either because the Department failed to proceed in a manner required by state and federal law, or because the Chief's decision is not supported by the evidence in the record.
  - c. All action of the Review Panel must be by majority vote.

(NEW. Details not in Charter and no counterpart in PRC procedures.)
5. The Review Panel must, within 45 days of the date the Director accepts an objection:
  - a. Dismiss the complainant's objection; or
  - b. Issue a report agreeing with the Chief's determination; or
  - c. Issue a report disagreeing with the Chief's determination if the Review Panel finds that: 1) the Department failed to proceed in a manner required by state and federal law; or 2) the Chief's decision is not supported by the evidence in the record. The Director shall submit this report to the Chief and the City Manager.

(Art. XVIII, Secs. 125(19)(f), 125(19)(g).)
6. Within 15 days of receiving a Review Panel's recommendation disagreeing with the Chief, the Chief may prepare a report for the City Manager addressing any concerns or objections. (Art. XVIII, Sec. 125(19)(g).)
7. Within 25 days of receiving the Chief's report, the City Manager or their designee shall consider the reports of both the Board and the Chief,

Section III.B.

and send a final determination with a written explanation to the Director, the Board, and the Chief. (Art. XVIII, Sec. 125(19)(g).)

8. The deadlines in this Section III are advisory, and may be adjusted by mutual agreement between the City Manager, the Director, and the Chief, to ensure that all investigations are completed such that the time limit for investigations and notification of discipline occurs within 240 days, and investigation of all complaints filed with the Police Department are completed within 120 days of the City's discovery of alleged misconduct, unless a Government Code section 3304(d) exception applies. (Art. XVIII, Sec. 125(19)(i).)

**IV. INFORMAL COMPLAINTS**

- A.** An informal complaint is a communication from a member of the public, not on a complaint form, that identifies an officer or officers by name, badge number, or other identifying features, and alleges any act of misconduct pertaining to the manner in which the officer performs their duties. Such complaints shall be treated confidentially.
- B.** ODPa staff shall contact the complainant to explain the policy complaint and formal individual complaint processes.
- C.** Informal complaints will be agendaized for a closed session at the next regular Board meeting and distributed to the Board in closed session, with notice to the named officer(s).
- D.** The Board shall consider the informal complaint and recommend what additional action, if any, the Director of Police Accountability should take.

(Adopted by the PRC Jan. 8, 2020.)

**V. AVAILABILITY AND AMENDMENT OF REGULATIONS**

- A.** These Interim Regulations shall be posted on the website of the Office of the Director of Police Accountability, and ODPa staff shall furnish them to any person requesting a copy.
- B.** Amendments to these Interim Regulations require a majority vote of the Board and ratification by the City Council.

(PRC Reg. Sec. IX, modified.)

**Police Accountability Board**  
**Office of the Director of Police Accountability**

**Interim Regulations for Handling Complaints Against Sworn Officers of the  
Police Department under City Charter Article XVIII, Section 125 (Measure II)**

**Preamble**

These interim regulations for handling complaints against sworn members of the Berkeley Police Department are issued in accordance with an amendment to the Charter of the City of Berkeley adding Article XVIII, Section 125, approved by the voters of the City as Measure II on November 3, 2020. Measure II establishes a Police Accountability Board (Board) and a Director of Police Accountability (Director), and is intended to promote public trust by providing for prompt, impartial and fair investigations of complaints by members of the public against sworn employees of the Berkeley Police Department. The Board and Director replace the Police Review Commission (PRC), established by Ordinance No. 4,644-N.S.

Under Resolution No. 69,531 N.S., the City Council directed that the core functions of the Board and Director be implemented by July 1, 2021. Under Article XVIII, Section 125(13)(c) of the City Charter, the Board must establish rules of procedure governing the conduct of its business, which are subject to ratification by the City Council. In order for the Director to accept and investigate complaints filed against sworn members of the Police Department beginning July 1, 2021, interim regulations are needed until such time as the Board adopts permanent regulations and the Council ratifies them.

These interim regulations reflect the procedures for handling complaints against police officers as set forth in Measure II as well as the provisions of the PRC Regulations for Handling Complaints Against Members of the Police Department (effective April 4, 2018) that are not in conflict with Measure II. They shall apply to all complaints that were pending with the PRC as of July 1, 2021, and all complaints filed with the Office of the Director of Police Accountability on and after July 1, 2021. Applicability of permanent regulations to these pending cases will be determined later.

**I. GENERAL PROVISIONS**

**A. Definitions**

The following definitions shall apply in these interim regulations:

1. Administrative Closure: Closure of a complaint before a confidential personnel hearing is held.
2. Aggrieved Party: Any person directly affected by the alleged police misconduct.
3. Allegation: An assertion of specific police misconduct.

## Section I.A.

4. Board Member: A member of the Police Accountability Board appointed by the City Council.
5. Chief; Police Chief: Chief of the Berkeley Police Department.
6. City's discovery of alleged misconduct: The City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct.
7. Complaint: A declaration that alleges misconduct by a sworn employee of the Berkeley Police Department.
8. Complainant: A member of the public who files a complaint with the Office of the Director of Police Accountability.
9. Days: Means calendar days unless otherwise specified.
10. Director of Police Accountability (Director): The individual appointed by the City Council to investigate complaints and carry out the operations of the Police Accountability Board and the Office of the Director of Police Accountability (ODPA).
11. Duty Command Officer (DCO): A sworn employee of the Berkeley Police Department designated by the Chief of Police to appear at a hearing or review proceeding to answer questions clarifying BPD policy.
12. Hearing Panel: Three Board members impaneled to conduct a confidential personnel hearing.
13. Investigator: Employee of the Office of Director of Police Accountability whose primary role is to investigate complaints filed with the ODP.
14. Mediation: A process of attempting to reach a mutually agreeable resolution, facilitated by a trained, neutral third party.
15. Police Accountability Board (Board): The body established by City Charter Article XVIII, Section 125.
16. Review Panel: Three Board members impaneled to conduct a review of a BPD investigative record.
17. Subject Officer: A sworn employee of the Berkeley Police Department against whom a complaint is filed.
18. Witness Officer: A sworn employee of the Berkeley Police Department who has personal knowledge of events described in a complaint, but is not a subject officer.

(PRC Reg. Sec. II.B., modified.)

## B. Confidentiality

1. Importance. In their capacity as Board members, each Board member will have access to confidential data or information related to Berkeley

## Section I.B.

Police Department personnel. ODPa staff will likewise have access to such confidential information. It is vitally important to the integrity of the complaint process under Measure II that all parties involved understand and adhere to the confidentiality of the process, and do all in their power to protect the privacy rights of Berkeley Police Department employees as required by law. (PRC Reg. Preamble.)

2. Duty. Board members, ODPa staff, and their agents and representatives shall protect and maintain the confidentiality of any records and information they receive consistent with state or federal law governing such records or information. (Art. XVIII, Sec. 125(20)(b).) In particular, such persons shall not violate the rights of sworn officers to confidentiality of personnel file information under Penal Code secs. 832.7, 832.8 (3(d)), and state law. Confidential information may be provided through witness testimony or through electronic or hard-copy transmission, and the obligation to maintain confidentiality applies, regardless of how the information is communicated. (PRC Reg. Sec. IV.A.)
3. Closed hearings; effect on public records. All confidential personnel hearings and closed session meetings relating to the investigation of complaints against sworn officers will be closed to the public. Records of these investigations are confidential and will not be disclosed to members of the public. However, any public records included in, or attached to, investigative reports shall remain public records. (PRC Reg. Sec. 1.A.)
4. Handling confidential information. For any proceeding in which hard copies of confidential information are distributed to Board members, each Board member shall return all confidential material to ODPa staff at the close of the proceedings, or as soon thereafter as practicable. (PRC Reg. Sec. IV.B.2.) For any proceeding in which electronic copies of confidential information are distributed to Board members, each Board member shall delete all confidential information as soon as the information is no longer needed, and promptly inform ODPa staff that they have done so. (NEW)
5. Effect of violation. A Board member who violates confidentiality before or during a confidential personnel hearing shall be automatically disqualified from further participation in the hearing. Additionally, a Board member or the Director may agendize an alleged violation of confidentiality for discussion and action at a regular meeting of the Board, which may take adverse action upon a two-thirds vote of those present. Such adverse action may include: notice of the violation to the Board member's nominating Councilmember or to the City Council, or a prohibition from participating in future confidential personnel hearings for the remainder of the Board member's term. (PRC Reg. VI.D.3.)

## Section II.A.

**II. COMPLAINTS FILED WITH THE OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY****A. Initiating a complaint**

1. Complaint form. A complaint alleging misconduct by one or more sworn officers of the Berkeley Police Department must be filed on a form provided by the Office of the Director of Police Accountability. (Art. XVIII, Sec. 125(18)(a)(1); PRC Reg. Secs. I.B.7, II.A.1.) Complaint packets must include information about the difference between mediation and an investigation; language advising a complainant who is the subject of, or has commenced, litigation relating to the incident that gave rise to the complaint to consult an attorney before filing a complaint; and conclude with the following: "I hereby certify that, to the best of my knowledge, the statements made herein are true. I also understand that my oral testimony before the Board shall be given under oath." Complaints shall be signed by the complainant, except for complaints initiated by the Board. (PRC Reg. Sec. II.A.1.)
2. Who may file. Aggrieved parties, as well as eyewitnesses to alleged police misconduct, may file a complaint. Complaints may also be initiated by the Board upon a vote of five Board members to authorize an investigation. (PRC Reg. Secs. I.B.2., II. A.3.)
3. Filing period. A complaint must be filed within 180 days of the alleged misconduct, except that the 180 days shall be tolled if:
  - a) the complainant is incapacitated or otherwise prevented from filing a complaint; or
  - b) the complainant is the subject of a criminal proceeding related to the subject matter of the complaint, in which case the time for the complainant to file is tolled until the criminal matter has been adjudicated or dismissed.(PRC Reg. Sec. II.A.2.)
4. Sufficiency of complaint. Complaints must allege facts that, if true, would establish that misconduct occurred. Complaints that do not allege prima facie misconduct, or are frivolous or retaliatory, shall be submitted by the Director to the Board for administrative closure at the next regular meeting that allows the complainant to be provided at least 5 days' notice. If a majority of Board members agree, the case will be closed; if the Board rejects the Director's recommendation, the Notice of Complaint and Allegations must be issued within 10 days, unless the complainant has elected mediation. This section does not apply to complaints initiated by the Board under Section II.A.2. (PRC Reg. Sec. II.A.4.a.)

## Section II.A.

5. Right to representation. Complainants and subject officers have the right to consult with, and be represented by, an attorney or other representative, but a representative is not required. If the ODPa is notified that a complainant or subject officer is represented, then the ODPa shall thereafter send copies of any materials or notices provided to the complainant or subject officer(s) to their representatives. (PRC Reg. Sec. II.A.5.)

**B. Mediation**

## 1. Election

- a. ODPa staff shall provide every complainant with information about the option to select mediation, and make every effort to ensure complainants understand this option. The complainant may elect to enter into mediation up until they are notified that the Director has submitted findings and recommendations as set forth in Section II. G.1 below.
- b. If the complainant elects mediation, ODPa staff shall notify the subject officer within 7 days that the complainant has opted for mediation, and include a copy of the complaint if not previously provided. This notice shall also inform the subject officer of their right to agree to or reject mediation within 10 days.
- c. A subject officer who agrees to mediation must agree to toll the City's 240-day disciplinary deadline if the officer later withdraws from mediation before mediation session begins.
- d. Once both parties agree to mediation, the complainant no longer has the option to have their complaint investigated and to proceed to a confidential personnel hearing, unless the subject officer withdraws from mediation.

## 2. Completion

After receiving notice from the mediator that a mediation has concluded, ODPa staff shall close the case and inform the Board.

(Art. XVIII, Sec. 125(18)(a)(2); PRC Reg. Sec. II.B., modified)

**C. Complaint investigation**

1. Time for completion. Complaint investigations must begin immediately, proceed expeditiously, and be completed within 120 days of the City's discovery of the alleged misconduct, unless a Government Code sec. 3304(d) applies (Art. XVIII, Sec. 125(18)(e)), except:
  - a. If the complainant or subject officer is the subject of criminal proceedings related to the complaint, the ODPa shall not commence an investigation until the criminal matter is adjudicated or dismissed. All time limits for processing the complaint shall be

## Section II.C.

tolled during the pendency of the proceedings. As soon as practicable after the filing of a complaint, the ODPA shall contact the District Attorney's Office to determine the status and anticipated resolution of the criminal proceeding (PRC Reg. Sec. III.C.3.).

- b. A longer time period for the investigation, not to exceed 195 days, may be agreed upon as provided under Section II.O.
2. Transmittal of complaint. Complaints accepted by the Director shall be sent by hard copy or electronically to the Chief of Police, BPD Internal Affairs, Board members, and each sworn officer against whom the complaint is filed. (Art. XVIII, Sec. 125(18)(g).)
  3. Notice of Complaint and Allegations. Within 28 days of a complaint filing or the acceptance of a late-filed complaint, the ODPA shall prepare and send a Notice of Complaint and Allegations by hard copy or electronically to the complainant, the Chief of Police or BPD Internal Affairs, and each identified subject officer. The Notice of Complaint and Allegations need not be sent if the complaint requests mediation, or the Director recommends administrative closure. (PRC Reg. Sec. III.B.1, modified.)
  4. Sworn officers' schedules. The Chief of Police or their designee shall provide ODPA staff with the schedules of all sworn employees of the Police Department. (PRC Reg. Sec. VII.A.1.)
  5. Nature of investigation. The investigation shall consist of conducting recorded interviews with the complainant, subject officers, witness officers, and civilian witnesses; and collecting relevant documentary evidence, including, but not limited to, photographic, audio, and video evidence. (PRC Reg. Sec. III.C.1.)
  6. Production, subpoena, and preservation of records. The Berkeley Police Department and all other City departments must produce records and information requested by the Office of the Director of Police Accountability and Board in connection with investigations, without redaction or limitation, unless required by state or federal law. (Art. XVIII, Sec. 125(20)(a).)
    - a. The Director may issue subpoenas to compel the production of books, papers, and documents as needed to carry out their duties and functions. (Art. XVIII, Sec. 125(20)(c).)
    - b. Whenever a PRC investigation is tolled, the Chief of Police shall take appropriate steps to assure preservation of the following items of evidence:
      - I. The original Communications Center tapes relevant to the complaint.



## Section II.C.

- II. All police reports, records, and documentation, including body-worn camera video.
  - III. Names, addresses, telephone numbers, and statements of all witnesses. (PRC Reg. Sec. II.E.2.)
7. Interview notices. Subject officers and witness officers must appear for interviews related to complaints. (Art. XVIII, Sec. 125(20)(c); PRC Reg. Exhibit A.) ODPa staff shall notify subject and witness officers at least 9 days before a scheduled interview date by hard copy or, when feasible, email. An officer who is unavailable for an interview shall contact the Director or the Investigator immediately to state the reason for their unavailability. (PRC Reg. Sec. III.D.2.)
8. Conduct of interviews, exercise of Constitutional rights. Interviews should be conducted such that they produce a minimum of inconvenience and embarrassment to all parties. Subject and witness officer interviews shall be conducted in compliance with the Public Safety Officers' Procedural Bill of Rights Act<sup>1</sup> ("POBRA"). When possible, ODPa staff shall avoid contacting BPD employees at home, and avoid contacting others at their place of employment. (PRC Reg. Sec. III.D.1.) While all officers have a right to invoke the Fifth Amendment, they also have a duty to answer questions before the ODPa regarding conduct and observations that arise in the course of their employment, and are subject to discipline for failure to respond. The exercise of any constitutional rights shall not be considered by the Board in its disposition of a complaint (PRC Reg. Sec. III.D.3.)

**D. Pre-hearing complaint disposition.**

## 1. Administrative Closure

a. Grounds

The grounds upon which a complaint may be administratively closed include but are not limited to the following:

- i. Complaint does not allege prima facie misconduct or is frivolous or retaliatory.
- ii. Request for closure by complainant.
- iii. Unavailability of complainant where staff has attempted at least 3 telephone, electronic mail and/or regular mail contacts. Attempts to reach the complainant by telephone and/or mail shall be documented in the recommendation for Administrative Closure.

---

<sup>1</sup> Government Code Sec. 3300 et seq.

## Section II.E.

- iv. Mootness of the complaint including but not limited to situations where the subject officer's employment has been terminated or where the complaint has been resolved by other means.
- v. Failure of the complainant to cooperate, including but not limited to: refusal to submit to an interview, to make available essential evidence, to attend a hearing, and similar action or inaction by a complainant that compromises the integrity of the investigation or has a significant prejudicial effect.
- vi. Failure of ODPa staff to timely complete its investigation, as set forth in Section II.C.1.

- b. Procedure

A complaint may be administratively closed by a majority vote of Board members during closed session at a meeting. The complainant shall be notified of the opportunity to address the Board during the meeting no later than 7 days before the meeting. Cases closed pursuant to this section shall be deemed "administratively closed" and the complainant, the subject officer, and the Chief of Police shall be notified by mail.

- c. Effect of Administrative Closure

Administrative Closure does not constitute a judgment on the merits of the complaint.

(PRC Reg. Sec. V.A.)

## 2. No Contest Response

A subject officer who accepts the allegations of the complaint as substantially true may enter a written response of "no contest" at any time before the Director submits their findings and recommendations to the Board under Section II.G.1. If the subject officer sends a "no contest" response, the Director shall so notify the Board when findings and recommendations are sent to them. (PRC Reg. Sec. V.B., modified)

## E. Initial submission and consideration of investigative findings and recommendations.

- 1. Time to submit. Within 60 days of completing an investigation, the Director must submit and present investigative findings and recommendations to the Board in a closed session and convene a confidential personnel hearing if the Board requests it. (Art. XVIII, Sec. 125(18)(i).) This deadline may be extended as provided under Section II.O.

## Section II.E.

2. Standard of proof. In determining whether a sworn officer has committed misconduct, the standard is “preponderance of the evidence.” (Art. XVIII, Sec. 125(18)(c).)
3. Categories of Findings
  - a. If the evidence shows that the alleged act did not occur, the finding shall be “Unfounded.”
  - b. If the evidence fails to support the allegations, but the allegations cannot be shown as false, the finding shall be “Not Sustained.”
  - c. If the evidence shows that the alleged act did occur, but was lawful, justified, and proper, the finding shall be “Exonerated.”
  - d. If the evidence shows that the alleged act did occur and the action was not justified, the finding shall be “Sustained.”

(PRC Regs., Sec. VIII.B.)
4. Recommendation of discipline and level of discipline. If the Director recommends a “sustained” finding on any allegation of misconduct, a recommendation of whether discipline is warranted must also be included. For those cases where an allegation of misconduct, if sustained, would involve any of the classes of conduct described in Penal Code 832.7, as enacted pursuant to Senate Bill 1421, the Director must include a recommendation regarding the level of discipline. (Art. XVIII, Sec. 125(18)(i).)
5. Board decision. Upon reviewing the Director’s investigative findings, the Board must then decide whether to hold a confidential personnel hearing.
  - a. If the Board agrees with the Director on all findings and recommendations, (i.e., no need for hearing), the Director shall send the findings and recommendations to the Chief of Police. The findings and recommendations must be sent within 195 days of the City’s discovery of alleged misconduct, except if extended as provided under Section II.M.2.
  - b. If the Board decides that further fact-finding is needed, the Board may vote to hold a confidential personnel hearing.

(Art. XVIII, Sec. 125(18)(i).)

**F. Scheduling a hearing, assigning Hearing Panel members, distributing hearing packet.**

1. Time. If the Board decides to move forward with a confidential personnel hearing, it must be held within 60 days of the date the ODPa has completed its investigation. (Art. XVIII, Sec. 125(18)(i).)

## Section II.F.

2. Scheduling hearing. ODPa staff shall determine the availability of subject officers before setting a hearing date and time. Hearings are not to be scheduled on an officer's day off or during vacation or other leave, unless two or more subject officers on same complaint do not share a common day on duty. (PRC Reg. Sec. VII.A.1.)
3. Hearing Panel. ODPa staff shall secure a Hearing Panel to conduct the confidential personnel hearing. A Hearing Panel shall consist of three Board members, except that in death cases and any cases in which six Board members vote to sit as a whole, the entire Board, with a minimum of six Board members, will constitute the Hearing Panel. (PRC Reg. Sec. VI.A.)
4. Obligation to serve; unavailability. Board members must serve on roughly an equal number of Hearing Panels each year. (PRC Reg. Sec. VI.B.1.) If a Hearing Panel member becomes unavailable, they shall be replaced by another Board member, and notice of substitution shall issue as soon as possible. If substituted within 7 days of a hearing, the subject officer retains the right to challenge the Board member for cause. The notice of challenge of a substituted Board member must be made at least 3 business days before convening the hearing and constitutes good cause for continuing the hearing. (PRC Reg. Sec. VI.B.2.)
5. Effect of continuance. If a hearing is rescheduled due to unavailability of the complainant, a subject officer, or either party's attorney, another Hearing Panel may be assigned. However, the Hearing Panel composition shall not change after the hearing has been convened. (PRC Reg. Sec. VI.B.3)
6. Notice of hearing. The ODPa must issue a written hearing notice at least 14 days before the hearing to all parties, witnesses, representatives, Hearing Panel members, and the Police Chief. This notice must include the time, date, and location of the hearing, and the composition of the Hearing Panel. (PRC Reg. Sec. VII. A.2)
7. Hearing Packet. The ODPa shall provide the Hearing Panel with a Hearing Packet, which shall contain the Director's findings and recommendations, and all evidence and documentation obtained or produced during the investigation (Art. XVIII, Sec. 125(18)(i)), at least 14 days before the hearing date. The Hearing Packet shall also be sent to the subject officer(s), any representatives, the Duty Command Officer, and the Police Chief. The complainant shall receive a Hearing Packet without documents containing confidential investigatory materials or findings and recommendations. Witness officers and civilian witnesses shall receive a copy of only their interview transcript. (PRC Reg. Sec. VII.B., modified.)

## Section II.G.

**G. Board member impartiality; recusals; challenges**

1. Conduct.
  - a. Board members shall maintain basic standards of fair play and impartiality, and avoid bias and the appearance of bias. In confidential personnel hearings, they shall hear all viewpoints. (Art. XVIII, Sec. 125(8)(b).)
  - b. No member of a Hearing Panel shall publicly state an opinion regarding policies directly related to the subject matter of a pending complaint; publicly comment on any of the facts or analysis of a pending complaint; or pledge or promise to vote in any particular manner in a pending complaint. (PRC Reg. Sec. VI.D.2.)
  - c. A Board member who violates Section G.1.b above, before or during a confidential personnel hearing, shall be automatically disqualified from further participation in the hearing. Additionally, a Board member or the Director may agendize an alleged violation of that Section for discussion and action at a regular meeting of the Board, which may take adverse action upon a two-thirds vote of those present. Such adverse action may include: notice of the violation to the Board member's nominating Councilmember or to the City Council, or a prohibition from participating in future confidential personnel hearings for the remainder of the Board member's term. (PRC Reg. VI.D.3.)
2. Recusal; disclosure of ex parte contacts. Board members recused for a conflict of interest must do so immediately when an item is taken up. Board members shall verbally disclose all ex parte contacts concerning the subject of the hearing and shall submit a written report of such contacts before the hearing begins. Ex parte contacts include any contact between a Board member and any party involved in the complaint before the public hearing. (Art. XVIII, Sec. 125(8)(b)(2).)
3. Challenges to Hearing Panel member
  - a. Basis for Challenge. A Board member who has a personal interest, or the appearance thereof, in the outcome of a hearing shall not sit on the Board. Personal interest in the outcome of a hearing does not include political or social attitudes or beliefs. Examples of personal bias include, but are not limited to:
    - i. a familial relationship or close friendship with the complainant or subject officer;
    - ii. witnessing events material to the inquiry;
    - iii. a financial interest in the outcome of the inquiry;
    - iv. a bias for or against the complainant or subject officer.

## Section II.G.

b. Procedure

- i. No later than 7 days of the date of mailing of the Hearing Packet, which includes the names of the Board members constituting the Hearing Panel, the complainant or the subject officer(s) may file a written challenge for cause to any Board member. Such challenge must specify the nature of the conflict of interest.
  - ii. The Director shall contact the challenged Board member as soon as possible after receipt of the challenge.
  - iii. If the Board member agrees to recuse themselves, the Director shall ask another Board member to serve.
  - iv. If the Board member disagrees that the challenge is for good cause, they shall state their reasons in writing, and the Director shall make this determination. If the Director finds good cause for the challenge, the Director shall inform the challenged Board member and ask another to serve.
  - v. If the Director rejects a challenge to a Board member and the Board member serves, the written challenge and the Board member's written response shall be made part of the hearing record.
- c. Replacement of Board member. Any Board member who is unable to serve for any reason shall be replaced by another Board member, except in cases involving a death.

(PRC Reg. Sec. VI.C., modified.)

**H. Continuance requests; other pre-hearing motions**

1. Pre-hearing continuance requests. Requests to continue a hearing must be made to the Director as soon as the cause for continuance arises. The Director may grant the request only for good cause. Factors in determining good cause include: reason for request, timeliness, prejudice to the other party, filing date of complaint, and previous continuance requests. A request for a continuance made within 3 business days of the hearing date shall not be granted unless the requester cannot attend due to a personal emergency or can demonstrate substantial prejudice if denied. A continuance granted at a subject officer's request shall toll any disciplinary time period under the Memorandum of Understanding between the City of Berkeley and the Berkeley Police Association and the 60-day time limitation under Article XVIII, Section 125(18)(i). (PRC Reg. Sec. VII.C.4., modified)
2. Newly Discovered Evidence or Witnesses. The complainant and subject officer shall provide any newly discovered evidence or witnesses' names to the ODP staff no later than 14 days before the

## Section II.H.

scheduled hearing date, with an explanation as to why the evidence or witnesses could not have been discovered earlier and its significance. ODPa staff shall inform the Hearing Panel of the newly discovered evidence or witnesses as soon as possible.

The Hearing Panel shall decide whether or not to allow the evidence or witnesses no later than 4 business days before the scheduled hearing date, and ODPa staff shall notify both the complainant and the subject officer of the Hearing Panel's decision. (PRC Reg. Sec. VII.C.1.)

3. Procedural issues. The complainant and subject officer shall raise any procedural issues by submitting them in writing to the Director at least 7 days before the hearing date. Procedural issues can include, without limitation, expiration of the 1-year limitation period under Government Code section 3304, or whether an officer should testify. (PRC Reg. Sec. VII.C.2.)

### I. Hearing procedures

1. Who may or must be present at hearing. Hearings are closed to the public. The Director and Investigator may be present during the entirety of the hearing. The Duty Command Officer may be present for all but the Board members' deliberations. (PRC Reg. VII.D.1.) The complainant and the subject officer shall be present to answer questions from Board members, subject to state law. (Art. XVIII, Sec. 125(18)(i).) An attorney or other representative for the complainant or the subject officer may participate in the hearing, but a representative is not required, and the complainant or subject officer is responsible for ensuring their representative's presence at the hearing. (PRC Reg. VII.D.2.)
2. Continuances. If good cause is shown, the Hearing Panel may continue the hearing due to the unanticipated unavailability of a witness or a representative. (PRC Reg. Sec. VII.D.3.)
3. Party's failure to appear. Absent good cause, if the complainant fails to appear within 30 minutes of the scheduled hearing time, the complaint will be dismissed. Absent good cause, if the subject officer fails to appear within 30 minutes of the scheduled hearing time, the hearing will proceed and the allegations may be sustained. (PRC Reg. Sec. VII.D.4.)
4. Lack of full Hearing Panel. If two Hearing Panel members are present but a third fails to appear within 30 minutes of the scheduled hearing time, the hearing will be continued until a third Hearing Panel member is seated, unless all parties agree to proceed with two Hearing Panel members, in which case all findings must be unanimous. (PRC Reg. Sec. VII.D.5.)

## Section II.I.

5. Chair of panel. The Hearing Panel shall select one member to serve as the Chairperson of the hearing. (PRC Reg. Sec. VI.A.)
6. Taking testimony at the hearing.
  - a. The complainant and any civilian witnesses will be called into the hearing room to testify separately; the subject officers and their representatives may be present during their testimony. The complainant or their representative may make a statement or rely on the interview statements. Questioning will then proceed as follows: a) The complainant or the complainant's representative may ask questions; b) Board members may ask questions; c) the subject officer or his or her representative may ask questions; d) Board members may ask follow-up questions. After questioning is completed, the complainant or their representative will have up to 15 minutes to provide a summary of their case and a closing statement. (PRC Reg. Sec. VII.D.7., modified)
  - b. The subject officers and any witness officers will be called into the hearing room to testify separately. The complainant and their representative may be present during their testimony. Subject officer representatives may be present for all testimony. Each subject officer may make a statement or choose to rely on the interview statements. Questioning will then proceed as follows: 1. Subject officers' representatives may ask questions. 2. Board members may ask questions. The officer may then be questioned by 2 Board members unless the officer waives this requirement. 3. Complainant or their representatives may ask questions. 4. Board members may ask follow up questions. After questioning is completed, each subject officer will have up to 15 minutes to provide a summary of their case and a closing statement.
  - c. All except Board members and staff will then be excused from the hearing room.
7. Subpoenas. The Board may issue subpoenas to compel the production of books, papers, and documents as needed to carry out their duties and functions. (Art. XVIII, Sec. 125(20)(c).)
8. Maintaining order. No person at hearing shall become subject of undue harassment, personal attack, or invective. If the chairperson fails to maintain reasonable order, BPD employees may leave the hearing without prejudice. The burden shall be upon the BPD employee to establish to the City Manager's satisfaction that their reason for leaving was sufficient. (PRC Reg. Sec. VII.D.10.)



## Section II.J.

**J. Evidence**

1. General. The hearing need not be conducted according to technical rules of evidence. Any relevant evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs.
2. Procedure. Evidence shall be taken in accordance with the following provisions:
  - a. The complainant and subject officers shall have the right to testify and refer to any relevant evidence that has been entered into the record. If the complainant or subject officers do not testify on their own behalf, they may be called and examined as if under cross-examination.;
  - b. Oral evidence shall be taken only under oath.
  - c. The Chairperson shall exclude irrelevant and unduly repetitious evidence.
  - d. The Chairperson shall exclude unruly or disruptive persons from the hearing.
  - e. The Chairperson will conduct the hearing subject to being overruled by a majority of the Hearing Panel members. Hearing Panel members shall be primarily responsible for obtaining testimony. ODPa staff will answer Board members' questions on the evidence, points of law, and procedure.
  - f. The City Attorney's opinion will be sought whenever the interpretation of a City Ordinance or the City Charter is contested and pivotal to the case, or when a case raises substantial legal issues of first impression.
  - g. If the Hearing Panel needs additional evidence or an opinion from the City Attorney to reach its findings, it may continue the hearing to a future date.
  - h. If either party requests that the hearing be continued to consider motions or points of law, any applicable BPD disciplinary time limit shall be tolled for the period of such continuance.
3. Judicial disposition. Either party may present to the Hearing Panel evidence of the disposition of a related matter by any branch of the judiciary (including but not limited to superior court, traffic court, and small claims court), and the Hearing Panel shall accept those findings as true.

(PRC Reg. Sec. VII.E.)

## Section II.K.

**K. Deliberation and Findings**

1. Deliberation. After the hearing has concluded, the Hearing Panel deliberates outside the presence of everyone except ODPA staff. The Hearing Panel shall not consider any information not received in the hearing packet or during the hearing. (PRC Reg. Sec. VIII.A.)
2. Vote. The Hearing Panel shall affirm, modify, or reject the findings and recommendation of the Director of Police Accountability. (Art. XVIII, Sec. 125(18)(j).) All action of the Hearing Panel shall be by majority vote of those Board members present. (PRC Reg. Sec. VIII.B.)
3. Transmittal of findings. The Hearing Panel's decision must be submitted in writing to the Chief of Police within 15 days of the hearing (Art. XVIII, Sec. 125(18)(j)), unless extended as provided under Section II.M.2. (Art. XVIII, Sec. 125(18)(m).)
4. Content of findings.
  - a. If the Hearing Panel agrees with the findings and recommendations of the Director, no explanation is required.
  - b. If the Hearing Panel modifies or rejects a finding or recommendation of the Director, the Hearing Panel shall provide an explanation of its decision. (Art. XVIII, Sec. 125(18)(j).)
  - c. Any Hearing Panel member dissenting from a finding or recommendation of the majority shall submit a separate written explanation of their reasoning (PRC Reg. Sec. VIII.B.), unless the dissenter agrees with the Director's finding and recommendation. (NEW)

**L. Findings of Chief of Police; tentative decision; final determination by Chief or City Manager.**

1. Chief's decision. Within 10 days of receiving the findings and recommendations from the Director under Section II.E.5.a. above, or from the Hearing Panel under Section II.K.3.b. above, the Chief of Police shall take one of the following actions
  - a. Issue a final decision if the Chief agrees with the Director or with the Hearing Panel.
  - b. Submit a tentative decision to the Director and the Police Accountability Board.
2. Director's request to review tentative decision. If the Chief submits a tentative decision, the Director may request, within 10 days of receiving the decision, that the Chief submit the decision to the City Manager. If the Director does not make the request, the Chief's decision becomes final.

## Section II.L.

3. City Manager's final decision. Within 25 days of receiving the submittal from the Chief, the City Manager or their designee shall submit a final determination, with a written explanation, to the Director, the Board, and the Chief.

(Art. XVIII, Sec. 125(18)(k).)

4. Extension of time. The deadlines in this Section II.L may be extended as provided under Section II.M.2. (Art. XVIII, Sec. 125(18)(m).)

**M. Time limits; extensions.**

1. Overall limit. The time limit for investigations and notification of discipline is 240 days from the date of the City's discovery of alleged misconduct, unless a Government Code section 3304(d) exception applies. (Art. XVIII, Sec.(125)(18)(d).)
2. Other time limits. The deadlines for the Director to complete an investigation, present investigative findings to the Board, submit findings and recommendations to the Chief of Police, or request that the Chief submit a tentative decision to the City Manager; as well as deadlines for the Chief to act on findings and recommendations from the Director or Hearing Panel, and for the City Manager or their designee to make a final decision, are advisory, and may be adjusted by the Director after consulting with the City Manager and Chief, to ensure that all investigations and notifications are completed within 240 days. The timeline for completing an investigation shall not be extended beyond 195 days. (Art. XVIII, Sec.125(18)(m).)

**III. CONTESTING FINDINGS OF DECISION WHEN COMPLAINT FILED WITH THE POLICE DEPARTMENT.****A. Application**

1. This Section III applies to complaints that a member of the public files with the Police Department only.

**B. Procedure**

1. When the Internal Affairs division of the Police Department has completed its investigation of a complaint, the Chief of Police shall issue a letter of disposition to the subject officer and the Director. The Chief shall also issue a letter of disposition to the complainant that complies with the Penal Code. (Art. XVIII, Sec. 125(19)(d).)
2. If a finding is "not sustained," "unfounded," or "exonerated," the complainant has 20 days from the date notice is sent (by mail or other reasonable means that the complainant agrees to), to contest the Chief's determination to the Director. (Art. XVIII, Sec. 125(19)(e).) The

## Section III.B.

Director, if appropriate, may request to review all files, transcripts, and records related to the complaint. (Art. XVIII, Sec. 125(19)(e)(1).)

3. Within 15 days of receiving an objection from a complainant or a notice from the Chief that a complainant has objected, the Director, in their discretion, may notify the complainant that either:
  - a. The objection is accepted and the Board will convene a Review Panel to conduct a review based on the investigative record provided by the Department; or
  - b. The objection is dismissed. In such cases, the Director must notify the Board of such dismissal in writing within 30 days of notifying the complainant of the dismissal.

(Art. XVIII, Sec. 125(19)(e)(1); Review Panel added.)

4. If the Director decides that the Board will conduct a review, ODPa staff shall secure a Review Panel of three Board members to conduct a review of the investigative record at a closed session meeting.
  - a. At the meeting, only Review Panel members and ODPa staff will be present. A Duty Command Officer may be present.
  - b. The Review Panel shall evaluate the investigative record to determine whether the complainant's objection has merit, either because the Department failed to proceed in a manner required by state and federal law, or because the Chief's decision is not supported by the evidence in the record.
  - c. All action of the Review Panel must be by majority vote.

(NEW. Details not in Charter and no counterpart in PRC procedures.)

5. The Review Panel must, within 45 days of the date the Director accepts an objection:
  - a. Dismiss the complainant's objection; or
  - b. Issue a report agreeing with the Chief's determination; or
  - c. Issue a report disagreeing with the Chief's determination if the Review Panel finds that: 1) the Department failed to proceed in a manner required by state and federal law; or 2) the Chief's decision is not supported by the evidence in the record. The Director shall submit this report to the Chief and the City Manager.

(Art. XVIII, Secs. 125(19)(f), 125(19)(g).)

6. Within 15 days of receiving a Review Panel's recommendation disagreeing with the Chief, the Chief may prepare a report for the City Manager addressing any concerns or objections. (Art. XVIII, Sec. 125(19)(g).)

## Section III.B.

7. Within 25 days of receiving the Chief's report, the City Manager or their designee shall consider the reports of both the Board and the Chief, and send a final determination with a written explanation to the Director, the Board, and the Chief. (Art. XVIII, Sec. 125(19)(g).)
8. The deadlines in this Section III are advisory, and may be adjusted by mutual agreement between the City Manager, the Director, and the Chief, to ensure that all investigations are completed such that the time limit for investigations and notification of discipline occurs within 240 days, and investigation of all complaints filed with the Police Department are completed within 120 days of the City's discovery of alleged misconduct, unless a Government Code section 3304(d) exception applies. (Art. XVIII, Sec. 125(19)(i).

**IV. INFORMAL COMPLAINTS**

- A.** An informal complaint is a communication from a member of the public, not on a complaint form, that identifies an officer or officers by name, badge number, or other identifying features, and alleges any act of misconduct pertaining to the manner in which the officer performs their duties. Such complaints shall be treated confidentially.
- B.** ODPA staff shall contact the complainant to explain the policy complaint and formal individual complaint processes.
- C.** Informal complaints will be agendaized for a closed session at the next regular Board meeting and distributed to the Board in closed session, with notice to the named officer(s).
- D.** The Board shall consider the informal complaint and recommend what additional action, if any, the Director of Police Accountability should take.

(Adopted by the PRC Jan. 8, 2020.)

**V. AVAILABILITY AND AMENDMENT OF REGULATIONS**

- A.** These Interim Regulations shall be posted on the website of the Office of the Director of Police Accountability, and ODPA staff shall furnish them to any person requesting a copy.
- B.** Amendments to these Interim Regulations require a majority vote of the Board and ratification by the City Council.

(PRC Reg. Sec. IX, modified.)

**Police Accountability Board**  
**Office of the Director of Police Accountability**

**Interim Regulations for Handling Complaints Against Sworn Officers of the  
Police Department under City Charter Article XVIII, Section 125 (Measure II)**

**Preamble**

These interim regulations for handling complaints against sworn members of the Berkeley Police Department are issued in accordance with an amendment to the Charter of the City of Berkeley adding Article XVIII, Section 125, approved by the voters of the City as Measure II on November 3, 2020. Measure II establishes a Police Accountability Board (Board) and a Director of Police Accountability (Director), and is intended to promote public trust by providing for prompt, impartial and fair investigations of complaints by members of the public against sworn employees of the Berkeley Police Department. The Board and Director replace the Police Review Commission (PRC), established by Ordinance No. 4,644-N.S.

Under Resolution No. 69,531 N.S., the City Council directed that the core functions of the Board and Director be implemented by July 1, 2021. Under Article XVIII, Section 125(13)(c) of the City Charter, the Board must establish rules of procedure governing the conduct of its business, which are subject to ratification by the City Council. In order for the Director to accept and investigate complaints filed against sworn members of the Police Department beginning July 1, 2021, interim regulations are needed until such time as the Board adopts permanent regulations and the Council ratifies them.

These interim regulations reflect the procedures for handling complaints against police officers as set forth in Measure II as well as the provisions of the PRC Regulations for Handling Complaints Against Members of the Police Department (effective April 4, 2018) that are not in conflict with Measure II. They shall apply to all complaints that were pending with the PRC as of July 1, 2021, and all complaints filed with the Office of the Director of Police Accountability on and after July 1, 2021. Applicability of permanent regulations to these pending cases will be determined later.

**I. GENERAL PROVISIONS****A. Definitions**

The following definitions shall apply in these interim regulations:

1. Administrative Closure: Closure of a complaint before a confidential personnel hearing is held.
2. Aggrieved Party: Any person directly affected by the alleged police misconduct.
3. Allegation: An assertion of specific police misconduct.

## Section I.A.

4. Board Member: A member of the Police Accountability Board appointed by the City Council.
5. Chief; Police Chief: Chief of the Berkeley Police Department.
6. City's discovery of alleged misconduct: The City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct.
7. Complaint: A declaration that alleges misconduct by a sworn employee of the Berkeley Police Department.
8. Complainant: A member of the public who files a complaint with the Office of the Director of Police Accountability.
9. Days: Means calendar days unless otherwise specified.
10. Director of Police Accountability (Director): The individual appointed by the City Council to investigate complaints and carry out the operations of the Police Accountability Board and the Office of the Director of Police Accountability (ODPA).
11. Duty Command Officer (DCO): A sworn employee of the Berkeley Police Department designated by the Chief of Police to appear at a hearing or review proceeding to answer questions clarifying BPD policy.
12. Hearing Panel: Three Board members impaneled to conduct a confidential personnel hearing.
13. Investigator: Employee of the Office of Director of Police Accountability whose primary role is to investigate complaints filed with the ODP.
14. Mediation: A process of attempting to reach a mutually agreeable resolution, facilitated by a trained, neutral third party.
15. Police Accountability Board (Board): The body established by City Charter Article XVIII, Section 125.
16. Review Panel: Three Board members impaneled to conduct a review of a BPD investigative record.
17. Subject Officer: A sworn employee of the Berkeley Police Department against whom a complaint is filed.
18. Witness Officer: A sworn employee of the Berkeley Police Department who has personal knowledge of events described in a complaint, but is not a subject officer.

(PRC Reg. Sec. II.B., modified.)

## **B. Confidentiality**

1. Importance. In their capacity as Board members, each Board member will have access to confidential data or information related to Berkeley

## Section I.B.

Police Department personnel. ODPa staff will likewise have access to such confidential information. It is vitally important to the integrity of the complaint process under Measure II that all parties involved understand and adhere to the confidentiality of the process, and do all in their power to protect the privacy rights of Berkeley Police Department employees as required by law. (PRC Reg. Preamble.)

2. Duty. Board members, ODPa staff, and their agents and representatives shall protect and maintain the confidentiality of any records and information they receive consistent with state or federal law governing such records or information. (Art. XVIII, Sec. 125(20)(b).) In particular, such persons shall not violate the rights of sworn officers to confidentiality of personnel file information under Penal Code secs. 832.7, 832.8 (3(d)), and state law. Confidential information may be provided through witness testimony or through electronic or hard-copy transmission, and the obligation to maintain confidentiality applies, regardless of how the information is communicated. (PRC Reg. Sec. IV.A.)
3. Closed hearings; effect on public records. All confidential personnel hearings and closed session meetings relating to the investigation of complaints against sworn officers will be closed to the public. Records of these investigations are confidential and will not be disclosed to members of the public. However, any public records included in, or attached to, investigative reports shall remain public records. (PRC Reg. Sec. 1.A.)
4. Handling confidential information. For any proceeding in which hard copies of confidential information are distributed to Board members, each Board member shall return all confidential material to ODPa staff at the close of the proceedings, or as soon thereafter as practicable. (PRC Reg. Sec. IV.B.2.) For any proceeding in which electronic copies of confidential information are distributed to Board members, each Board member shall delete all confidential information as soon as the information is no longer needed, and promptly inform ODPa staff that they have done so. (NEW)
5. Effect of violation. A Board member who violates confidentiality before or during a confidential personnel hearing shall be automatically disqualified from further participation in the hearing. Additionally, a Board member or the Director may agendize an alleged violation of confidentiality for discussion and action at a regular meeting of the Board, which may take adverse action upon a two-thirds vote of those present. Such adverse action may include: notice of the violation to the Board member's nominating Councilmember or to the City Council, or a prohibition from participating in future confidential personnel hearings for the remainder of the Board member's term. (PRC Reg. VI.D.3.)



## Section II.A.

**II. COMPLAINTS FILED WITH THE OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY****A. Initiating a complaint**

1. Complaint form. A complaint alleging misconduct by one or more sworn officers of the Berkeley Police Department must be filed on a form provided by the Office of the Director of Police Accountability. (Art. XVIII, Sec. 125(18)(a)(1); PRC Reg. Secs. I.B.7, II.A.1.) Complaint packets must include information about the difference between mediation and an investigation; language advising a complainant who is the subject of, or has commenced, litigation relating to the incident that gave rise to the complaint to consult an attorney before filing a complaint; and conclude with the following: "I hereby certify that, to the best of my knowledge, the statements made herein are true. I also understand that my oral testimony before the Board shall be given under oath." Complaints shall be signed by the complainant, except for complaints initiated by the Board. (PRC Reg. Sec. II.A.1.)
2. Who may file. Aggrieved parties, as well as eyewitnesses to alleged police misconduct, may file a complaint. Complaints may also be initiated by the Board upon a vote of five Board members to authorize an investigation. (PRC Reg. Secs. I.B.2., II. A.3.)
3. Filing period. A complaint must be filed within 180 days of the alleged misconduct, except that the 180 days shall be tolled if:
  - a) the complainant is incapacitated or otherwise prevented from filing a complaint; or
  - b) the complainant is the subject of a criminal proceeding related to the subject matter of the complaint, in which case the time for the complainant to file is tolled until the criminal matter has been adjudicated or dismissed.(PRC Reg. Sec. II.A.2.)
4. Sufficiency of complaint. Complaints must allege facts that, if true, would establish that misconduct occurred. Complaints that do not allege prima facie misconduct, or are frivolous or retaliatory, shall be submitted by the Director to the Board for administrative closure at the next regular meeting that allows the complainant to be provided at least 5 days' notice. If a majority of Board members agree, the case will be closed; if the Board rejects the Director's recommendation, the Notice of Complaint and Allegations must be issued within 10 days, unless the complainant has elected mediation. This section does not apply to complaints initiated by the Board under Section II.A.2. (PRC Reg. Sec. II.A.4.a.)

## Section II.A.

5. Right to representation. Complainants and subject officers have the right to consult with, and be represented by, an attorney or other representative, but a representative is not required. If the ODPa is notified that a complainant or subject officer is represented, then the ODPa shall thereafter send copies of any materials or notices provided to the complainant or subject officer(s) to their representatives. (PRC Reg. Sec. II.A.5.)

**B. Mediation**

## 1. Election

- a. ODPa staff shall provide every complainant with information about the option to select mediation, and make every effort to ensure complainants understand this option. The complainant may elect to enter into mediation up until they are notified that the Director has submitted findings and recommendations as set forth in Section II. G.1 below.
- b. If the complainant elects mediation, ODPa staff shall notify the subject officer within 7 days that the complainant has opted for mediation, and include a copy of the complaint if not previously provided. This notice shall also inform the subject officer of their right to agree to or reject mediation within 10 days.
- c. A subject officer who agrees to mediation must agree to toll the City's 240-day disciplinary deadline if the officer later withdraws from mediation before mediation session begins.
- d. Once both parties agree to mediation, the complainant no longer has the option to have their complaint investigated and to proceed to a confidential personnel hearing, unless the subject officer withdraws from mediation.

## 2. Completion

After receiving notice from the mediator that a mediation has concluded, ODPa staff shall close the case and inform the Board.

(Art. XVIII, Sec. 125(18)(a)(2); PRC Reg. Sec. II.B., modified)

**C. Complaint investigation**

1. Time for completion. Complaint investigations must begin immediately, proceed expeditiously, and be completed within 120 days of the City's discovery of the alleged misconduct, unless a Government Code sec. 3304(d) applies (Art. XVIII, Sec. 125(18)(e)), except:
  - a. If the complainant or subject officer is the subject of criminal proceedings related to the complaint, the ODPa shall not commence an investigation until the criminal matter is adjudicated or dismissed. All time limits for processing the complaint shall be

## Section II.C.

tolled during the pendency of the proceedings. As soon as practicable after the filing of a complaint, the ODPA shall contact the District Attorney's Office to determine the status and anticipated resolution of the criminal proceeding (PRC Reg. Sec. III.C.3.).

- b. A longer time period for the investigation, not to exceed 195 days, may be agreed upon as provided under Section II.O.
2. Transmittal of complaint. Complaints accepted by the Director shall be sent by hard copy or electronically to the Chief of Police, BPD Internal Affairs, Board members, and each sworn officer against whom the complaint is filed. (Art. XVIII, Sec. 125(18)(g).)
  3. Notice of Complaint and Allegations. Within 28 days of a complaint filing or the acceptance of a late-filed complaint, the ODPA shall prepare and send a Notice of Complaint and Allegations by hard copy or electronically to the complainant, the Chief of Police or BPD Internal Affairs, and each identified subject officer. The Notice of Complaint and Allegations need not be sent if the complaint requests mediation, or the Director recommends administrative closure. (PRC Reg. Sec. III.B.1, modified.)
  4. Sworn officers' schedules. The Chief of Police or their designee shall provide ODPA staff with the schedules of all sworn employees of the Police Department. (PRC Reg. Sec. VII.A.1.)
  5. Nature of investigation. The investigation shall consist of conducting recorded interviews with the complainant, subject officers, witness officers, and civilian witnesses; and collecting relevant documentary evidence, including, but not limited to, photographic, audio, and video evidence. (PRC Reg. Sec. III.C.1.)
  6. Production, subpoena, and preservation of records. The Berkeley Police Department and all other City departments must produce records and information requested by the Office of the Director of Police Accountability and Board in connection with investigations, without redaction or limitation, unless required by state or federal law. (Art. XVIII, Sec. 125(20)(a).)
    - a. The Director may issue subpoenas to compel the production of books, papers, and documents as needed to carry out their duties and functions. (Art. XVIII, Sec. 125(20)(c).)
    - b. Whenever a PRC investigation is tolled, the Chief of Police shall take appropriate steps to assure preservation of the following items of evidence:
      - I. The original Communications Center tapes relevant to the complaint.

## Section II.C.

- II. All police reports, records, and documentation, including body-worn camera video.
  - III. Names, addresses, telephone numbers, and statements of all witnesses. (PRC Reg. Sec. II.E.2.)
7. Interview notices. Subject officers and witness officers must appear for interviews related to complaints. (Art. XVIII, Sec. 125(20)(c); PRC Reg. Exhibit A.) ODPa staff shall notify subject and witness officers at least 9 days before a scheduled interview date by hard copy or, when feasible, email. An officer who is unavailable for an interview shall contact the Director or the Investigator immediately to state the reason for their unavailability. (PRC Reg. Sec. III.D.2.)
8. Conduct of interviews, exercise of Constitutional rights. Interviews should be conducted such that they produce a minimum of inconvenience and embarrassment to all parties. Subject and witness officer interviews shall be conducted in compliance with the Public Safety Officers' Procedural Bill of Rights Act<sup>1</sup> ("POBRA"). When possible, ODPa staff shall avoid contacting BPD employees at home, and avoid contacting others at their place of employment. (PRC Reg. Sec. III.D.1.) While all officers have a right to invoke the Fifth Amendment, they also have a duty to answer questions before the ODPa regarding conduct and observations that arise in the course of their employment, and are subject to discipline for failure to respond. The exercise of any constitutional rights shall not be considered by the Board in its disposition of a complaint (PRC Reg. Sec. III.D.3.)

**D. Pre-hearing complaint disposition.**

## 1. Administrative Closure

a. Grounds

The grounds upon which a complaint may be administratively closed include but are not limited to the following:

- i. Complaint does not allege prima facie misconduct or is frivolous or retaliatory.
- ii. Request for closure by complainant.
- iii. Unavailability of complainant where staff has attempted at least 3 telephone, electronic mail and/or regular mail contacts. Attempts to reach the complainant by telephone and/or mail shall be documented in the recommendation for Administrative Closure.

---

<sup>1</sup> Government Code Sec. 3300 et seq.

## Section II.E.

- iv. Mootness of the complaint including but not limited to situations where the subject officer's employment has been terminated or where the complaint has been resolved by other means.
- v. Failure of the complainant to cooperate, including but not limited to: refusal to submit to an interview, to make available essential evidence, to attend a hearing, and similar action or inaction by a complainant that compromises the integrity of the investigation or has a significant prejudicial effect.
- vi. Failure of ODPa staff to timely complete its investigation, as set forth in Section II.C.1.

- b. Procedure

A complaint may be administratively closed by a majority vote of Board members during closed session at a meeting. The complainant shall be notified of the opportunity to address the Board during the meeting no later than 7 days before the meeting. Cases closed pursuant to this section shall be deemed "administratively closed" and the complainant, the subject officer, and the Chief of Police shall be notified by mail.

- c. Effect of Administrative Closure

Administrative Closure does not constitute a judgment on the merits of the complaint.

(PRC Reg. Sec. V.A.)

## 2. No Contest Response

A subject officer who accepts the allegations of the complaint as substantially true may enter a written response of "no contest" at any time before the Director submits their findings and recommendations to the Board under Section II.G.1. If the subject officer sends a "no contest" response, the Director shall so notify the Board when findings and recommendations are sent to them. (PRC Reg. Sec. V.B., modified)

## E. Initial submission and consideration of investigative findings and recommendations.

- 1. Time to submit. Within 60 days of completing an investigation, the Director must submit and present investigative findings and recommendations to the Board in a closed session and convene a confidential personnel hearing if the Board requests it. (Art. XVIII, Sec. 125(18)(i).) This deadline may be extended as provided under Section II.O.

## Section II.E.

2. Standard of proof. In determining whether a sworn officer has committed misconduct, the standard is “preponderance of the evidence.” (Art. XVIII, Sec. 125(18)(c).)
3. Categories of Findings
  - a. If the evidence shows that the alleged act did not occur, the finding shall be “Unfounded.”
  - b. If the evidence fails to support the allegations, but the allegations cannot be shown as false, the finding shall be “Not Sustained.”
  - c. If the evidence shows that the alleged act did occur, but was lawful, justified, and proper, the finding shall be “Exonerated.”
  - d. If the evidence shows that the alleged act did occur and the action was not justified, the finding shall be “Sustained.”

(PRC Regs., Sec. VIII.B.)
4. Recommendation of discipline and level of discipline. If the Director recommends a “sustained” finding on any allegation of misconduct, a recommendation of whether discipline is warranted must also be included. For those cases where an allegation of misconduct, if sustained, would involve any of the classes of conduct described in Penal Code 832.7, as enacted pursuant to Senate Bill 1421, the Director must include a recommendation regarding the level of discipline. (Art. XVIII, Sec. 125(18)(i).)
5. Board decision. Upon reviewing the Director’s investigative findings, the Board must then decide whether to hold a confidential personnel hearing.
  - a. If the Board agrees with the Director on all findings and recommendations, (i.e., no need for hearing), the Director shall send the findings and recommendations to the Chief of Police. The findings and recommendations must be sent within 195 days of the City’s discovery of alleged misconduct, except if extended as provided under Section II.M.2.
  - b. If the Board decides that further fact-finding is needed, the Board may vote to hold a confidential personnel hearing.

(Art. XVIII, Sec. 125(18)(i).)

**F. Scheduling a hearing, assigning Hearing Panel members, distributing hearing packet.**

1. Time. If the Board decides to move forward with a confidential personnel hearing, it must be held within 60 days of the date the ODPa has completed its investigation. (Art. XVIII, Sec. 125(18)(i).)

## Section II.F.

2. Scheduling hearing. ODPa staff shall determine the availability of subject officers before setting a hearing date and time. Hearings are not to be scheduled on an officer's day off or during vacation or other leave, unless two or more subject officers on same complaint do not share a common day on duty. (PRC Reg. Sec. VII.A.1.)
3. Hearing Panel. ODPa staff shall secure a Hearing Panel to conduct the confidential personnel hearing. A Hearing Panel shall consist of three Board members, except that in death cases and any cases in which six Board members vote to sit as a whole, the entire Board, with a minimum of six Board members, will constitute the Hearing Panel. (PRC Reg. Sec. VI.A.)
4. Obligation to serve; unavailability. Board members must serve on roughly an equal number of Hearing Panels each year. (PRC Reg. Sec. VI.B.1.) If a Hearing Panel member becomes unavailable, they shall be replaced by another Board member, and notice of substitution shall issue as soon as possible. If substituted within 7 days of a hearing, the subject officer retains the right to challenge the Board member for cause. The notice of challenge of a substituted Board member must be made at least 3 business days before convening the hearing and constitutes good cause for continuing the hearing. (PRC Reg. Sec. VI.B.2.)
5. Effect of continuance. If a hearing is rescheduled due to unavailability of the complainant, a subject officer, or either party's attorney, another Hearing Panel may be assigned. However, the Hearing Panel composition shall not change after the hearing has been convened. (PRC Reg. Sec. VI.B.3)
6. Notice of hearing. The ODPa must issue a written hearing notice at least 14 days before the hearing to all parties, witnesses, representatives, Hearing Panel members, and the Police Chief. This notice must include the time, date, and location of the hearing, and the composition of the Hearing Panel. (PRC Reg. Sec. VII. A.2)
7. Hearing Packet. The ODPa shall provide the Hearing Panel with a Hearing Packet, which shall contain the Director's findings and recommendations, and all evidence and documentation obtained or produced during the investigation (Art. XVIII, Sec. 125(18)(i)), at least 14 days before the hearing date. The Hearing Packet shall also be sent to the subject officer(s), any representatives, the Duty Command Officer, and the Police Chief. The complainant shall receive a Hearing Packet without documents containing confidential investigatory materials or findings and recommendations. Witness officers and civilian witnesses shall receive a copy of only their interview transcript. (PRC Reg. Sec. VII.B., modified.)

## Section II.G.

**G. Board member impartiality; recusals; challenges**

1. Conduct.
  - a. Board members shall maintain basic standards of fair play and impartiality, and avoid bias and the appearance of bias. In confidential personnel hearings, they shall hear all viewpoints. (Art. XVIII, Sec. 125(8)(b).)
  - b. No member of a Hearing Panel shall publicly state an opinion regarding policies directly related to the subject matter of a pending complaint; publicly comment on any of the facts or analysis of a pending complaint; or pledge or promise to vote in any particular manner in a pending complaint. (PRC Reg. Sec. VI.D.2.)
  - c. A Board member who violates Section G.1.b above, before or during a confidential personnel hearing, shall be automatically disqualified from further participation in the hearing. Additionally, a Board member or the Director may agendize an alleged violation of that Section for discussion and action at a regular meeting of the Board, which may take adverse action upon a two-thirds vote of those present. Such adverse action may include: notice of the violation to the Board member's nominating Councilmember or to the City Council, or a prohibition from participating in future confidential personnel hearings for the remainder of the Board member's term. (PRC Reg. VI.D.3.)
2. Recusal; disclosure of ex parte contacts. Board members recused for a conflict of interest must do so immediately when an item is taken up. Board members shall verbally disclose all ex parte contacts concerning the subject of the hearing and shall submit a written report of such contacts before the hearing begins. Ex parte contacts include any contact between a Board member and any party involved in the complaint before the public hearing. (Art. XVIII, Sec. 125(8)(b)(2).)
3. Challenges to Hearing Panel member
  - a. Basis for Challenge. A Board member who has a personal interest, or the appearance thereof, in the outcome of a hearing shall not sit on the Board. Personal interest in the outcome of a hearing does not include political or social attitudes or beliefs. Examples of personal bias include, but are not limited to:
    - i. a familial relationship or close friendship with the complainant or subject officer;
    - ii. witnessing events material to the inquiry;
    - iii. a financial interest in the outcome of the inquiry;
    - iv. a bias for or against the complainant or subject officer.



## Section II.G.

b. Procedure

- i. No later than 7 days of the date of mailing of the Hearing Packet, which includes the names of the Board members constituting the Hearing Panel, the complainant or the subject officer(s) may file a written challenge for cause to any Board member. Such challenge must specify the nature of the conflict of interest.
  - ii. The Director shall contact the challenged Board member as soon as possible after receipt of the challenge.
  - iii. If the Board member agrees to recuse themselves, the Director shall ask another Board member to serve.
  - iv. If the Board member disagrees that the challenge is for good cause, they shall state their reasons in writing, and the Director shall make this determination. If the Director finds good cause for the challenge, the Director shall inform the challenged Board member and ask another to serve.
  - v. If the Director rejects a challenge to a Board member and the Board member serves, the written challenge and the Board member's written response shall be made part of the hearing record.
- c. Replacement of Board member. Any Board member who is unable to serve for any reason shall be replaced by another Board member, except in cases involving a death.

(PRC Reg. Sec. VI.C., modified.)

**H. Continuance requests; other pre-hearing motions**

1. Pre-hearing continuance requests. Requests to continue a hearing must be made to the Director as soon as the cause for continuance arises. The Director may grant the request only for good cause. Factors in determining good cause include: reason for request, timeliness, prejudice to the other party, filing date of complaint, and previous continuance requests. A request for a continuance made within 3 business days of the hearing date shall not be granted unless the requester cannot attend due to a personal emergency or can demonstrate substantial prejudice if denied. A continuance granted at a subject officer's request shall toll any disciplinary time period under the Memorandum of Understanding between the City of Berkeley and the Berkeley Police Association and the 60-day time limitation under Article XVIII, Section 125(18)(i). (PRC Reg. Sec. VII.C.4., modified)
2. Newly Discovered Evidence or Witnesses. The complainant and subject officer shall provide any newly discovered evidence or witnesses' names to the ODP staff no later than 14 days before the

## Section II.H.

scheduled hearing date, with an explanation as to why the evidence or witnesses could not have been discovered earlier and its significance. ODPa staff shall inform the Hearing Panel of the newly discovered evidence or witnesses as soon as possible.

The Hearing Panel shall decide whether or not to allow the evidence or witnesses no later than 4 business days before the scheduled hearing date, and ODPa staff shall notify both the complainant and the subject officer of the Hearing Panel's decision. (PRC Reg. Sec. VII.C.1.)

3. Procedural issues. The complainant and subject officer shall raise any procedural issues by submitting them in writing to the Director at least 7 days before the hearing date. Procedural issues can include, without limitation, expiration of the 1-year limitation period under Government Code section 3304, or whether an officer should testify. (PRC Reg. Sec. VII.C.2.)

### I. Hearing procedures

1. Who may or must be present at hearing. Hearings are closed to the public. The Director and Investigator may be present during the entirety of the hearing. The Duty Command Officer may be present for all but the Board members' deliberations. (PRC Reg. VII.D.1.) The complainant and the subject officer shall be present to answer questions from Board members, subject to state law. (Art. XVIII, Sec. 125(18)(i).) An attorney or other representative for the complainant or the subject officer may participate in the hearing, but a representative is not required, and the complainant or subject officer is responsible for ensuring their representative's presence at the hearing. (PRC Reg. VII.D.2.)
2. Continuances. If good cause is shown, the Hearing Panel may continue the hearing due to the unanticipated unavailability of a witness or a representative. (PRC Reg. Sec. VII.D.3.)
3. Party's failure to appear. Absent good cause, if the complainant fails to appear within 30 minutes of the scheduled hearing time, the complaint will be dismissed. Absent good cause, if the subject officer fails to appear within 30 minutes of the scheduled hearing time, the hearing will proceed and the allegations may be sustained. (PRC Reg. Sec. VII.D.4.)
4. Lack of full Hearing Panel. If two Hearing Panel members are present but a third fails to appear within 30 minutes of the scheduled hearing time, the hearing will be continued until a third Hearing Panel member is seated, unless all parties agree to proceed with two Hearing Panel members, in which case all findings must be unanimous. (PRC Reg. Sec. VII.D.5.)

## Section II.I.

5. Chair of panel. The Hearing Panel shall select one member to serve as the Chairperson of the hearing. (PRC Reg. Sec. VI.A.)
6. Taking testimony at the hearing.
  - a. The complainant and any civilian witnesses will be called into the hearing room to testify separately; the subject officers and their representatives may be present during their testimony. The complainant or their representative may make a statement or rely on the interview statements. Questioning will then proceed as follows: a) The complainant or the complainant's representative may ask questions; b) Board members may ask questions; c) the subject officer or his or her representative may ask questions; d) Board members may ask follow-up questions. After questioning is completed, the complainant or their representative will have up to 15 minutes to provide a summary of their case and a closing statement. (PRC Reg. Sec. VII.D.7., modified)
  - b. The subject officers and any witness officers will be called into the hearing room to testify separately. The complainant and their representative may be present during their testimony. Subject officer representatives may be present for all testimony. Each subject officer may make a statement or choose to rely on the interview statements. Questioning will then proceed as follows: 1. Subject officers' representatives may ask questions. 2. Board members may ask questions. The officer may then be questioned by 2 Board members unless the officer waives this requirement. 3. Complainant or their representatives may ask questions. 4. Board members may ask follow up questions. After questioning is completed, each subject officer will have up to 15 minutes to provide a summary of their case and a closing statement.
  - c. All except Board members and staff will then be excused from the hearing room.
7. Subpoenas. The Board may issue subpoenas to compel the production of books, papers, and documents as needed to carry out their duties and functions. (Art. XVIII, Sec. 125(20)(c).)
8. Maintaining order. No person at hearing shall become subject of undue harassment, personal attack, or invective. If the chairperson fails to maintain reasonable order, BPD employees may leave the hearing without prejudice. The burden shall be upon the BPD employee to establish to the City Manager's satisfaction that their reason for leaving was sufficient. (PRC Reg. Sec. VII.D.10.)

## Section II.J.

**J. Evidence**

1. General. The hearing need not be conducted according to technical rules of evidence. Any relevant evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs.
2. Procedure. Evidence shall be taken in accordance with the following provisions:
  - a. The complainant and subject officers shall have the right to testify and refer to any relevant evidence that has been entered into the record. If the complainant or subject officers do not testify on their own behalf, they may be called and examined as if under cross-examination.;
  - b. Oral evidence shall be taken only under oath.
  - c. The Chairperson shall exclude irrelevant and unduly repetitious evidence.
  - d. The Chairperson shall exclude unruly or disruptive persons from the hearing.
  - e. The Chairperson will conduct the hearing subject to being overruled by a majority of the Hearing Panel members. Hearing Panel members shall be primarily responsible for obtaining testimony. ODPa staff will answer Board members' questions on the evidence, points of law, and procedure.
  - f. The City Attorney's opinion will be sought whenever the interpretation of a City Ordinance or the City Charter is contested and pivotal to the case, or when a case raises substantial legal issues of first impression.
  - g. If the Hearing Panel needs additional evidence or an opinion from the City Attorney to reach its findings, it may continue the hearing to a future date.
  - h. If either party requests that the hearing be continued to consider motions or points of law, any applicable BPD disciplinary time limit shall be tolled for the period of such continuance.
3. Judicial disposition. Either party may present to the Hearing Panel evidence of the disposition of a related matter by any branch of the judiciary (including but not limited to superior court, traffic court, and small claims court), and the Hearing Panel shall accept those findings as true.

(PRC Reg. Sec. VII.E.)

## Section II.K.

**K. Deliberation and Findings**

1. Deliberation. After the hearing has concluded, the Hearing Panel deliberates outside the presence of everyone except ODPA staff. The Hearing Panel shall not consider any information not received in the hearing packet or during the hearing. (PRC Reg. Sec. VIII.A.)
2. Vote. The Hearing Panel shall affirm, modify, or reject the findings and recommendation of the Director of Police Accountability. (Art. XVIII, Sec. 125(18)(j).) All action of the Hearing Panel shall be by majority vote of those Board members present. (PRC Reg. Sec. VIII.B.)
3. Transmittal of findings. The Hearing Panel's decision must be submitted in writing to the Chief of Police within 15 days of the hearing (Art. XVIII, Sec. 125(18)(j)), unless extended as provided under Section II.M.2. (Art. XVIII, Sec. 125(18)(m).)
4. Content of findings.
  - a. If the Hearing Panel agrees with the findings and recommendations of the Director, no explanation is required.
  - b. If the Hearing Panel modifies or rejects a finding or recommendation of the Director, the Hearing Panel shall provide an explanation of its decision. (Art. XVIII, Sec. 125(18)(j).)
  - c. Any Hearing Panel member dissenting from a finding or recommendation of the majority shall submit a separate written explanation of their reasoning (PRC Reg. Sec. VIII.B.), unless the dissenter agrees with the Director's finding and recommendation. (NEW)

**L. Findings of Chief of Police; tentative decision; final determination by Chief or City Manager.**

1. Chief's decision. Within 10 days of receiving the findings and recommendations from the Director under Section II.E.5.a. above, or from the Hearing Panel under Section II.K.3.b. above, the Chief of Police shall take one of the following actions
  - a. Issue a final decision if the Chief agrees with the Director or with the Hearing Panel.
  - b. Submit a tentative decision to the Director and the Police Accountability Board.
2. Director's request to review tentative decision. If the Chief submits a tentative decision, the Director may request, within 10 days of receiving the decision, that the Chief submit the decision to the City Manager. If the Director does not make the request, the Chief's decision becomes final.

## Section II.L.

3. City Manager's final decision. Within 25 days of receiving the submittal from the Chief, the City Manager or their designee shall submit a final determination, with a written explanation, to the Director, the Board, and the Chief.

(Art. XVIII, Sec. 125(18)(k).)

4. Extension of time. The deadlines in this Section II.L may be extended as provided under Section II.M.2. (Art. XVIII, Sec. 125(18)(m).)

**M. Time limits; extensions.**

1. Overall limit. The time limit for investigations and notification of discipline is 240 days from the date of the City's discovery of alleged misconduct, unless a Government Code section 3304(d) exception applies. (Art. XVIII, Sec.(125)(18)(d).)
2. Other time limits. The deadlines for the Director to complete an investigation, present investigative findings to the Board, submit findings and recommendations to the Chief of Police, or request that the Chief submit a tentative decision to the City Manager; as well as deadlines for the Chief to act on findings and recommendations from the Director or Hearing Panel, and for the City Manager or their designee to make a final decision, are advisory, and may be adjusted by the Director after consulting with the City Manager and Chief, to ensure that all investigations and notifications are completed within 240 days. The timeline for completing an investigation shall not be extended beyond 195 days. (Art. XVIII, Sec.125(18)(m).)

**III. CONTESTING FINDINGS OF DECISION WHEN COMPLAINT FILED WITH THE POLICE DEPARTMENT.****A. Application**

1. This Section III applies to complaints that a member of the public files with the Police Department only.

**B. Procedure**

1. When the Internal Affairs division of the Police Department has completed its investigation of a complaint, the Chief of Police shall issue a letter of disposition to the subject officer and the Director. The Chief shall also issue a letter of disposition to the complainant that complies with the Penal Code. (Art. XVIII, Sec. 125(19)(d).)
2. If a finding is "not sustained," "unfounded," or "exonerated," the complainant has 20 days from the date notice is sent (by mail or other reasonable means that the complainant agrees to), to contest the Chief's determination to the Director. (Art. XVIII, Sec. 125(19)(e).) The

## Section III.B.

Director, if appropriate, may request to review all files, transcripts, and records related to the complaint. (Art. XVIII, Sec. 125(19)(e)(1).)

3. Within 15 days of receiving an objection from a complainant or a notice from the Chief that a complainant has objected, the Director, in their discretion, may notify the complainant that either:
  - a. The objection is accepted and the Board will convene a Review Panel to conduct a review based on the investigative record provided by the Department; or
  - b. The objection is dismissed. In such cases, the Director must notify the Board of such dismissal in writing within 30 days of notifying the complainant of the dismissal.

(Art. XVIII, Sec. 125(19)(e)(1); Review Panel added.)

4. If the Director decides that the Board will conduct a review, ODPa staff shall secure a Review Panel of three Board members to conduct a review of the investigative record at a closed session meeting.
  - a. At the meeting, only Review Panel members and ODPa staff will be present. A Duty Command Officer may be present.
  - b. The Review Panel shall evaluate the investigative record to determine whether the complainant's objection has merit, either because the Department failed to proceed in a manner required by state and federal law, or because the Chief's decision is not supported by the evidence in the record.
  - c. All action of the Review Panel must be by majority vote.

(NEW. Details not in Charter and no counterpart in PRC procedures.)

5. The Review Panel must, within 45 days of the date the Director accepts an objection:
  - a. Dismiss the complainant's objection; or
  - b. Issue a report agreeing with the Chief's determination; or
  - c. Issue a report disagreeing with the Chief's determination if the Review Panel finds that: 1) the Department failed to proceed in a manner required by state and federal law; or 2) the Chief's decision is not supported by the evidence in the record. The Director shall submit this report to the Chief and the City Manager.

(Art. XVIII, Secs. 125(19)(f), 125(19)(g).)

6. Within 15 days of receiving a Review Panel's recommendation disagreeing with the Chief, the Chief may prepare a report for the City Manager addressing any concerns or objections. (Art. XVIII, Sec. 125(19)(g).)

## Section III.B.

7. Within 25 days of receiving the Chief's report, the City Manager or their designee shall consider the reports of both the Board and the Chief, and send a final determination with a written explanation to the Director, the Board, and the Chief. (Art. XVIII, Sec. 125(19)(g).)
8. The deadlines in this Section III are advisory, and may be adjusted by mutual agreement between the City Manager, the Director, and the Chief, to ensure that all investigations are completed such that the time limit for investigations and notification of discipline occurs within 240 days, and investigation of all complaints filed with the Police Department are completed within 120 days of the City's discovery of alleged misconduct, unless a Government Code section 3304(d) exception applies. (Art. XVIII, Sec. 125(19)(i).

**IV. INFORMAL COMPLAINTS**

- A.** An informal complaint is a communication from a member of the public, not on a complaint form, that identifies an officer or officers by name, badge number, or other identifying features, and alleges any act of misconduct pertaining to the manner in which the officer performs their duties. Such complaints shall be treated confidentially.
- B.** ODPA staff shall contact the complainant to explain the policy complaint and formal individual complaint processes.
- C.** Informal complaints will be agendaized for a closed session at the next regular Board meeting and distributed to the Board in closed session, with notice to the named officer(s).
- D.** The Board shall consider the informal complaint and recommend what additional action, if any, the Director of Police Accountability should take.

(Adopted by the PRC Jan. 8, 2020.)

**V. AVAILABILITY AND AMENDMENT OF REGULATIONS**

- A.** These Interim Regulations shall be posted on the website of the Office of the Director of Police Accountability, and ODPA staff shall furnish them to any person requesting a copy.
- B.** Amendments to these Interim Regulations require a majority vote of the Board and ratification by the City Council.

(PRC Reg. Sec. IX, modified.)



**Police Accountability Board**  
**Office of the Director of Police Accountability**

**Interim Regulations for Handling Complaints Against Sworn Officers of the  
Police Department under City Charter Article XVIII, Section 125 (Measure II)**

**Preamble**

These interim regulations for handling complaints against sworn members of the Berkeley Police Department are issued in accordance with an amendment to the Charter of the City of Berkeley adding Article XVIII, Section 125, approved by the voters of the City as Measure II on November 3, 2020. Measure II establishes a Police Accountability Board (Board) and a Director of Police Accountability (Director), and is intended to promote public trust by providing for prompt, impartial and fair investigations of complaints by members of the public against sworn employees of the Berkeley Police Department. The Board and Director replace the Police Review Commission (PRC), established by Ordinance No. 4,644-N.S.

Under Resolution No. 69,531 N.S., the City Council directed that the core functions of the Board and Director be implemented by July 1, 2021. Under Article XVIII, Section 125(13)(c) of the City Charter, the Board must establish rules of procedure governing the conduct of its business, which are subject to ratification by the City Council. In order for the Director to accept and investigate complaints filed against sworn members of the Police Department beginning July 1, 2021, interim regulations are needed until such time as the Board adopts permanent regulations and the Council ratifies them.

These interim regulations reflect the procedures for handling complaints against police officers as set forth in Measure II as well as the provisions of the PRC Regulations for Handling Complaints Against Members of the Police Department (effective April 4, 2018) that are not in conflict with Measure II. They shall apply to all complaints that were pending with the PRC as of July 1, 2021, and all complaints filed with the Office of the Director of Police Accountability on and after July 1, 2021. Applicability of permanent regulations to these pending cases will be determined later.

**I. GENERAL PROVISIONS**

**A. Definitions**

The following definitions shall apply in these interim regulations:

1. Administrative Closure: Closure of a complaint before a confidential personnel hearing is held.
2. Aggrieved Party: Any person directly affected by the alleged police misconduct.
3. Allegation: An assertion of specific police misconduct.

## Section I.A.

4. Board Member: A member of the Police Accountability Board appointed by the City Council.
5. Chief; Police Chief: Chief of the Berkeley Police Department.
6. City's discovery of alleged misconduct: The City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct.
7. Complaint: A declaration that alleges misconduct by a sworn employee of the Berkeley Police Department.
8. Complainant: An aggrieved party who files a complaint with the Office of the Director of Police Accountability.
9. Days: Means calendar days unless otherwise specified.
10. Director of Police Accountability (Director): The individual appointed by the City Council to investigate complaints and carry out the operations of the Police Accountability Board and the Office of the Director of Police Accountability (ODPA).
11. Duty Command Officer (DCO): A sworn employee of the Berkeley Police Department designated by the Chief of Police to appear at a hearing or review proceeding to answer questions clarifying BPD policy.
12. Hearing Panel: Three Board members impaneled to conduct a confidential personnel hearing.
13. Investigator: Employee of the Office of Director of Police Accountability whose primary role is to investigate complaints filed with the ODP.
14. Mediation: A process of attempting to reach a mutually agreeable resolution, facilitated by a trained, neutral third party.
15. Police Accountability Board (Board): The body established by City Charter Article XVIII, Section 125.
16. Review Panel: Three Board members impaneled to conduct a review of a BPD investigative record.
17. Subject Officer: A sworn employee of the Berkeley Police Department against whom a complaint is filed.
18. Witness Officer: A sworn employee of the Berkeley Police Department who has personal knowledge of events described in a complaint, but is not a subject officer.

(PRC Reg. Sec. II.B., modified.)

## B. Confidentiality

1. Importance. In their capacity as Board members, each Board member will have access to confidential data or information related to Berkeley

## Section I.B.

- Police Department personnel. ODPa staff will likewise have access to such confidential information. It is vitally important to the integrity of the complaint process under Measure II that all parties involved understand and adhere to the confidentiality of the process, and do all in their power to protect the privacy rights of Berkeley Police Department employees as required by law. (PRC Reg. Preamble.)
2. Duty. Board members, ODPa staff, and their agents and representatives shall protect and maintain the confidentiality of any records and information they receive consistent with state or federal law governing such records or information. (Art. XVIII, Sec. 125(20)(b).) In particular, such persons shall not violate the rights of sworn officers to confidentiality of personnel file information under Penal Code secs. 832.7, 832.8 (3(d)), and state law. Confidential information may be provided through witness testimony or through electronic or hard-copy transmission, and the obligation to maintain confidentiality applies, regardless of how the information is communicated. (PRC Reg. Sec. IV.A.)
  3. Closed hearings; effect on public records. All confidential personnel hearings and closed session meetings relating to the investigation of complaints against sworn officers will be closed to the public. Records of these investigations are confidential and will not be disclosed to members of the public. However, any public records included in, or attached to, investigative reports shall remain public records. (PRC Reg. Sec. 1.A.)
  4. Handling confidential information. For any proceeding in which hard copies of confidential information are distributed to Board members, each Board member shall return all confidential material to ODPa staff at the close of the proceedings, or as soon thereafter as practicable. (PRC Reg. Sec. IV.B.2.) For any proceeding in which electronic copies of confidential information are distributed to Board members, each Board member shall delete all confidential information as soon as the information is no longer needed, and promptly inform ODPa staff that they have done so. (NEW)
  5. Effect of violation. A Board member who violates confidentiality before or during a confidential personnel hearing shall be automatically disqualified from further participation in the hearing. Additionally, a Board member or the Director may agendize an alleged violation of confidentiality for discussion and action at a regular meeting of the Board, which may take adverse action upon a two-thirds vote of those present. Such adverse action may include: notice of the violation to the Board member's nominating Councilmember or to the City Council, or a prohibition from participating in future confidential personnel hearings for the remainder of the Board member's term. (PRC Reg. VI.D.3.)

## Section II.A.

**II. COMPLAINTS FILED WITH THE OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY****A. Initiating a complaint**

1. Complaint form. A complaint alleging misconduct by one or more sworn officers of the Berkeley Police Department must be filed on a form provided by the Office of the Director of Police Accountability. (Art. XVIII, Sec. 125(18)(a)(1); PRC Reg. Secs. I.B.7, II.A.1.) Complaint packets must include information about the difference between mediation and an investigation; language advising a complainant who is the subject of, or has commenced, litigation relating to the incident that gave rise to the complaint to consult an attorney before filing a complaint; and conclude with the following: "I hereby certify that, to the best of my knowledge, the statements made herein are true. I also understand that my oral testimony before the Board shall be given under oath." Complaints shall be signed by the complainant, except for complaints initiated by the Board. (PRC Reg. Sec. II.A.1.)
2. Who may file. Only an "aggrieved party" may file a complaint, except that if no complainant is available to initiate a complaint, and in any case involving a death, 5 Board members may vote to authorize an investigation or take other such action they deem appropriate. (PRC Reg. Secs. I.B.2., II. A.3.)
3. Filing period. A complaint must be filed within 90 days of the alleged misconduct, except that the 90 days shall be tolled if:
  - a) the complainant is incapacitated or otherwise prevented from filing a complaint; or
  - b) the complainant is the subject of a criminal proceeding related to the subject matter of the complaint, in which case the time for the complainant to file is tolled until the criminal matter has been adjudicated or dismissed.(PRC Reg. Sec. II.A.2.)
4. Late-filed complaints. Complaints filed between 91 and 180 days of the alleged misconduct must be reviewed by the Police Accountability Board in a closed session meeting. Six Board members must find good cause for the late filing, by clear and convincing evidence, to accept the complaint. A complaint filed after 180 days after the alleged misconduct will not be accepted. (PRC Reg. Sec. II.A.2.a)
5. Sufficiency of complaint. Complaints must allege facts that, if true, would establish that misconduct occurred. Complaints that do not allege prima facie misconduct, or are frivolous or retaliatory, shall be submitted by the Director to the Board for administrative closure at the next regular meeting that allows the complainant to be provided at least

## Section II.A.

5 days' notice. If a majority of Board members agree, the case will be closed; if the Board rejects the Director's recommendation, the Notice of Complaint and Allegations must be issued within 10 days, unless the complainant has elected mediation. This section does not apply to complaints initiated by the Board under Section II.A.2. (PRC Reg. Sec. II.A.4.a.)

6. Right to representation. Complainants and subject officers have the right to consult with, and be represented by, an attorney or other representative, but a representative is not required. If the ODPA is notified that a complainant or subject officer is represented, then the ODPA shall thereafter send copies of any materials or notices provided to the complainant or subject officer(s) to their representatives. (PRC Reg. Sec. II.A.5.)

**B. Mediation**

## 1. Election

- a. ODPA staff shall provide every complainant with information about the option to select mediation, and make every effort to ensure complainants understand this option. The complainant may elect to enter into mediation up until they are notified that the Director has submitted findings and recommendations as set forth in Section II. G.1 below.
- b. If the complainant elects mediation, ODPA staff shall notify the subject officer within 7 days that the complainant has opted for mediation, and include a copy of the complaint if not previously provided. This notice shall also inform the subject officer of their right to agree to or reject mediation within 10 days.
- c. A subject officer who agrees to mediation must agree to toll the City's 240-day disciplinary deadline if the officer later withdraws from mediation before mediation session begins.
- d. Once both parties agree to mediation, the complainant no longer has the option to have their complaint investigated and to proceed to a confidential personnel hearing, unless the subject officer withdraws from mediation.

## 2. Completion

After receiving notice from the mediator that a mediation has concluded, ODPA staff shall close the case and inform the Board.

(Art. XVIII, Sec. 125(18)(a)(2); PRC Reg. Sec. II.B., modified)

**C. Complaint investigation**

1. Time for completion. Complaint investigations must begin immediately, proceed expeditiously, and be completed within 120 days of the City's

## Section II.C.

discovery of the alleged misconduct, unless a Government Code sec. 3304(d) applies (Art. XVIII, Sec. 125(18)(e)), except:

- a. If the complainant or subject officer is the subject of criminal proceedings related to the complaint, the ODPa shall not commence an investigation until the criminal matter is adjudicated or dismissed. All time limits for processing the complaint shall be tolled during the pendency of the proceedings. As soon as practicable after the filing of a complaint, the ODPa shall contact the District Attorney's Office to determine the status and anticipated resolution of the criminal proceeding (PRC Reg. Sec. III.C.3.).
  - b. A longer time period for the investigation, not to exceed 195 days, may be agreed upon as provided under Section II.O.
2. Transmittal of complaint. Complaints accepted by the Director shall be sent by hard copy or electronically to the Chief of Police, BPD Internal Affairs, Board members, and each sworn officer against whom the complaint is filed. (Art. XVIII, Sec. 125(18)(g).)
  3. Notice of Complaint and Allegations. Within 28 days of a complaint filing or the acceptance of a late-filed complaint, the ODPa shall prepare and send a Notice of Complaint and Allegations by hard copy or electronically to the complainant, the Chief of Police or BPD Internal Affairs, and each identified subject officer. The Notice of Complaint and Allegations need not be sent if the complaint requests mediation, or the Director recommends administrative closure. (PRC Reg. Sec. III.B.1, modified.)
  4. Sworn officers' schedules. The Chief of Police or their designee shall provide ODPa staff with the schedules of all sworn employees of the Police Department. (PRC Reg. Sec. VII.A.1.)
  5. Nature of investigation. The investigation shall consist of conducting recorded interviews with the complainant, subject officers, witness officers, and civilian witnesses; and collecting relevant documentary evidence, including, but not limited to, photographic, audio, and video evidence. (PRC Reg. Sec. III.C.1.)
  6. Production, subpoena, and preservation of records. The Berkeley Police Department and all other City departments must produce records and information requested by the Office of the Director of Police Accountability and Board in connection with investigations, without redaction or limitation, unless required by state or federal law. (Art. XVIII, Sec. 125(20)(a).)
    - a. The Director may issue subpoenas to compel the production of books, papers, and documents as needed to carry out their duties and functions. (Art. XVIII, Sec. 125(20)(c).)

## Section II.C.

- b. Whenever a PRC investigation is tolled, the Chief of Police shall take appropriate steps to assure preservation of the following items of evidence:
  - I. The original Communications Center tapes relevant to the complaint.
  - II. All police reports, records, and documentation, including body-worn camera video.
  - III. Names, addresses, telephone numbers, and statements of all witnesses. (PRC Reg. Sec. II.E.2.)
7. Interview notices. Subject officers and witness officers must appear for interviews related to complaints. (Art. XVIII, Sec. 125(20)(c); PRC Reg. Exhibit A.) ODPa staff shall notify subject and witness officers at least 9 days before a scheduled interview date by hard copy or, when feasible, email. An officer who is unavailable for an interview shall contact the Director or the Investigator immediately to state the reason for their unavailability. (PRC Reg. Sec. III.D.2.)
8. Conduct of interviews, exercise of Constitutional rights. Interviews should be conducted such that they produce a minimum of inconvenience and embarrassment to all parties. Subject and witness officer interviews shall be conducted in compliance with the Public Safety Officers' Procedural Bill of Rights Act<sup>1</sup> ("POBRA"). When possible, ODPa staff shall avoid contacting BPD employees at home, and avoid contacting others at their place of employment. (PRC Reg. Sec. III.D.1.) While all officers have a right to invoke the Fifth Amendment, they also have a duty to answer questions before the ODPa regarding conduct and observations that arise in the course of their employment, and are subject to discipline for failure to respond. The exercise of any constitutional rights shall not be considered by the Board in its disposition of a complaint (PRC Reg. Sec. III.D.3.)

**D. Pre-hearing complaint disposition.**

## 1. Administrative Closure

a. Grounds

The grounds upon which a complaint may be administratively closed include but are not limited to the following:

- i. Complaint does not allege prima facie misconduct or is frivolous or retaliatory.
- ii. Request for closure by complainant.

---

<sup>1</sup> Government Code Sec. 3300 et seq.

## Section II.D.1.

- iii. Unavailability of complainant where staff has attempted at least 3 telephone, electronic mail and/or regular mail contacts. Attempts to reach the complainant by telephone and/or mail shall be documented in the recommendation for Administrative Closure.
- iv. Mootness of the complaint including but not limited to situations where the subject officer's employment has been terminated or where the complaint has been resolved by other means.
- v. Failure of the complainant to cooperate, including but not limited to: refusal to submit to an interview, to make available essential evidence, to attend a hearing, and similar action or inaction by a complainant that compromises the integrity of the investigation or has a significant prejudicial effect.
- vi. Failure of ODPa staff to timely complete its investigation, as set forth in Section II.C.1.

b. Procedure

A complaint may be administratively closed by a majority vote of Board members during closed session at a meeting. The complainant shall be notified of the opportunity to address the Board during the meeting no later than 7 days before the meeting. Cases closed pursuant to this section shall be deemed "administratively closed" and the complainant, the subject officer, and the Chief of Police shall be notified by mail.

c. Effect of Administrative Closure

Administrative Closure does not constitute a judgment on the merits of the complaint.

(PRC Reg. Sec. V.A.)

## 2. No Contest Response

A subject officer who accepts the allegations of the complaint as substantially true may enter a written response of "no contest" at any time before the Director submits their findings and recommendations to the Board under Section II.G.1. If the subject officer sends a "no contest" response, the Director shall so notify the Board when findings and recommendations are sent to them. (PRC Reg. Sec. V.B., modified)

**E. Initial submission and consideration of investigative findings and recommendations.**

- 1. Time to submit. Within 60 days of completing an investigation, the Director must submit and present investigative findings and recommendations to the Board in a closed session and convene a



## Section II.E.

confidential personnel hearing if the Board requests it. (Art. XVIII, Sec. 125(18)(i).) This deadline may be extended as provided under Section II.O.

2. Standard of proof. In determining whether a sworn officer has committed misconduct, the standard is “preponderance of the evidence.” (Art. XVIII, Sec. 125(18)(c).)
3. Categories of Findings
  - a. If the evidence shows that the alleged act did not occur, the finding shall be “Unfounded.”
  - b. If the evidence fails to support the allegations, but the allegations cannot be shown as false, the finding shall be “Not Sustained.”
  - c. If the evidence shows that the alleged act did occur, but was lawful, justified, and proper, the finding shall be “Exonerated.”
  - d. If the evidence shows that the alleged act did occur and the action was not justified, the finding shall be “Sustained.”

(PRC Regs., Sec. VIII.B.)
4. Recommendation of discipline and level of discipline. If the Director recommends a “sustained” finding on any allegation of misconduct, a recommendation of whether discipline is warranted must also be included. For those cases where an allegation of misconduct, if sustained, would involve any of the classes of conduct described in Penal Code 832.7, as enacted pursuant to Senate Bill 1421, the Director must include a recommendation regarding the level of discipline. (Art. XVIII, Sec. 125(18)(i).)
5. Board decision. Upon reviewing the Director’s investigative findings, the Board must then decide whether to hold a confidential personnel hearing.
  - a. If the Board agrees with the Director on all findings and recommendations, (i.e., no need for hearing), the Director shall send the findings and recommendations to the Chief of Police. The findings and recommendations must be sent within 195 days of the City’s discovery of alleged misconduct, except if extended as provided under Section II.M.2.
  - b. If the Board decides that further fact-finding is needed, the Board may vote to hold a confidential personnel hearing.

(Art. XVIII, Sec. 125(18)(i).)

## Section II.F.

**F. Scheduling a hearing, assigning Hearing Panel members, distributing hearing packet.**

1. Time. If the Board decides to move forward with a confidential personnel hearing, it must be held within 60 days of the date the ODPa has completed its investigation. (Art. XVIII, Sec. 125(18)(i).)
2. Scheduling hearing. ODPa staff shall determine the availability of subject officers before setting a hearing date and time. Hearings are not to be scheduled on an officer's day off or during vacation or other leave, unless two or more subject officers on same complaint do not share a common day on duty. (PRC Reg. Sec. VII.A.1.)
3. Hearing Panel. ODPa staff shall secure a Hearing Panel to conduct the confidential personnel hearing. A Hearing Panel shall consist of three Board members, except that in death cases and any cases in which six Board members vote to sit as a whole, the entire Board, with a minimum of six Board members, will constitute the Hearing Panel. (PRC Reg. Sec. VI.A.)
4. Obligation to serve; unavailability. Board members must serve on roughly an equal number of Hearing Panels each year. (PRC Reg. Sec. VI.B.1.) If a Hearing Panel member becomes unavailable, they shall be replaced by another Board member, and notice of substitution shall issue as soon as possible. If substituted within 7 days of a hearing, the subject officer retains the right to challenge the Board member for cause. The notice of challenge of a substituted Board member must be made at least 3 business days before convening the hearing and constitutes good cause for continuing the hearing. (PRC Reg. Sec. VI.B.2.)
5. Effect of continuance. If a hearing is rescheduled due to unavailability of the complainant, a subject officer, or either party's attorney, another Hearing Panel may be assigned. However, the Hearing Panel composition shall not change after the hearing has been convened. (PRC Reg. Sec. VI.B.3)
6. Notice of hearing. The ODPa must issue a written hearing notice at least 14 days before the hearing to all parties, witnesses, representatives, Hearing Panel members, and the Police Chief. This notice must include the time, date, and location of the hearing, and the composition of the Hearing Panel. (PRC Reg. Sec. VII. A.2)
7. Hearing Packet. The ODPa shall provide the Hearing Panel with a Hearing Packet, which shall contain the Director's findings and recommendations, and all evidence and documentation obtained or produced during the investigation (Art. XVIII, Sec. 125(18)(i)), at least 14 days before the hearing date. The Hearing Packet shall also be sent to the subject officer(s), any representatives, the Duty Command

## Section II.F.

Officer, and the Police Chief. The complainant shall receive a Hearing Packet without documents containing confidential investigatory materials or findings and recommendations. Witness officers and civilian witnesses shall receive a copy of only their interview transcript. (PRC Reg. Sec. VII.B., modified.)

**G. Board member impartiality; recusals; challenges**

1. Conduct.
  - a. Board members shall maintain basic standards of fair play and impartiality, and avoid bias and the appearance of bias. In confidential personnel hearings, they shall hear all viewpoints. (Art. XVIII, Sec. 125(8)(b).)
  - b. No member of a Hearing Panel shall publicly state an opinion regarding policies directly related to the subject matter of a pending complaint; publicly comment on any of the facts or analysis of a pending complaint; or pledge or promise to vote in any particular manner in a pending complaint. (PRC Reg. Sec. VI.D.2.)
  - c. A Board member who violates Section G.1.b above, before or during a confidential personnel hearing, shall be automatically disqualified from further participation in the hearing. Additionally, a Board member or the Director may agendize an alleged violation of that Section for discussion and action at a regular meeting of the Board, which may take adverse action upon a two-thirds vote of those present. Such adverse action may include: notice of the violation to the Board member's nominating Councilmember or to the City Council, or a prohibition from participating in future confidential personnel hearings for the remainder of the Board member's term. (PRC Reg. VI.D.3.)
2. Recusal; disclosure of ex parte contacts. Board members recused for a conflict of interest must do so immediately when an item is taken up. Board members shall verbally disclose all ex parte contacts concerning the subject of the hearing and shall submit a written report of such contacts before the hearing begins. Ex parte contacts include any contact between a Board member and any party involved in the complaint before the public hearing. (Art. XVIII, Sec. 125(8)(b)(2).)
3. Challenges to Hearing Panel member
  - a. Basis for Challenge. A Board member who has a personal interest, or the appearance thereof, in the outcome of a hearing shall not sit on the Board. Personal interest in the outcome of a hearing does not include political or social attitudes or beliefs. Examples of personal bias include, but are not limited to:

## Section II.G.

- i. a familial relationship or close friendship with the complainant or subject officer;
  - ii. witnessing events material to the inquiry;
  - iii. a financial interest in the outcome of the inquiry;
  - iv. a bias for or against the complainant or subject officer.
- b. Procedure
- i. No later than 7 days of the date of mailing of the Hearing Packet, which includes the names of the Board members constituting the Hearing Panel, the complainant or the subject officer(s) may file a written challenge for cause to any Board member. Such challenge must specify the nature of the conflict of interest.
  - ii. The Director shall contact the challenged Board member as soon as possible after receipt of the challenge.
  - iii. If the Board member agrees to recuse themselves, the Director shall ask another Board member to serve.
  - iv. If the Board member disagrees that the challenge is for good cause, they shall state their reasons in writing, and the Director shall make this determination. If the Director finds good cause for the challenge, the Director shall inform the challenged Board member and ask another to serve.
  - v. If the Director rejects a challenge to a Board member and the Board member serves, the written challenge and the Board member's written response shall be made part of the hearing record.
- c. Replacement of Board member. Any Board member who is unable to serve for any reason shall be replaced by another Board member, except in cases involving a death.
- (PRC Reg. Sec. VI.C., modified.)

## Section II.H.

**H. Continuance requests; other pre-hearing motions**

1. Pre-hearing continuance requests. Requests to continue a hearing must be made to the Director as soon as the cause for continuance arises. The Director may grant the request only for good cause. Factors in determining good cause include: reason for request, timeliness, prejudice to the other party, filing date of complaint, and previous continuance requests. A request for a continuance made within 3 business days of the hearing date shall not be granted unless the requester cannot attend due to a personal emergency or can demonstrate substantial prejudice if denied. A continuance granted at a subject officer's request shall toll any disciplinary time period under the Memorandum of Understanding between the City of Berkeley and the Berkeley Police Association and the 60-day time limitation under Article XVIII, Section 125(18)(i). (PRC Reg. Sec. VII.C.4., modified)
2. Newly Discovered Evidence or Witnesses. The complainant and subject officer shall provide any newly discovered evidence or witnesses' names to the ODP staff no later than 14 days before the scheduled hearing date, with an explanation as to why the evidence or witnesses could not have been discovered earlier and its significance. ODP staff shall inform the Hearing Panel of the newly discovered evidence or witnesses as soon as possible.

The Hearing Panel shall decide whether or not to allow the evidence or witnesses no later than 4 business days before the scheduled hearing date, and ODP staff shall notify both the complainant and the subject officer of the Hearing Panel's decision. (PRC Reg. Sec. VII.C.1.)

3. Procedural issues. The complainant and subject officer shall raise any procedural issues by submitting them in writing to the Director at least 7 days before the hearing date. Procedural issues can include, without limitation, expiration of the 1-year limitation period under Government Code section 3304, or whether an officer should testify. (PRC Reg. Sec. VII.C.2.)

**I. Hearing procedures**

1. Who may or must be present at hearing. Hearings are closed to the public. The Director and Investigator may be present during the entirety of the hearing. The Duty Command Officer may be present for all but the Board members' deliberations. (PRC Reg. VII.D.1.) The complainant and the subject officer shall be present to answer questions from Board members, subject to state law. (Art. XVIII, Sec. 125(18)(i).) An attorney or other representative for the complainant or the subject officer may participate in the hearing, but a representative is not required, and the complainant or subject officer is responsible for

## Section II.I.

- ensuring their representative's presence at the hearing. (PRC Reg. VII.D.2.)
2. Continuances. If good cause is shown, the Hearing Panel may continue the hearing due to the unanticipated unavailability of a witness or a representative. (PRC Reg. Sec. VII.D.3.)
  3. Party's failure to appear. Absent good cause, if the complainant fails to appear within 30 minutes of the scheduled hearing time, the complaint will be dismissed. Absent good cause, if the subject officer fails to appear within 30 minutes of the scheduled hearing time, the hearing will proceed and the allegations may be sustained. (PRC Reg. Sec. VII.D.4.)
  4. Lack of full Hearing Panel. If two Hearing Panel members are present but a third fails to appear within 30 minutes of the scheduled hearing time, the hearing will be continued until a third Hearing Panel member is seated, unless all parties agree to proceed with two Hearing Panel members, in which case all findings must be unanimous. (PRC Reg. Sec. VII.D.5.)
  5. Chair of panel. The Hearing Panel shall select one member to serve as the Chairperson of the hearing. (PRC Reg. Sec. VI.A.)
  6. Taking testimony at the hearing.
    - a. The complainant and any civilian witnesses will be called into the hearing room to testify separately; the subject officers and their representatives may be present during their testimony. The complainant or their representative may make a statement or rely on the interview statements. Questioning will then proceed as follows: a) Board members may ask questions; b) the subject officer or his or her representative may ask questions; c) Board members may ask follow-up questions. After questioning is completed, the complainant or their representative will have up to 15 minutes to provide a summary of their case and a closing statement. (PRC Reg. Sec. VII.D.7.)
    - b. The complainant and their representative, and civilian witnesses will each be excused from the hearing room after their testimony or representation is completed. (PRC Reg. Sec. VII.D.8.)
    - c. The subject officers and any witness officers will be called into the hearing room to testify separately. Subject officer representatives may be present for all testimony. Each subject officer may make a statement or choose to rely on the interview statements. Each subject officer will be questioned by their representative first, after which the officer may be questioned by 2 Board members, unless the officer waives this requirement. After questioning is completed,

## Section II.I.

each subject officer will have up to 15 minutes to provide a summary of their case and a closing statement.

- d. The subject officers and witness officers will each be excused from the hearing room after their testimony is completed. (PRC Reg. Sec. VII.D.9.)
7. Subpoenas. The Board may issue subpoenas to compel the production of books, papers, and documents as needed to carry out their duties and functions. (Art. XVIII, Sec. 125(20)(c).)
8. Maintaining order. No person at hearing shall become subject of undue harassment, personal attack, or invective. If the chairperson fails to maintain reasonable order, BPD employees may leave the hearing without prejudice. The burden shall be upon the BPD employee to establish to the City Manager's satisfaction that their reason for leaving was sufficient. (PRC Reg. Sec. VII.D.10.)

**J. Evidence**

1. General. The hearing need not be conducted according to technical rules of evidence. Any relevant evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs.
2. Procedure. Evidence shall be taken in accordance with the following provisions:
  - a. The complainant and subject officers shall have the right to testify and refer to any relevant evidence that has been entered into the record. If the complainant or subject officers do not testify on their own behalf, they may be called and examined as if under cross-examination.;
  - b. Oral evidence shall be taken only under oath.
  - c. The Chairperson shall exclude irrelevant and unduly repetitious evidence.
  - d. The Chairperson shall exclude unruly or disruptive persons from the hearing.
  - e. The Chairperson will conduct the hearing subject to being overruled by a majority of the Hearing Panel members. Hearing Panel members shall be primarily responsible for obtaining testimony. ODPA staff will answer Board members' questions on the evidence, points of law, and procedure.
  - f. The City Attorney's opinion will be sought whenever the interpretation of a City Ordinance or the City Charter is contested

## Section II.K.

and pivotal to the case, or when a case raises substantial legal issues of first impression.

- g. If the Hearing Panel needs additional evidence or an opinion from the City Attorney to reach its findings, it may continue the hearing to a future date.
  - h. If either party requests that the hearing be continued to consider motions or points of law, any applicable BPD disciplinary time limit shall be tolled for the period of such continuance.
3. Judicial disposition. Either party may present to the Hearing Panel evidence of the disposition of a related matter by any branch of the judiciary (including but not limited to superior court, traffic court, and small claims court), and the Hearing Panel shall accept those findings as true.

(PRC Reg. Sec. VII.E.)

### K. Deliberation and Findings

- 1. Deliberation. After the hearing has concluded, the Hearing Panel deliberates outside the presence of everyone except ODPa staff. The Hearing Panel shall not consider any information not received in the hearing packet or during the hearing. (PRC Reg. Sec. VIII.A.)
- 2. Vote. The Hearing Panel shall affirm, modify, or reject the findings and recommendation of the Director of Police Accountability. (Art. XVIII, Sec. 125(18)(j).) All action of the Hearing Panel shall be by majority vote of those Board members present. (PRC Reg. Sec. VIII.B.)
- 3. Transmittal of findings. The Hearing Panel's decision must be submitted in writing to the Chief of Police within 15 days of the hearing (Art. XVIII, Sec. 125(18)(j)), unless extended as provided under Section II.M.2. (Art. XVIII, Sec. 125(18)(m).)
- 4. Content of findings.
  - a. If the Hearing Panel agrees with the findings and recommendations of the Director, no explanation is required.
  - b. If the Hearing Panel modifies or rejects a finding or recommendation of the Director, the Hearing Panel shall provide an explanation of its decision. (Art. XVIII, Sec. 125(18)(j).)
  - c. Any Hearing Panel member dissenting from a finding or recommendation of the majority shall submit a separate written explanation of their reasoning (PRC Reg. Sec. VIII.B.), unless the dissenter agrees with the Director's finding and recommendation.  
(NEW)



## Section II.L.

**L. Findings of Chief of Police; tentative decision; final determination by Chief or City Manager.**

1. Chief's decision. Within 10 days of receiving the findings and recommendations from the Director under Section II.E.5.a. above, or from the Hearing Panel under Section II.K.3.b. above, the Chief of Police shall take one of the following actions
  - a. Issue a final decision if the Chief agrees with the Director or with the Hearing Panel.
  - b. Submit a tentative decision to the Director and the Police Accountability Board.
2. Director's request to review tentative decision. If the Chief submits a tentative decision, the Director may request, within 10 days of receiving the decision, that the Chief submit the decision to the City Manager. If the Director does not make the request, the Chief's decision becomes final.
3. City Manager's final decision. Within 25 days of receiving the submittal from the Chief, the City Manager or their designee shall submit a final determination, with a written explanation, to the Director, the Board, and the Chief.

(Art. XVIII, Sec. 125(18)(k).)

4. Extension of time. The deadlines in this Section II.L may be extended as provided under Section II.M.2. (Art. XVIII, Sec. 125(18)(m).)

**M. Time limits; extensions.**

1. Overall limit. The time limit for investigations and notification of discipline is 240 days from the date of the City's discovery of alleged misconduct, unless a Government Code section 3304(d) exception applies. (Art. XVIII, Sec.(125)(18)(d).)
2. Other time limits. The deadlines for the Director to complete an investigation, present investigative findings to the Board, submit findings and recommendations to the Chief of Police, or request that the Chief submit a tentative decision to the City Manager; as well as deadlines for the Chief to act on findings and recommendations from the Director or Hearing Panel, and for the City Manager or their designee to make a final decision, are advisory, and may be adjusted by the Director after consulting with the City Manager and Chief, to ensure that all investigations and notifications are completed within 240 days. The timeline for completing an investigation shall not be extended beyond 195 days. (Art. XVIII, Sec.125(18)(m).)

## Section III.

**III. CONTESTING FINDINGS OF DECISION WHEN COMPLAINT FILED WITH THE POLICE DEPARTMENT.****A. Application**

1. This Section III applies to complaints that a member of the public files with the Police Department only.

**B. Procedure**

1. When the Internal Affairs division of the Police Department has completed its investigation of a complaint, the Chief of Police shall issue a letter of disposition to the subject officer and the Director. The Chief shall also issue a letter of disposition to the complainant that complies with the Penal Code. (Art. XVIII, Sec. 125(19)(d).)
2. If a finding is “not sustained,” “unfounded,” or “exonerated,” the complainant has 20 days from the date notice is sent (by mail or other reasonable means that the complainant agrees to), to contest the Chief’s determination to the Director. (Art. XVIII, Sec. 125(19)(e).) The Director, if appropriate, may request to review all files, transcripts, and records related to the complaint. (Art. XVIII, Sec. 125(19)(e)(1).)
3. Within 15 days of receiving an objection from a complainant or a notice from the Chief that a complainant has objected, the Director, in their discretion, may notify the complainant that either:
  - a. The objection is accepted and the Board will convene a Review Panel to conduct a review based on the investigative record provided by the Department; or
  - b. The objection is dismissed. In such cases, the Director must notify the Board of such dismissal in writing within 30 days of notifying the complainant of the dismissal.  
(Art. XVIII, Sec. 125(19)(e)(1); Review Panel added.)
4. If the Director decides that the Board will conduct a review, ODPA staff shall secure a Review Panel of three Board members to conduct a review of the investigative record at a closed session meeting.
  - a. At the meeting, only Review Panel members and ODPA staff will be present. A Duty Command Officer may be present.
  - b. The Review Panel shall evaluate the investigative record to determine whether the complainant’s objection has merit, either because the Department failed to proceed in a manner required by state and federal law, or because the Chief’s decision is not supported by the evidence in the record.
  - c. All action of the Review Panel must be by majority vote.

## Section III.

(NEW. Details not in Charter and no counterpart in PRC procedures.)

5. The Review Panel must, within 45 days of the date the Director accepts an objection:
  - a. Dismiss the complainant's objection; or
  - b. Issue a report agreeing with the Chief's determination; or
  - c. Issue a report disagreeing with the Chief's determination if the Review Panel finds that: 1) the Department failed to proceed in a manner required by state and federal law; or 2) the Chief's decision is not supported by the evidence in the record. The Director shall submit this report to the Chief and the City Manager.

(Art. XVIII, Secs. 125(19)(f), 125(19)(g).)
6. Within 15 days of receiving a Review Panel's recommendation disagreeing with the Chief, the Chief may prepare a report for the City Manager addressing any concerns or objections. (Art. XVIII, Sec. 125(19)(g).)
7. Within 25 days of receiving the Chief's report, the City Manager or their designee shall consider the reports of both the Board and the Chief, and send a final determination with a written explanation to the Director, the Board, and the Chief. (Art. XVIII, Sec. 125(19)(g).)
8. The deadlines in this Section III are advisory, and may be adjusted by mutual agreement between the City Manager, the Director, and the Chief, to ensure that all investigations are completed such that the time limit for investigations and notification of discipline occurs within 240 days, and investigation of all complaints filed with the Police Department are completed within 120 days of the City's discovery of alleged misconduct, unless a Government Code section 3304(d) exception applies. (Art. XVIII, Sec. 125(19)(i).)

#### **IV. INFORMAL COMPLAINTS**

- A.** An informal complaint is a communication from a member of the public, not on a complaint form, that identifies an officer or officers by name, badge number, or other identifying features, and alleges any act of misconduct pertaining to the manner in which the officer performs their duties. Such complaints shall be treated confidentially.
- B.** ODPA staff shall contact the complainant to explain the policy complaint and formal individual complaint processes.
- C.** Informal complaints will be agendaized for a closed session at the next regular Board meeting and distributed to the Board in closed session, with notice to the named officer(s).

Section IV.

- D.** The Board shall consider the informal complaint and recommend what additional action, if any, the Director of Police Accountability should take.

(Adopted by the PRC Jan. 8, 2020.)

**V. AVAILABILITY AND AMENDMENT OF REGULATIONS**

- A.** These Interim Regulations shall be posted on the website of the Office of the Director of Police Accountability, and ODPA staff shall furnish them to any person requesting a copy.

- B.** Amendments to these Interim Regulations require a majority vote of the Board and ratification by the City Council.

(PRC Reg. Sec. IX, modified.)

**Police Accountability Board  
Office of the Director of Police Accountability**

**Interim Regulations for Handling Complaints Against Sworn Officers of the  
Police Department under City Charter Article XVIII, Section 125 (Measure II)**

**Preamble**

These interim regulations for handling complaints against sworn members of the Berkeley Police Department are issued in accordance with an amendment to the Charter of the City of Berkeley adding Article XVIII, Section 125, approved by the voters of the City as Measure II on November 3, 2020. Measure II establishes a Police Accountability Board (Board) and a Director of Police Accountability (Director), and is intended to promote public trust by providing for prompt, impartial and fair investigations of complaints by members of the public against sworn employees of the Berkeley Police Department. The Board and Director replace the Police Review Commission (PRC), established by Ordinance No. 4,644-N.S.

Under Resolution No. 69,531 N.S., the City Council directed that the core functions of the Board and Director be implemented by July 1, 2021. Under Article XVIII, Section 125(13)(c) of the City Charter, the Board must establish rules of procedure governing the conduct of its business, which are subject to ratification by the City Council. In order for the Director to accept and investigate complaints filed against sworn members of the Police Department beginning July 1, 2021, interim regulations are needed until such time as the Board adopts permanent regulations and the Council ratifies them.

These interim regulations reflect the procedures for handling complaints against police officers as set forth in Measure II as well as the provisions of the PRC Regulations for Handling Complaints Against Members of the Police Department (effective April 4, 2018) that are not in conflict with Measure II. They shall apply to all complaints that were pending with the PRC as of July 1, 2021, and all complaints filed with the Office of the Director of Police Accountability on and after July 1, 2021. Applicability of permanent regulations to these pending cases will be determined later.

**I. GENERAL PROVISIONS****A. Definitions**

The following definitions shall apply in these interim regulations:

1. Administrative Closure: Closure of a complaint before a confidential personnel hearing is held.
2. Aggrieved Party: Any person directly affected by the alleged police misconduct.
3. Allegation: An assertion of specific police misconduct.

## Section I.A.

4. Board Member: A member of the Police Accountability Board appointed by the City Council.
5. Chief; Police Chief: Chief of the Berkeley Police Department.
6. City's discovery of alleged misconduct: The City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct.
7. Complaint: A declaration that alleges misconduct by a sworn employee of the Berkeley Police Department.
8. Complainant: An aggrieved party who files a complaint with the Office of the Director of Police Accountability.
9. Days: Means calendar days unless otherwise specified.
10. Director of Police Accountability (Director): The individual appointed by the City Council to investigate complaints and carry out the operations of the Police Accountability Board and the Office of the Director of Police Accountability (ODPA).
11. Duty Command Officer (DCO): A sworn employee of the Berkeley Police Department designated by the Chief of Police to appear at a hearing or review proceeding to answer questions clarifying BPD policy.
12. Hearing Panel: Three Board members impaneled to conduct a confidential personnel hearing.
13. Investigator: Employee of the Office of Director of Police Accountability whose primary role is to investigate complaints filed with the ODP.
14. Mediation: A process of attempting to reach a mutually agreeable resolution, facilitated by a trained, neutral third party.
15. Police Accountability Board (Board): The body established by City Charter Article XVIII, Section 125.
16. Review Panel: Three Board members impaneled to conduct a review of a BPD investigative record.
17. Subject Officer: A sworn employee of the Berkeley Police Department against whom a complaint is filed.
18. Witness Officer: A sworn employee of the Berkeley Police Department who has personal knowledge of events described in a complaint, but is not a subject officer.

(PRC Reg. Sec. II.B., modified.)

## B. Confidentiality

1. Importance. In their capacity as Board members, each Board member will have access to confidential data or information related to Berkeley

## Section I.B.

- Police Department personnel. ODPa staff will likewise have access to such confidential information. It is vitally important to the integrity of the complaint process under Measure II that all parties involved understand and adhere to the confidentiality of the process, and do all in their power to protect the privacy rights of Berkeley Police Department employees as required by law. (PRC Reg. Preamble.)
2. Duty. Board members, ODPa staff, and their agents and representatives shall protect and maintain the confidentiality of any records and information they receive consistent with state or federal law governing such records or information. (Art. XVIII, Sec. 125(20)(b).) In particular, such persons shall not violate the rights of sworn officers to confidentiality of personnel file information under Penal Code secs. 832.7, 832.8 (3(d)), and state law. Confidential information may be provided through witness testimony or through electronic or hard-copy transmission, and the obligation to maintain confidentiality applies, regardless of how the information is communicated. (PRC Reg. Sec. IV.A.)
  3. Closed hearings; effect on public records. All confidential personnel hearings and closed session meetings relating to the investigation of complaints against sworn officers will be closed to the public. Records of these investigations are confidential and will not be disclosed to members of the public. However, any public records included in, or attached to, investigative reports shall remain public records. (PRC Reg. Sec. 1.A.)
  4. Handling confidential information. For any proceeding in which hard copies of confidential information are distributed to Board members, each Board member shall return all confidential material to ODPa staff at the close of the proceedings, or as soon thereafter as practicable. (PRC Reg. Sec. IV.B.2.) For any proceeding in which electronic copies of confidential information are distributed to Board members, each Board member shall delete all confidential information as soon as the information is no longer needed, and promptly inform ODPa staff that they have done so. (NEW)
  5. Effect of violation. A Board member who violates confidentiality before or during a confidential personnel hearing shall be automatically disqualified from further participation in the hearing. Additionally, a Board member or the Director may agendize an alleged violation of confidentiality for discussion and action at a regular meeting of the Board, which may take adverse action upon a two-thirds vote of those present. Such adverse action may include: notice of the violation to the Board member's nominating Councilmember or to the City Council, or a prohibition from participating in future confidential personnel hearings for the remainder of the Board member's term. (PRC Reg. VI.D.3.)

## Section II.A.

**II. COMPLAINTS FILED WITH THE OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY****A. Initiating a complaint**

1. Complaint form. A complaint alleging misconduct by one or more sworn officers of the Berkeley Police Department must be filed on a form provided by the Office of the Director of Police Accountability. (Art. XVIII, Sec. 125(18)(a)(1); PRC Reg. Secs. I.B.7, II.A.1.) Complaint packets must include information about the difference between mediation and an investigation; language advising a complainant who is the subject of, or has commenced, litigation relating to the incident that gave rise to the complaint to consult an attorney before filing a complaint; and conclude with the following: "I hereby certify that, to the best of my knowledge, the statements made herein are true. I also understand that my oral testimony before the Board shall be given under oath." Complaints shall be signed by the complainant, except for complaints initiated by the Board. (PRC Reg. Sec. II.A.1.)
2. Who may file. Only an "aggrieved party" may file a complaint, except that if no complainant is available to initiate a complaint, and in any case involving a death, 5 Board members may vote to authorize an investigation or take other such action they deem appropriate. (PRC Reg. Secs. I.B.2., II. A.3.)
3. Filing period. A complaint must be filed within 90 days of the alleged misconduct, except that the 90 days shall be tolled if:
  - a) the complainant is incapacitated or otherwise prevented from filing a complaint; or
  - b) the complainant is the subject of a criminal proceeding related to the subject matter of the complaint, in which case the time for the complainant to file is tolled until the criminal matter has been adjudicated or dismissed.(PRC Reg. Sec. II.A.2.)
4. Late-filed complaints. Complaints filed between 91 and 180 days of the alleged misconduct must be reviewed by the Police Accountability Board in a closed session meeting. Six Board members must find good cause for the late filing, by clear and convincing evidence, to accept the complaint. A complaint filed after 180 days after the alleged misconduct will not be accepted. (PRC Reg. Sec. II.A.2.a)
5. Sufficiency of complaint. Complaints must allege facts that, if true, would establish that misconduct occurred. Complaints that do not allege prima facie misconduct, or are frivolous or retaliatory, shall be submitted by the Director to the Board for administrative closure at the next regular meeting that allows the complainant to be provided at least



## Section II.A.

5 days' notice. If a majority of Board members agree, the case will be closed; if the Board rejects the Director's recommendation, the Notice of Complaint and Allegations must be issued within 10 days, unless the complainant has elected mediation. This section does not apply to complaints initiated by the Board under Section II.A.2. (PRC Reg. Sec. II.A.4.a.)

6. Right to representation. Complainants and subject officers have the right to consult with, and be represented by, an attorney or other representative, but a representative is not required. If the ODPA is notified that a complainant or subject officer is represented, then the ODPA shall thereafter send copies of any materials or notices provided to the complainant or subject officer(s) to their representatives. (PRC Reg. Sec. II.A.5.)

**B. Mediation**

## 1. Election

- a. ODPA staff shall provide every complainant with information about the option to select mediation, and make every effort to ensure complainants understand this option. The complainant may elect to enter into mediation up until they are notified that the Director has submitted findings and recommendations as set forth in Section II. G.1 below.
- b. If the complainant elects mediation, ODPA staff shall notify the subject officer within 7 days that the complainant has opted for mediation, and include a copy of the complaint if not previously provided. This notice shall also inform the subject officer of their right to agree to or reject mediation within 10 days.
- c. A subject officer who agrees to mediation must agree to toll the City's 240-day disciplinary deadline if the officer later withdraws from mediation before mediation session begins.
- d. Once both parties agree to mediation, the complainant no longer has the option to have their complaint investigated and to proceed to a confidential personnel hearing, unless the subject officer withdraws from mediation.

## 2. Completion

After receiving notice from the mediator that a mediation has concluded, ODPA staff shall close the case and inform the Board.

(Art. XVIII, Sec. 125(18)(a)(2); PRC Reg. Sec. II.B., modified)

**C. Complaint investigation**

1. Time for completion. Complaint investigations must begin immediately, proceed expeditiously, and be completed within 120 days of the City's

## Section II.C.

discovery of the alleged misconduct, unless a Government Code sec. 3304(d) applies (Art. XVIII, Sec. 125(18)(e)), except:

- a. If the complainant or subject officer is the subject of criminal proceedings related to the complaint, the ODPa shall not commence an investigation until the criminal matter is adjudicated or dismissed. All time limits for processing the complaint shall be tolled during the pendency of the proceedings. As soon as practicable after the filing of a complaint, the ODPa shall contact the District Attorney's Office to determine the status and anticipated resolution of the criminal proceeding (PRC Reg. Sec. III.C.3.).
  - b. A longer time period for the investigation, not to exceed 195 days, may be agreed upon as provided under Section II.O.
2. Transmittal of complaint. Complaints accepted by the Director shall be sent by hard copy or electronically to the Chief of Police, BPD Internal Affairs, Board members, and each sworn officer against whom the complaint is filed. (Art. XVIII, Sec. 125(18)(g).)
  3. Notice of Complaint and Allegations. Within 28 days of a complaint filing or the acceptance of a late-filed complaint, the ODPa shall prepare and send a Notice of Complaint and Allegations by hard copy or electronically to the complainant, the Chief of Police or BPD Internal Affairs, and each identified subject officer. The Notice of Complaint and Allegations need not be sent if the complaint requests mediation, or the Director recommends administrative closure. (PRC Reg. Sec. III.B.1, modified.)
  4. Sworn officers' schedules. The Chief of Police or their designee shall provide ODPa staff with the schedules of all sworn employees of the Police Department. (PRC Reg. Sec. VII.A.1.)
  5. Nature of investigation. The investigation shall consist of conducting recorded interviews with the complainant, subject officers, witness officers, and civilian witnesses; and collecting relevant documentary evidence, including, but not limited to, photographic, audio, and video evidence. (PRC Reg. Sec. III.C.1.)
  6. Production, subpoena, and preservation of records. The Berkeley Police Department and all other City departments must produce records and information requested by the Office of the Director of Police Accountability and Board in connection with investigations, without redaction or limitation, unless required by state or federal law. (Art. XVIII, Sec. 125(20)(a).)
    - a. The Director may issue subpoenas to compel the production of books, papers, and documents as needed to carry out their duties and functions. (Art. XVIII, Sec. 125(20)(c).)

## Section II.C.

- b. Whenever a PRC investigation is tolled, the Chief of Police shall take appropriate steps to assure preservation of the following items of evidence:
  - I. The original Communications Center tapes relevant to the complaint.
  - II. All police reports, records, and documentation, including body-worn camera video.
  - III. Names, addresses, telephone numbers, and statements of all witnesses. (PRC Reg. Sec. II.E.2.)
7. Interview notices. Subject officers and witness officers must appear for interviews related to complaints. (Art. XVIII, Sec. 125(20)(c); PRC Reg. Exhibit A.) ODPa staff shall notify subject and witness officers at least 9 days before a scheduled interview date by hard copy or, when feasible, email. An officer who is unavailable for an interview shall contact the Director or the Investigator immediately to state the reason for their unavailability. (PRC Reg. Sec. III.D.2.)
8. Conduct of interviews, exercise of Constitutional rights. Interviews should be conducted such that they produce a minimum of inconvenience and embarrassment to all parties. Subject and witness officer interviews shall be conducted in compliance with the Public Safety Officers' Procedural Bill of Rights Act<sup>1</sup> ("POBRA"). When possible, ODPa staff shall avoid contacting BPD employees at home, and avoid contacting others at their place of employment. (PRC Reg. Sec. III.D.1.) While all officers have a right to invoke the Fifth Amendment, they also have a duty to answer questions before the ODPa regarding conduct and observations that arise in the course of their employment, and are subject to discipline for failure to respond. The exercise of any constitutional rights shall not be considered by the Board in its disposition of a complaint (PRC Reg. Sec. III.D.3.)

**D. Pre-hearing complaint disposition.**

## 1. Administrative Closure

a. Grounds

The grounds upon which a complaint may be administratively closed include but are not limited to the following:

- i. Complaint does not allege prima facie misconduct or is frivolous or retaliatory.
- ii. Request for closure by complainant.

---

<sup>1</sup> Government Code Sec. 3300 et seq.

## Section II.D.1.

- iii. Unavailability of complainant where staff has attempted at least 3 telephone, electronic mail and/or regular mail contacts. Attempts to reach the complainant by telephone and/or mail shall be documented in the recommendation for Administrative Closure.
- iv. Mootness of the complaint including but not limited to situations where the subject officer's employment has been terminated or where the complaint has been resolved by other means.
- v. Failure of the complainant to cooperate, including but not limited to: refusal to submit to an interview, to make available essential evidence, to attend a hearing, and similar action or inaction by a complainant that compromises the integrity of the investigation or has a significant prejudicial effect.
- vi. Failure of ODPa staff to timely complete its investigation, as set forth in Section II.C.1.

b. Procedure

A complaint may be administratively closed by a majority vote of Board members during closed session at a meeting. The complainant shall be notified of the opportunity to address the Board during the meeting no later than 7 days before the meeting. Cases closed pursuant to this section shall be deemed "administratively closed" and the complainant, the subject officer, and the Chief of Police shall be notified by mail.

c. Effect of Administrative Closure

Administrative Closure does not constitute a judgment on the merits of the complaint.

(PRC Reg. Sec. V.A.)

## 2. No Contest Response

A subject officer who accepts the allegations of the complaint as substantially true may enter a written response of "no contest" at any time before the Director submits their findings and recommendations to the Board under Section II.G.1. If the subject officer sends a "no contest" response, the Director shall so notify the Board when findings and recommendations are sent to them. (PRC Reg. Sec. V.B., modified)

**E. Initial submission and consideration of investigative findings and recommendations.**

- 1. Time to submit. Within 60 days of completing an investigation, the Director must submit and present investigative findings and recommendations to the Board in a closed session and convene a

## Section II.E.

confidential personnel hearing if the Board requests it. (Art. XVIII, Sec. 125(18)(i).) This deadline may be extended as provided under Section II.O.

2. Standard of proof. In determining whether a sworn officer has committed misconduct, the standard is “preponderance of the evidence.” (Art. XVIII, Sec. 125(18)(c).)
3. Categories of Findings
  - a. If the evidence shows that the alleged act did not occur, the finding shall be “Unfounded.”
  - b. If the evidence fails to support the allegations, but the allegations cannot be shown as false, the finding shall be “Not Sustained.”
  - c. If the evidence shows that the alleged act did occur, but was lawful, justified, and proper, the finding shall be “Exonerated.”
  - d. If the evidence shows that the alleged act did occur and the action was not justified, the finding shall be “Sustained.”

(PRC Regs., Sec. VIII.B.)
4. Recommendation of discipline and level of discipline. If the Director recommends a “sustained” finding on any allegation of misconduct, a recommendation of whether discipline is warranted must also be included. For those cases where an allegation of misconduct, if sustained, would involve any of the classes of conduct described in Penal Code 832.7, as enacted pursuant to Senate Bill 1421, the Director must include a recommendation regarding the level of discipline. (Art. XVIII, Sec. 125(18)(i).)
5. Board decision. Upon reviewing the Director’s investigative findings, the Board must then decide whether to hold a confidential personnel hearing.
  - a. If the Board agrees with the Director on all findings and recommendations, (i.e., no need for hearing), the Director shall send the findings and recommendations to the Chief of Police. The findings and recommendations must be sent within 195 days of the City’s discovery of alleged misconduct, except if extended as provided under Section II.M.2.
  - b. If the Board decides that further fact-finding is needed, the Board may vote to hold a confidential personnel hearing.

(Art. XVIII, Sec. 125(18)(i).)

## Section II.F.

**F. Scheduling a hearing, assigning Hearing Panel members, distributing hearing packet.**

1. Time. If the Board decides to move forward with a confidential personnel hearing, it must be held within 60 days of the date the ODPa has completed its investigation. (Art. XVIII, Sec. 125(18)(i).)
2. Scheduling hearing. ODPa staff shall determine the availability of subject officers before setting a hearing date and time. Hearings are not to be scheduled on an officer's day off or during vacation or other leave, unless two or more subject officers on same complaint do not share a common day on duty. (PRC Reg. Sec. VII.A.1.)
3. Hearing Panel. ODPa staff shall secure a Hearing Panel to conduct the confidential personnel hearing. A Hearing Panel shall consist of three Board members, except that in death cases and any cases in which six Board members vote to sit as a whole, the entire Board, with a minimum of six Board members, will constitute the Hearing Panel. (PRC Reg. Sec. VI.A.)
4. Obligation to serve; unavailability. Board members must serve on roughly an equal number of Hearing Panels each year. (PRC Reg. Sec. VI.B.1.) If a Hearing Panel member becomes unavailable, they shall be replaced by another Board member, and notice of substitution shall issue as soon as possible. If substituted within 7 days of a hearing, the subject officer retains the right to challenge the Board member for cause. The notice of challenge of a substituted Board member must be made at least 3 business days before convening the hearing and constitutes good cause for continuing the hearing. (PRC Reg. Sec. VI.B.2.)
5. Effect of continuance. If a hearing is rescheduled due to unavailability of the complainant, a subject officer, or either party's attorney, another Hearing Panel may be assigned. However, the Hearing Panel composition shall not change after the hearing has been convened. (PRC Reg. Sec. VI.B.3)
6. Notice of hearing. The ODPa must issue a written hearing notice at least 14 days before the hearing to all parties, witnesses, representatives, Hearing Panel members, and the Police Chief. This notice must include the time, date, and location of the hearing, and the composition of the Hearing Panel. (PRC Reg. Sec. VII. A.2)
7. Hearing Packet. The ODPa shall provide the Hearing Panel with a Hearing Packet, which shall contain the Director's findings and recommendations, and all evidence and documentation obtained or produced during the investigation (Art. XVIII, Sec. 125(18)(i)), at least 14 days before the hearing date. The Hearing Packet shall also be sent to the subject officer(s), any representatives, the Duty Command

## Section II.F.

Officer, and the Police Chief. The complainant shall receive a Hearing Packet without documents containing confidential investigatory materials or findings and recommendations. Witness officers and civilian witnesses shall receive a copy of only their interview transcript. (PRC Reg. Sec. VII.B., modified.)

**G. Board member impartiality; recusals; challenges**

1. Conduct.
  - a. Board members shall maintain basic standards of fair play and impartiality, and avoid bias and the appearance of bias. In confidential personnel hearings, they shall hear all viewpoints. (Art. XVIII, Sec. 125(8)(b).)
  - b. No member of a Hearing Panel shall publicly state an opinion regarding policies directly related to the subject matter of a pending complaint; publicly comment on any of the facts or analysis of a pending complaint; or pledge or promise to vote in any particular manner in a pending complaint. (PRC Reg. Sec. VI.D.2.)
  - c. A Board member who violates Section G.1.b above, before or during a confidential personnel hearing, shall be automatically disqualified from further participation in the hearing. Additionally, a Board member or the Director may agendize an alleged violation of that Section for discussion and action at a regular meeting of the Board, which may take adverse action upon a two-thirds vote of those present. Such adverse action may include: notice of the violation to the Board member's nominating Councilmember or to the City Council, or a prohibition from participating in future confidential personnel hearings for the remainder of the Board member's term. (PRC Reg. VI.D.3.)
2. Recusal; disclosure of ex parte contacts. Board members recused for a conflict of interest must do so immediately when an item is taken up. Board members shall verbally disclose all ex parte contacts concerning the subject of the hearing and shall submit a written report of such contacts before the hearing begins. Ex parte contacts include any contact between a Board member and any party involved in the complaint before the public hearing. (Art. XVIII, Sec. 125(8)(b)(2).)
3. Challenges to Hearing Panel member
  - a. Basis for Challenge. A Board member who has a personal interest, or the appearance thereof, in the outcome of a hearing shall not sit on the Board. Personal interest in the outcome of a hearing does not include political or social attitudes or beliefs. Examples of personal bias include, but are not limited to:

## Section II.G.

- i. a familial relationship or close friendship with the complainant or subject officer;
  - ii. witnessing events material to the inquiry;
  - iii. a financial interest in the outcome of the inquiry;
  - iv. a bias for or against the complainant or subject officer.
- b. Procedure
- i. No later than 7 days of the date of mailing of the Hearing Packet, which includes the names of the Board members constituting the Hearing Panel, the complainant or the subject officer(s) may file a written challenge for cause to any Board member. Such challenge must specify the nature of the conflict of interest.
  - ii. The Director shall contact the challenged Board member as soon as possible after receipt of the challenge.
  - iii. If the Board member agrees to recuse themselves, the Director shall ask another Board member to serve.
  - iv. If the Board member disagrees that the challenge is for good cause, they shall state their reasons in writing, and the Director shall make this determination. If the Director finds good cause for the challenge, the Director shall inform the challenged Board member and ask another to serve.
  - v. If the Director rejects a challenge to a Board member and the Board member serves, the written challenge and the Board member's written response shall be made part of the hearing record.
- c. Replacement of Board member. Any Board member who is unable to serve for any reason shall be replaced by another Board member, except in cases involving a death.

(PRC Reg. Sec. VI.C., modified.)



## Section II.H.

**H. Continuance requests; other pre-hearing motions**

1. Pre-hearing continuance requests. Requests to continue a hearing must be made to the Director as soon as the cause for continuance arises. The Director may grant the request only for good cause. Factors in determining good cause include: reason for request, timeliness, prejudice to the other party, filing date of complaint, and previous continuance requests. A request for a continuance made within 3 business days of the hearing date shall not be granted unless the requester cannot attend due to a personal emergency or can demonstrate substantial prejudice if denied. A continuance granted at a subject officer's request shall toll any disciplinary time period under the Memorandum of Understanding between the City of Berkeley and the Berkeley Police Association and the 60-day time limitation under Article XVIII, Section 125(18)(i). (PRC Reg. Sec. VII.C.4., modified)
2. Newly Discovered Evidence or Witnesses. The complainant and subject officer shall provide any newly discovered evidence or witnesses' names to the ODPa staff no later than 14 days before the scheduled hearing date, with an explanation as to why the evidence or witnesses could not have been discovered earlier and its significance. ODPa staff shall inform the Hearing Panel of the newly discovered evidence or witnesses as soon as possible.

The Hearing Panel shall decide whether or not to allow the evidence or witnesses no later than 4 business days before the scheduled hearing date, and ODPa staff shall notify both the complainant and the subject officer of the Hearing Panel's decision. (PRC Reg. Sec. VII.C.1.)

3. Procedural issues. The complainant and subject officer shall raise any procedural issues by submitting them in writing to the Director at least 7 days before the hearing date. Procedural issues can include, without limitation, expiration of the 1-year limitation period under Government Code section 3304, or whether an officer should testify. (PRC Reg. Sec. VII.C.2.)

**I. Hearing procedures**

1. Who may or must be present at hearing. Hearings are closed to the public. The Director and Investigator may be present during the entirety of the hearing. The Duty Command Officer may be present for all but the Board members' deliberations. (PRC Reg. VII.D.1.) The complainant and the subject officer shall be present to answer questions from Board members, subject to state law. (Art. XVIII, Sec. 125(18)(i).) An attorney or other representative for the complainant or the subject officer may participate in the hearing, but a representative is not required, and the complainant or subject officer is responsible for

## Section II.I.

- ensuring their representative's presence at the hearing. (PRC Reg. VII.D.2.)
2. Continuances. If good cause is shown, the Hearing Panel may continue the hearing due to the unanticipated unavailability of a witness or a representative. (PRC Reg. Sec. VII.D.3.)
  3. Party's failure to appear. Absent good cause, if the complainant fails to appear within 30 minutes of the scheduled hearing time, the complaint will be dismissed. Absent good cause, if the subject officer fails to appear within 30 minutes of the scheduled hearing time, the hearing will proceed and the allegations may be sustained. (PRC Reg. Sec. VII.D.4.)
  4. Lack of full Hearing Panel. If two Hearing Panel members are present but a third fails to appear within 30 minutes of the scheduled hearing time, the hearing will be continued until a third Hearing Panel member is seated, unless all parties agree to proceed with two Hearing Panel members, in which case all findings must be unanimous. (PRC Reg. Sec. VII.D.5.)
  5. Chair of panel. The Hearing Panel shall select one member to serve as the Chairperson of the hearing. (PRC Reg. Sec. VI.A.)
  6. Taking testimony at the hearing.
    - a. The complainant and any civilian witnesses will be called into the hearing room to testify separately; the subject officers and their representatives may be present during their testimony. The complainant or their representative may make a statement or rely on the interview statements. Questioning will then proceed as follows: a) Board members may ask questions; b) the subject officer or his or her representative may ask questions; c) Board members may ask follow-up questions. After questioning is completed, the complainant or their representative will have up to 15 minutes to provide a summary of their case and a closing statement. (PRC Reg. Sec. VII.D.7.)
    - b. The complainant and their representative, and civilian witnesses will each be excused from the hearing room after their testimony or representation is completed. (PRC Reg. Sec. VII.D.8.)
    - c. The subject officers and any witness officers will be called into the hearing room to testify separately. Subject officer representatives may be present for all testimony. Each subject officer may make a statement or choose to rely on the interview statements. Each subject officer will be questioned by their representative first, after which the officer may be questioned by 2 Board members, unless the officer waives this requirement. After questioning is completed,

## Section II.I.

each subject officer will have up to 15 minutes to provide a summary of their case and a closing statement.

- d. The subject officers and witness officers will each be excused from the hearing room after their testimony is completed. (PRC Reg. Sec. VII.D.9.)
7. Subpoenas. The Board may issue subpoenas to compel the production of books, papers, and documents as needed to carry out their duties and functions. (Art. XVIII, Sec. 125(20)(c).)
8. Maintaining order. No person at hearing shall become subject of undue harassment, personal attack, or invective. If the chairperson fails to maintain reasonable order, BPD employees may leave the hearing without prejudice. The burden shall be upon the BPD employee to establish to the City Manager's satisfaction that their reason for leaving was sufficient. (PRC Reg. Sec. VII.D.10.)

**J. Evidence**

1. General. The hearing need not be conducted according to technical rules of evidence. Any relevant evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs.
2. Procedure. Evidence shall be taken in accordance with the following provisions:
  - a. The complainant and subject officers shall have the right to testify and refer to any relevant evidence that has been entered into the record. If the complainant or subject officers do not testify on their own behalf, they may be called and examined as if under cross-examination.;
  - b. Oral evidence shall be taken only under oath.
  - c. The Chairperson shall exclude irrelevant and unduly repetitious evidence.
  - d. The Chairperson shall exclude unruly or disruptive persons from the hearing.
  - e. The Chairperson will conduct the hearing subject to being overruled by a majority of the Hearing Panel members. Hearing Panel members shall be primarily responsible for obtaining testimony. ODPA staff will answer Board members' questions on the evidence, points of law, and procedure.
  - f. The City Attorney's opinion will be sought whenever the interpretation of a City Ordinance or the City Charter is contested

## Section II.K.

and pivotal to the case, or when a case raises substantial legal issues of first impression.

- g. If the Hearing Panel needs additional evidence or an opinion from the City Attorney to reach its findings, it may continue the hearing to a future date.
  - h. If either party requests that the hearing be continued to consider motions or points of law, any applicable BPD disciplinary time limit shall be tolled for the period of such continuance.
3. Judicial disposition. Either party may present to the Hearing Panel evidence of the disposition of a related matter by any branch of the judiciary (including but not limited to superior court, traffic court, and small claims court), and the Hearing Panel shall accept those findings as true.

(PRC Reg. Sec. VII.E.)

#### K. Deliberation and Findings

- 1. Deliberation. After the hearing has concluded, the Hearing Panel deliberates outside the presence of everyone except ODPa staff. The Hearing Panel shall not consider any information not received in the hearing packet or during the hearing. (PRC Reg. Sec. VIII.A.)
- 2. Vote. The Hearing Panel shall affirm, modify, or reject the findings and recommendation of the Director of Police Accountability. (Art. XVIII, Sec. 125(18)(j).) All action of the Hearing Panel shall be by majority vote of those Board members present. (PRC Reg. Sec. VIII.B.)
- 3. Transmittal of findings. The Hearing Panel's decision must be submitted in writing to the Chief of Police within 15 days of the hearing (Art. XVIII, Sec. 125(18)(j)), unless extended as provided under Section II.M.2. (Art. XVIII, Sec. 125(18)(m).)
- 4. Content of findings.
  - a. If the Hearing Panel agrees with the findings and recommendations of the Director, no explanation is required.
  - b. If the Hearing Panel modifies or rejects a finding or recommendation of the Director, the Hearing Panel shall provide an explanation of its decision. (Art. XVIII, Sec. 125(18)(j).)
  - c. Any Hearing Panel member dissenting from a finding or recommendation of the majority shall submit a separate written explanation of their reasoning (PRC Reg. Sec. VIII.B.), unless the dissenter agrees with the Director's finding and recommendation.  
(NEW)

## Section II.L.

**L. Findings of Chief of Police; tentative decision; final determination by Chief or City Manager.**

1. Chief's decision. Within 10 days of receiving the findings and recommendations from the Director under Section II.E.5.a. above, or from the Hearing Panel under Section II.K.3.b. above, the Chief of Police shall take one of the following actions
  - a. Issue a final decision if the Chief agrees with the Director or with the Hearing Panel.
  - b. Submit a tentative decision to the Director and the Police Accountability Board.
2. Director's request to review tentative decision. If the Chief submits a tentative decision, the Director may request, within 10 days of receiving the decision, that the Chief submit the decision to the City Manager. If the Director does not make the request, the Chief's decision becomes final.
3. City Manager's final decision. Within 25 days of receiving the submittal from the Chief, the City Manager or their designee shall submit a final determination, with a written explanation, to the Director, the Board, and the Chief.

(Art. XVIII, Sec. 125(18)(k).)

4. Extension of time. The deadlines in this Section II.L may be extended as provided under Section II.M.2. (Art. XVIII, Sec. 125(18)(m).)

**M. Time limits; extensions.**

1. Overall limit. The time limit for investigations and notification of discipline is 240 days from the date of the City's discovery of alleged misconduct, unless a Government Code section 3304(d) exception applies. (Art. XVIII, Sec.(125)(18)(d).)
2. Other time limits. The deadlines for the Director to complete an investigation, present investigative findings to the Board, submit findings and recommendations to the Chief of Police, or request that the Chief submit a tentative decision to the City Manager; as well as deadlines for the Chief to act on findings and recommendations from the Director or Hearing Panel, and for the City Manager or their designee to make a final decision, are advisory, and may be adjusted by the Director after consulting with the City Manager and Chief, to ensure that all investigations and notifications are completed within 240 days. The timeline for completing an investigation shall not be extended beyond 195 days. (Art. XVIII, Sec.125(18)(m).)

## Section III.

**III. CONTESTING FINDINGS OF DECISION WHEN COMPLAINT FILED WITH THE POLICE DEPARTMENT.****A. Application**

1. This Section III applies to complaints that a member of the public files with the Police Department only.

**B. Procedure**

1. When the Internal Affairs division of the Police Department has completed its investigation of a complaint, the Chief of Police shall issue a letter of disposition to the subject officer and the Director. The Chief shall also issue a letter of disposition to the complainant that complies with the Penal Code. (Art. XVIII, Sec. 125(19)(d).)
2. If a finding is “not sustained,” “unfounded,” or “exonerated,” the complainant has 20 days from the date notice is sent (by mail or other reasonable means that the complainant agrees to), to contest the Chief’s determination to the Director. (Art. XVIII, Sec. 125(19)(e).) The Director, if appropriate, may request to review all files, transcripts, and records related to the complaint. (Art. XVIII, Sec. 125(19)(e)(1).)
3. Within 15 days of receiving an objection from a complainant or a notice from the Chief that a complainant has objected, the Director, in their discretion, may notify the complainant that either:
  - a. The objection is accepted and the Board will convene a Review Panel to conduct a review based on the investigative record provided by the Department; or
  - b. The objection is dismissed. In such cases, the Director must notify the Board of such dismissal in writing within 30 days of notifying the complainant of the dismissal.  
(Art. XVIII, Sec. 125(19)(e)(1); Review Panel added.)
4. If the Director decides that the Board will conduct a review, ODPA staff shall secure a Review Panel of three Board members to conduct a review of the investigative record at a closed session meeting.
  - a. At the meeting, only Review Panel members and ODPA staff will be present. A Duty Command Officer may be present.
  - b. The Review Panel shall evaluate the investigative record to determine whether the complainant’s objection has merit, either because the Department failed to proceed in a manner required by state and federal law, or because the Chief’s decision is not supported by the evidence in the record.
  - c. All action of the Review Panel must be by majority vote.

## Section III.

(NEW. Details not in Charter and no counterpart in PRC procedures.)

5. The Review Panel must, within 45 days of the date the Director accepts an objection:
  - a. Dismiss the complainant's objection; or
  - b. Issue a report agreeing with the Chief's determination; or
  - c. Issue a report disagreeing with the Chief's determination if the Review Panel finds that: 1) the Department failed to proceed in a manner required by state and federal law; or 2) the Chief's decision is not supported by the evidence in the record. The Director shall submit this report to the Chief and the City Manager.

(Art. XVIII, Secs. 125(19)(f), 125(19)(g).)
6. Within 15 days of receiving a Review Panel's recommendation disagreeing with the Chief, the Chief may prepare a report for the City Manager addressing any concerns or objections. (Art. XVIII, Sec. 125(19)(g).)
7. Within 25 days of receiving the Chief's report, the City Manager or their designee shall consider the reports of both the Board and the Chief, and send a final determination with a written explanation to the Director, the Board, and the Chief. (Art. XVIII, Sec. 125(19)(g).)
8. The deadlines in this Section III are advisory, and may be adjusted by mutual agreement between the City Manager, the Director, and the Chief, to ensure that all investigations are completed such that the time limit for investigations and notification of discipline occurs within 240 days, and investigation of all complaints filed with the Police Department are completed within 120 days of the City's discovery of alleged misconduct, unless a Government Code section 3304(d) exception applies. (Art. XVIII, Sec. 125(19)(i).)

#### IV. INFORMAL COMPLAINTS

- A.** An informal complaint is a communication from a member of the public, not on a complaint form, that identifies an officer or officers by name, badge number, or other identifying features, and alleges any act of misconduct pertaining to the manner in which the officer performs their duties. Such complaints shall be treated confidentially.
- B.** ODPa staff shall contact the complainant to explain the policy complaint and formal individual complaint processes.
- C.** Informal complaints will be agendaized for a closed session at the next regular Board meeting and distributed to the Board in closed session, with notice to the named officer(s).

Section IV.

- D.** The Board shall consider the informal complaint and recommend what additional action, if any, the Director of Police Accountability should take.

(Adopted by the PRC Jan. 8, 2020.)

**V. AVAILABILITY AND AMENDMENT OF REGULATIONS**

- A.** These Interim Regulations shall be posted on the website of the Office of the Director of Police Accountability, and ODPA staff shall furnish them to any person requesting a copy.

- B.** Amendments to these Interim Regulations require a majority vote of the Board and ratification by the City Council.

(PRC Reg. Sec. IX, modified.)



ATTACHMENT 5



OFFICE OF THE DIRECTOR  
OF POLICE ACCOUNTABILITY

July 20, 2021

To: Police Accountability Board Regulations Subcommittee,  
Lt. Dan Montgomery (BPD), Sgt. Scott Castle (BPA)

From: Katherine J. Lee, <sup>KA</sup> Interim Director of Police Accountability

Re: Draft Interim Regulations for Handling Complaints Filed with the PAB/ODPA  
Against Sworn Members of the Police Department

Attached for your review are draft Interim Regulations governing the handling of complaints filed with the Police Accountability Board / Office of Director of Police Accountability. These draft regulations are intended to allow the ODPa and PAB to perform investigations, hold hearings, and conduct reviews, pending adoption of permanent regulations.

These draft regulations reflect a merger of the provisions of City Charter Article XVIII, Section 125 (aka Measure II) and the Police Review Commission (PRC) Regulations for Handling Complaints Against Members of the Police Department (latest edition, dated April 4, 2018) that do not conflict with Measure II. I've included a copy of Charter Article XVIII, and an annotated copy of the PRC Regulations, with cross-references to where sections were placed in the draft Interim Regulations and showing which sections were omitted.

Specific notes:

1. **The most important aspect of your review is to carefully study Draft Sections E, I, K, L, and M**, which implement Charter Art. XVIII, Sections 125(18) (i), (j), (k), and (m), and 125(19) (e) through (i). These reflect the new procedures of the Charter amendment. Charter Section 125(18), especially subsection (i), is somewhat difficult to plow through, so I created a flowchart to help visualize the process. (Flowchart on Section 19 to come.)
2. Confidentiality provisions, scattered in several places in the PRC Regs, are gathered in one section. (Draft Sec. I.B.)
3. The following decisions, formerly in the hands of the Commission or the Board of Inquiry, have been put in the hands of the Director for efficiency's sake. This is also consistent with a bit more authority being placed in the hands of the Director under Measure II:

Draft Interim Regulations  
July 20, 2021  
P. 2 of 2

- a. Challenge to Board member (Draft Sec. II.I.3.) – Note also that the PRC Regulations provided for the PRC Officer to poll the other two Commissioners, which violates the Brown Act. (PRC Reg. VI.C.2.d.)
- b. Request for continuance (Draft Sec. II.J.)

General notes:

1. Police Accountability Board, Board member, Office of the Director of Police Accountability, and Director, have replaced Police Review Commission, Commissioner, PRC staff and PRC Officer, respectively.
2. I have removed all provisions relating to policy complaints. These are best left to a separate document, or perhaps incorporation into the Board's Standing Rules.
3. "Business days" have been converted to calendar days in almost all instances. I thought going back and forth between business and calendar days in the PRC Regulations was unnecessary and confusing.

This is a lot of information to go through, and I welcome any questions or concerns you may have. Subcommittee members can discuss with me without fear of violating the Brown Act; I just cannot transmit your thoughts to other subcommittee members until we're in a meeting.

Attachments:

- Draft Interim Regulations, dated July 20, 2021
- Annotated PRC Regulations, dated April 4, 2018
- City Charter Article XVIII, Section 125
- Flowchart, Section 125(18)

---

# ***CITY OF BERKELEY***

---

# **REGULATIONS**

## **For Handling Complaints Against Members of the Police Department**

*Effective April 4, 2018*

---

# ***POLICE REVIEW COMMISSION***

---

*POLICE REVIEW COMMISSION OFFICES: 1947 Center Street, First Floor, Berkeley, CA 94704  
Tel: 510.981.4950 • TDD: 510.981.6903 • Fax: 510.981.4955  
e-mail: [prc@cityofberkeley.info](mailto:prc@cityofberkeley.info) • website: [www.cityofberkeley.info/prc/](http://www.cityofberkeley.info/prc/)*

**TABLE OF CONTENTS**

PREAMBLE ..... 1

I. GENERAL ..... 1

    A. Application of Regulations - Confidentiality of Complaint Proceedings..... 1

    B. Definitions..... 2

II. INITIATING THE PROCESS ..... 3

    A. Filing a Complaint..... 3

    B. Mediation..... 4

III. COMPLAINT INVESTIGATION ..... 5

    A. Priority of Investigations..... 5

    B. Notice and Availability of Complaint..... 5

    C. Investigation Process..... 5

    D. Interviews ..... 6

    E. BPD Reports..... 7

    F. Report of Investigation..... 7

IV. CONFIDENTIALITY OF PERSONNEL MATTERS..... 7

    A. Responsibilities of PRC Commissioners ..... 7

    B. Conduct ..... 7

V. PRE-HEARING COMPLAINT DISPOSITION..... 8

    A. Administrative Closure..... 8

    B. No Contest Response..... 9

    C. Waiver of Hearing..... 9

VI. BOARDS OF INQUIRY ..... 9

    A. Composition..... 9

    B. Designation..... 9

    C. Challenge of BOI Commissioner..... 10

    D. Responsibilities of BOI Commissioners ..... 10

    E. Function..... 11

    F. Subpoena Power ..... 11

VII. HEARINGS ..... 11

    A. Scheduling and Notice..... 11

    B. Board of Inquiry Hearing Packet..... 12

    C. Pre-Hearing Motions..... 12

    D. Procedure..... 14

    E. Evidence..... 15

VIII. DELIBERATION AND FINDINGS ..... 15

    A. Deliberation ..... 15

    B. Majority Vote..... 15

    C. Standard of Proof ..... 16

    D. Categories of Findings..... 16

    E. Findings Report and Notification..... 16

    F. Petition for Rehearing ..... 16

IX. AMENDMENT AND AVAILABILITY OF REGULATIONS..... 17

EXHIBIT A Memorandum from City Manager Re: Subject Officer Testimony ..... 18

Section references  
in left margin are  
to DRAFT  
Interim  
Regulations dated  
7-20-2021

**BERKELEY POLICE REVIEW COMMISSION**

**REGULATIONS FOR HANDLING COMPLAINTS AGAINST  
MEMBERS OF THE POLICE DEPARTMENT**

(Adopted May 13, 1975. Amended August 8, 1984; April 30, 1990; May 26, 1993;  
November 7, 2007; July 14, 2010; July 9, 2014; March 28, 2016; April 4, 2018)

**PREAMBLE**

Revised

The following procedures for handling complaints against members of the Berkeley Police Department (BPD) have been drawn up in accordance with the enabling Ordinance establishing the Police Review Commission for the City of Berkeley. That Ordinance, No. 4644-N.S., passed by the voters April 17, 1973, was intended to provide prompt, impartial, and fair investigation of complaints brought by individuals against the BPD and these regulations are adopted by the Commission to carry out that purpose.

That Ordinance, by setting up this Commission made up of community residents, is intended to establish a process for reviewing Police Department policies, practices and procedures and for handling individual complaints against members of the BPD that is available to any individual, free of charge and without the need for attorneys or other professional advisors. The Ordinance gives the Commission the power to adopt rules and regulations and develop procedures for its own activities and investigations.

Accordingly, the Commission reserves the right to establish and interpret its procedures in the spirit of the Ordinance and in the best interests of the City of Berkeley, as long as they are consistent with the powers granted to it by the enabling Ordinance, current California case law, the Public Safety Officers Procedural Bill of Rights Act (Gov't Code sections 3300-3319), and Penal Code sections 832.5 and 832.7, governing the confidentiality of peace officer personnel records.

In their capacity as PRC Commissioners, each Commissioner will have access to confidential data or information related to Berkeley Police Department personnel. Confidential information may be provided through witness testimony or through electronic or hard-copy transmission. Regardless of how the confidential information is communicated, it shall not be disclosed to any unauthorized person or organization, and it is the responsibility of each PRC Commissioner to protect confidential information from unauthorized disclosure. It is vitally important to the integrity of the Berkeley Police Review Commission process that all parties involved understand and adhere to the confidentiality of the process, and do all in their power to protect the privacy rights of Berkeley Police Department employees as required by law.

**I. GENERAL**

A. Application of Regulations - Confidentiality of Complaint Proceedings

I.B.

The following regulations govern the receipt and processing of complaints submitted to the Police Review Commission (PRC or Commission). All Board of Inquiry (BOI) and Commission proceedings relating to the investigation of an individual complaint against an officer shall be closed to the public. Records of these investigations shall be treated as confidential and will not be disclosed to members of the public. Any

## Section I.A.

public records included in, or attached to, any investigative reports shall remain public records, and copies shall be made available to the complainant and subject officer.

I.A.  
(substantive provisions removed from definitions.)

B. Definitions.

The following definitions shall apply in these regulations:

1. Administrative Closure: Complaint closure before a BOI hearing. [Administrative closure requires a majority vote of the Commissioners, in closed session, at a regularly scheduled meeting, and does not constitute a judgment on the merits of the complaint. ] See II.D.1.
2. Aggrieved Party: Any person directly affected by the alleged police misconduct. Only an aggrieved party may file a complaint, except that a complaint by an aggrieved minor must be filed by the minor's parent or guardian. ] See II.A.2.
3. Allegation: A specific assertion of police misconduct by a complainant or the Commission.
- ~~4~~. Board of Inquiry (BOI): Three Commissioners impaneled to hear and render findings on complaints; ~~a~~ BOI Commissioner is required to sign a confidentiality and nondisclosure agreement.] replaced by Hearing Panel
- ~~5~~. BOI Hearing Packet: Evidence and information for the hearing, issued no later than 10 business days before the scheduled hearing.
- ~~6~~. Commissioner: A resident of Berkeley appointed by a City Council member or the Mayor to serve on the PRC.
7. Complaint: A declaration that alleges misconduct by a Berkeley Police Department (BPD) employee [(including employees of the Public Safety Communications Center) while engaged in official duties. ] deleted
8. Complainant: Any aggrieved party who files a complaint with the PRC.
9. Duty Command Officer (DCO): A sworn BPD officer designated by the BPD's Chief of Police to appear at a Board of Inquiry and answer procedural questions clarifying BPD policy.
- ~~10~~. Findings Report: Summary of the BOI's findings, provided to the City Manager and the Chief of Police.
11. Mediation: A process of reaching a mutually agreeable resolution to a complaint, which is facilitated by ~~a~~ local mediation agency.] revised
- ~~12~~. Policy Complaint: A declaration alleging that a BPD policy, practice or procedure is improper or should be reviewed or revised.
13. PRC Investigator: A person employed by the City Manager and assigned to the PRC to investigate complaints.
- ~~14~~. PRC Officer: A person employed by the City Manager and assigned to the PRC as the office administrator and secretary to the Commission.
- ~~15~~. Report of Investigation: Report issued within 80 calendar days of the filing date of the complaint.

## Section I.B.

16. Subject Officer: A sworn BPD officer, [or other BPD employee] against whom a complaint is filed.
17. Summary Dismissal: Dismissal of any or all of the allegations in a complaint prior to the start of a BOI hearing; requires a unanimous vote of the BOI Commissioners, and constitutes a judgment on the merits.
18. Toll: Stop the running of the clock/investigation timeline.
19. Witness Officer: A sworn BPD officer, [or other BPD employee,] who has personal knowledge of events described in a complaint, but is not the subject officer.

## II. INITIATING THE PROCESS

### A. Filing a Complaint

II.A.1.

#### 1. Complaint Form

Complaints and policy complaints must be filed on a form provided by the PRC and, except as provided in section 3, signed by the complainant. Non-policy complaint forms will include information about the difference between mediation and an investigation; and language advising a complainant who is the subject of, or has commenced, litigation relating to the incident that gave rise to the complaint to consult an attorney before filing a complaint. Non-policy complaint forms will conclude with the following: "I hereby certify that, to the best of my knowledge, the statements made herein are true. I also understand that my oral testimony before the Board of Inquiry shall be given under oath."

II.A.3.,  
II.A.4.

#### 2. Filing Period

- a. To be considered timely, a complaint must be filed within 90 calendar days of the alleged misconduct, except that the 90-day period shall be tolled when a complainant is incapacitated or otherwise prevented from filing a complaint. Any complaint filed after 90 calendar days of the alleged misconduct shall be dismissed, unless accepted as a late-file. A complaint filed between 91 and 180 calendar days of the alleged misconduct must include a late-file form, and can be accepted as a late-file if at least 6 Commissioners find, by clear and convincing evidence, good cause for the complainant's failure to file in a timely fashion. The PRC staff will submit a late-file to the Commission for a vote in closed session at the next regularly scheduled meeting. Any complaint filed after 180 calendar days of the alleged misconduct will not be accepted.
- b. If a person is the subject of a criminal proceeding related to the subject matter of the complaint, the time for that person to file a complaint shall be tolled until the criminal matter has been adjudicated or dismissed.

II.A.2.

#### 3. Unavailability of Complainant

If there is no complainant able to initiate a complaint, and in any case where a sworn officer or other BPD employee is involved in a death, 5 Commissioners may vote to authorize an investigation or take such other action they deem appropriate.

## Section II.A.

## II.A.5.

## 4. Sufficiency of Complaint

a. Complaints must allege facts that, if true, would establish that misconduct occurred. Complaints that do not allege prima facie misconduct, or are frivolous or retaliatory shall be referred by the PRC staff to the Commission for administrative closure at the next regularly scheduled meeting, provided there is sufficient time to give the complainant notice (see Sec. V.A.2.), and before the Notice of Allegations is issued. If a majority of the Commissioners agree, the case will be closed; if not, the Notice of Allegations will be issued within 10 calendar days after the date of the vote rejecting the PRC Officer's recommendation for closure, unless the complainant has elected mediation. This Section II.4.a. does not apply to complaints initiated by the Commission under Section II.A.3.

Policy complaints  
not included in  
Interim Regs.

b. [Policy complaints will be brought to the Commission for discussion or action within 30 calendar days of filing or at the next regularly scheduled meeting of the PRC if the 30 days has expired. If a majority of the Commissioners feel that a policy review is warranted, they may take appropriate action, including, but not limited to, initiating a formal investigation or establishing a subcommittee; a subcommittee, if established, will seek BPD involvement in its review of a BPD policy. Upon completion of its review, the subcommittee will present its conclusions and recommendations to the full Board.]

## II.A.6.

## 5. Right to Representation

Complainants and subject officers have the right to consult with, and be represented by, an attorney or other representative, but an attorney is not required. If PRC staff is notified that a complainant or subject officer is represented by an attorney, PRC staff shall thereafter send copies of any materials and notification provided to the complainant or the subject officer(s) to their representative.

B. Mediation

II.B.1.,  
modified

## 1. Election

- a. PRC staff shall provide the complainant with information about the option to select mediation. The complainant may elect to enter into mediation up until notice of the Board of Inquiry hearing has been issued. PRC staff shall make every effort to ensure complainants understand the mediation option.
  - b. If the complainant elects mediation, the PRC staff shall provide the subject officer with a copy of the complaint, if not previously provided, and notify him or her of the complainant's election, within 5 business days.
  - c. If the subject officer agrees to mediation, she or he shall notify PRC staff within 10 calendar days of being informed of the complainant's election. A subject officer who agrees to mediation must agree to toll the City's 120-day disciplinary deadline should the officer later withdraw from mediation before the start of the mediation session.
- ✗. If notice of a Board of Inquiry hearing has been issued, the hearing shall be cancelled upon both parties agreeing to mediation.



## Section II.B.

- e. Once both parties agree to mediation, the complainant no longer has the option to proceed to a Board of Inquiry hearing unless the subject officer withdraws from mediation.

## 2. Notice of completion

After receiving notice from the mediator that a mediation has concluded, PRC staff shall close the case and inform the Commission.

### III. COMPLAINT INVESTIGATION

#### A. Priority of Investigations

Recognizing that the Memorandum of Understanding between the City of Berkeley and the Berkeley Police Association places a 120-day limit on the imposition of officer discipline, it shall be the priority of staff in those cases where a BOI is convened, that the BOI findings be issued within 105 days of the filing of the complaint.

II.C.3.

#### B. Notice and Availability of Complaint

## 1. Notice of Allegations

Within 20 business days of the date a timely-filed complaint is received at the PRC office, unless it is submitted to the Commission for administrative closure or the complainant elects mediation, PRC staff shall prepare a Notice of Allegations. The Notice of Allegations shall be sent in hard copy or electronically, to the complainant, the Chief of Police and/or BPD Internal Affairs, and, by delivery to the BPD, each identified subject officer. [If the Notice of Allegations is not issued in the time required, PRC staff shall submit the case to the Commission for administrative closure at the next regularly scheduled meeting; the complaint shall be closed, unless the Commission determines that good cause exists for the delay.] ~~deleted~~

[II.C.2,  
II.C.3.]

#### X. Availability of Complaint

The complaint shall be available at the PRC office, [and a copy shall be provided to the subject officer with the Notice of Allegations] PRC staff shall maintain a central register of all complaints filed.

II.C.5.

#### C. Investigation Process

## 1. Nature of Investigation

The investigation of a complaint shall consist of conducting recorded interviews with the complainant, the subject officer(s), and any witnesses to the incident that gave rise to the complaint;<sup>1</sup> collecting relevant documentary evidence, including, but not limited to: police reports and records, photographs, and visual or audio records; and issuing a Notice of Allegations and Report of Investigation.

<sup>1</sup> Recordings of interviews shall be kept for 100 days or until the Board of Inquiry's Findings Report has been provided to the City Manager, whichever is later.

## Section III.C.

## 2. Time for Investigation

- ~~X~~ PRC staff shall make every effort to complete the Report of Investigation within 80 days of filing.
- ~~X~~ If the Report of Investigation is not completed within 80 days, PRC staff shall make an oral report to the full Commission in a closed session at its next regularly scheduled meeting.
- ? c. The investigation must be completed within one year, unless a Government Code Sec. 3304(d) exception applies.
- ? d. If the investigation is not completed within one year, the PRC Officer or Investigator shall submit the case to the Commission for administrative closure at the next regularly scheduled meeting; the case shall be closed, unless the Commission determines that a Government Code Sec. 3304(d) exception applies.
- ? e. If a Government Code Sec. 3304(d) exception to the one-year limitation period applies, the BOI Hearing Packet shall state the applicable exception.

Unsure if one-year limit is applicable

## II.C.1.a.

## 3. Pending Criminal Action

If the complainant or the subject officer is the subject of criminal proceedings related to the matter of the complaint, the PRC shall not undertake an investigation until the criminal matter has been adjudicated or dismissed. All time limitations applicable to the processing of PRC complaints shall be tolled during the pendency of any such criminal proceedings. Within one week of the filing of the complaint, or as soon thereafter as possible, the PRC Officer shall determine the status and anticipated resolution of the criminal proceedings by communicating, in writing, directly with the District Attorney's Office.

D. Interviews

## II.C.8.

## 1. Conduct

Interviews should be conducted in a manner that will produce a minimum of inconvenience and embarrassment to all parties. BPD officer interviews must be conducted in compliance with the Peace Officers Procedural Bill of Rights, Government Code Section 3303. When possible, BPD employees should not be contacted at home, and others should not be contacted at their places of employment.

## II.C.7.

## 2. Notice

PRC staff shall notify subject and witness officers at least 9 calendar days before a scheduled interview date by providing a hard copy and, when feasible, an electronic mail notification. An officer who is unavailable for an interview shall contact the PRC Officer or the Investigator immediately to state the reason for his/her unavailability.

## II.C.8.

## 3. Exercise of Constitutional Rights

Subject officer testimony shall be required, in accordance with the City Manager's policy (see Exhibit A). While all BPD employees have a right to invoke the Fifth Amendment, they also have a duty to answer questions before the PRC regarding conduct and observations that arise in the course of their employment

## Section III.D.

and may be subject to discipline for failure to respond. The exercise of any or all constitutional rights shall not be considered by the Commission in its disposition of a complaint.

E. BPD Reports

- See II.C.6. ~~1.~~ The PRC should receive un-redacted police reports from BPD once the PRC Officer has established and implemented security and chain of custody procedures that satisfy the City Manager and the Chief of Police. Police reports will be redacted when distributed to BOI Commissioners, but un-redacted reports will be available at the PRC Office for BOI Commissioners to review.
- II.C.6.b. 2. Whenever a PRC investigation is tolled, the Chief of Police shall take appropriate steps to assure preservation of the following items of evidence:
- a) The original Communications Center tapes relevant to the complaint.
  - b) All police reports, records, and documentation.
  - c) Names, addresses, telephone numbers, and statements of all witnesses.

~~1.~~ Report of Investigation

1. PRC staff shall assemble all relevant information in a confidential Report of Investigation. The Report shall list the allegations, provide a summary of the complaint, provide the applicable BPD, state or local rules and regulations, and include a copy of the interview transcripts.
2. Upon completion, the Report of Investigation shall be provided to subject officers, and any known representatives, with a copy to the Chief of Police and the Duty Command Officer.

**IV. CONFIDENTIALITY OF PERSONNEL MATTERS**I.B.1. A. Responsibilities of PRC Commissioners

In their capacity as PRC Commissioners, each Commissioner will have access to confidential data or information related to Berkeley Police Department personnel. Confidential information may be provided through witness testimony or through electronic or hard-copy transmission. Regardless of how the confidential information is communicated, no Commissioner shall disclose it to any unauthorized person or organization.

B. Conduct

- I.B.2,  
I.B.4.
1. It is the responsibility of each PRC Commissioner to protect confidential information from unauthorized disclosure.
  2. At any proceeding in which confidential information was distributed to the Commissioners, each Commissioner shall return all confidential material to the PRC staff at the close of the proceeding or as soon thereafter as practicable.

Section V.

**V. PRE-HEARING COMPLAINT DISPOSITION****A. Administrative Closure**

II.D.1.a.

**1. Grounds**

The grounds upon which a complaint may be administratively closed include but are not limited to the following:

- a) Complaint does not allege prima facie misconduct or is frivolous or retaliatory.
- b) Request for closure by complainant.
- c) Unavailability of complainant where staff has attempted at least 3 telephone, electronic mail and/or regular mail contacts. Attempts to reach the complainant by telephone and/or mail shall be documented in the recommendation for Administrative Closure.
- d) Mootness of the complaint including but not limited to situations where the subject officer's employment has been terminated or where the complaint has been resolved by other means (e.g. mediation)
- e) Failure of the complainant to cooperate, including but not limited to: refusal to submit to an interview, to make available essential evidence, to attend a Board of Inquiry hearing, and similar action or inaction by a complainant that compromises the integrity of the investigation or has a significant prejudicial effect.
- f) Failure to timely issue the Notice of Allegations, as set forth in Section III.B.1.
- g) Failure to timely issue the Report of Investigation, as set forth in Section III.C.2.b.
- h) Failure to timely complete its investigation, as set forth in Section III.C.2.d.
- i) A policy complaint that has been considered by the Commission.

II.D.1.a.

**2. Procedure**

A complaint may be administratively closed by a majority vote of Commissioners during closed session at a regularly scheduled meeting. The complainant shall be notified of the opportunity to address the commission during closed session at this meeting and such notice shall be sent no later than 5 calendar days prior to said meeting. Cases closed pursuant to this section shall be deemed "administratively closed" and the complainant, the subject officer, and the Chief of Police shall be notified by mail.

A policy complaint may be administratively closed by a majority vote of Commissioners during open session at a regularly scheduled meeting.

II.D.1.c.

**3. Effect of Administrative Closure**

Administrative Closure does not constitute a judgment on the merits of the complaint.

Section V.

II.D.2. B. No Contest Response

A subject officer who accepts the allegations of the complaint as substantially true may enter a written response of "no contest" at any time before a hearing. Upon receipt of a "no contest" response, the PRC Officer or Investigator shall refer the file and the response to the City Manager and the Chief of Police for appropriate action.

Ø. Waiver of Hearing

Either the complainant or the subject officer may request that findings be rendered without a hearing. If both the complainant and the subject officer sign a written waiver of their right to a hearing, a Board of Inquiry may issue findings based on interview statements and documentary evidence.

Replaced by Hearing Panels

**[ VI. BOARDS OF INQUIRY ]**

II.F.3,  
II.I.5. A. Composition

A Board of Inquiry (BOI) shall consist of 3 Commissioners, who shall designate one of them to be Chairperson. In cases involving the death of a person, and in such other cases as the Commission shall determine by a vote of 6 Commissioners, the Commission shall sit as a Board of the whole, with a minimum of 6 Commissioners.

II.F.4. B. Designation

1. Obligation to Serve

Commissioners will volunteer for dates upon which hearings have been scheduled, without knowledge of the factual dispute to be heard. PRC staff will keep a record of the number of cases heard by each Commissioner, who will be expected to hear an approximately equal number of cases over each three-month period. A BOI Commissioner is required to sign a confidentiality and nondisclosure agreement.

II.F.4. 2. Unavailability of BOI Member

If any member of a Board of Inquiry becomes unavailable, s/he shall be replaced by another Commissioner. Notice of this substitution shall be made as soon as possible to the subject officer. If a Commissioner is substituted within 7 calendar days of a Board of Inquiry, the subject officer will retain the right to challenge said Commissioner for cause under Section VI.B.4.C. below. The notice of challenge of a substituted Commissioner must be made at least 3 business days prior to the convening of a Board of Inquiry and shall be deemed as just cause for a continuance of the hearing.

II.F.5. 3. Effect of Continuance

If a hearing is rescheduled due to the unanticipated unavailability of the complainant(s), the subject officer(s) or the complainant's or subject officer's attorney, the case may be reassigned to another Board of Inquiry. The Board composition shall not change once a hearing has been convened, however.

## Section VI.

## II.G.3.

C. Challenge of BOI Commissioner

## 1. Basis for Challenge

A Commissioner who has a personal interest, or the appearance thereof, in the outcome of a hearing shall not sit on the Board. Personal interest in the outcome of a hearing does not include political or social attitudes or beliefs. Examples of personal bias include, but are not limited to:

- a) a familial relationship or close friendship with the complainant or subject officer;
- b) witnessing events material to the inquiry;
- c) a financial interest in the outcome of the inquiry;
- d) a bias for or against the complainant or subject officer.

## 2. Procedure

- a. Within 7 calendar days from the date of mailing of the Board of Inquiry hearing packet, which includes the names of the Commissioners constituting that Board, the complainant or the subject officer(s) may file a written challenge for cause to any Commissioner. Such challenge must specify the nature of the conflict of interest.
- b. The PRC Officer or his/her designee shall contact the challenged Commissioner as soon as possible after receipt of the challenge.
- c. If the Commissioner agrees, PRC Officer or his/her designee shall ask another Commissioner to serve.
- d. If the Commissioner does not agree that the challenge is for good cause, PRC Officer or his/her designee shall [poll the other members of the Board and, if both agree that the challenge is for good cause,] shall inform the challenged Commissioner and ask another to serve.
- e. If a challenge to a Commissioner is rejected, and the Commissioner serves, the written challenge and the Commissioner's written response shall be part of the record of the complaint.

## 3. Replacement of Commissioners

Any Commissioner who is unable to serve for any reason shall be replaced by another Commissioner, except in cases involving a death.

D. Responsibilities of BOI Commissioners

## 1. Confidentiality

- a. Each Commissioner shall maintain the confidentiality of personnel matters as required under Section IV of these Regulations and by state law.
- b. Consistent with Section IV.B.2., each Commissioner shall return the confidential portions of the Hearing Packet and any other confidential documents to PRC staff at the close of the BOI.

[revised - poll is  
Brown Act  
violation]

I.B.2,  
I.B.4

## Section VI.D.

II.G.1.b.

## 2. Conduct

In accordance with the PRC enabling ordinance, which requires that complaint investigations be conducted in a fair and impartial manner, no member of a BOI shall: publicly state an opinion regarding policies that are directly related to the subject matter of a pending BOI complaint; publicly comment on any of the facts or analysis of a pending complaint; or pledge or promise to vote in any particular manner in a pending complaint.

I.B.5.,  
II.G.1.c.

## 3. Violation

- a. A violation of Sections VI.D.1. or VI.D.2. above, before or during a BOI shall automatically disqualify a Commissioner from a BOI.
- b. In addition, a Commissioner or PRC staff may agendize an alleged violation of Sections VI.D.1. or VI.D.2. for discussion and action at a regularly scheduled meeting. Any action adverse to a Commissioner requires a two-thirds vote of the Commissioners present. Such action may include: notice of the violation to the Commissioner's appointing City Councilmember; a communication to the City Council; or a prohibition from sitting on future BOIs for the remainder of the Commissioner's term.

~~E.~~ Function

The BOI members shall review the confidential Hearing Packet and the evidence gathered in connection therewith, hear testimony in closed session, prepare findings, and advise the Chief of Police and the City Manager of its findings.

II.I.8.

F. Subpoena Power

The Commission's subpoena power shall be used to the extent necessary to insure fairness to all parties.

VII. HEARINGSA. Scheduling and Notice

II.F.2.

## 1. BPD Schedules

The Chief of Police, or his designee, shall provide PRC staff with a subject officer's schedule prior to the scheduling of a hearing. Hearings shall not be held on an officer's regular days off, scheduled vacation or any authorized leave of absence, except if subject officers in the same complaint do not share a common day on duty. In such cases, a hearing may be scheduled on an officer's regular day off, but not during a scheduled vacation or any authorized leave of absence. PRC staff shall determine the complainant's and the subject officer's availability before scheduling a hearing.

II.F.7.

## 2. Notice

No later than 10 business days before the hearing date, the PRC Officer or the Investigator shall provide written notice of the date, time and location of the hearing, and the composition of the Board of Inquiry, to the complainant, the subject officer(s), any representatives, civilian witnesses, witness officers, the BOI members and the Chief of Police.

## Section VII.

**B. Board of Inquiry Hearing Packet**

See II.F.7.

No later than 10 business days before the hearing date, PRC staff shall provide a Hearing Packet to the BOI members, the complainant, the subject officer(s), any representative(s), any witnesses, the DCO and the Chief of Police.

1. The BOI Hearing Packet distributed to the BOI members shall contain:
  - a) The Report of Investigation referenced in Section III.F.
  - b) .Any supplemental evidence or analysis staff deems necessary.
  - c) A copy of the complaint, if not contained in the report of investigation.
  - d) Police reports and any other relevant documentary evidence, including evidence submitted by the complainant.
  - e) The PRC staff's recommendations, if any, concerning summary disposition or procedural matters.
2. The BOI Hearing Packet distributed to the subject officer(s), the officer's representative, the DCO, and the Chief of Police shall contain:
  - a) Any supplemental evidence or analysis staff deems necessary.
  - b) A copy of the complaint, if not included in the Report of Investigation.
  - c) Any evidence submitted by the complainant.
3. The BOI packet distributed to the complainant shall contain:
  - a) A copy of the complaint.
  - b) Police reports and any other non-confidential, relevant documentary evidence, including evidence submitted by the complainant.
  - c) A copy of the complainant's interview transcript.
4. Each witness shall receive a copy of his/her interview transcript.

**C. Pre-Hearing Motions**

II.H.2.

## 1. Newly Discovered Evidence and/or Witnesses

The complainant and subject officer shall provide any newly discovered evidence or witnesses' names to the PRC Officer or Investigator no later than 10 business days before the scheduled hearing date, with an explanation as to why the evidence or witnesses could not have been discovered earlier and its significance. The PRC Officer or Investigator shall inform the BOI of the newly discovered evidence or witnesses as soon as possible.

The BOI shall decide whether or not to allow the evidence or witnesses no later than 4 business days before the scheduled hearing date, and the PRC Officer or Investigator shall notify both the complainant and the subject officer of the Board's decision.

II.H.3.

## 2. Procedural Issues

The complainant and subject officer shall raise any procedural issues, by submitting them to the PRC Officer in writing, no later than 5 business days before the scheduled hearing date. Procedural issues can include, but are not



## Section VII.C.

limited to, the expiration of the 1-year limitation period and/or whether an officer should testify.

**3. Summary Dismissal**

- a. After issuance of the BOI Hearing Packet, and upon the motion of the subject officer or its own motion, the BOI may summarily dismiss any or all of the allegations that it finds clearly without merit based on the evidence contained in the BOI Hearing Packet. A vote to summarily dismiss an allegation must be unanimous.
- b. A subject officer's motion for summary dismissal must be in writing and submitted no later than 7 calendar days before the date of the BOI Hearing. The BOI shall consider the motion either at a special BOI meeting or at the scheduled BOI hearing. Parties to the complaint shall be notified of the request for summary dismissal.
- c. The BOI may summarily dismiss, upon its own motion at a scheduled BOI hearing, any or all of the allegations.
- d. When the summary dismissal is being considered the BOI shall not hear arguments or ask questions of the parties to the complaint. Following public comment, the BOI shall excuse everyone, except PRC staff, from the meeting and deliberate. The BOI shall consider only the information included in the BOI Hearing Packet when making its decision on summary dismissal. The decision of the BOI will be announced orally and issued in writing.

**4. Continuances**

- a. A continuance may be granted by a [majority of the BOI.] In considering whether to grant such a continuance, the BOI members shall consider the reason for the request; the timeliness of the request; the prejudice to the other party; the date of the filing of the complaint; previous continuance requests; and other relevant information.
- b. A continuance request shall be presented to the BOI as soon as the cause for continuance arises. Whenever possible, requests for continuance shall be considered at a specially convened meeting of the BOI. Such a meeting shall be convened in accord with existing procedures and regulations.
- c. A continuance shall not be granted in the absence of good cause.
- d. A request for continuance made within 3 business days of the hearing date shall not be granted unless the requesting party is unable to attend due to a personal emergency, or can demonstrate substantial prejudice if a continuance is denied.
- e. A continuance granted at the request of the subject officer shall toll any BPD disciplinary time period.

II.H.1., giving  
authority to grant  
continuance to DPA

## Section VII.

D. Procedure

- II.I.1. 1. All BOI hearings shall be closed to the public. PRC staff may be present during the entirety of the closed hearing, and the DCO shall be present for all but the Commissioners' deliberations.
- II.I.1. 2. An attorney or other person acting on behalf of any complainant or subject officer may participate in the hearing. However, a representative is not required and the complainant and subject officer is each responsible for insuring his/her counsel's presence at the hearing.
- II.I.2. 3. If good cause is shown, the BOI may continue the hearing due to the unanticipated unavailability of a witness or a representative.
- II.I.3. 4. Absent good cause, if the complainant fails to appear within 30 minutes after the scheduled time for the hearing, the complaint will be dismissed. Absent good cause, if the subject officer fails to appear within 30 minutes after the scheduled time for the hearing, the hearing will proceed and the allegations may be sustained.
- II.I.4. 5. If a third Commissioner fails to appear within 30 minutes after the scheduled time for the hearing, the hearing will be continued until a third Commissioner is seated unless all the parties present agree to proceed with 2 Commissioners. If the hearing proceeds with 2 Commissioners, all findings must be unanimous.
- See II.I.6. ~~6.~~ The PRC Officer or Investigator will present the complaint, introduce witnesses, if any, and answer appropriate questions addressed to them.
- II.I.7. 7. The complainant and any civilian witnesses will be called into the hearing room to testify separately; the subject officer and the officer's representative may be present during the complainant's and the civilian witnesses' testimony. The complainant may make a statement or rely on the interview statements. Questioning will then proceed as follows: a) Commissioners may ask questions; b) the subject officer or his or her representative may ask questions; c) Commissioners may ask follow-up questions. After questioning is completed, the complainant will have up to 15 minutes to provide a summary of his/her case and/or closing statement.
- II.I.7. 8. The complainant and any civilian witnesses will each be excused from the hearing room after his/her testimony is completed.
- II.I.7. 9. The subject officers and any witness officers will be called into the hearing room to testify separately. Any subject officers' representative(s) will be allowed to remain in the hearing room through the duration of all testimony. Each subject officer may make a statement or choose to rely on the interview statements. The subject officer(s) will be questioned by his/her representative first, after which the officer may be questioned by 2 Board members, unless s/he waives this requirement. After questioning is completed, each subject officer will have up to 15 minutes to provide a summary of his/her case and/or closing statement. The subject officers and any witness officers will each be excused from the hearing room after his/her testimony is completed.
- II.I.9. 10. No person who is present at a BOI hearing shall become the subject of undue harassment, personal attack, or invective. If the Chairperson fails to maintain reasonable order, BPD employees may leave the hearing without prejudice. The

## Section VII.D.

burden shall be upon the BPD employee to establish to the City Manager's satisfaction that his/her reason for leaving was sufficient.

## II.J.

E. Evidence

The hearing need not be conducted according to technical rules of evidence. Any relevant evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs.

1. Evidence shall be taken in accordance with the following provisions:
  - a) The complainant and subject officer(s) shall have the right to testify and refer to any relevant documentary evidence and exhibits. If the complainant or subject officer does not testify on his/her own behalf, he/she may be called and examined as if under cross-examination.
  - b) Oral evidence shall be taken only under oath.
  - c) The Chairperson shall exclude irrelevant and unduly repetitious evidence.
  - d) The Chairperson shall exclude unruly or disruptive persons from the hearing.
  - e) The Chairperson will conduct the hearing subject to being overruled by a majority of the BOI members. BOI members shall be primarily responsible for obtaining testimony. The PRC Officer or his/her designee will answer Commissioner's questions on the evidence, points of law, and procedure.
  - f) The City Attorney's opinion will be sought whenever the interpretation of City of Berkeley Ordinance is contested and pivotal in the case, or when a case raises substantial legal issues of first impression.
  - g) If the BOI needs additional evidence or an opinion from the City Attorney to reach its findings, it may continue the hearing to a future date.
  - h) If upon the petition of either party, the hearing is continued for consideration of motions or points of law, any applicable BPD disciplinary time limit shall be tolled for the period of such continuance.
2. Either party may present to the BOI evidence of the disposition of a related matter by any branch of the judiciary (including but not limited to superior court, traffic court, and small claims court), and the BOI shall accept those findings as true.

### VIII. DELIBERATION AND FINDINGS

## II.K.1.

A. Deliberation

After the hearing has been concluded, the Board will deliberate outside of the presence of the complainant, the subject officer(s), and any witnesses or representatives. The Board shall not consider any information not received in the Hearing Packet or during the hearing.

## II.K.2.

B. Majority Vote

All action by the Board under Section VIII of these regulations shall be by majority vote of those Commissioners present. Each dissenting member shall set forth the

## Section VIII.B.

reasons for dissenting in writing, and such dissent shall be circulated in the same manner as the decision of the majority.

## II.E.2.

C. Standard of Proof

No complaint shall be sustained unless it is proven by clear and convincing evidence presented at the hearing or otherwise contained in the record. "Clear and convincing" is more than a preponderance of the evidence, but less than beyond a reasonable doubt.

## II.E.3.

D. Categories of Findings

1. If the evidence shows that the alleged act did not occur, the finding shall be "Unfounded."
2. If the evidence fails to support the allegations, but the allegations cannot be shown as false, the finding shall be "Not Sustained."
3. If the evidence shows that the alleged act did occur, but was lawful, justified, and proper, the finding shall be "Exonerated."
4. If the evidence shows that the alleged act did occur and the action was not justified, the finding shall be "Sustained."

E. Findings Report and Notification

1. Within 7 calendar days of the hearing, the PRC office shall inform the complainant and subject officer, in writing, whether the allegation was sustained, not sustained, unfounded or exonerated, and about the right to petition for rehearing.
2. Within 15 calendar days of the hearing, the PRC office shall submit a Findings Report, together with the Hearing Packet, to the City Manager and the Chief of Police, except that for late-filed complaints, the Findings Report shall be filed within 30 calendar days of the hearing.

F. Petition for Rehearing

1. Within 15 calendar days of the mailing of the Board's findings, any party to the complaint may petition in writing for a rehearing. A rehearing may be granted only if the applicant establishes that: there is newly discovered, material evidence that, with reasonable diligence, could not have been discovered and produced at the hearing; or, that there was substantial procedural error likely to have affected the outcome.
2. After receipt of a petition for rehearing by either party, the Commission shall vote in closed session whether to grant or deny it at its next regularly scheduled meeting for which there is adequate time to meet Brown Act requirements. Both the complainant and the subject officer shall receive notice that the Commission will vote on the petition for rehearing. If, by a majority vote of the Commissioners, a rehearing is granted, it shall be held within 60 calendar days of the receipt of the petition. If the officer makes the request, the officer must agree to toll the 120-day disciplinary period and the requirement that the Commission's investigation be completed within one year, provided the request is granted; tolling reverts back to the date the request is submitted and continues until the

Section VIII.F.

hearing is concluded and the findings are issued. However, there shall be no tolling if the 120 days has already passed.

3. If a petition for rehearing is granted, the Board of Inquiry shall be composed of the same Commissioners who presided over the original hearing unless circumstances make such composition impossible.

Sec. V.

**IX. AMENDMENT AND AVAILABILITY OF REGULATIONS**

- Amendments to the Regulations for Handling Complaints Against Members of the Police Department (Regulations) require a majority vote of the Commission.
- Amendments shall be distributed to Commissioners, the Berkeley Police Association, the City Manager, the City Attorney, and the Chief of Police.
- The PRC office shall maintain a complete set of the current Regulations.

SUBJECT OFFICER TESTIMONY

MEMORANDUM

July 20, 1990

To: Ronald D. Nelson, Chief of Police  
Police Review Commission  
Berkeley Police Association

From: Michael F. Brown, City Manager

Subject: SUBJECT OFFICER TESTIMONY

The purpose of this memorandum is to set forth my policy regarding testimony by accused officers at Police Review Commission (PRC) Boards of Inquiry.

Subject officer testimony has been required since July 1, 1983 based on agreements reached in negotiations between the PRC, the Berkeley Police Association (BPA), and the City Manager's Office (CMO) in the fall of 1982.

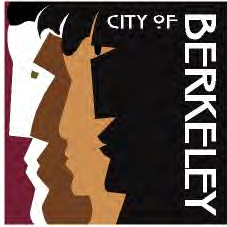
The requirement is as follows:

Each Subject Officer, each BPD Member Witness, the Duty Command Officer (DCO), the Complainant, and the Police Review Commission's Investigator shall be present at PRC Boards of Inquiry and shall testify unless otherwise directed by the City Manager.

If the DCO observes actions which in his/her opinion constitute a violation of PRC rules and Regulations, the DCO shall request of the Chairperson that the violation be corrected. If the violation is not corrected, the DCO may direct the Subject Officer to leave the hearing. Such a decision should only be reached under very extreme circumstances after all other means of resolving the situation have failed.

The requirement of the Subject Officer to testify shall not apply in cases where the complaint was filed during the 90-day filing extension period.

The requirements to testify before the PRC shall not apply to non-sworn employees of the Parking Division.



Office of the City Manager

## REVISED AGENDA MATERIAL

**Meeting Date:** September 14, 2021

**Item Number:** 35

**Item Description:** Adoption of the Baseline Zoning Ordinance (BZO)

**Supplemental/Revision Submitted By:** Jordan Klein, Director, Planning and Development Department

**“Good of the City” Analysis:**

*The analysis below must demonstrate how accepting this supplement/revision is for the “good of the City” and outweighs the lack of time for citizen review or evaluation by the Council.*

The recommendation for adoption of the BZO requests an effective date of December 1, 2021. This time allows staff to work with the City’s code publisher after the second reading of the Ordinance to ensure a timely and accurate version of the BZO is uploaded to the City’s website, including hyperlinks and graphics. The proposed revision to the first page of the Ordinance (Attachment 1) is provided below:

Section 5. That the effective date of this Ordinance is December 1, 2021 and that the City Clerk is directed to codify an online version of the Zoning Ordinance that includes necessary technical edits, graphics, hyperlinks, and grammatical corrections.

Section 6. 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.

***Consideration of supplemental or revised agenda material is subject to approval by a two-thirds roll call vote of the City Council. (BMC 2.06.070)***

A minimum of **42 copies** must be submitted to the City Clerk for distribution at the Council meeting. This completed cover page must accompany every copy.

Copies of the supplemental/revised agenda material may be delivered to the City Clerk Department by 12:00 p.m. the day of the meeting. Copies that are ready after 12:00 p.m. must be delivered directly to the City Clerk at Council Chambers prior to the start of the meeting.

Supplements or Revisions submitted pursuant to BMC § 2.06.070 may only be revisions of the original report included in the Agenda Packet.

ORDINANCE NO. -N.S.

REPEALING ZONING ORDINANCE AND OFFICIAL ZONING MAP (BERKELEY MUNICIPAL CODE TITLE 23) AND ADOPTING NEW ZONING ORDINANCE AND OFFICIAL ZONING MAP

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

Section 1. That the existing Berkeley Municipal Code Title 23, including the Official Zoning Map adopted by Berkeley Municipal Code Section 23A.16.010, is repealed.

Section 2. That a new Berkeley Municipal Code Title 23 is adopted as set forth in Exhibit A.

Section 3. That the new Official Zoning Map is adopted as set forth in Exhibit B.

Section 4. That the new Official Zoning Map maintains existing boundaries, but creates two new zoning districts (University Avenue Commercial [C-U] and Corridor Commercial [C-C]) from the General Commercial (C-1) zoning district.

Section 5. That the effective date of this Ordinance is December 1, 2021 and that the City Clerk is directed to codify an online version of the Zoning Ordinance that includes necessary technical edits, graphics, hyperlinks, and grammatical corrections.

Section 6. 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.

Exhibits

A: New Baseline Zoning Ordinance (BMC Title 23)

B: New Official Zoning Maps





Sophie Hahn  
Councilmember District 5

SUPPLEMENTAL 2  
September 13, 2021  
ITEM #35

**To:** Honorable Mayor and Members of the City Council  
**From:** Councilmember Sophie Hahn  
**Subject:** Baseline Zoning Ordinance (BZO) Proposed Amendments (Item #35)

### BACKGROUND

Phase 1 of the Baseline Zoning Ordinance (BZO) rewrite is a huge and long-anticipated project. The work done by Staff, the Consultants and the Commissions is both formidable - and excellent. A lengthy, wordy code, cobbled together over decades, has been transformed into a much more succinct and user-friendly document. I commend this important work.

Two of the substantive changes (reflected across more than one code section, but only two concepts) recommended by staff I believe do rise to the level of major policy changes, and propose that these be eliminated from the Phase 1 draft and referred for more robust review and consideration in Phase 2.

Eliminating these few elements from Phase 1 *does not* introduce deviations from the current Zoning Ordinance. On the contrary, the amendments proposed remove major policy changes and revert back to language and concepts that conform with the existing Ordinance.

**I respectfully request that these limited proposed amendments, which bring a few elements of the Phase I draft back into conformance with the current Zoning Code, be accepted, and the changes be referred for consideration during Phase2.**

### RECOMMENDATIONS

Phase 1 of of the BZO process is intended to “result in a newly written, newly formatted Zoning Ordinance that is easy to read, understand and administer,” and to provide “the opportunity to systematically review the regulations to identify code sections that could benefit from substantive changes *to be addressed in Phase 2.*”<sup>1</sup> [Emphasis added]

---

<sup>1</sup> [Staff Report](#), September 14, 2021 Council meeting

The Staff report and BZO webpage emphasize that Phase 1 is not intended to introduce substantive changes, which are to be addressed in Phase 2.

*The BZO rewrites and reformats the Zoning Ordinance without making any substantive changes in regulations . . . Phase I is solely a reorganization and reformatting to make land use regulations easier to understand.<sup>2</sup>*

*The BZO . . . contains no major substantive policy changes. The second phase, yet to begin, will include substantive amendments intended to reduce the complexity of the City's zoning regulations and address the streamlining recommended in the referral.<sup>3</sup>*

Etc.

However, some substantive changes from the existing code are included in the Phase I draft,<sup>4</sup> many of which are outlined in the [Consent Changes Matrix](#). These changes were considered to “not contain any major policy changes” and therefore, while substantive, are proposed as part of Phase 1.

The BZO draft presented for review and Council adoption comprises almost 500 pages, and the existing code it is intended to replace is even longer. The [Style Guide](#) states that a footnoted and redlined draft will be provided for Council (and public) review,<sup>5</sup> but unfortunately, this version was not able to be produced. While the [Zoning Ordinance Disposition](#) tables are somewhat helpful, comparison of new with existing code sections and language has been difficult to track.

The amendments to the Phase 1 draft, proposed and explained below, also include relevant code sections from the existing Zoning Ordinance and proposed BZO, for easy reference and comparison.

---

<sup>2</sup> [BZO Webpage](#)

<sup>3</sup> [Staff Report](#), September 14, 2021 Council meeting

<sup>4</sup> [BZO webpage - Consent Changes Matrix](#)

<sup>5</sup> **Section 5** of the Style Guide [emphasis added]:

**Showing Changes to the Existing Zoning Ordinance** For chapters with significant reorganization and revision to the existing Zoning Ordinance, *we will show all changes with footnotes and will not use track changes*. For chapters with minimal changes, *we will show these changes in underline strikethrough text*. Footnote and track changes will be accepted and removed from the Draft Final BZO acted on by the Planning Commission and City Council at the adoptions hearings.

## Proposed Amendments to new Section 23.104.020 (page 17) and new Section 23.402.040 (Page 368)

### Major Substantive Policy Change:

There is a difference between “having the authority” to do something (as in, having permission) and being “The Authority.”

In the existing Ordinance, the Zoning Officer “has the authority” to interpret and enforce the ordinance, along with ZAB, Council, LPC and in some instances DRC, who have “powers” rather than just “the authority” to interpret and enforce. In the new proposed BZO, the Zoning Officer becomes “The” first/primary Authority on interpretation and application of the Ordinance, with ZAB and Council’s role becoming secondary - to modify or review the ZO’s interpretations.

I believe this change in roles among Council, ZAB and the ZO is a major substantive policy change that should be considered in Phase 2, in the context of a more robust analysis and discussion.

The following amendments to the proposed BZO revert language and placement *to mirror the existing Zoning Ordinance*:

### Page 17

#### ~~Section 23.104.020 – Authority~~

~~The Zoning Officer is responsible for interpreting the meaning and applicability of all provisions in the Zoning Ordinance. Zoning Officer interpretations are subject to review and modification by the Zoning Adjustments Board (ZAB) and City Council.~~

### Page 368

#### 23.402.040 - Zoning Officer

##### B. Responsibilities and ~~Powers~~ Duties.

##### 1. The Zoning Officer:

- a. Acts as the Secretary to the Zoning Adjustments Board (ZAB) and the Design Review Committee (DRC);
- b. Determines if land uses, structures, and activities conform with the Zoning Ordinance;
- c. Serves as the review authority on applications as shown in Table 23.402-1: Review and Decision-Making Authority;
- d. Has the authority to interpret the meaning and applicability of the Zoning Ordinance;
- e. Enforces the Zoning Ordinance in accordance with Chapter 23.414-Nuisance Abatement
- f. ...
- g. ...
- h. ...

### References

Baseline Zoning Ordinance (BZO) Proposed Amendments September 13, 2021  
Code Sections to compare, both in language and placement, within the proposed BZO and the existing Zoning Ordinance:

**Existing Zoning Ordinance:**

Sub-Title 23A - ORDINANCE APPLICABILITY

Chapter [23A.08](#) - INTERPRETATION AND CONSTRUCTION OF ORDINANCE

Section on “Authority” - does not exist - the existing ordinance is SILENT on the question of who interprets the ordinance

Sub-Title 23B - ORDINANCE ADMINISTRATION

Chapter 23B.12

Section [23B.12.020](#) Responsibilities and Powers of the Zoning Officer

- Compare with -

**Proposed BZO:**

DIVISION 1 - GENERAL PROVISIONS

23.104 - Interpreting the Zoning Ordinance

23.104.020 - Authority (page 17) See below for an entirely new “Authority” being created in the BZO

DIVISION 4 - PERMITS AND ADMINISTRATION

23.402 - Administrative Responsibility

Section 23.402.040 - Zoning Officer (page 368)

**Discussion:**

In the existing Zoning Ordinance, the Zoning Officer (ZO) “has the authority” to “Interpret and enforce this Ordinance, subject to the review by the Board and Council.” This authority is included as one bullet point in a list of seven things the Zoning Office “has the authority” to do. That list is housed within a Chapter describing the Zoning Officer and their “responsibilities and duties.” The Chapter shows up *after* Chapters describing the “responsibilities and powers” of the Zoning Board (ZAB) and Design Review Committee (DRC), and elaboration of the role of the LPC (which is in 3 - Board, Commissions and Committees). This *authority*, which is part of a *responsibility* or *duty* of the ZO, and is not a *power* such as those held by ZAB and DRC, is neither prominent in the ZO’s responsibilities and duties, nor is it phrased or placed in the Zoning Ordinance in such a manner as to suggest that the ZO is “The Authority” on interpretation and enforcement of the Ordinance.

In the newly proposed BZO, an entirely new Section - **Authority** - is introduced in a Title named INTERPRETING THE ZONING ORDINANCE. It states that “The Zoning Officer is responsible for interpreting the meaning and applicability of all provisions of the Zoning Ordinance,” “subject to review and modification by the Zoning Adjustments Board (ZAB) and City Council.”

This Section - **Authority** - is entirely new to the BZO. It doesn’t parallel anything in the existing Ordinance’s Chapter on interpretation, and by its prominent placement in the BZO, and enhanced wording, the Zoning Officer becomes the first and primary authority - “The Authority” - on interpretation and enforcement of the Ordinance.

Baseline Zoning Ordinance (BZO) Proposed Amendments September 13, 2021

The proposed BZO includes a list of “Responsibilities and Powers” of the Zoning Officer. In the existing Zoning Ordinance, these are “Responsibilities and Duties.” The bullet point about interpretation of the meaning and applicability of the Zoning Ordinance is the proposed BZO states that the Zoning Officer “Interprets the meaning and applicability of the Zoning Ordinance.” In the existing Zoning Ordinance, the Zoning Officer “has the authority to Interpret and enforce this Ordinance, subject to the review by the Board and Council.” The small changes in wording confer significantly greater agency to the ZO that the current Ordinance provides, and together with the creation of a new “Authority” earlier in the BZO, constitute a major substantive change.

These sets of changes in the placement, prominence, and wording of sections relating to the ZO’s “authority” and powers are significant, and I believe best considered as part of Phase 2. The amendments offered revert the BZO to mirror the current Zoning Ordinance.

[continued on next page]

**Proposed Amendments to new Section 23.402.020 (page 365), new Table 23.402-1 (Page 366-367) and new Section 23.402.030**

**Major Substantive Policy Change**

**Presenting reports and background materials and possibly recommended actions to a Commission or to the City Council is not the same as being a body/entity statutorily empowered by the Zoning Code to make “official” Recommendations.**

In both the existing and proposed Zoning Ordinances, the Zoning Officer (or Planning and Development Department) is the official Secretary to the ZAB, LPC and DRC, and supports the City Council when land use appeals are before the Council. However, the proposed BZO equates the role of briefing and potentially offering recommended actions to the bodies for which the ZO/Planning Department serves as Secretary with a statutorily provided, official role as a “Recommender,” on the same level as when the ZAB or another elected or appointed body makes and official, statutorily required Recommendation to another body.

These two roles, being a Commission Secretary providing reports and recommended actions and being an official, statutorily required “Recommender” are very different, and introducing the ZO as a Recommender I believe is a major substantive change to the Zoning Code which should be considered in Phase 2.

The following amendments to the proposed BZO revert language and placement *to more closely track the existing Zoning Ordinance and the role of ZAB/DRC/LPC/PC Secretary in the proposed BZO*:

**Page 365**

**23.402.020 - Review and Decision-Making Authority**

**B. Meaning of Notations.** Authority roles as noted in Table 23.402-1 mean the following:

1. “Present” means the authority prepares and presents a report and, where appropriate, provides a recommended action to the decision-making authority.
2. “Recommend” means . . . .

[ etc. - the rest remains the same, just renumbered]

**Page 366-367**

**TABLE 23.402-1: Review and Decision-Making Authority**

On the following lines of the Table, in the vertical column for “Planning and Development Department,” the word “**Recommend**” is deleted and substituted with the word “**Present**”

**Permits|**  
 Use Permits  
 Master Use Permits

**Design Review**

Design Review

**Flexibility and Relief**

Variances

Modifications to Development Standards in West Berkeley

**Page 368**

**23.402.030 - Planning and Development Department**

The Planning and Development Department:

- A. **Makes recommendations or prepares and presents a report and, where appropriate, a recommended action** on requested permits and approvals as shown in Table 23.402-1: Review and Decision-Making Authority

**CONTACT PERSON**

Councilmember Sophie Hahn

Council District 5

510-682-5905



Office of the City Manager

PUBLIC HEARING

September 28, 2021

*(Continued from September 14, 2021)*

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: Adoption of the Baseline Zoning Ordinance (BZO)

RECOMMENDATION

Conduct a public hearing and, upon conclusion, adopt the first reading of an Ordinance rescinding the current Berkeley Municipal Code (BMC) Title 23 and adopting the new Baseline Zoning Ordinance (BZO) as BMC Title 23 with an effective date of December 1, 2021.

SUMMARY

The Zoning Ordinance Revision Project (ZORP) originated from a 2016 City Council referral which asked the Planning Department to undertake structural revisions of the Zoning Ordinance. The goals of the referral included making the ordinance more straightforward to use, reducing the types of projects requiring extensive discretionary review, and adding graphic illustrations of terms, regulations and processes. The project has been divided into two phases. The first is a new Baseline Zoning Ordinance (BZO), which is reworded and formatted to make land use regulations easier to read, understand and administer. The BZO contains all the regulatory elements of the existing Zoning Ordinance and contains no major substantive policy changes. The second phase, yet to begin, will include substantive amendments intended to reduce the complexity of the City's zoning regulations and address the streamlining recommended in the referral.

A fully-formatted and more readable PDF of the Baseline Zoning Ordinance can be found at this link:

[https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Land\\_Use\\_Division/Att%201%20Exhibit%20A%20-%20Baseline%20Zoning%20Ordinance.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Land_Use_Division/Att%201%20Exhibit%20A%20-%20Baseline%20Zoning%20Ordinance.pdf)

FISCAL IMPACTS OF RECOMMENDATION

Revising the Zoning Ordinance is a staff-intensive effort with a robust public input process and significant time dedicated to drafting language and reviewing for accuracy. Staffing costs are covered utilizing the existing Land Use Policy team and project



consultants. Consultant work for development of the BZO cost approximately half of the ZORP's \$300,000 project budget.

It will cost \$15,000 for the City's ordinance publisher to replace the existing online-version of the BMC Title 23 with the BZO. This will include hyperlinked cross-referencing and quality assurance check of presentation on the City website.

### CURRENT SITUATION AND ITS EFFECTS

The BZO is a Strategic Plan Priority Project, advancing the City's goal to be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community. This project was initiated by a January 26, 2016 City Council referral that focused on customer service enhancements and the need to provide a Zoning Ordinance that was written clearly and concisely and laid out in an intuitive manner (see Attachment 2). Requested revisions would clarify rules and procedures, provide informative tables and figures, and ensure internal consistency with the rest of the BMC. The 2017 City-commissioned Zucker report on Planning Department customer service also recommended that the City revise the Ordinance to correct grammatical and technical errors, reduce complexity, eliminate possible conflicts or contradictions, and align with current policies and practices.

### Project Approach

In 2017, staff released a Request for Proposals and selected a consultant team with technical zoning expertise (Ben Noble and Clarion Associates) to support the ZORP project. ZORP began with a baseline evaluation of the existing Zoning Ordinance that involved a thorough review of the existing zoning code, prior zoning interpretations, and staff-suggested technical edits. The project team also interviewed Planning Department staff to understand challenges implementing the code and to compile a summary of issues raised by members of the public. Based on this evaluation and a survey of Zoning Ordinances from cities of similar size and character, the project team proposed a two-phased approach to ZORP.

Phase 1: Prepare a new Baseline Zoning Ordinance (BZO). This phase will result in a newly written, newly formatted Zoning Ordinance that is easy to read, understand and administer. Phase 1 also provides the opportunity to systematically review the regulations to identify code sections that could benefit from substantive changes to be addressed in Phase 2.

Phase 2: Undertake selected major substantive changes, identified in Phase 1, that could be implemented to bolster customer service or improve the permitting process. Phase 2 revisions will be aligned with other Planning Division initiatives and outstanding referrals from City Council.

### Meetings and Engagement

The Planning Commission and the Zoning Adjustments Board have been actively involved in this project. Planning Commission supported the two-phase approach, and appointed three members to a ZORP Subcommittee. The Zoning Adjustments Board (ZAB) also formed a ZORP Subcommittee that met concurrently with Planning Commission's subcommittee to provide guidance, input and review of draft BZO chapters. The full Planning Commission and ZAB received regular updates from subcommittee members at their meetings, and the project team provided project updates annually to the full commission/board when subcommittees were re-established<sup>1</sup>, providing an opportunity for feedback from the parent commission/board and public comment from the community.

On July 7, 2020 the ZORP Subcommittees recommended that the draft BZO move forward for public review and public hearings. The BZO then went through a final round of drafting and returned to the Planning Commission on December 16, 2020 for a public hearing. At that meeting, Planning Commission voted to recommend that City Council adopt the BZO (Moved: Vincent; Seconded: Wiblin. Vote 8-0-1; Ayes: Beach, Hauser, Kapla, Krpata, Lacey, Schildt, Vincent and Wiblin. Noes: none. Abstain: Ghosh; see Attachment 3).

### Public Outreach and Feedback

In addition to receiving feedback at public meetings, the project team designed a Community Outreach Plan to solicit input on the draft BZO, which included:

- The creation of the Zoning Ordinance Revision Project website (see Link 1);
- Targeted outreach to over 35 frequent project applicants;
- Internal outreach to Planning Department staff;
- Office hours to meet with members of the public via Zoom, to introduce the BZO and receive questions and comments; and
- A Berkeley Considers survey, which received 194 visitors and 24 responses.

### Summary of BZO

The BZO rewrites and reformats the Zoning Ordinance without making any substantive changes in regulations. The BZO addresses a portion of the Council referral and provides a better customer experience with the following improvements:

- **Provides Easy to Follow Format and Writing Style.** The current Zoning Ordinance has been criticized for containing technical jargon, wordy phrases, inconsistent formatting, and a repetitive structure. The BZO addresses these concerns by providing clear explanations, updated formatting, and an intuitive

---

<sup>1</sup> The Commissioners Handbook requires parent commissions to re-elect subcommittee members on an annual basis.

outline structure. In addition, the BZO is written in accessible language and presents regulations in tables or lists when appropriate, to provide a better user experience. See Attachment 4 for an example of this improved writing format and style.

- **Consolidates Land Use Tables.** In the current Zoning Ordinance, each of the 25 zoning districts contains a unique land use table that lists permitted uses and permit requirements. Having 25 separate land use tables has resulted in different lists of uses and disparate treatment of similar uses across zoning districts. These inconsistencies raise questions about whether these differences are intentional or not. The BZO instead provides three comprehensive Land Use Tables (Residential, Commercial and Industrial) that consolidate land uses, applies naming conventions, and allows for easy comparisons among districts.
- **Introduces New Maps and Figures.** The current Zoning Ordinance includes only narrative descriptions of certain important geographic areas and subzones, such as the University Strategic Plan Area, the Car-Free Housing Overlay, or the Downtown Arts District Overlay. The BZO uses maps to illustrate important districts, subzones and areas, eliminating long, narrative descriptions and references to other adopted plans. The BZO also includes updated figures and diagrams to illustrate important land use regulations, such as Floor Area Ratio, setbacks, and measurement methods.
- **Eliminates Repetitive Language.** The current Zoning Ordinance is repetitive. Each of the 25 districts lists special land use regulations, development standards, and permit requirements separately. Sometimes these are unique to one district, but often they apply to multiple districts. Similarly, administrative procedures that apply to various types of permits are often repeated in various sections. This repetition creates an opportunity for technical errors and discrepancies when word choice or punctuation differs from district to district, or when amendments are made to some but not all sections. These inadvertent errors result in inconsistent application of regulations. The BZO eliminates this unnecessary repetition by collecting these special land use regulations, development standards or permit requirements and stating them in a single section.
- **Introduces a List of “Consent Changes.”** Developing the BZO has provided the opportunity to make a number of minor, but important, changes to the Zoning Ordinance. These changes are not substantive. They clarify ambiguous terms, reflect updated legal requirements, and codify existing interpretations and practice. Including these changes in the BZO makes it a clearer, more comprehensive document. These consent changes are summarized in a Consent Changes Matrix (see Attachment 5), which includes an explanation for each change.

The recommendation for adoption of the BZO requests an effective date of December 1, 2021. This time allows staff to work with the City's code publisher after the second reading of the Ordinance to ensure a timely and accurate version of the BZO is uploaded to the City's website, including hyperlinks and graphics.

### BACKGROUND

The current Zoning Ordinance was adopted in 1999. It constituted the first comprehensive revision of the Zoning Ordinance since its original adoption in 1949, and still carries many of the original provisions. It is codified in Title 23 of the BMC and includes six sub-titles:

- Title 23A, Ordinance Applicability, which includes the official title of the Ordinance and the Zoning Ordinance's purpose.
- Title 23B, Ordinance Administration, which includes all of the processes for permit approval and review, application requirements, regulations for abating nuisances, as well as defining the roles of the Zoning Adjustments Board, the Design Review Committee and the Zoning Officer.
- Title 23C, General Provisions Applicable to All Districts, which includes citywide regulations, such as Inclusionary Zoning, Short-Term Rentals and Cannabis Uses.
- Title 23D, Provisions Applicable in All Residential Districts, which includes the regulations for all of the Residential (R) zoning districts;
- Title 23E, Provisions Applicable in All Non-Residential Districts, which includes the regulations for all of the Commercial (C) and Manufacturing (M) zoning districts, as well as the Hillside Overlay (H) zone; and
- Title 23F, Definitions, which includes definitions of many of the terms and most of the uses included in the Zoning Ordinance.

The Zoning Maps are also included as part of Title 23.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental and climate impacts or opportunities associated with the BZO.

### RATIONALE FOR RECOMMENDATION

Preparation of the BZO has been a thorough and detail-oriented process. The involvement of the Planning Commission and ZAB has meant that the draft BZO was

reviewed for consistency of land use policy and for usability when reviewing project proposals. The BZO has also been reviewed by Planning Department staff to ensure its usability in day-to-day work. Finally, the public has provided feedback on the BZO that supports the new document. The Planning Commission recommended that the City Council adopt the BZO, finding it a clear improvement over the existing Zoning Ordinance and agreeing that it met project goals and objectives.

#### ALTERNATIVE ACTIONS CONSIDERED

No alternatives were considered; however, City Council could choose to not adopt the BZO.

#### CONTACT PERSON

Justin Horner, Associate Planner, Planning and Development, 510-981-7476  
Alene Pearson, Principal Planner, Planning and Development, 510-981-7489

#### Attachments:

- 1: Ordinance
  - Exhibit A: Text of new Baseline Zoning Ordinance
  - Exhibit B: Revised Zoning Map
- 2: 2016 City Council Referral
- 3: December 16, 2020 Planning Commission Final Minutes
- 4: Code Comparison Example (Variance Section)
- 5: Consent Changes Matrix
6. December 16, 2020 Planning Commission Staff Report (without BZO attachment)
7. Public Hearing Notice

#### Link

- 1: ZORP website:

[https://www.cityofberkeley.info/Planning\\_and\\_Development/Land\\_Use\\_Division/Zoning\\_Ordinance\\_Revision\\_Project\\_\(ZORP\).aspx](https://www.cityofberkeley.info/Planning_and_Development/Land_Use_Division/Zoning_Ordinance_Revision_Project_(ZORP).aspx)

- 2: A PDF of the full Baseline Zoning Ordinance:

[https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Land\\_Use\\_Division/Att%201%20Exhibit%20A%20-%20Baseline%20Zoning%20Ordinance.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Land_Use_Division/Att%201%20Exhibit%20A%20-%20Baseline%20Zoning%20Ordinance.pdf)

ORDINANCE NO. -N.S.

REPEALING ZONING ORDINANCE AND OFFICIAL ZONING MAP (BERKELEY MUNICIPAL CODE TITLE 23) AND ADOPTING NEW ZONING ORDINANCE AND OFFICIAL ZONING MAP

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

Section 1. That the existing Berkeley Municipal Code Title 23, including the Official Zoning Map adopted by Berkeley Municipal Code Section 23A.16.010, is repealed.

Section 2. That a new Berkeley Municipal Code Title 23 is adopted as set forth in Exhibit A.

Section 3. That the new Official Zoning Map is adopted as set forth in Exhibit B.

Section 4. That the new Official Zoning Map maintains existing boundaries, but creates two new zoning districts (University Avenue Commercial [C-U] and Corridor Commercial [C-C]) from the General Commercial (C-1) zoning district.

Section 5. 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.

Exhibits

A: New Baseline Zoning Ordinance (BMC Title 23)

B: New Official Zoning Map

# TABLE OF CONTENTS

## DIVISION 1 – GENERAL PROVISIONS

|               |                                                |           |
|---------------|------------------------------------------------|-----------|
| <b>23.102</b> | <b>Introductory Provisions</b> .....           | <b>12</b> |
| 23.102.010    | – Title .....                                  | 12        |
| 23.102.020    | – Effective Date .....                         | 12        |
| 23.102.030    | – Authority .....                              | 12        |
| 23.102.040    | – Purpose of the Zoning Ordinance .....        | 12        |
| 23.102.050    | – Applicability and Jurisdiction .....         | 13        |
| 23.102.060    | – Emergencies .....                            | 14        |
| 23.102.070    | – Conflicting Provisions .....                 | 15        |
| 23.102.080    | – Transitional Provisions .....                | 15        |
| 23.102.090    | – Severability .....                           | 16        |
| 23.102.100    | – Rules of Evidence and Procedure .....        | 16        |
| <b>23.104</b> | <b>Interpreting the Zoning Ordinance</b> ..... | <b>17</b> |
| 23.104.010    | – Chapter Purpose .....                        | 17        |
| 23.104.020    | – Authority .....                              | 17        |
| 23.104.030    | – Rules of Interpretation .....                | 17        |
| 23.104.040    | – Threshold Regulations .....                  | 19        |
| 23.104.050    | – Zoning Map .....                             | 19        |
| <b>23.106</b> | <b>Rules of Measurement</b> .....              | <b>20</b> |
| 23.106.010    | – Chapter Purpose .....                        | 20        |
| 23.106.020    | – Lot Coverage .....                           | 20        |
| 23.106.030    | – Floor Area, Gross .....                      | 20        |
| 23.106.040    | – Floor Area, Leasable .....                   | 21        |
| 23.106.050    | – Floor Area Ratio .....                       | 22        |
| 23.106.060    | – Story .....                                  | 22        |
| 23.106.070    | – Setbacks .....                               | 23        |
| 23.106.080    | – Building Separation .....                    | 24        |
| 23.106.090    | – Height .....                                 | 24        |

**23.108 Zoning Districts and Map.....27**  
 23.108.010 – Chapter Purpose .....27  
 23.108.020 – Zoning Districts .....27  
 23.108.030 – Zoning Map .....29

**DIVISION 2 -- ZONING DISTRICTS**

**23.202 Residential Districts .....32**  
 23.202.010 – Chapter Purpose .....32  
 23.202.020 – Allowed Land Uses .....32  
 23.202.030 – Additional Permit Requirements.....36  
 23.202.040 – Use-Specific Regulations .....37  
 23.202.050 – R-1 Single-Family Residential District.....37  
 23.202.060 – R-1A Limited Two-Family Residential District.....39  
 23.202.070 – ES-R Environmental Safety-Residential District .....41  
 23.202.080 – R-2 Restricted Two-Family Residential District.....48  
 23.202.090 – R-2A Restricted Multiple-Family Residential District.....50  
 23.202.100 – R-3 Multiple-Family Residential District .....52  
 23.202.110 – R-4 Multi-Family Residential District .....55  
 23.202.120 – R-5 High-Density Residential District.....57  
 23.202.130 – R-S Residential Southside District .....59  
 23.202.140 – R-SMU Residential Southside District.....62  
**23.204 Commercial Districts .....68**  
 23.204.010 – Chapter Purpose .....68  
 23.204.020 – Allowed Land Uses .....68  
 23.204.030 – Additional Permit Requirements.....80  
 23.204.040 – Use-Specific Permit Requirements and Regulations .....83  
 23.204.050 – C-C Corridor Commercial District.....86  
 23.204.060 – C-U University Commercial District.....90  
 23.204.070 – C-N Neighborhood Commercial District.....99  
 23.204.080 – C-E Elmwood Commercial District.....103  
 23.204.090 – C-NS North Shattuck Commercial District .....107  
 23.204.100 – C-SA South Area Commercial District .....111



|               |                                                   |            |
|---------------|---------------------------------------------------|------------|
| 23.204.110    | – C-T Telegraph Avenue Commercial District.....   | 119        |
| 23.204.120    | – C-SO Solano Avenue Commercial District.....     | 124        |
| 23.204.130    | – C-DMU Downtown Mixed-Use District .....         | 129        |
| 23.204.140    | – C-W West Berkeley Commercial District.....      | 140        |
| 23.204.150    | – C-AC Adeline Corridor Commercial District ..... | 147        |
| <b>23.206</b> | <b>Manufacturing Districts.....</b>               | <b>159</b> |
| 23.206.010    | – Chapter Purpose .....                           | 159        |
| 23.206.020    | – Allowed Land Uses and Permit Requirements.....  | 159        |
| 23.206.030    | – Additional Permit Requirements.....             | 168        |
| 23.206.040    | – Use-Specific Regulations .....                  | 170        |
| 23.206.050    | – Protected Uses.....                             | 172        |
| 23.206.060    | – M Manufacturing District .....                  | 177        |
| 23.206.070    | – MM Mixed Manufacturing District.....            | 181        |
| 23.206.080    | – MU-LI Mixed Use-Light Industrial District.....  | 182        |
| 23.206.090    | – MU-R Mixed Use-Residential District.....        | 185        |
| 23.206.100    | – Permit Findings .....                           | 189        |
| <b>23.208</b> | <b>Special Purpose Districts.....</b>             | <b>191</b> |
| 23.208.010    | – Specific Plan District .....                    | 191        |
| 23.208.020    | – Unclassified District.....                      | 191        |
| <b>23.210</b> | <b>Overlay Zones .....</b>                        | <b>193</b> |
| 23.210.010    | – Purpose of Overlay Zones .....                  | 193        |
| 23.210.020    | – Hillside Overlay Zone .....                     | 193        |
| 23.210.030    | – Civic Center District Overlay Zone .....        | 195        |

**DIVISION 3 -- CITYWIDE PROVISIONS**

|               |                                                                  |            |
|---------------|------------------------------------------------------------------|------------|
| <b>23.302</b> | <b>Supplemental Use Regulations .....</b>                        | <b>202</b> |
| 23.302.010    | – Purpose.....                                                   | 202        |
| 23.302.020    | – General Use Regulations .....                                  | 202        |
| 23.302.030    | – Temporary Uses and Structures .....                            | 206        |
| 23.302.040    | – Home Occupations.....                                          | 211        |
| 23.302.050    | – Bed and Breakfast Establishments in Residential Districts..... | 215        |
| 23.302.060    | – Sidewalk Cafe Seating .....                                    | 216        |

|                                                                                     |            |
|-------------------------------------------------------------------------------------|------------|
| 23.302.070 – Use-Specific Regulations .....                                         | 217        |
| <b>23.304 General Development Standards .....</b>                                   | <b>224</b> |
| 23.304.010 – Purpose .....                                                          | 224        |
| 23.304.020 – Lot Requirements .....                                                 | 224        |
| 23.304.030 – Setbacks .....                                                         | 225        |
| 23.304.040 – Building Separation in Residential Districts.....                      | 231        |
| 23.304.050 – Building Height .....                                                  | 231        |
| 23.304.060 – Accessory Buildings and Enclosed Accessory Structures .....            | 233        |
| 23.304.070 – Unenclosed Accessory Structures in Residential Districts.....          | 236        |
| 23.304.080 – Fences .....                                                           | 236        |
| 23.304.090 – Usable Open Space .....                                                | 239        |
| 23.304.100 – Site Features in Residential Districts .....                           | 240        |
| 23.304.110 – Dormers .....                                                          | 240        |
| 23.304.120 – Lot Coverage.....                                                      | 241        |
| 23.304.130 – Non-Residential Districts Abutting a Residential District.....         | 241        |
| 23.304.140 – Area Plans.....                                                        | 242        |
| <b>23.306 Accessory Dwelling Units .....</b>                                        | <b>243</b> |
| 23.306.010 – Purposes .....                                                         | 243        |
| 23.306.020 – Applicability .....                                                    | 243        |
| 23.306.030 – Permit Procedures .....                                                | 243        |
| <b>23.308 Emergency Shelters .....</b>                                              | <b>244</b> |
| 23.308.010 – Chapter Purpose .....                                                  | 244        |
| 23.308.020 – Applicability and Nonconformities .....                                | 244        |
| 23.308.030 – Required Permits .....                                                 | 244        |
| 23.308.040 – Standards for Emergency Shelters .....                                 | 245        |
| <b>23.310 Alcoholic Beverage Sales and Service .....</b>                            | <b>248</b> |
| 23.310.010 – Chapter Purpose .....                                                  | 248        |
| 23.310.020 – General Requirements Excluding Incidental Beer and Wine Service<br>248 |            |
| 23.310.030 – Alcoholic Beverage Service When Incidental to Food Service .....       | 249        |
| <b>23.312 Live/Work.....</b>                                                        | <b>253</b> |
| 23.312.010 – Chapter Purpose .....                                                  | 253        |
| 23.312.020 – Applicability .....                                                    | 253        |

|               |                                                                |            |
|---------------|----------------------------------------------------------------|------------|
| 23.312.030    | – Required Permits .....                                       | 254        |
| 23.312.040    | – Standards for Live/Work.....                                 | 255        |
| 23.312.050    | – Findings.....                                                | 257        |
| <b>23.314</b> | <b>Short-Term Rentals.....</b>                                 | <b>260</b> |
| 23.314.010    | – Chapter Purpose .....                                        | 260        |
| 23.314.020    | – Definitions .....                                            | 260        |
| 23.314.030    | – Applicability .....                                          | 261        |
| 23.314.040    | – General Regulations .....                                    | 261        |
| 23.314.050    | – Operating Standards and Requirements.....                    | 262        |
| 23.314.060    | – Violations and Remedies .....                                | 264        |
| <b>23.316</b> | <b>Percentage for Public Art on Private Projects .....</b>     | <b>266</b> |
| 23.316.010    | – Chapter Purpose .....                                        | 266        |
| 23.316.020    | – Applicability .....                                          | 266        |
| 23.316.030    | – Definitions .....                                            | 267        |
| 23.316.040    | – General Requirements .....                                   | 267        |
| 23.316.050    | – Required Permits .....                                       | 268        |
| 23.316.060    | – In-Lieu Fees .....                                           | 268        |
| 23.316.070    | – Administrative Regulations (Guidelines) .....                | 268        |
| <b>23.318</b> | <b>Urban Agriculture .....</b>                                 | <b>269</b> |
| 23.318.010    | – Chapter Purpose .....                                        | 269        |
| 23.318.020    | – Applicability .....                                          | 269        |
| 23.318.030    | – Urban Agriculture Uses and Levels of Discretion.....         | 269        |
| 23.318.040    | – Thresholds .....                                             | 269        |
| 23.318.050    | – Operation Standards .....                                    | 270        |
| 23.318.060    | – Complaints .....                                             | 270        |
| <b>23.320</b> | <b>Cannabis Uses .....</b>                                     | <b>271</b> |
| 23.320.010    | – Chapter Purpose .....                                        | 271        |
| 23.320.020    | – Cannabis Retail.....                                         | 271        |
| 23.320.030    | – Commercial Cannabis Cultivation .....                        | 273        |
| 23.320.040    | – Cannabis Manufacturers, Testing Labs, and Distributors ..... | 274        |
| 23.320.050    | – Microbusinesses .....                                        | 275        |
| <b>23.322</b> | <b>Parking and Loading .....</b>                               | <b>276</b> |

|               |                                                                          |            |
|---------------|--------------------------------------------------------------------------|------------|
| 23.322.010    | – Chapter Purpose .....                                                  | 276        |
| 23.322.020    | – Applicability .....                                                    | 276        |
| 23.322.030    | – Required Parking Spaces .....                                          | 277        |
| 23.322.040    | – General Requirements .....                                             | 285        |
| 23.322.050    | – Parking Reductions .....                                               | 289        |
| 23.322.060    | – C-DMU Parking and Transportation Demand Management .....               | 294        |
| 23.322.070    | – Off-Street Parking Maximums for Residential Development.....           | 296        |
| 23.322.080    | – Parking Layout and Design .....                                        | 297        |
| 23.322.090    | – Bicycle Parking.....                                                   | 302        |
| 23.322.100    | – On-site Loading Spaces.....                                            | 303        |
| 23.322.110    | – Parking Lots in Residential Districts.....                             | 305        |
| 23.322.120    | – Transportation Services Fee .....                                      | 305        |
| <b>23.324</b> | <b>Nonconforming Uses, Structures, and Buildings.....</b>                | <b>307</b> |
| 23.324.010    | – Chapter Purpose .....                                                  | 307        |
| 23.324.020    | – General .....                                                          | 307        |
| 23.324.030    | – Nonconforming Lots .....                                               | 308        |
| 23.324.040    | – Nonconforming Uses.....                                                | 308        |
| 23.324.050    | – Nonconforming Structures and Buildings.....                            | 310        |
| 23.324.060    | – Exemptions .....                                                       | 313        |
| <b>23.326</b> | <b>Demolition and Dwelling Unit Control .....</b>                        | <b>315</b> |
| 23.326.010    | – Chapter Purpose .....                                                  | 315        |
| 23.326.020    | – General Requirements .....                                             | 315        |
| 23.326.030    | – Eliminating Dwelling Units through Demolition.....                     | 315        |
| 23.326.040    | – Eliminating Dwelling Units through Conversion and Change of Use<br>318 |            |
| 23.326.050    | – Private Right of Action.....                                           | 320        |
| 23.326.060    | – Elimination of Residential Hotel Rooms .....                           | 320        |
| 23.326.070    | – Demolitions of Non-Residential Buildings .....                         | 321        |
| 23.326.080    | – Building Relocations.....                                              | 322        |
| 23.326.090    | – Limitations .....                                                      | 323        |
| <b>23.328</b> | <b>Inclusionary Housing .....</b>                                        | <b>324</b> |
| 23.328.010    | – Chapter Purpose and Applicability .....                                | 324        |
| 23.328.020    | – General Requirements .....                                             | 325        |

|               |                                                                             |            |
|---------------|-----------------------------------------------------------------------------|------------|
| 23.328.030    | – Payment of In-Lieu Fees as an Alternative to Providing Inclusionary Units | 325        |
| 23.328.040    | – Requirements Applicable to All Inclusionary Units                         | 326        |
| 23.328.050    | – Inclusionary Unit Requirements for Rental Housing Projects                | 328        |
| 23.328.060    | – Inclusionary Unit Requirements for Ownership Projects                     | 329        |
| 23.328.070    | – Special Requirements for Avenues Plan Area                                | 331        |
| 23.328.080    | – Administrative Regulations                                                | 337        |
| 23.328.090    | – Fees                                                                      | 337        |
| <b>23.330</b> | <b>Density Bonus</b>                                                        | <b>338</b> |
| 23.330.010    | – Chapter Purpose                                                           | 338        |
| 23.330.020    | – Definitions                                                               | 338        |
| 23.330.030    | – Application Requirements                                                  | 339        |
| 23.330.040    | – Density Bonus Calculations and Procedures                                 | 340        |
| 23.330.050    | – Incentives and Concessions                                                | 340        |
| 23.330.060    | – Waivers and Reductions                                                    | 341        |
| 23.330.070    | – Qualifying Units                                                          | 341        |
| 23.330.080    | – Regulatory Agreements                                                     | 341        |
| <b>23.332</b> | <b>Wireless Communication Facilities</b>                                    | <b>342</b> |
| 23.332.010    | – Chapter Purpose and Applicability                                         | 342        |
| 23.332.020    | – Definitions                                                               | 343        |
| 23.332.030    | – General Requirements                                                      | 345        |
| 23.332.040    | – Minimum Application Requirements                                          | 345        |
| 23.332.050    | – Location Requirements                                                     | 348        |
| 23.332.060    | – Height Requirements                                                       | 348        |
| 23.332.070    | – Design Requirements                                                       | 348        |
| 23.332.080    | – Operation and Maintenance Standards                                       | 352        |
| 23.332.090    | – Public Information Requirements                                           | 354        |
| 23.332.100    | – Certification Requirements                                                | 354        |
| 23.332.110    | – Permits and Findings Required for Approval                                | 357        |
| 23.332.120    | – Cessation of Operations                                                   | 358        |
| <b>23.334</b> | <b>Transportation Demand Management</b>                                     | <b>360</b> |
| 23.334.010    | – Chapter Purpose                                                           | 360        |
| 23.334.020    | – Applicability                                                             | 360        |

|            |                                                              |     |
|------------|--------------------------------------------------------------|-----|
| 23.334.030 | – Transportation Demand Management Program Requirements .... | 361 |
| 23.334.040 | – Monitoring, Reporting and Compliance .....                 | 361 |

#### **DIVISION 4 -- PERMITS AND ADMINISTRATION**

|               |                                              |            |
|---------------|----------------------------------------------|------------|
| <b>23.402</b> | <b>Administrative Responsibility .....</b>   | <b>365</b> |
| 23.402.010    | – Purpose .....                              | 365        |
| 23.402.020    | – Review and Decision-Making Authority ..... | 365        |
| 23.402.030    | – Planning and Development Department .....  | 368        |
| 23.402.040    | – Zoning Officer .....                       | 368        |
| 23.402.050    | – Landmarks Preservation Commission .....    | 369        |
| 23.402.060    | – Design Review Committee .....              | 369        |
| 23.402.070    | – Zoning Adjustments Board .....             | 370        |
| 23.402.080    | – Planning Commission .....                  | 371        |
| 23.402.090    | – City Council .....                         | 371        |
| <b>23.404</b> | <b>Common Permit Requirements .....</b>      | <b>372</b> |
| 23.404.010    | – Purpose and Applicability .....            | 372        |
| 23.404.020    | – Application Submittal .....                | 372        |
| 23.404.030    | – Application Review .....                   | 374        |
| 23.404.040    | – Public Notice .....                        | 376        |
| 23.404.050    | – Public Hearings and Decisions .....        | 382        |
| 23.404.060    | – Post-Decision Provisions .....             | 385        |
| 23.404.070    | – Permit Modifications .....                 | 387        |
| 23.404.080    | – Permit Revocation .....                    | 388        |
| <b>23.406</b> | <b>Specific Permit Requirements .....</b>    | <b>392</b> |
| 23.406.010    | – Purpose .....                              | 392        |
| 23.406.020    | – Zoning Certificates .....                  | 392        |
| 23.406.030    | – Administrative Use Permits .....           | 393        |
| 23.406.040    | – Use Permits .....                          | 395        |
| 23.406.050    | – Variances .....                            | 395        |
| 23.406.060    | – Master Use Permits .....                   | 397        |
| 23.406.070    | – Design Review .....                        | 398        |

|               |                                                                           |            |
|---------------|---------------------------------------------------------------------------|------------|
| 23.406.080    | – Modification of Development Standards in West Berkeley Plan Area<br>403 |            |
| 23.406.090    | – Reasonable Accommodations .....                                         | 404        |
| <b>23.408</b> | <b>Green Pathway .....</b>                                                | <b>408</b> |
| 23.408.010    | – Purpose .....                                                           | 408        |
| 23.408.020    | – Applicability .....                                                     | 408        |
| 23.408.030    | – Eligibility Determination .....                                         | 408        |
| 23.408.040    | – Green Pathway Application .....                                         | 410        |
| 23.408.050    | – General Requirements .....                                              | 411        |
| 23.408.060    | – Requirements for Large Buildings and Hotels.....                        | 412        |
| 23.408.070    | – Development Standards.....                                              | 412        |
| 23.408.080    | – Streamlined Permitting Process.....                                     | 413        |
| 23.408.090    | – Tolling.....                                                            | 415        |
| 23.408.100    | – Compliance .....                                                        | 415        |
| 23.408.110    | – City Manager Authority to Issue Regulations .....                       | 415        |
| <b>23.410</b> | <b>Appeals and Certifications.....</b>                                    | <b>416</b> |
| 23.410.010    | – Chapter Purpose .....                                                   | 416        |
| 23.410.020    | – Appeal Subjects and Jurisdiction .....                                  | 416        |
| 23.410.030    | – Filing and Processing of Appeals.....                                   | 419        |
| 23.410.040    | – Hearing and Decision .....                                              | 420        |
| 23.410.050    | – City Council Certifications .....                                       | 422        |
| <b>23.412</b> | <b>Zoning Ordinance Amendments .....</b>                                  | <b>423</b> |
| 23.412.010    | – Purpose.....                                                            | 423        |
| 23.412.020    | – Initiation .....                                                        | 423        |
| 23.412.030    | – Application.....                                                        | 423        |
| 23.412.040    | – Planning Commission Hearing and Action.....                             | 423        |
| 23.412.050    | – City Council Hearing and Action .....                                   | 424        |
| 23.412.060    | – Findings for Approval .....                                             | 425        |
| 23.412.070    | – Limitations on Resubmittals after Denial.....                           | 425        |
| 23.412.080    | – Zoning Map Amendment Notations.....                                     | 426        |
| <b>23.414</b> | <b>Nuisance Abatement .....</b>                                           | <b>427</b> |
| 23.414.010    | – Purpose.....                                                            | 427        |
| 23.414.020    | – Enforcement Responsibility.....                                         | 427        |

23.414.030 – Violations a Misdemeanor.....427

23.414.040 – Nuisances Prohibited .....427

23.414.050 – City Attorney Action.....428

23.414.060 – Abatement Procedures .....428

23.414.070 – Statements of Violations .....429

23.414.080 – Remedies .....430

23.414.090 – Recovery of Costs.....430

23.414.100 – Private Right of Action.....431

**DIVISION 5 -- GLOSSARY**

**23.502 Glossary.....433**

23.502.010 – Purpose.....433

23.502.020 – Defined Terms.....433

23.502.030 – Acronyms .....469

**Appendix A:** Table Relating Ordinance Sections: New Ordinance to Old Ordinance Table

**Appendix B:** Table Relating Ordinance Sections: Old Ordinance to New Ordinance Table



## **DIVISION 1: GENERAL PROVISIONS**

### **23.102: Introductory Provisions**

- 23.102.010 – Title
- 23.102.020 – Effective Date
- 23.102.030 – Authority
- 23.102.040 – Purpose of the Zoning Ordinance
- 23.102.050 – Applicability and Jurisdiction
- 23.102.060 – Emergencies
- 23.102.070 – Conflicting Provisions
- 23.102.080 – Transitional Provisions
- 23.102.090 – Severability
- 23.102.100 – Rules of Evidence and Procedure

### **23.104: Interpreting the Zoning Ordinance**

- 23.104.010 – Chapter Purpose
- 23.104.020 – Authority
- 23.104.030 – Rules of Interpretation
- 23.104.040 – Threshold Regulations
- 23.104.050 – Zoning Map

### **23.106: Rules of Measurement**

- 23.106.010– Chapter Purpose
- 23.106.020– Lot Coverage
- 23.106.030– Floor Area, Gross
- 23.106.040– Floor Area, Leasable
- 23.106.050– Floor Area Ratio
- 23.106.060– Story
- 23.106.070– Setbacks
- 23.106.080– Building Separation
- 23.106.090– Height

### **23.108: Zoning Districts and Map**

- 23.108.010– Chapter Purpose
- 23.108.020– Zoning Districts
- 23.108.030– Zoning Map

## **23.102 INTRODUCTORY PROVISIONS**

---

### **Sections:**

- 23.102.010 – Title
- 23.102.020 – Effective Date
- 23.102.030 – Authority
- 23.102.040 – Purpose of the Zoning Ordinance
- 23.102.050 – Applicability and Jurisdiction
- 23.102.060 – Emergencies
- 23.102.070 – Conflicting Provisions
- 23.102.080 – Transitional Provisions
- 23.102.090 – Severability
- 23.102.100 – Rules of Evidence and Procedure

### **23.102.010 – Title**

Municipal Code Title 23 is known and cited as the “City of Berkeley Zoning Ordinance” and referred to in this title as “the Zoning Ordinance.”

### **23.102.020 – Effective Date**

The Zoning Ordinance takes effect and is in force from and after [date of adoption].

### **23.102.030 – Authority**

The Zoning Ordinance is adopted under the authority in California Government Code Section 65850 and all other relevant laws of the State of California. If the Zoning Ordinance refers to a section of state law that is later amended or superseded, the Zoning Ordinance is deemed amended to refer to the amended section or the section that most closely corresponds to the superseded section.

### **23.102.040 – Purpose of the Zoning Ordinance**

- A. **General.** The purpose of the Zoning Ordinance is to implement the General Plan and adopted area plans and to protect the public health, safety, and welfare.
- B. **Specific.** The Zoning Ordinance is intended to:
  1. Encourage appropriate land uses and a harmonious relationship among land uses by regulating the location and type of allowed land uses and development.
  2. Provide for the appropriate intensity of development by regulating:
    - a. The establishment, density and change of uses;
    - b. The construction of buildings and additions; and
    - c. The size and coverage of lots.

3. Provide for adequate light and air by:
  - a. Limiting building height, bulk, and size; and
  - b. Requiring building setbacks from lot lines and separations between buildings.
4. Provide for adequate usable open space, off-street parking, and off-street loading spaces for specified land uses by:
  - a. Requiring reservations of land and structures for such purposes; and
  - b. Regulating the number, placement, and location of such spaces and areas.
5. Prevent adverse effects of commercial and manufacturing activities by:
  - a. Limiting the hours, intensity, presence of outdoor activities, and other aspects of commercial and manufacturing land uses; and
  - b. Limiting the number and size of commercial and manufacturing land uses in specified districts.
6. Provide review of major changes in buildings by regulating proposals for their demolition, conversion, or relocation.
7. Ensure that the construction and alteration of buildings in Non-Residential Districts is compatible with the existing neighborhoods by requiring Design Review to provide for a pleasing Berkeley environment and encourage excellence in design.
8. Protect Berkeley's existing housing stock by regulating the reduction in size, removal, demolition, or conversion of dwelling units, group living accommodations, and residential hotel rooms.
9. Promote the development of affordable housing for all persons and in particular for persons with low and moderate incomes.
10. Incorporate the substantive provisions of the Neighborhood Preservation Ordinance (Ordinance 4641-NS, not codified), a citizen initiative, to the extent permitted by law.

### **23.102.050 – Applicability and Jurisdiction**

#### **A. Applicability.**

1. **General.** The Zoning Ordinance applies to all property in Berkeley, including property owned by the City and other governmental entities, to the full extent permitted by law.
2. **Public Right-of-Way.** The Zoning Ordinance does not apply to uses and structures wholly in the public right-of-way, unless otherwise specified. Such uses and structures must comply with Encroachment Permit regulations in

Municipal Code Chapter 16.18 (Right-of-Way Encroachments and Encroachment Permits).

- B. **Compliance Required.** All land uses and structures in Berkeley must comply with the Zoning Ordinance and all applicable City ordinances and regulations.
- C. **City Actions.** No City department, employee, or official may issue a permits or license for a use or structures that conflicts with the Zoning Ordinance. Any permit or license issued in conflict with the Zoning Ordinance is null and void. Nothing in this subsection is intended to create a mandatory duty under Government Code Section 815.6.
- D. **Approvals Required.** A land use may be established and a structure may be constructed, altered, or moved only after:
  1. All applicable project review and approval processes have been followed;
  2. All required permits and approvals have been obtained; and
  3. All required authorizations to proceed have been issued.
- E. **Other Regulations.** Compliance with the Zoning Ordinance does not relieve an applicant from requirements to comply with other federal, state, and City regulations that also apply to the property.

### 23.102.060 – Emergencies

- A. **Deviations Allowed.** During a local emergency, the City Council may allow a land use or structure to be established without a Use Permit or other approval ordinarily required by the Zoning Ordinance.
- B. **Approval Procedures.**
  1. The City Council may approve such a land use or structure by the same vote required for the adoption of an urgency ordinance upon finding that:
    - a. An emergency exists as defined in Municipal Code Section 2.88.020—  
Emergency Defined; and
    - b. The use or structure is required to ameliorate the effects of the emergency.
- C. **Effective Date of Action.** Action by the City Council under this section is effective immediately.
- D. **Post-Emergency Requirements.**
  1. Uses and structures permitted under this section are no longer authorized after the City Council declares the emergency has ended.
  2. After the emergency has ended, uses and structures shall either:

- a. Be removed or discontinued; or
- b. Apply for all permits and approvals required by the Zoning Ordinance.

### **23.102.070 – Conflicting Provisions**

- A. **Conflict with State or Federal Regulations.** Where the Zoning Ordinance conflicts with state or federal laws, higher law controls over lower law unless local variation is permitted.
- B. **Conflict with Other City Regulations.** Where the Zoning Ordinance conflicts with other ordinances, resolutions, or regulations of the City of Berkeley, the more restrictive controls.
- C. **Conflict with Private Agreements.** It is not the intent of the Zoning Ordinance to interfere with, abrogate, or annul any easement, covenant, deed restriction, or other agreement between private parties. If the Zoning Ordinance imposes a greater restriction than imposed by a private agreement, the Zoning Ordinance controls. Private agreements may impose greater restrictions than the Zoning Ordinance, but the City is not responsible for monitoring or enforcing private agreements.

### **23.102.080 – Transitional Provisions**

- A. **Relation to Prior Zoning Ordinance.** The Zoning Ordinance supersedes the prior Zoning Ordinance codified in Municipal Code Title 23, including all Title 23 sub-titles and appendices.
- B. **Violations Continue.** A violation of the prior Zoning Ordinance continues to be a violation under this Zoning Ordinance unless the violation is brought into compliance with this Zoning Ordinance.
- C. **Pending Applications.**
  - 1. If the City deems an application complete but does not take final action on the application before the effective date of this Zoning Ordinance, the application remains subject to prior Zoning Ordinance in effect when the application was deemed complete.
  - 2. If an application is withdrawn before a decision, any re-application is subject to the requirements of this Zoning Ordinance.
- D. **Approved Projects.**
  - 1. Permits and other approvals valid on the effective date of this Zoning Ordinance remain valid until their expiration date.
  - 2. Projects with valid permits or approvals shall be completed in compliance with the standards in effect at the time of approval. If the permit or approval expires, future development shall comply with the requirements of this Zoning Ordinance.

- E. **Nonconformities.** A parcel, land use, or structure lawfully established before [effective date of Zoning Ordinance] that does not comply with this Zoning Ordinance is considered nonconforming and subject to the requirements in Chapter 23.324 (Nonconforming Uses, Structures, and Buildings).

**23.102.090 – Severability**

If any portion of the Zoning Ordinance is found invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity or the constitutionality of the remaining portions of the Zoning Ordinance, which shall remain in full force and effect. The City Council declares that it would have passed the Zoning Ordinance and each of its portions, regardless of whether any portion is declared invalid or unconstitutional.

**23.102.100 – Rules of Evidence and Procedure**

Except as otherwise expressly provided in this Ordinance, formal rules of evidence or procedure which must be followed in a court of record in this state shall not apply. No action, inaction or recommendation made by any City official, employee, commission, board or other entity under this Ordinance shall be void or invalid or be set aside by any court on the ground of the improper admission or rejection of evidence or by reason of any error, irregularity, informality, neglect or omission (hereinafter called error) as to any matter pertaining to petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals or any matters of procedure whatever, unless after an examination of the entire case, including the evidence, the court is of the opinion that the error complained of was prejudicial, and that by reason of such error the party complaining or appealing sustained and suffered substantial injury, and that a different result would have been probable if such error had not occurred or existed. There shall be no presumption that error is prejudicial or that injury was done if error is shown.

## **23.104 INTERPRETING THE ZONING ORDINANCE**

---

### **Sections:**

- 23.104.010 – Chapter Purpose
- 23.104.020 – Authority
- 23.104.030 – Rules of Interpretation
- 23.104.040 – Threshold Regulations
- 23.104.050 – Zoning Map

### **23.104.010 – Chapter Purpose**

This chapter establishes rules and procedures for interpreting the Zoning Ordinance to ensure that it is applied and enforced in a consistent manner.

### **23.104.020 – Authority**

The Zoning Officer is responsible for interpreting the meaning and applicability of all provisions in the Zoning Ordinance. Zoning Officer interpretations are subject to review and modification by the Zoning Adjustments Board (ZAB) and City Council.

### **23.104.030 – Rules of Interpretation**

- A. **Meaning and Intent.** All language shall be construed according to the purpose and intent set out in Section 23.102.040 (Purpose of the Zoning Ordinance).
- B. **Minimum Requirements.** The Zoning Ordinance establishes minimum requirements to promote the public health, safety, and general welfare. When the Zoning Ordinance provides for discretion on the part of a City official or body, that discretion may be exercised to impose more stringent requirements as necessary to achieve the purpose and intent of the Zoning Ordinance set out Section 23.102.040 (Purpose of the Zoning Ordinance).
- C. **Harmonious Construction.** The City intends that all provisions of the Zoning Ordinance be construed harmoniously. When two or more provisions of the Zoning Ordinance appear to conflict, the City shall construe such provisions to give effect to both, if possible, by harmonizing them with each other. In cases of conflict, the more restrictive shall govern.
- D. **Headings, Illustrations, and Text.** In cases where text conflicts with any heading, table, or figure, the text controls.
- E. **Lists and Examples.** Unless otherwise specifically indicated, lists of items or examples that use terms such as “including,” “such as,” or similar language are intended to provide examples, not to be exhaustive lists of all possibilities.
- F. **Computation of Time.** References to days are consecutive calendar days unless otherwise stated. When business days are referenced, they include only days when

City Hall is open. The end of a time period is computed by excluding the first day and including the last day. If the last day is a holiday observed by the City or a City Hall non-business day, that day is excluded.

- G. **Rounding of Fractional Numbers.** Unless otherwise stated, a fraction of one-half or more is rounded to the nearest highest whole number and a fraction of less than one-half is rounded to the next lowest whole number.
- H. **References to Other Regulations, Publications, and Documents.** Whenever reference is made to a resolution, ordinance, regulation, or document, it is construed as a reference to the most recent edition of such resolution, ordinance, regulation, or document, unless specifically stated.
- I. **Technical and Non-Technical Terms.** Words and phrases are construed according to the common and approved usage of the language, but technical words and phrases that may have acquired a peculiar and appropriate meaning in law are construed and understood according to such meaning.
- J. **Terms Not Defined.** If there is a term used in the Zoning Ordinance that is not defined in this title, the Zoning Officer has the authority to provide a definition based upon intended meaning of the undefined term.
- K. **Public Officials and Agencies.** All public officials, bodies, and agencies to which references are made are those of the City of Berkeley, unless otherwise indicated.
- L. **Mandatory and Discretionary Terms.** The words “shall,” “will,” “must,” and “is” are always mandatory. The words “may” and “should” are advisory and discretionary terms.
- M. **Conjunctions.** Unless the context clearly suggests the contrary, conjunctions shall be interpreted as follows:
1. “And” means that all connected items apply.
  2. “And/or” means that the connected words or provisions may apply singularly or in any combination.
  3. “Or” means that any one of the connected items may apply singularly but not in combination.
  4. “Either...or” means that the connected words or provisions shall apply singularly but not in combination.
- N. **Tenses and Plurals.** Words used in one tense (past, present, or future) include all other tenses, unless the context clearly indicates the contrary. The singular includes the plural, and the plural includes the singular.



**23.104.040 – Threshold Regulations**

To determine if a non-residential project application is subject to a requirement which applies only if certain development or use thresholds are reached, any construction or change of use which is subject to the same regulation and was completed within one year before the application is considered part of the same application.

**23.104.050 – Zoning Map**

**A. Zoning Map Boundaries.** Where uncertainty exists as to the boundaries of districts shown on the Zoning Map, the following rules apply:

1. Boundaries shown as approximately following lot lines are construed to follow the lot lines.
2. Boundaries shown as approximately following the centerlines of streets, highways, and alleys are construed to follow the centerlines.
3. Boundaries shown as approximately following city limits are construed to follow city limits.
4. Where a district boundary divides a lot, the location of the boundary is determined by the use of the scale appearing on the Zoning Map unless otherwise indicated by a legal description of the property.

**B. Lots Containing Two or More Districts.**

1. For lots containing two or more districts, each part of the lot is subject to the regulations of district in which it is located, except as allowed by Paragraph (2) below.
2. The City may apply the setback requirements in one part of a lot to a part of the lot located in another district with a Use Permit, subject to the following:
  - a. The development intensity (residential density and/or floor area ratio) of the project may not exceed the development intensity that would be allowed if the setbacks requirements are not adjusted; and
  - b. Allowed land uses in each part of the lot are only as permitted in the district in which it is located.

## **23.106 RULES OF MEASUREMENT**

---

### **Sections:**

- 23.106.010– Chapter Purpose
- 23.106.020– Lot Coverage
- 23.106.030– Floor Area, Gross
- 23.106.040– Floor Area, Leasable
- 23.106.050– Floor Area Ratio
- 23.106.060– Story
- 23.106.070– Setbacks
- 23.106.080– Building Separation
- 23.106.090– Height

### **23.106.010 – Chapter Purpose**

This chapter establishes rules for the measurement of standards contained in the Zoning Ordinance.

### **23.106.020 – Lot Coverage**

- A. **Lot Coverage Defined.** Lot coverage means all the area of a lot, as projected on a horizontal plane, which is:
  1. Enclosed by the exterior walls of buildings or enclosed accessory structures; or
  2. Covered by decks, porches, stairs and/or landings which cover an enclosed space or paved ground area.
- B. **Exclusions.** The lot coverage calculation excludes:
  1. Uncovered porches, landings and stairs;
  2. Uncovered decks, except that a deck on the roof of a building or accessory structure or over an enclosed space or paved ground area is included in the lot coverage calculation; and
  3. The area of the roof of a subterranean structure, when such a structure is not more than 3 feet above finished grade.

### **23.106.030 – Floor Area, Gross**

- A. **Gross Floor Area Defined.** Gross floor area means the total gross horizontal areas of all floors of a building or enclosed structure.
- B. **Basements and Cellars.** Gross floor area includes usable basements and cellars that are either:

1. Below the roof and within the outer surface of the main walls of a main or accessory building (or the centerlines of party walls separating such buildings or portions of buildings); or
  2. Within lines drawn parallel to and 2 feet within the roof line of any building or portion of a building without walls.
- C. **Access Features in Multi-Story Buildings.** For a multi-story building with a covered or enclosed stairways, stairwells, or elevator shafts, the horizontal area of these features is counted only once at the floor level of their greatest area of horizontal extent.
- D. **Excluded Areas.** The following areas are excluded from gross floor area calculation:
1. Covered or uncovered areas used for off-street parking or loading spaces.
  2. Driveways ramps between floors and maneuvering aisles of a multi-level parking garage.
  3. Mechanical, electrical, and telephone equipment rooms below finished grade.
  4. Areas which qualify as usable open space.
  5. Arcades, porticoes, and similar open areas for non-residential uses which are:
    - a. Located at or near street level;
    - b. Accessible to the general public; and
    - c. Are not designed or used as sales, display, storage, service, or production areas.
- E. **Covered Pedestrian Access Features for Non-Residential Uses.** For non-residential uses, gross floor area includes pedestrian access interior walkways or corridors, or interior courtyards, walkways, paseos or corridors covered by a roof or skylight.
- F. **Mezzanines.** Gross floor area includes the floor area of a mezzanine.

#### **23.106.040 – Floor Area, Leasable**

- A. **Leasable Floor Area Defined.** Leasable floor area means the total interior floor area of a commercial lease space available for use by a single business.
- B. **Included Areas.** Leasable floor area includes all sales, customer, display, shelving, assembly, seating, counter, kitchen, storage, and office areas.
- C. **Excluded Areas.** Leasable floor area does not include stairs, restrooms, and unenclosed walkways and areas serving more than one lease space such as

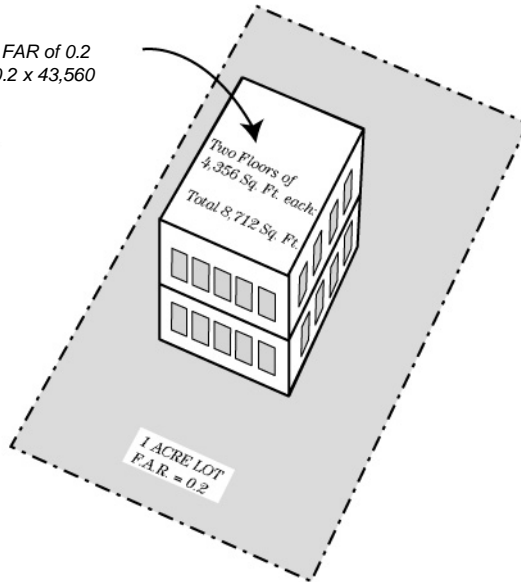
hallways, corridors, lobbies, maintenance areas, vestibules and other common areas.

### 23.106.050 – Floor Area Ratio

- A. **Floor Area Ratio Defined.** Floor area ratio (FAR) means the quotient resulting from division of the gross floor area of all buildings on a lot by the area of the lot. See Figure 23.106-1: Floor Area Ratio.

**FIGURE 23.106-1: FLOOR AREA RATIO**

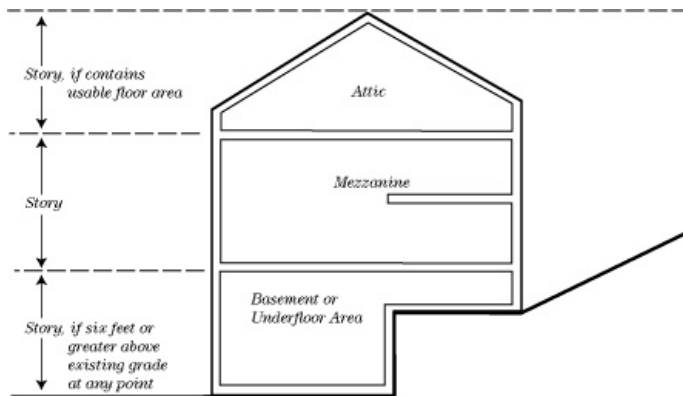
*Maximum Floor Area for a FAR of 0.2  
on a 43,560 Sq. Ft. Lot =  $0.2 \times 43,560$   
Sq. Ft. = 8,712 Sq. Ft.*



- B. **Development on Contiguous Lots.** In a single integrated development on contiguous lots, the permitted floor area ratio is calculated using the total combined area of all such lots.

### 23.106.060 – Story

- A. **Story Defined.** A story means the portion of a building included between the upper surface of any floor and the upper surface of the floor next above. See Figure 23.106-2: Story.

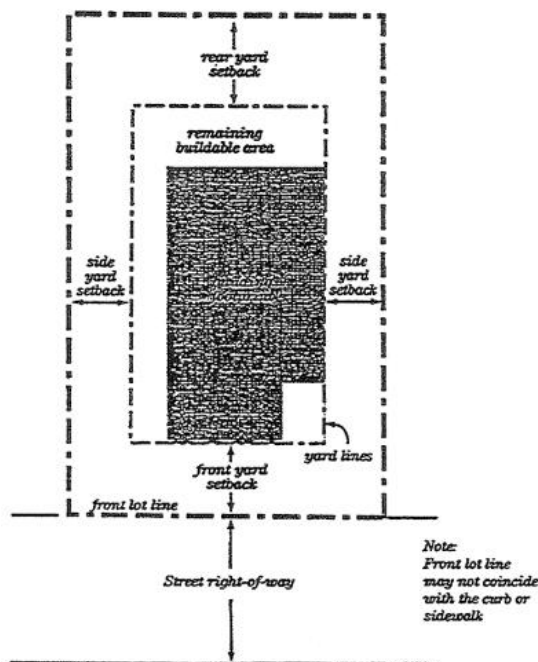
**FIGURE 23.106-2: STORY**

- B. **Topmost Story.** The topmost story of a building is the portion of a building between the floor of the topmost floor and the ceiling or roof above.
- C. **Below Grade Spaces.** If the finished floor level directly above the ceiling of a basement, garage structure, cellar, or unused underfloor space is more than 6 feet above existing grade at any point, such basement, cellar, or unused underfloor space is considered a story.
- D. **Penthouses.** A penthouse used for purposes other than shelter of mechanical equipment or shelter of vertical shaft openings in the roof is considered a story.
- E. **Mezzanines.** When the total floor area of a mezzanine exceeds 33.3 percent of the total floor area in that room, it constitutes an additional story.

### 23.106.070 – Setbacks

- A. **Measurement.** A required setback is measured as the distance between the surface of a building's outer wall and the applicable lot line.
- B. **Setback Areas.** As shown in Figure 23.106-3: Setbacks, a setback area means the required open area on a lot that is between a lot line and a setback line. A setback area must be unoccupied and unobstructed from the ground upward by any portion of a building or structure except as otherwise permitted by the Zoning Ordinance. Required setback areas are defined as follows:
  1. **Front Setback Area:** The area extending across the full width of the front of a lot from the front lot line to the front setback line.
  2. **Rear Setback Area:** The area extending across the full width of the lot between the rear lot line and the rear setback line.
  3. **Interior Side Setback Area:** The area between an interior side lot line and the side setback line, and extending from the front lot line to the rear lot line.
  4. **Street Side Setback Area:** The area between a street side lot line and the side setback line, and extending from the front lot line to the rear lot line.

FIGURE 23.106-3: SETBACKS



### 23.106.080 – Building Separation

- A. **Measurement.** Building separation is measured as the distance between the surface of a main building's outer wall and the outer wall surface of the closest neighboring main building.
- B. **Main Buildings with Different Height.** The required building separation between two or more main buildings which are of different heights is that required for the number of stories in the tallest building.

### 23.106.090 – Height

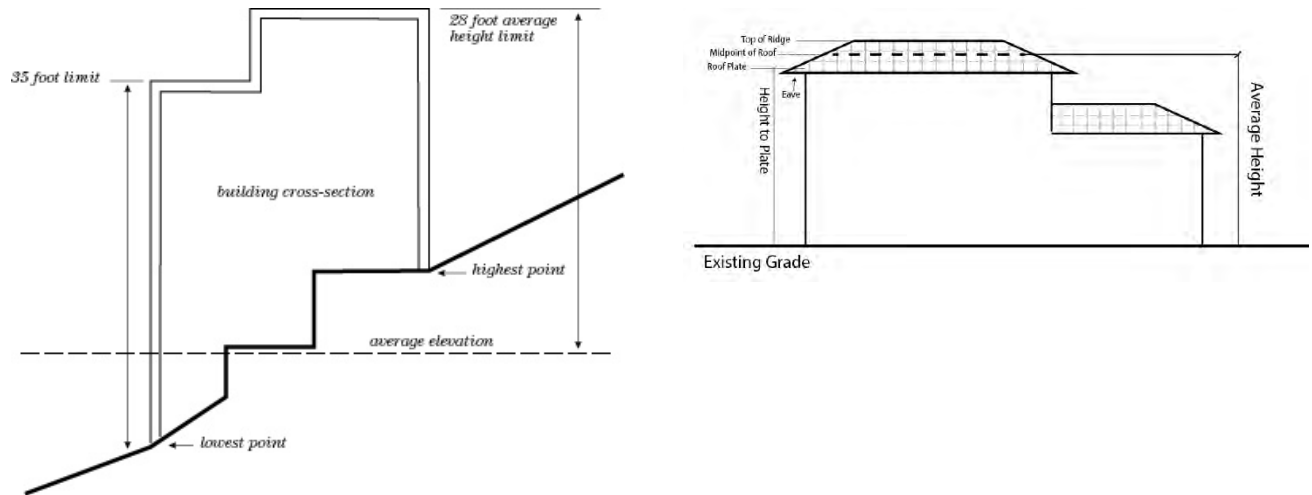
#### A. Average Building Height.

1. **Average Building Height:** The vertical distance from the average level of the highest and lowest point of that portion of the lot covered by the building (or, in the case of residential additions, that portion of the lot covered by the addition) to the roof features shown in Table 23.106-1: Average Building Height Measurement. See
2. Figure 23.106-4: Average Building Height.
3. Dormers are not included in the average building height calculation.

**TABLE 23.106-1: AVERAGE BUILDING HEIGHT MEASUREMENT**

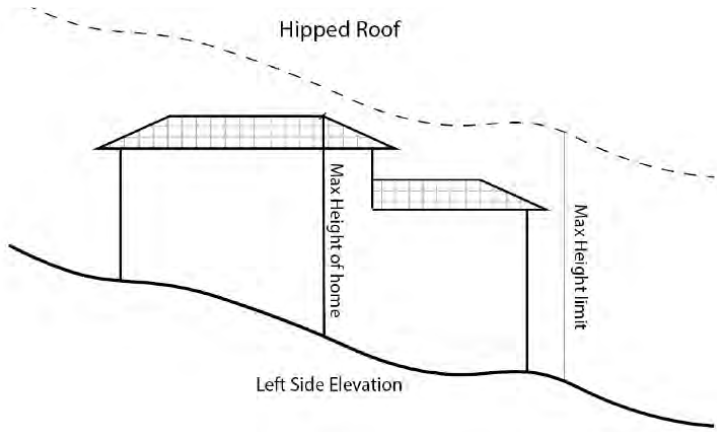
| ROOF TYPE                    | AVERAGE BUILDING HEIGHT MEASURED TO:                                                                                 |
|------------------------------|----------------------------------------------------------------------------------------------------------------------|
| Sloped, hipped, gabled roofs | The average height of the roof between the ridge and where the eave meets the plate                                  |
| Roof with parapet walls      | The top of the parapet wall                                                                                          |
| Gambrel roof                 | The average height of the roof between the ridge and the point where the uppermost change in the roof's slope occurs |
| Mansard roof                 | The height of the deck                                                                                               |
| Shed roof                    | The height of the roof ridge                                                                                         |

**FIGURE 23.106-4: AVERAGE BUILDING HEIGHT**



**B. Maximum Building Height:** The vertical distance of a building at any point, within a given plane, from finished grade to the top of the roof or parapet walls. See Figure 23.106-5: Maximum Building Height

**FIGURE 23.106-5: MAXIMUM BUILDING HEIGHT**





## 23.108 ZONING DISTRICTS AND MAP

### Sections:

- 23.108.010– Chapter Purpose
- 23.108.020– Zoning Districts
- 23.108.030– Zoning Map

### 23.108.010 – Chapter Purpose

This chapter identifies the districts that apply to land within the Berkeley city limits and establishes the official Berkeley Zoning Map.

### 23.108.020 – Zoning Districts

- A. **Districts.** Berkeley is divided into districts as shown in Table 23.108-1: Zoning Districts. Unique regulations apply within each district as established in Chapters 23.202 – 23.208 (Zoning Districts).

**TABLE 23.108-1: ZONING DISTRICTS**

| DISTRICT SYMBOL              | NAME OF DISTRICT                       |
|------------------------------|----------------------------------------|
| <b>Residential Districts</b> |                                        |
| R-1                          | Single-Family Residential              |
| R-1A                         | Limited Two-family Residential         |
| ES-R                         | Environmental Safety Residential       |
| R-2                          | Restricted Two-family Residential      |
| R-2A                         | Restricted Multiple-family Residential |
| R-3                          | Multiple-family Residential            |
| R-4                          | Multi-family Residential               |
| R-5                          | High Density Residential               |
| R-S                          | Residential Southside                  |
| R-SMU                        | Residential Southside Mixed Use        |
| <b>Commercial Districts</b>  |                                        |
| C-C                          | Corridor Commercial                    |
| C-U                          | University Avenue Commercial           |
| C-N                          | Neighborhood Commercial                |
| C-E                          | Elmwood Commercial                     |

| <b>DISTRICT SYMBOL</b>         | <b>NAME OF DISTRICT</b>     |
|--------------------------------|-----------------------------|
| C-NS                           | North Shattuck Commercial   |
| C-SA                           | South Area Commercial       |
| C-T                            | Telegraph Avenue Commercial |
| C-SO                           | Solano Avenue Commercial    |
| C-DMU                          | Downtown Mixed-Use          |
| C-W                            | West Berkeley Commercial    |
| C-AC                           | Adeline Corridor Commercial |
| <b>Manufacturing Districts</b> |                             |
| M                              | Manufacturing               |
| MM                             | Mixed Manufacturing         |
| MU-LI                          | Mixed Use-Light Industrial  |
| MU-R                           | Mixed Use-Residential       |
| <b>Special Districts</b>       |                             |
| S                              | Specific Plan               |
| U                              | Unclassified                |

**B. Undesignated Areas.** Any area not specifically designated as a district on the Zoning Map is subject to the Unclassified (U) district requirements.

**C. Overlay Zones.**

1. The Zoning Ordinance and Zoning Map include the overlay zones shown in
2. Table 23.108-2: Overlay Zones. Overlay zones impose additional regulations on properties beyond what is required by the underlying district.
3. As shown in
4. Table 23.108-2: Overlay Zones, provisions for overlay zones that apply to two or more districts are located in Chapter 23.210 (Overlay Zones). Provisions for overlay zones that apply only in one district are located in the Zoning Ordinance chapter for that district.

**TABLE 23.108-2: OVERLAY ZONES**

| <b>OVERLAY ZONE SYMBOL</b> | <b>NAME OF OVERLAY ZONE</b> | <b>LOCATION IN ZONING ORDINANCE</b> |
|----------------------------|-----------------------------|-------------------------------------|
|----------------------------|-----------------------------|-------------------------------------|

| <b>Overlay Zones that Apply in Two or More Districts</b> |               |                                                                                   |
|----------------------------------------------------------|---------------|-----------------------------------------------------------------------------------|
| H                                                        | Hillside      | 23.210.020– Hillside Overlay Zone                                                 |
| C                                                        | Civic Center  | 23.210.030– Civic Center District Overlay Zone                                    |
| <b>Overlay Zones that Apply in One District</b>          |               |                                                                                   |
| D                                                        | Dealership    | 23.204.100.B.5– C-SA South Area Commercial District (Automobile/Motorcycle Sales) |
| DA                                                       | Downtown Arts | 23.204.130– C-DMU Downtown Mixed-Use District (Arts Overlay District)             |

5. 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.

D. **Vacated Streets.** Where a public street or alley is officially vacated or abandoned, the land area of the street or alley acquires the district classification of the property to which it reverts.

### **23.108.030 – Zoning Map**

- A. **Adoption.** The City Council hereby adopts the City of Berkeley Zoning Map (“Zoning Map”), which establishes the boundaries of all districts and overlay zones provided for in the Zoning Ordinance.
- B. **Incorporation by Reference.** The Zoning Map, including all legends, symbols, notations, references, and other information shown on the map, is incorporated by reference and made a part of the Zoning Ordinance.
- C. **Location.** The Zoning Map is kept, maintained, and updated electronically by the City Clerk, and is available for viewing by the public at the Planning and Development Department and on the official City of Berkeley website.

## **DIVISION 2: ZONING DISTRICTS**

### **23.202: Residential Districts**

- 23.202.010– Chapter Purpose
- 23.202.020– Allowed Land Uses
- 23.202.030– Additional Permit Requirements
- 23.202.040– Use-Specific Regulations
- 23.202.050– R-1 Single-Family Residential District
- 23.202.060– R-1A Limited Two-Family Residential District
- 23.202.070– ES-R Environmental Safety-Residential District
- 23.202.080– R-2 Restricted Two-Family Residential District
- 23.202.090– R-2A Restricted Multiple-Family Residential District
- 23.202.100– R-3 Multiple-Family Residential District
- 23.202.110– R-4 Multi-Family Residential District
- 23.202.120– R-5 High-Density Residential District
- 23.202.130– R-S Residential Southside District
- 23.202.140– R-SMU Residential Southside District

### **23.204: Commercial Districts**

- 23.204.010– Chapter Purpose
- 23.204.020– Allowed Land Uses
- 23.204.030– Additional Permit Requirements
- 23.204.040– Use-Specific Permit Requirements and Regulations
- 23.204.050– C-C Corridor Commercial District
- 23.204.060– C-U University Commercial District
- 23.204.070– C-N Neighborhood Commercial District
- 23.204.080– C-E Elmwood Commercial District
- 23.204.090– C-NS North Shattuck Commercial District
- 23.204.100– C-SA South Area Commercial District
- 23.204.110– C-T Telegraph Avenue Commercial District
- 23.204.120– C-SO Solano Avenue Commercial District
- 23.204.130– C-DMU Downtown Mixed-Use District
- 23.204.140– C-W West Berkeley Commercial District
- 23.204.150– C-AC Adeline Corridor Commercial District

### **23.206: Manufacturing Districts**

- 23.206.010– Chapter Purpose
- 23.206.020– Allowed Land Uses and Permit Requirements

- 23.206.030– Additional Permit Requirements
- 23.206.040– Use-Specific Regulations
- 23.206.050– Protected Uses
- 23.206.060– M Manufacturing District
- 23.206.070– MM Mixed Manufacturing District
- 23.206.080– MU-LI Mixed Use-Light Industrial District
- 23.206.090– MU-R Mixed Use-Residential District
- 23.206.100– Permit Findings

**23.208: Special Purpose Districts**

- 23.208.010– Specific Plan District
- 23.208.020– Unclassified District

**23.210: Overlay Zones**

- 23.210.010– Purpose of Overlay Zones
- 23.210.020– Hillside Overlay Zone
- 23.210.030– Civic Center District Overlay Zone

## **23.202 RESIDENTIAL DISTRICTS**

---

### **Sections:**

- 23.202.010– Chapter Purpose
- 23.202.020– Allowed Land Uses
- 23.202.030– Additional Permit Requirements
- 23.202.040– Use-Specific Regulations
- 23.202.050– R-1 Single-Family Residential District
- 23.202.060– R-1A Limited Two-Family Residential District
- 23.202.070– ES-R Environmental Safety-Residential District
- 23.202.080– R-2 Restricted Two-Family Residential District
- 23.202.090– R-2A Restricted Multiple-Family Residential District
- 23.202.100– R-3 Multiple-Family Residential District
- 23.202.110– R-4 Multi-Family Residential District
- 23.202.120– R-5 High-Density Residential District
- 23.202.130– R-S Residential Southside District
- 23.202.140– R-SMU Residential Southside District

### **23.202.010 – Chapter Purpose**

This chapter identifies allowed land uses, permit requirements, and development standards for residential districts.

### **23.202.020 – Allowed Land Uses**

- A. **Allowed Land Uses.** Table 23.202-1: Allowed Land Uses in Residential Districts identifies allowed land uses and required permits in the Residential Districts. All land uses are defined in Chapter 23.502—Glossary. Permit requirements are described in Chapter 23.406—Specific Permit Requirements.
- B. **Unlisted Land Uses.** Any land use not listed in Table 23.202-1: Allowed Land Uses in Residential Districts is not permitted in the Residential District

**TABLE 23.202-1: ALLOWED LAND USES IN RESIDENTIAL DISTRICTS**

| ZC = Zoning Certificate<br>AUP = ADMINISTRATIVE USE PERMIT<br>UP(PH) = Use Permit<br>NP = Not Permitted<br>* Use-Specific Regulations Apply | RESIDENTIAL DISTRICTS                      |        |        |                                     |                                            |        |            |        |        |        | USE-SPECIFIC REGULATIONS<br>APPLIES TO USES WITH AN ASTERISK FOLLOWING THE PERMIT REQUIREMENT (E.G., ZC*) |
|---------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|--------|--------|-------------------------------------|--------------------------------------------|--------|------------|--------|--------|--------|-----------------------------------------------------------------------------------------------------------|
|                                                                                                                                             | R-1                                        | R-1A   | ES-R   | R-2                                 | R-2A                                       | R-3    | R-4        | R-5    | R-S    | R-SMU  |                                                                                                           |
| <b>Residential Uses</b>                                                                                                                     |                                            |        |        |                                     |                                            |        |            |        |        |        |                                                                                                           |
| Accessory Dwelling Unit                                                                                                                     | See 23.306—Accessory Dwelling Units        |        | NP     | See 23.306—Accessory Dwelling Units |                                            |        |            |        |        |        |                                                                                                           |
| <b>Dwellings</b>                                                                                                                            |                                            |        |        |                                     |                                            |        |            |        |        |        |                                                                                                           |
| Single-Family                                                                                                                               | UP(PH)                                     | UP(PH) | UP(PH) | UP(PH)                              | UP(PH)                                     | UP(PH) | UP(PH)     | UP(PH) | UP(PH) | UP(PH) |                                                                                                           |
| Two-Family                                                                                                                                  | NP                                         | UP(PH) | NP     | UP(PH)                              | UP(PH)                                     | UP(PH) | UP(PH)     | UP(PH) | UP(PH) | UP(PH) |                                                                                                           |
| Multi-Family                                                                                                                                | NP                                         | NP     | NP     | UP(PH)                              | UP(PH)                                     | UP(PH) | UP(PH)     | UP(PH) | UP(PH) | UP(PH) |                                                                                                           |
| Group Living Accommodation                                                                                                                  | NP                                         | NP     | NP     | NP                                  | NP                                         | UP(PH) | UP(PH)     | UP(PH) | UP(PH) | UP(PH) |                                                                                                           |
| Senior Congregate Housing                                                                                                                   | NP                                         | NP     | NP     | NP                                  | See 23.302.070.H– Use-Specific Regulations |        |            |        |        |        |                                                                                                           |
| Mixed-Use Residential                                                                                                                       | NP                                         | NP     | NP     | UP(PH)                              | UP(PH)                                     | UP(PH) | UP(PH)     | UP(PH) | UP(PH) | UP(PH) |                                                                                                           |
| <b>Public and Quasi-Public Uses</b>                                                                                                         |                                            |        |        |                                     |                                            |        |            |        |        |        |                                                                                                           |
| Child Care Center                                                                                                                           | UP(PH)                                     | UP(PH) | NP     | UP(PH)                              | UP(PH)                                     | UP(PH) | UP(PH)     | UP(PH) | UP(PH) | UP(PH) |                                                                                                           |
| Club/Lodge                                                                                                                                  | UP(PH)                                     | UP(PH) | NP     | UP(PH)                              | UP(PH)                                     | UP(PH) | UP(PH)     | UP(PH) | UP(PH) | UP(PH) |                                                                                                           |
| Columbaria                                                                                                                                  | AUP*                                       | AUP*   | NP     | AUP*                                | AUP*                                       | AUP*   | AUP*       | AUP*   | AUP*   | AUP*   | 23.302.070.C– Use-Specific Regulations                                                                    |
| Community Care Facility                                                                                                                     | See 23.202.040.A– Use-Specific Regulations |        |        |                                     |                                            |        |            |        |        |        |                                                                                                           |
| Community Center                                                                                                                            | UP(PH)                                     | UP(PH) | NP     | UP(PH)                              | UP(PH)                                     | UP(PH) | UP(PH)     | UP(PH) | UP(PH) | UP(PH) |                                                                                                           |
| Emergency Shelter                                                                                                                           | NP                                         | NP     | NP     | NP                                  | NP                                         | NP     | See 23.308 |        |        |        |                                                                                                           |
| Family Day Care Home, Large                                                                                                                 | 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     |                                                                                                           |
| Hospital                                                                                                                                    | NP                                         | NP     | NP     | NP                                  | NP                                         | UP(PH) | UP(PH)     | UP(PH) | NP     | UP(PH) |                                                                                                           |
| Library                                                                                                                                     | UP(PH)                                     | UP(PH) | NP     | UP(PH)                              | UP(PH)                                     | UP(PH) | UP(PH)     | UP(PH) | UP(PH) | UP(PH) |                                                                                                           |
| Nursing Home                                                                                                                                | NP                                         | NP     | NP     | –                                   | UP(PH)                                     | UP(PH) | UP(PH)     | UP(PH) | UP(PH) | UP(PH) |                                                                                                           |
| Park/Playground                                                                                                                             | ZC                                         | ZC     | UP     | ZC                                  | ZC                                         | ZC     | ZC         | ZC     | ZC     | 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) |                                                                                                           |
| Public Utility Substation/Tank                                                                                                              | UP(PH)                                     | UP(PH) | UP(PH) | UP(PH)                              | UP(PH)                                     | UP(PH) | UP(PH)     | UP(PH) | UP(PH) | UP(PH) |                                                                                                           |

| ZC = Zoning Certificate<br><b>AUP = ADMINISTRATIVE USE PERMIT</b><br>UP(PH) = Use Permit<br>NP = Not Permitted<br>* Use-Specific Regulations Apply | RESIDENTIAL DISTRICTS |             |             |             |             |             |             |             |             |             | <b>USE-SPECIFIC REGULATIONS</b><br>APPLIES TO USES WITH AN ASTERISK FOLLOWING THE PERMIT REQUIREMENT (E.G., ZC*) |
|----------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                    | R-1                   | R-1A        | ES-R        | R-2         | R-2A        | R-3         | R-4         | R-5         | R-S         | R-SMU       |                                                                                                                  |
| Religious Assembly                                                                                                                                 | UP(PH)                | UP(PH)      | NP          | UP(PH)      | UP(PH)      | UP(PH)      | UP(PH)      | UP(PH)      | UP(PH)      | UP(PH)      |                                                                                                                  |
| School                                                                                                                                             | UP(PH)                | UP(PH)      | NP          | UP(PH)      | UP(PH)      | UP(PH)      | UP(PH)      | UP(PH)      | UP(PH)      | UP(PH)      |                                                                                                                  |
| <b>Commercial Uses</b>                                                                                                                             |                       |             |             |             |             |             |             |             |             |             |                                                                                                                  |
| Alcoholic Beverage Service                                                                                                                         | NP                    | NP          | NP          | NP          | NP          | NP          | NP          | NP          | NP          | UP(PH)<br>* | 23.310—Alcoholic Beverage Sales and Service                                                                      |
| Food Products Store                                                                                                                                | NP                    | NP          | NP          | NP          | NP          | NP          | NP          | NP          | NP          | UP(PH)<br>* | 23.202.140.B.3–R-SMU Residential Southside District                                                              |
| Food Service Establishment                                                                                                                         | NP                    | NP          | NP          | NP          | NP          | NP          | NP          | NP          | NP          | UP(PH)<br>* | 23.302.070.E–Use-Specific Regulations                                                                            |
| Hotel, Tourist                                                                                                                                     | NP                    | NP          | NP          | NP          | NP          | NP          | UP(PH)      | UP(PH)      | UP(PH)      | UP(PH)      |                                                                                                                  |
| Laundromat and Cleaner                                                                                                                             | NP                    | NP          | NP          | NP          | NP          | NP          | NP          | NP          | NP          | UP(PH)      |                                                                                                                  |
| Office                                                                                                                                             | NP                    | NP          | NP          | NP          | NP          | NP          | UP(PH)      | UP(PH)      | NP          | UP(PH)      |                                                                                                                  |
| Parking Lot/Structure                                                                                                                              | UP(PH)<br>*           | UP(PH)<br>* | UP(PH)<br>* | UP(PH)<br>* | UP(PH)<br>* | UP(PH)<br>* | UP(PH)<br>* | UP(PH)<br>* | UP(PH)<br>* | UP(PH)<br>* | 23.302.070.G–Unenclosed Accessory Structures in Residential Districts<br><br>23.322.100– On-site Loading Spaces  |
| Personal and Household Service, General                                                                                                            | NP                    | NP          | NP          | NP          | NP          | NP          | NP          | NP          | NP          | ZC*         | 23.202.140.B.2–R-SMU Residential Southside District                                                              |
| Retail, General                                                                                                                                    | NP                    | NP          | NP          | NP          | NP          | NP          | UP(PH)<br>* | UP(PH)<br>* | UP(PH)<br>* | UP(PH)<br>* | 23.202.040.B–Use-Specific Regulations                                                                            |
| Veterinary Clinic                                                                                                                                  | NP                    | NP          | NP          | NP          | NP          | NP          | NP          | NP          | NP          | UP(PH)      |                                                                                                                  |
| Video Tape/Disk Rental                                                                                                                             | NP                    | NP          | NP          | NP          | NP          | NP          | NP          | NP          | NP          | UP(PH)      |                                                                                                                  |



| ZC = Zoning Certificate<br><b>AUP = ADMINISTRATIVE USE PERMIT</b><br>UP(PH) = Use Permit<br>NP = Not Permitted<br>* Use-Specific Regulations Apply | <b>RESIDENTIAL DISTRICTS</b>                  |        |        |        |        |        |        |        |        |        | <b>USE-SPECIFIC REGULATIONS</b><br>APPLIES TO USES WITH AN ASTERISK FOLLOWING THE PERMIT REQUIREMENT (E.G., ZC*) |
|----------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                    | R-1                                           | R-1A   | ES-R   | R-2    | R-2A   | R-3    | R-4    | R-5    | R-S    | R-SMU  |                                                                                                                  |
| <b>Industrial and Heavy Commercial Uses</b>                                                                                                        |                                               |        |        |        |        |        |        |        |        |        |                                                                                                                  |
| Commercial Excavation                                                                                                                              | UP(PH)                                        | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) |                                                                                                                  |
| <b>Other Uses</b>                                                                                                                                  |                                               |        |        |        |        |        |        |        |        |        |                                                                                                                  |
| Accessory Uses                                                                                                                                     | See 23.302.020.A– General Use Regulations     |        |        |        |        |        |        |        |        |        |                                                                                                                  |
| Home Occupations                                                                                                                                   | See 23.302.040– Home Occupations              |        |        |        |        |        |        |        |        |        |                                                                                                                  |
| Short-Term Rental                                                                                                                                  | ZC*                                           | ZC*    | NP     | ZC*    | ZC*    | ZC*    | ZC*    | ZC*    | ZC*    | ZC*    | 23.314—Short-Term Rentals                                                                                        |
| Temporary Uses                                                                                                                                     | See 23.302.030– Temporary Uses and Structures |        |        |        |        |        |        |        |        |        |                                                                                                                  |
| Urban Agriculture, Low-Impact                                                                                                                      | ZC*                                           | ZC*    | NP     | ZC*    | ZC*    | ZC*    | ZC*    | ZC*    | ZC*    | ZC*    | 23.318—Urban Agriculture                                                                                         |
| Urban Agriculture, High-Impact                                                                                                                     | AUP*                                          | AUP*   | NP     | AUP*   | AUP*   | AUP*   | AUP*   | AUP*   | AUP*   | AUP*   | 23.318—Urban Agriculture                                                                                         |
| Wireless Telecommunication Facility                                                                                                                | See 23.332—Wireless Communication Facilities  |        |        |        |        |        |        |        |        |        |                                                                                                                  |

- C. **Use-Specific Regulations.** Uses subject to supplemental regulations are shown in Table 23.202-1: Allowed Land Uses in Residential Districts with an asterisk (\*) following the permit requirement (e.g., UP\*). The Use-Specific Regulations column in **Error! Reference source not found.** identifies the location of these regulations in the Zoning Ordinance.

### **23.202.030 – Additional Permit Requirements**

- A. **Residential Additions.** See Section 23.502.020.A– Defined Terms (“A” Terms) for residential addition definitions.

#### **1. Permits Required.**

- a. In all Residential Districts except for the ES-R district, residential additions require permits as follows:
  - i. Residential additions (up to 15 percent of lot area or 600 square feet, whichever is less): Zoning Certificate.
  - ii. Major residential additions (more than 15 percent of lot area or 600 square feet, whichever is less): AUP.
- b. In the ES-R district, residential additions require permits as follows:
  - i. Residential additions up to 10 percent of lot area or 200 square feet, whichever is less: Zoning Certificate.
  - ii. Major residential additions more than 10 percent of lot area or 200 square feet, whichever is less: Use Permit.

#### **2. Basis for AUP Decision.**

- a. To deny an AUP for a residential addition in all residential districts except for the ES-R district, the review authority must find that although the proposed residential addition satisfies all other Zoning Ordinance requirements, the residential addition would unreasonably obstruct sunlight, air, or views.
- b. To approve an AUP for a residential addition in the ES-R district, the review authority must make the finding in Subsection 23.202.070.H.6– ES-R Environmental Safety-Residential District (Land Use Intensification).

#### **B. Adding Bedrooms.**

1. In the R-1, R-1A, R-2, R-2A, and R-3 districts, adding a bedroom to a lot requires permits as follows:
  - a. Adding a first, second, third, or fourth bedroom to a lot: no permit required.
  - b. Adding a fifth bedroom to a lot: AUP.
  - c. Adding a bedroom to a lot beyond the fifth: Use Permit.

2. See Section 23.502.020.B– Defined Terms (“B” Terms) for bedroom definition.
  3. In the ES-R district, any alteration to create a new bedroom in a single-family detached home on a single lot requires an AUP. See Section 23.202.070.H.6 (Land Use Intensification) for required finding.
- C. **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.
- D. **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.

### **23.202.040 – Use-Specific Regulations**

#### **A. Community Care Facilities.**

1. **Permits Required.** Community care facilities in a Residential District require permits as follows:
  - a. Change of use: Zoning Certificate.
  - b. New construction: Use Permit.
2. **ES-R District.** Community care facilities in the ES-R district must comply with the following standards:
  - a. Maximum of six residents.
  - b. Permitted pursuant to Health and Safety Code Section 1566.3 when occupying a legally established existing single-family dwelling.

#### **B. General Retail.** In the R-4, R-5, R-S, and R-SMU districts, general retail uses must be:

1. Accessory to another use;
2. Contained within a building with no street access; and
3. Without displays of merchandise visible from the street.

### **23.202.050 – R-1 Single-Family Residential District**

#### **A. District Purpose.** The purpose of the Single-Family Residential (R-1) district is to:

1. Recognize and protect the existing pattern of development in the low-density, single-family residential areas of the city consistent with the General Plan;

2. Make housing available for persons who desire detached housing and a relatively large amount of usable open space;
3. Protect adjacent properties from unreasonable obstruction of light and air; and
4. Permit community facilities such as religious assembly uses, schools, parks, and libraries which serve the local population and are not detrimental to the immediate neighborhood.

**B. Allowed Land Uses.** See Table 23.202-1: Allowed Land Uses in Residential Districts

**C. Additional Permit Requirements.** See Subsection A of Section 23.202.030– Additional Permit Requirements (Residential Additions) and Subsection B of Section 23.202.030– Additional Permit Requirements (Adding Bedrooms).

**D. Development Standards.**

1. **Basic Standards.** See Table 23.202-2: R-1 Development Standards.
2. **Supplemental Standards.** Supplemental development standards that apply in the R-1 district are noted in Table 23.202-2: R-1 Development Standards.

**TABLE 23.202-2: R-1 DEVELOPMENT STANDARDS**

| BASIC STANDARDS                              |                          | SUPPLEMENTAL STANDARDS        |
|----------------------------------------------|--------------------------|-------------------------------|
| Lot Area for New Lots, Minimum               | 5,000 sq. ft.            | 23.304.020– Lot Requirements  |
| Usable Open Space per Dwelling Unit, Minimum | 400 sq. ft.              | 23.304.090– Usable Open Space |
| Floor Area Ratio, Maximum                    | No maximum               |                               |
| Main Building Height, Average                |                          | 23.304.050– Building Height   |
| New Buildings or Non-Residential Additions   | 28 ft. and 3 stories [1] |                               |
| Residential Additions                        | 14 ft. [2]               |                               |
| Lot Line Setbacks, Minimum                   |                          | 23.304.030– Setbacks          |
| Front                                        | 20 ft.                   |                               |
| Rear                                         | 20 ft.                   |                               |
| Interior Side                                | 4 ft.                    |                               |
| Street Side                                  | 4 ft.                    |                               |
| Building Separation, Minimum                 | No minimum               |                               |
| Lot Coverage, Maximum                        | 40%                      | 23.304.120– Lot Coverage      |

| BASIC STANDARDS                                                                                                                                                                     | SUPPLEMENTAL STANDARDS |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| Notes:<br>[1] Maximum 35 ft. with an AUP.<br>[2] Height greater than 14 ft. up to 28 ft. allowed with an AUP. Height greater than 28 ft up to 35 ft allowed with an additional AUP. |                        |

**23.202.060 – R-1A Limited Two-Family Residential District**

- A. **District Purpose.** The purpose of the Limited Two-Family Residential (R-1A) district is to:
  1. Recognize and protect the existing pattern of low medium-density residential areas characterized by reasonable open and spacious type of development consistent with the General Plan;
  2. Protect adjacent properties from unreasonable obstruction of light and air;
  3. Allow flexibility in the use of property for residential purposes by permitting two dwelling units on one lot under limited conditions; and
  4. Appropriately regulate the rear and side setback areas for the construction of a dwelling unit in areas west of San Pablo Avenue.
- B. **Allowed Land Uses.** See Table 23.202-1: Allowed Land Uses in Residential Districts
- C. **Additional Permit Requirements.** See Subsection A (Residential Additions) and Subsection B (Adding Bedrooms) of Section 23.202.030– Additional Permit Requirements.
- D. **Development Standards.**
  1. **Basic Standards.** See Table 23.202-3: R-1A Development Standards.
  2. **Supplemental Standards.** Supplemental development standards that apply in the R-1A district are noted in Table 23.202-3: R-1A Development Standards.

**TABLE 23.202-3: R-1A DEVELOPMENT STANDARDS**

| BASIC STANDARDS        |                   | SUPPLEMENTAL STANDARDS       |
|------------------------|-------------------|------------------------------|
| Lot Area, Minimum      |                   | 23.304.020– Lot Requirements |
| New Lots               | 5,000 sq. ft.     |                              |
| For Two Dwelling Units | 4,500 sq. ft. [1] |                              |

| <b>BASIC STANDARDS</b>                                                                                                                 |                          | <b>SUPPLEMENTAL STANDARDS</b>                            |
|----------------------------------------------------------------------------------------------------------------------------------------|--------------------------|----------------------------------------------------------|
| Usable Open Space Per Dwelling Unit, Minimum                                                                                           | 400 sq. ft. [2]          | 23.304.090– Usable Open Space                            |
| Floor Area Ratio, Maximum                                                                                                              | No maximum               |                                                          |
| Main Building Height, Average                                                                                                          |                          | 23.304.050– Building Height                              |
| New Buildings and Non-Residential Additions                                                                                            | 28 ft. and 3 stories [3] |                                                          |
| Rear Main Buildings                                                                                                                    | 22 ft. and 2 stories     |                                                          |
| Residential Additions                                                                                                                  | 14 ft. [4]               |                                                          |
| Lot Line Setbacks, Minimum                                                                                                             |                          | 23.304.030– Setbacks                                     |
| Front                                                                                                                                  | 20 ft.                   |                                                          |
| Rear                                                                                                                                   | 20 ft.                   |                                                          |
| Interior Side                                                                                                                          | 4 ft.                    |                                                          |
| Street Side                                                                                                                            | 4 ft.                    |                                                          |
| Interior and Street Side for Rear Main Building                                                                                        | 6 ft.                    |                                                          |
| Building Separation, Minimum                                                                                                           |                          | 23.304.040– Building Separation in Residential Districts |
| 1 story                                                                                                                                | 8 ft.                    |                                                          |
| 2 stories                                                                                                                              | 12 ft.                   |                                                          |
| 3 stories                                                                                                                              | 16 ft.                   |                                                          |
| Lot Coverage, Maximum                                                                                                                  |                          | 23.304.120– Lot Coverage                                 |
| Interior and Through Lot                                                                                                               | 40%                      |                                                          |
| Corner Lot                                                                                                                             | 45%                      |                                                          |
| Notes:                                                                                                                                 |                          |                                                          |
| [1] Maximum two units per lot.                                                                                                         |                          |                                                          |
| [2] Open space is not required for accessory dwelling unit.                                                                            |                          |                                                          |
| [3] Maximum 35 ft. with an AUP.                                                                                                        |                          |                                                          |
| [4] Height greater than 14 ft. up to 28 ft. allowed with an AUP. Height greater than 28 ft up to 35 ft allowed with an additional AUP. |                          |                                                          |
|                                                                                                                                        |                          |                                                          |

## 23.202.070 – ES-R Environmental Safety-Residential District

### A. District Purpose.

1. **General.** Because of its substandard vehicular access, steep slopes, inadequate water pressure and proximity to the Hayward Fault and vegetated wildlands, the Panoramic Hill area is exceptionally vulnerable to severe damage or destruction from fire and earthquake hazards. Panoramic Hill also includes one of Berkeley's most architecturally significant residential districts, which is listed in the National Register of Historic Places because of its association with the Arts and Crafts movement of the Bay Area Tradition.
2. **Specific.** The specific purpose of the Environmental Safety-Residential (ES-R) district is to:
  - a. Provide a means to implement the General Plan and the Hazard Mitigation Plan to reduce the potential for life loss, injury, and economic damage to Berkeley residents from earthquakes, wildfires, and landslides and to protect the City's unique character and values from being compromised by hazard events by reducing the vulnerability of one of the most unique and inaccessible neighborhoods in the Hill Hazardous Fire Area;
  - b. Protect the lives and property of Panoramic Hill residents in Berkeley and adjoining parts of Oakland and avoid destruction or damage to the natural environment through the application of special development regulations and by ensuring that the review of new development and alterations or additions to existing structures will require analysis and mitigation of geologic, seismic, and fire hazards;
  - c. Limit the uses of land permitted to those which are necessary to serve the housing and access needs of the district's inhabitants and will not put either current or future residents at risk due to the area's inadequate infrastructure and special vulnerability to natural hazards;
  - d. Protect the health and safety of current and future residents by ensuring that no new dwelling units will be built and no land may be subdivided to allow the construction of additional dwelling units until plans are in place that identify the future distribution, location, and extent of development in the Berkeley and Oakland neighborhoods of Panoramic Hill, including provisions to develop and maintain a system of public facilities and services adequate to meet the needs of the future population;
  - e. Establish procedures to ensure that the development review process provides for consideration of the cumulative impact of new construction, alterations, and changes in use that have the potential to increase the population or intensify the use of land in the district together with the impacts of other

projects on Panoramic Hill and within adjacent areas of Berkeley and Oakland;

- f. Restrict the size and occupancy of residential structures by imposing standards that reflect the district's limited capacity to accommodate additional population due to poor access, inadequate infrastructure, vulnerability to natural hazards and the fact that a majority of the existing development does not conform to standards that the City adopted in 1979;
- g. Assure the effective use of emergency measures available to save lives and property;
- h. Give reasonable protection to views and privacy, yet allow appropriate development of all property as long as public services and access are adequate to ensure protection of the health and safety of residents in this vulnerable area; and
- i. Protect the integrity of the Panoramic Hill Historic District by ensuring that alterations to existing buildings and new construction maintain the existing pattern of development, are appropriate to the hillside setting, and do not impair the architectural significance of contributing structures.

**B. Interpretation.** Nothing in this section is intended or may be construed to overturn, nullify, or affect any recorded limitation of property in favor of the City. In case of conflict between this section and other provisions of the Zoning Ordinance, the more restrictive standards apply.

**C. Allowed Land Uses.**

- 1. **General.** See Table 23.202-1: Allowed Land Uses in Residential Districts.
- 2. **Rental of Rooms.** Rooms may be rented to a maximum of four persons on a single property. Occupancy of a single dwelling unit by a single household as defined in Chapter 23.502—Glossary is permitted.

**D. Additional Permit Requirements.** See Section 23.202.030.A— Additional Permit Requirements (Residential Additions) and 23.202.030.B (Adding Bedrooms).

**E. Specific Plan Required.**

- 1. The City may not approve an AUP, Use Permit, Parcel Map, or Tentative Map to allow a new dwelling unit in the ES-R district until the City Council adopts a Panoramic Hill Specific Plan (“the Plan”) in compliance with applicable law.
- 2. At a minimum, the Plan shall:
  - a. Show the proposed distribution, location, and extent of land uses in the ES-R district and the location and extent of the public facilities and services required to serve the land uses;



- b. Include proposals for water, wastewater, and stormwater systems and for a circulation system adequate to accommodate projected traffic and to provide emergency access to the ES-R district and a program of implementation actions including finance measures necessary to carry out those proposal; and
  - c. Include consideration of the needs and future growth of adjacent areas in the City of Oakland that are now or can feasibly be served by the proposed facilities and services.
3. The Zoning Adjustments Board (ZAB) may approve a new residential unit in the ES-R district only after finding that:
- a. The project is consistent with the Plan; and
  - b. The public facilities and services that the Plan requires have been provided or will be developed as a condition of approval.

#### F. Environmental Assessment.

##### 1. General.

- a. Due to Panoramic Hill's inadequate infrastructure and special vulnerability to natural hazards, a project that is ordinarily insignificant in its impact on the environment may be significant if it occurs in the ES-R district.
- b. Any discretionary entitlement under the Zoning Ordinance or Subdivision Ordinance (Municipal Code Title 21) will not be considered exempt from environmental review pursuant to the California Environmental Quality Act, except for alterations to create bedrooms and residential additions with a gross floor area of up to 10 percent of the lot area or 200 square feet, whichever is less, and which otherwise meet all applicable standards of this section.
- c. Environmental review shall be based on documentation in the record including the reports as described in this section where applicable. Environmental review shall include consideration of the cumulative impact of new construction, alterations, and changes in use that would result in intensification of land use in combination with other projects on Panoramic Hill and adjacent areas that affect conditions in the area.
- d. For purposes of this section, any project that increases habitable floor area, increases the size or number of sleeping rooms, or has the potential to increase vehicular trips in the area is considered an intensification of land use.

2. **Reports Required.** All applications for construction and development in the ES-R district that are not exempt from environmental review require the following special studies:

- a. **New Construction.** All new construction requires a soils report, a geologic report, and a traffic impact study subject to the requirements in this section.
  - b. **Additions and Accessory Structures.** All new accessory structures and additions to existing structures that require the installation of a foundation require a soils report, subject to the requirements below. The Building Official may waive this requirement for additions with less than 50 square feet of gross floor area or detached non-habitable structures with less than 225 square feet of gross floor area.
3. **Soils Report.** When required by Section 23.202.070.F.2– ES-R Environmental Safety-Residential District (Reports Required), a soils report shall be prepared by a civil engineer registered with the State of California, subject to the following requirements:
    - a. **Contents.** Based upon adequate test borings or excavations, the report shall assess the potential for landslides, ground shaking, and surface faulting. If the soils report indicates the presence of soil conditions which, if not corrected, could lead to structural defects, the report shall recommend corrective action that is likely to prevent structural damage to each structure proposed to be constructed.
    - b. **Review of Report.** The report shall be reviewed and approved by the City before issuance of any discretionary permit under the Zoning Ordinance, or before issuance of a building or grading permit if a discretionary permit is not required. The City may have the soils report independently reviewed by a licensed geotechnical engineer, registered by the state of California, the cost of which shall be borne by the applicant. The report’s recommended action shall be incorporated in the construction of each structure as a condition to the issuance of any building permit.
  4. **Geologic Report.** When required by Section 23.202.070.F.2– ES-R Environmental Safety-Residential District (Reports Required), a geologic report in compliance with the Alquist-Priolo Earthquake Fault Zoning Act and related regulations shall be prepared by a certified engineering geologist, subject to the following requirements:
    - a. **Contents.** The report shall identify, describe, and illustrate potential hazards of surface fault rupture, seismic shaking, liquefaction or landslide.
    - b. **Review Conditions.** The report shall review of the local and regional seismic and other geological conditions that significantly affect the proposed use.
    - c. **Assessment.** The report shall assess conditions on or near the site that would contribute to the potential for damage to a proposed use from a seismic or other geological event, or the potential for a new use to create adverse effects upon existing uses because of identified geologic hazards. The

conditions assessed are to include, where applicable, rainfall, soils, slopes, water table, bedrock geology, and any other substrate conditions that may affect seismic response, landslide risk, or liquefaction potential.

- d. **Recommendations.** The report shall recommend building techniques, site preparation and mitigation measures, or setbacks necessary to reduce risks to life and structural damage to property.
5. **Traffic Impact Study.** When required by Section 23.202.070.F.2– ES-R Environmental Safety-Residential District (Reports Required), a traffic study shall be prepared by a qualified traffic engineer or transportation planner for any project that may generate new trips, subject to the following requirements:
    - a. **Content.** The report shall identify, describe, and illustrate traffic, parking, and roadway conditions in the project vicinity including design characteristics, topography, parking and traffic regulation, accident rates, and pavement condition and width.
    - b. **Assessment.** The report shall assess how the project will affect traffic operations and emergency access based on the size, use, and location, and the proposed site design including driveway locations, turn movements to and from the project site, surrounding uses, locations of nearby intersections, and potential to create unsafe traffic conditions.
    - c. **Recommendations.** The report shall recommend measures to reduce the project’s impact on traffic safety including site design, location of parking and driveways, and off-site improvements necessary to ensure that the project would not exacerbate traffic safety problems in the area.

#### G. Projects in the Panoramic Hill Historic District.

##### 1. Landmarks Preservation Commission Review.

- a. Before the Zoning Officer or the ZAB may take action on AUP or Use Permit for a project in the Panoramic Hill Historic District that involves new construction, exterior alteration, or demolition, the Zoning Officer shall submit the application to the Landmarks Preservation Commission for review and an advisory recommendation.
- b. The purpose of this review is to ensure that proposed buildings, structures, landscaping, and other architectural and site design features are compatible with the design and appearance of existing buildings and structures in the Panoramic Hill Historic District that have established and contribute to its significant character.
- c. This requirement is in addition to but does not supersede any authority or responsibility the Landmarks Preservation Commission has pursuant to Municipal Code Chapter 3.2—Landmarks Preservation Commission.

2. **Parking Expansion.** An AUP is required for any project in the Panoramic Hill Historic District that expands an existing parking area or structure or creates additional parking to comply with the requirements of Chapter 23.322—Parking and Loading.
3. **Findings.** To approve any project involving exterior alterations, construction, demolition or site plan revisions within the Panoramic Hill Historic District, the review authority must find that:
  - a. The proposed work will not adversely affect the exterior architectural features of the subject property or the relationship between the subject structure or feature and its neighboring structures and surroundings, including facade, massing, scale, materials, setbacks, height, orientation, site design, and landscaping; and
  - b. The proposed work will not detract from or adversely affect the special historical, architectural and aesthetic characteristics of the Panoramic Hill Historic District.

**H. Development Standards.**

1. **Basic Standards.** See
2. Table 23.202-4: ES-R Development Standards
3. **Supplemental Standards.** Supplemental development standards that apply in the ES-R district are noted in
4. Table 23.202-4: ES-R Development Standards.

**TABLE 23.202-4: ES-R DEVELOPMENT STANDARDS**

| BASIC STANDARDS                              |                          | SUPPLEMENTAL STANDARDS                                                                        |
|----------------------------------------------|--------------------------|-----------------------------------------------------------------------------------------------|
| Lot Area for New Lots, Minimum               | 25,000 sq. ft.           | 23.304.020– Lot Requirements<br>23.202.070.H.3 (Minimum Lot Area Per Dwelling Unit Exception) |
| Usable Open Space Per Dwelling Unit, Minimum | 400 sq. ft.              | 23.304.090– Usable Open Space                                                                 |
| Floor Area Ratio, Maximum                    | 0.3                      | 23.202.070.H.4 (Lots under 5,000 Square Feet)                                                 |
| Main Building Height, Average                |                          | 23.304.050– Building Height                                                                   |
| New Buildings and Non-Residential Additions  | 24 ft. and 2 stories [1] |                                                                                               |

|                                                                                                                                                                                      |            |                                                          |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|----------------------------------------------------------|
| Residential Additions                                                                                                                                                                | 14 ft. [2] |                                                          |
| Main Building Height, Maximum                                                                                                                                                        | 35 ft.     |                                                          |
| Lot Line Setbacks, Minimum                                                                                                                                                           |            | 23.304.030– Setbacks                                     |
| Front                                                                                                                                                                                | 20 ft.     |                                                          |
| Rear                                                                                                                                                                                 | 20 ft.     |                                                          |
| Interior Side                                                                                                                                                                        | 15 ft.     |                                                          |
| Street Side                                                                                                                                                                          | 15 ft.     |                                                          |
| Building Separation, Minimum                                                                                                                                                         | 30 ft.     | 23.304.040– Building Separation in Residential Districts |
| Lot Coverage, Maximum                                                                                                                                                                | 30%        | 23.304.120– Lot Coverage                                 |
| Notes:                                                                                                                                                                               |            |                                                          |
| [1] Maximum building height of 35 ft. allowed with an AUP. See 23.202.070.H.5– ES-R Environmental Safety-Residential District (Height Increases) for findings.                       |            |                                                          |
| [2] Height greater than 14 ft. up to 28 ft. allowed with a Use Permit. Height greater than 28 ft up to 35 ft allowed with an additional Use Permit. See 23.202.070.H.5 for findings. |            |                                                          |

5. **Minimum Lot Area Per Dwelling Unit Exception.** A legally-created lot less than 25,000 square feet may be developed in compliance with ES-R district requirements if, on the effective date of the regulations that made it substandard, it was in single ownership separate from any abutting lot under the same ownership.
6. **Lots Under 5,000 Square Feet.** Lots less than 5,000 square feet are allowed no more than one dwelling unit of no more than 1,000 square feet of gross floor area. Accessory Dwelling Units as defined in Section 23.306 (Accessory Dwelling Units) are not subject to this restriction.
7. **Height Increases.** To approve an AUP or Use Permit to allow an increase in building height, the review authority must find that the increased height is:
  - a. Justified due to the topography of the site; and
  - b. Consistent with the purposes of the ES-R district as stated in Section 23.202.070.A – ES-R Environmental Safety-Residential District (District Purpose).
8. **Land Use Intensification.** To approve any project that increases habitable floor area, increases the size or number of bedrooms, may increase vehicular trips in the area, or will otherwise intensify the use of land in the ES-R district, the review authority must find that the project individually or together with other projects

within or adjacent to the ES-R district will not threaten the safety and general welfare of Panoramic Hill residents.

#### 9. **Nonconforming Uses and Structures.**

- a. Additions and enlargements to structures that contain a nonconforming use are not permitted.
- b. Alteration, addition, or enlargement of a nonconforming structure that contains a conforming use is allowed provided that:
  - i. The project complies with Section 23.324.050.D– Nonconforming Structures and Buildings (Expansion); and
  - ii. All findings required for the project by the Zoning Ordinance can be made.

### **23.202.080 – R-2 Restricted Two-Family Residential District**

- A. **District Purpose.** The purpose of the Restricted Two-Family Residential (R-2) district is to:
  1. Implement the General Plan by encouraging the development of low medium-density residential areas characterized by a reasonably open and spacious type of development with a pattern of housing types ranging from single-family to duplexes and small apartment structures;
  2. Make available housing for persons who desire a range of housing choice with a relatively large amount of open space; and
  3. Protect adjacent properties from unreasonable obstruction of light and air.
- B. **Allowed Land Uses.** See Table 23.202-1: Allowed Land Uses in Residential Districts
- C. **Additional Permit Requirements.** See Subsection A of Section 23.202.030 (Residential Additions) and Subsection B of 23.202.030 (Adding Bedrooms).
- D. **Development Standards.**
  1. **Basic Standards.** See Table 23.202-5: R-2 Lot and Height Standards, Table 23.202-6: R-2 Setback and Building Separation Standards, and Table 23.202-7: R-2 Lot Coverage Standards for development standards in the R-2 district.
  2. **Supplemental Standards.** Supplemental development standards that apply in the R-2 district are noted in Table 23.202-5: R-2 Lot and Height Standards, Table 23.202-6: R-2 Setback and Building Separation Standards, and Table 23.202-7: R-2 Lot Coverage Standards.

#### **TABLE 23.202-5: R-2 LOT AND HEIGHT STANDARDS**

| BASIC STANDARDS                                                                                                                                          |                          | SUPPLEMENTAL STANDARDS        |
|----------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|-------------------------------|
| Lot Area, Minimum                                                                                                                                        |                          | 23.304.020– Lot Requirements  |
| New Lots                                                                                                                                                 | 5,000 sq. ft.            |                               |
| Per Dwelling Unit                                                                                                                                        | 2,500 sq. ft. [1]        |                               |
| Usable Open Space Per Dwelling Unit, Minimum                                                                                                             | 400 sq. ft.              | 23.304.090– Usable Open Space |
| Floor Area Ratio, Maximum                                                                                                                                | No maximum               |                               |
| Main Building Height, Average                                                                                                                            |                          | 23.304.050– Building Height   |
| New Buildings and Non-Residential Additions                                                                                                              | 28 ft. and 3 stories [2] |                               |
| Residential Additions                                                                                                                                    | 14 ft. [3]               |                               |
| Notes:                                                                                                                                                   |                          |                               |
| [1] One additional dwelling unit is allowed for any remaining lot area between 2,000 and 2,500 square feet.                                              |                          |                               |
| [2] Maximum 35 ft. with an AUP.                                                                                                                          |                          |                               |
| [3] Addition height greater than 14 ft. up to 28 ft. allowed with an AUP. Addition height greater than 28 ft up to 35 ft allowed with an additional AUP. |                          |                               |

**TABLE 23.202-6: R-2 SETBACK AND BUILDING SEPARATION STANDARDS**

|                              | STANDARDS BY BUILDING STORY |                 |                 | SUPPLEMENTAL STANDARDS                                   |
|------------------------------|-----------------------------|-----------------|-----------------|----------------------------------------------------------|
|                              | 1 <sup>ST</sup>             | 2 <sup>ND</sup> | 3 <sup>RD</sup> |                                                          |
| Lot Line Setbacks, Minimum   |                             |                 |                 |                                                          |
| Front                        | 20 ft.                      | 20 ft.          | 20 ft.          | 23.304.030– Setbacks                                     |
| Rear                         | 20 ft.                      | 20 ft.          | 20 ft.          |                                                          |
| Interior                     | 4 ft.                       | 4 ft.           | 6 ft.           |                                                          |
| Street Side                  | 10 ft.                      | 10 ft.          | 10 ft.          |                                                          |
| Building Separation, Minimum | 8 ft.                       | 12 ft.          | 16 ft.          | 23.304.040– Building Separation in Residential Districts |

**TABLE 23.202-7: R-2 LOT COVERAGE STANDARDS**

|                          | STANDARD BASED ON BUILDING HEIGHT |           |           | SUPPLEMENTAL STANDARDS   |
|--------------------------|-----------------------------------|-----------|-----------|--------------------------|
|                          | 1 STORY                           | 2 STORIES | 3 STORIES |                          |
| Lot Coverage, Maximum    |                                   |           |           | 23.304.120– Lot Coverage |
| Interior and Through Lot | 45%                               | 40%       | 35%       |                          |
| Corner Lot               | 50%                               | 45%       | 40%       |                          |

**23.202.090 – R-2A Restricted Multiple-Family Residential District**

- A. **District Purpose.** The purpose of the Restricted Multiple-Family Residential (R-2A) district is to:
  1. Implement the General Plan by encouraging the development of medium-density residential areas characterized by small multiple-family and garden-type apartment structures with a maximum of open space consistent with this type of development;
  2. Make available housing for persons who desire apartment-type accommodations with a maximum of open space;
  3. Protect adjacent properties from unreasonable obstruction of light and air; and
  4. Permit only land use intensity which is compatible with existing low-density residential structures and is not detrimental to the immediate neighborhood.
- B. **Allowed Land Uses.** See Table 23.202-1: Allowed Land Uses in Residential Districts.
- C. **Additional Permit Requirements.** See Subsection A of Section 23.202.030 (Residential Additions) and Subsection B of 23.202.030 (Adding Bedrooms).
- D. **Development Standards.**
  1. **Basic Standards.** See Table 23.202-8: R-2A Lot and Height Standards, Table 23.202-9: R-2A Setback and Building Separation Standards, and Table 23.202-10: R-2A Lot Coverage Standards.
  2. **Supplemental Standards.** Supplemental development standards that apply in the R-2A district are noted in Table 23.202-8: R-2A Lot and Height Standards, Table 23.202-9: R-2A Setback and Building Separation Standards, and Table 23.202-10: R-2A Lot Coverage Standards.



**TABLE 23.202-8: R-2A LOT AND HEIGHT STANDARDS**

| <b>BASIC STANDARDS</b>                                                                                                                                   |                          | <b>SUPPLEMENTAL STANDARDS</b>  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------------|
| Lot Area, Minimum                                                                                                                                        |                          |                                |
| New Lots                                                                                                                                                 | 5,000 sq. ft.            | 23.304.010                     |
| Per Dwelling Unit                                                                                                                                        | 1,650 sq. ft. [1]        |                                |
| Usable Open Space Per Dwelling Unit, Minimum                                                                                                             | 300 sq. ft.              | 23.304.090                     |
| Main Building Height, Average                                                                                                                            |                          |                                |
| New Buildings and Non-Residential Additions                                                                                                              | 28 ft. and 3 stories [2] | 23.304.050–<br>Building Height |
| Residential Additions                                                                                                                                    | 14 ft. [3]               |                                |
| Notes:                                                                                                                                                   |                          |                                |
| [1] One additional dwelling unit is allowed for remaining lot area between 1,300 and 1,650 square feet.                                                  |                          |                                |
| [2] Maximum 35 ft. with an AUP.                                                                                                                          |                          |                                |
| [3] Addition height greater than 14 ft. up to 28 ft. allowed with an AUP. Addition height greater than 28 ft up to 35 ft allowed with an additional AUP. |                          |                                |

**TABLE 23.202-9: R-2A SETBACK AND BUILDING SEPARATION STANDARDS**

|                              | <b>STANDARDS BY BUILDING STORY</b> |                       |                       | <b>SUPPLEMENTAL STANDARDS</b>                               |
|------------------------------|------------------------------------|-----------------------|-----------------------|-------------------------------------------------------------|
|                              | <b>1<sup>ST</sup></b>              | <b>2<sup>ND</sup></b> | <b>3<sup>RD</sup></b> |                                                             |
| Lot Line Setbacks, Minimum   |                                    |                       |                       | 23.304.030–<br>Setbacks                                     |
| Front                        | 15 ft.                             | 15 ft.                | 15 ft.                |                                                             |
| Rear                         | 15 ft.                             | 15 ft.                | 15 ft.                |                                                             |
| Interior                     | 4 ft.                              | 4 ft.                 | 6 ft.                 |                                                             |
| Street Side                  | 6 ft.                              | 8 ft.                 | 10 ft.                |                                                             |
| Building Separation, Minimum | 8 ft.                              | 12 ft.                | 16 ft.                | 23.304.040–<br>Building Separation in Residential Districts |

**TABLE 23.202-10: R-2A LOT COVERAGE STANDARDS**

|                           | STANDARD BASED ON BUILDING HEIGHT |           |           | SUPPLEMENTAL STANDARDS |
|---------------------------|-----------------------------------|-----------|-----------|------------------------|
|                           | 1 STORY                           | 2 STORIES | 3 STORIES |                        |
| Lot Coverage, Maximum     |                                   |           |           | 23.304.120             |
| Interior and Through Lots | 45%                               | 40%       | 35%       |                        |
| Corner Lots               | 50%                               | 45%       | 40%       |                        |

**23.202.100 – R-3 Multiple-Family Residential District**

- A. **District Purpose.** The purpose of the Multiple-Family Residential (R-3) district is to:
1. Implement the General Plan by encouraging development of relatively high-density residential areas;
  2. Make available housing for persons who desire both convenience of location and a reasonable amount of usable open space;
  3. Protect adjacent properties from unreasonable obstruction of light and air;
  4. Permit the construction of residential structures, such as dormitories, fraternity and sorority houses, boarding and rooming houses, which meet City requirements for this type of housing; and
  5. Permit the construction of specialized care and treatment facilities such as senior congregate housing, nursing homes, and hospitals when such are not detrimental to the immediate neighborhood.
- B. **Allowed Land Uses.** See Table 23.202-1: Allowed Land Uses in Residential Districts.
- C. **Additional Permit Requirements.** See Subsections A of Section 23.202.030 (Residential Additions) and 23.202.030 (Adding Bedrooms).
- D. **Design Review.** Within the Southside Plan boundaries, all mixed-use and community and institutional use projects, as defined in Chapter 23.502 Glossary require Design Review. See Figure 23.202-1: R-3 Areas Subject to Design Review.

**FIGURE 23.202-1: R-3 AREAS SUBJECT TO DESIGN REVIEW**



Multiple-family Residential (R-3)
  Design Review In Southside Plan Area
 Parcel boundaries as of [adoption date]

**E. Development Standards.**

1. **Basic Standards.** See Table 23.202-11: R-3 Lot and Height Standards, Table 23.202-12: R-3 Setback and Building Separation Standards, and Table 23.202-13: R-3 Lot Coverage Standards.
2. **Supplemental Standards.** Supplemental development standards that apply in the R-3 district are noted in Table 23.202-11: R-3 Lot and Height Standards, Table 23.202-12: R-3 Setback and Building Separation Standards, and Table 23.202-13: R-3 Lot Coverage Standards.

**TABLE 23.202-11: R-3 LOT AND HEIGHT STANDARDS**

| BASIC STANDARDS                         |                 | SUPPLEMENTAL STANDARDS       |
|-----------------------------------------|-----------------|------------------------------|
| Lot Area, Minimum                       |                 | 23.304.020– Lot Requirements |
| New Lots                                | 5,000 sq. ft.   |                              |
| Per Group Living Accommodation Resident | 350 sq. ft. [1] |                              |
| Usable Open Space, Minimum              |                 | 23.304.090– Usable Open      |
| Per Dwelling Unit                       | 200 sq. ft.     |                              |

| BASIC STANDARDS                                                                                |                      | SUPPLEMENTAL STANDARDS         |
|------------------------------------------------------------------------------------------------|----------------------|--------------------------------|
| Per Group Living Accommodation Resident                                                        | 90 sq. ft.           | Space                          |
| Floor Area Ratio, Maximum                                                                      | No maximum           |                                |
| Main Building Height, Average                                                                  |                      | 23.304.050–<br>Building Height |
| New Buildings and Non-Residential Additions                                                    | 35 ft. and 3 stories |                                |
| Residential Additions                                                                          | 16 ft. [2]           |                                |
| Notes:                                                                                         |                      |                                |
| [1] One additional resident is allowed for remaining lot area between 200 and 350 square feet. |                      |                                |
| [2] Maximum 35 ft. with an AUP.                                                                |                      |                                |

**TABLE 23.202-12: R-3 SETBACK AND BUILDING SEPARATION STANDARDS**

|                              | STANDARDS BY BUILDING STORY |                 |                 | SUPPLEMENTAL STANDARDS         |
|------------------------------|-----------------------------|-----------------|-----------------|--------------------------------|
|                              | 1 <sup>ST</sup>             | 2 <sup>ND</sup> | 3 <sup>RD</sup> |                                |
| Lot Line Setbacks, Minimum   |                             |                 |                 |                                |
| Front                        | 15 ft.                      | 15 ft.          | 15 ft.          | 23.304.030–<br>Setbacks        |
| Rear                         | 15 ft.                      | 15 ft.          | 15 ft.          |                                |
| Interior Side                | 4 ft.                       | 4 ft.           | 6 ft.           |                                |
| Street Side                  | 6 ft.                       | 8 ft.           | 10 ft.          |                                |
| Building Separation, Minimum | 8 ft.                       | 12 ft.          | 16 ft.          | 23.304.040–<br>Building Height |

**TABLE 23.202-13: R-3 LOT COVERAGE STANDARDS**

|                          | STANDARD BASED ON BUILDING HEIGHT |           |           | SUPPLEMENTAL STANDARDS   |
|--------------------------|-----------------------------------|-----------|-----------|--------------------------|
|                          | 1 STORY                           | 2 STORIES | 3 STORIES |                          |
| Lot Coverage, Maximum    |                                   |           |           |                          |
| Interior and Through Lot | 45%                               | 45%       | 30%       | 23.304.120– Lot Coverage |
| Corner Lot               | 50%                               | 50%       | 45%       |                          |

3. **Increase in Lot Coverage.** Lot coverage may be increased for a project in an R-3 district located within the Southside Plan boundaries if an AUP is obtained with one or both of the following findings:
  - a. The increased coverage would enable a new rear dwelling on the lot; or
  - b. It would enable moving a historic building onto the lot.

### **23.202.110 – R-4 Multi-Family Residential District**

- A. **District Purpose.** The purpose of the Multi-Family Residential (R-4) district is to:
  1. Implement the General Plan by encouraging development of relatively high-density residential areas;
  2. Make available housing for persons who desire both convenience of location and a reasonable amount of usable open space;
  3. Protect adjacent properties from unreasonable obstruction of light and air;
  4. Permit the construction of residential structures, such as residential hotels, which will provide housing opportunities for transient or seasonal residents; and
  5. Permit the construction of institutional and office uses that are not detrimental to the immediate neighborhood.
- B. **Allowed Land Uses.** See Table 23.202-1: Allowed Land Uses in Residential Districts.
- C. **Additional Permit Requirements.** See Section 23.202.030.A– Additional Permit Requirements (Residential Additions).
- D. **Design Review.** All commercial and mixed-use projects in the R-4 district require Design Review.
- E. **Development Standards.**
  1. **Basic Standards.** See Table 23.202-14: R-4 Lot and Height Standards, Table 23.202-15: R-4 Setback and Building Separation Standards, and Table 23.202-16: R-4 Lot Coverage Standards.
  2. **Supplemental Standards.** Supplemental development standards that apply in the R-4 district are noted in Table 23.202-14: R-4 Lot and Height Standards, Table 23.202-15: R-4 Setback and Building Separation Standards, and Table 23.202-16: R-4 Lot Coverage Standards.

**TABLE 23.202-14: R-4 LOT AND HEIGHT STANDARDS**

| BASIC STANDARDS                                                                                                                    |                          | SUPPLEMENTAL STANDARDS        |
|------------------------------------------------------------------------------------------------------------------------------------|--------------------------|-------------------------------|
| Lot Area, Minimum                                                                                                                  |                          | 23.304.020– Lot Requirements  |
| New Lots                                                                                                                           | 5,000 sq. ft.            |                               |
| Per Group Living Accommodation Resident                                                                                            | 350 sq. ft. [1]          |                               |
| Usable Open Space, Minimum                                                                                                         |                          | 23.304.090– Usable Open Space |
| Per Dwelling Unit                                                                                                                  | 200 sq. ft.              |                               |
| Per Group Living Accommodation Resident                                                                                            | 90 sq. ft.               |                               |
| Floor Area Ratio, Maximum                                                                                                          | No maximum               |                               |
| Main Building Height, Average                                                                                                      |                          | 23.304.050– Building Height   |
| New Buildings and Non-Residential Additions                                                                                        | 35 ft. and 3 stories [2] |                               |
| Residential Additions                                                                                                              | 16 ft. [3]               |                               |
| Notes:                                                                                                                             |                          |                               |
| [1] One additional resident is allowed for remaining lot area between 200 and 350 square feet.                                     |                          |                               |
| [2] Maximum 65 ft and six stories allowed with Use Permit.                                                                         |                          |                               |
| [3] Height greater than 14 ft. up to 35 ft. allowed with an AUP. Height greater than 35 ft. up to 65 ft allowed with a Use Permit. |                          |                               |

**TABLE 23.202-15: R-4 SETBACK AND BUILDING SEPARATION STANDARDS**

|                              | STANDARDS BY BUILDING STORY |                 |                 |                 |                 |                 | SUPPLEMENTAL STANDARDS                                   |
|------------------------------|-----------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|----------------------------------------------------------|
|                              | 1 <sup>ST</sup>             | 2 <sup>ND</sup> | 3 <sup>RD</sup> | 4 <sup>TH</sup> | 5 <sup>TH</sup> | 6 <sup>TH</sup> |                                                          |
| Lot Line Setbacks, Minimum   |                             |                 |                 |                 |                 |                 | 23.304.030– Setbacks                                     |
| Front                        | 15 ft.                      | 15 ft.          | 15 ft.          | 15 ft.          | 15 ft.          | 15 ft.          |                                                          |
| Rear                         | 15 ft.                      | 15 ft.          | 15 ft.          | 17 ft.          | 19 ft.          | 21 ft.          |                                                          |
| Interior Side                | 4 ft.                       | 4 ft.           | 6 ft.           | 8 ft.           | 10 ft.          | 12 ft.          |                                                          |
| Street Side                  | 6 ft.                       | 8 ft.           | 10 ft.          | 12 ft.          | 14 ft.          | 15 ft.          |                                                          |
| Building Separation, Minimum | 8 ft.                       | 12 ft.          | 16 ft.          | 20 ft.          | 24 ft.          | 28 ft.          | 23.304.040– Building Separation in Residential Districts |

**TABLE 23.202-16: R-4 LOT COVERAGE STANDARDS**

|                          | STANDARD BASED ON BUILDING HEIGHT |           |           |           |           |           | SUPPLEMENTAL STANDARDS      |
|--------------------------|-----------------------------------|-----------|-----------|-----------|-----------|-----------|-----------------------------|
|                          | 1 STORY                           | 2 STORIES | 3 STORIES | 4 STORIES | 5 STORIES | 6 STORIES |                             |
| Lot Coverage, Maximum    |                                   |           |           |           |           |           | 23.304.120–<br>Lot Coverage |
| Interior and Through Lot | 45%                               | 45%       | 40%       | 35%       | 35%       | 35%       |                             |
| Corner Lot               | 50%                               | 50%       | 45%       | 40%       | 40%       | 40%       |                             |

**23.202.120 – R-5 High-Density Residential District**

- A. **District Purpose.** The purpose of the High-Density Residential (R-5) district is to:
1. Foster development of high-density, multi-story residential areas close to major shopping, transportation, and employment centers, in accordance with the General Plan;
  2. Make available housing for persons who desire convenience of location and who require relatively small amounts of usable open space;
  3. Assure adequate light, air, privacy and usable open space to promote and protect their physical and mental health;
  4. Protect adjacent properties from unreasonable obstruction of light and air;
  5. Permit the construction of residential structures, such as apartments and hotels, which provide housing opportunities for transient or seasonal residents; and
  6. Permit the construction of institutional and office uses when such uses are not detrimental to the immediate neighborhood.
- B. **Allowed Land Uses.** See Table 23.202-1: Allowed Land Uses in Residential Districts.
- C. **Additional Permit Requirements.** See Section 23.202.030.A– Additional Permit Requirements (Residential Additions).
- D. **Development Standards.**
1. **Basic Standards.** See Table 23.202-17: R-5 Lot and Height Standards, Table 23.202-18: R-5 Setback and Building Separation Standards, and Table 23.202-19: R-5 Lot Coverage Standards.
  2. **Supplemental Standards.** Supplemental development standards that apply in the R-5 district are noted in Table 23.202-17: R-5 Lot and Height Standards, Table 23.202-18: R-5 Setback and Building Separation Standards, and Table

## 23.202-19: R-5 Lot Coverage Standards.

**TABLE 23.202-17: R-5 LOT AND HEIGHT STANDARDS**

| BASIC STANDARDS                                                                                                                    |                          | SUPPLEMENTAL STANDARDS        |
|------------------------------------------------------------------------------------------------------------------------------------|--------------------------|-------------------------------|
| Lot Area, Minimum                                                                                                                  |                          | 23.304.020– Lot Requirements  |
| New Lots                                                                                                                           | 5,000 sq. ft.            |                               |
| Per Group Living Accommodation Resident                                                                                            | 175 sq. ft. [1]          |                               |
| Usable Open Space, Minimum                                                                                                         |                          | 23.304.090– Usable Open Space |
| Per Dwelling Unit                                                                                                                  | 100 sq. ft.              |                               |
| Per Group Living Accommodation Resident                                                                                            | 35 sq. ft.               |                               |
| Floor Area Ratio, Maximum                                                                                                          | No maximum               |                               |
| Main Building Height, Average                                                                                                      |                          | 23.304.050– Building Height   |
| New Construction                                                                                                                   | 40 ft. and 4 stories [2] |                               |
| Residential Additions                                                                                                              | 18 ft. [3]               |                               |
| Notes:                                                                                                                             |                          |                               |
| [1] One additional person is allowed for remaining lot area between 100 and 175 square feet.                                       |                          |                               |
| [2] Maximum 65 feet and 6 stories allowed with a Use Permit.                                                                       |                          |                               |
| [3] Height greater than 18 ft. up to 40 ft. allowed with an AUP. Height greater than 40 ft. up to 65 ft allowed with a Use Permit. |                          |                               |

**TABLE 23.202-18: R-5 SETBACK AND BUILDING SEPARATION STANDARDS**

|                              | STANDARDS BY BUILDING STORY |                 |                 |                 |                 |                 | SUPPLEMENTAL STANDARDS                                   |
|------------------------------|-----------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|----------------------------------------------------------|
|                              | 1 <sup>ST</sup>             | 2 <sup>ND</sup> | 3 <sup>RD</sup> | 4 <sup>TH</sup> | 5 <sup>TH</sup> | 6 <sup>TH</sup> |                                                          |
| Lot Line Setbacks, Minimum   |                             |                 |                 |                 |                 |                 | 23.304.030– Setbacks                                     |
| Front                        | 10 ft.                      | 10 ft.          | 10 ft.          | 10 ft.          | 10 ft.          | 10 ft.          |                                                          |
| Rear                         | 15 ft.                      | 15 ft.          | 15 ft.          | 17 ft.          | 19 ft.          | 21 ft.          |                                                          |
| Interior                     | 4 ft.                       | 4 ft.           | 6 ft.           | 8 ft.           | 10 ft.          | 12 ft.          |                                                          |
| Street Side                  | 6 ft.                       | 8 ft.           | 10 ft.          | 10 ft.          | 10 ft.          | 10 ft.          |                                                          |
| Building Separation, Minimum | 8 ft.                       | 12 ft.          | 16 ft.          | 20 ft.          | 24 ft.          | 28 ft.          | 23.304.040– Building Separation in Residential Districts |



**TABLE 23.202-19: R-5 LOT COVERAGE STANDARDS**

|                           | STANDARD BASED ON BUILDING HEIGHT |           |           |           |           |           | SUPPLEMENTAL STANDARDS      |
|---------------------------|-----------------------------------|-----------|-----------|-----------|-----------|-----------|-----------------------------|
|                           | 1 STORY                           | 2 STORIES | 3 STORIES | 4 STORIES | 5 STORIES | 6 STORIES |                             |
| Lot Coverage, Maximum     |                                   |           |           |           |           |           | 23.304.120–<br>Lot Coverage |
| Interior and Through Lots | 55%                               | 55%       | 50%       | 45%       | 40%       | 40%       |                             |
| Corner Lots               | 60%                               | 60%       | 55%       | 50%       | 45%       | 45%       |                             |

**23.202.130 – R-S Residential Southside District**

A. **District Purpose.** The purpose of the Residential Southside (R-S) district is to:

1. Implement General Plan and Southside Plan policy by encouraging relatively high and moderate-density, multi-story residential development close to major shopping, transportation, and employment centers;
2. Make housing available for persons who desire a convenient location with relatively small amounts of usable open space, yet assure adequate light, air, privacy and usable open space to promote and protect their physical and mental health;
3. Protect adjacent properties from unreasonable obstruction of light and air;
4. Permit the construction of residential structures, such as apartments, and residential hotels, which will provide housing opportunities for transient or seasonal residents;
5. Encourage the construction of new housing on vacant properties and surface parking lots;
6. Encourage the redevelopment of single-story structures that are not historically significant resources with more dense housing development; and
7. Protect and enhance historically and architecturally significant buildings by ensuring that new development and alterations complement their existing architectural character.

B. **Allowed Land Uses.** See Table 23.202-1: Allowed Land Uses in Residential Districts.

C. **Additional Permit Requirements.** See Section 23.202.030.A– Additional Permit Requirements (Residential Additions).

D. **Design Review.** All mixed-use and community and institutional projects, as defined in Chapter 23.502—Glossary, require Design Review.

E. **Development Standards.**

1. **Basic Standards.** See
2. Table 23.202-20: R-S Lot and Height Standards, Table 23.202-21: R-S Setback and Building Separation Standards, and Table 23.202-22: R-S Lot Coverage Standards.
3. **Supplemental Standards.** Supplemental development standards that apply in the R-S district are noted in
4. Table 23.202-20: R-S Lot and Height Standards, Table 23.202-21: R-S Setback and Building Separation Standards, and Table 23.202-22: R-S Lot Coverage Standards.

**TABLE 23.202-20: R-S LOT AND HEIGHT STANDARDS**

| BASIC STANDARDS                         |                          | SUPPLEMENTAL STANDARDS        |
|-----------------------------------------|--------------------------|-------------------------------|
| Lot Area, Minimum                       |                          | 23.304.020– Lot Requirements  |
| New Lots                                | 5,000 sq. ft.            |                               |
| Per Group Living Accommodation Resident | 350 sq. ft. [1]          |                               |
| Usable Open Space, Minimum              |                          | 23.304.090– Usable Open Space |
| Per Dwelling Unit                       | 50 sq. ft.               |                               |
| Per Group Living Accommodation Resident | 20 sq. ft.               |                               |
| Floor Area Ratio, Maximum               | No maximum               |                               |
| Main Building Height, Maximum           |                          | 23.304.050– Building Height   |
| New Construction                        | 35 ft. and 3 stories [2] |                               |
| Residential Additions                   | 16 ft. [3]               |                               |

## Notes:

- [1] One additional person is allowed for remaining lot area between 350 and 200 square feet.
- [2] Maximum 45 feet and 4 stories allowed with a Use Permit if at least 50 percent of the total building floor area is designated for residential use and the ZAB finds that the project meets the purpose of the district.
- [3] Maximum 35 feet and 3 stories allowed with an AUP. Maximum 45 feet and 4 stories allowed with a Use Permit if at least 50 percent of the total building floor area is designated for residential use and the ZAB finds that the project meets the purpose of the district.

**TABLE 23.202-21: R-S SETBACK AND BUILDING SEPARATION STANDARDS**

|                              | STANDARDS BY BUILDING STORY |                 |                 |                 | SUPPLEMENTAL STANDARDS                                               |
|------------------------------|-----------------------------|-----------------|-----------------|-----------------|----------------------------------------------------------------------|
|                              | 1 <sup>ST</sup>             | 2 <sup>ND</sup> | 3 <sup>RD</sup> | 4 <sup>TH</sup> |                                                                      |
| Lot Line Setback, Minimum    |                             |                 |                 |                 | 23.304.030–<br>Setbacks                                              |
| Front                        | 10 ft.                      | 10 ft.          | 10 ft.          | 10 ft.          |                                                                      |
| Rear                         | 10 ft.                      | 10 ft.          | 10 ft.          | 17 ft.          |                                                                      |
| Interior                     | 4 ft.                       | 4 ft.           | 6 ft.           | 8 ft.           |                                                                      |
| Street Side                  | 6 ft.                       | 8 ft.           | 10 ft.          | 10 ft.          |                                                                      |
| Building Separation, Minimum | 8 ft.                       | 12 ft.          | 16 ft.          | 20 ft.          | 23.304.040–<br>Building<br>Separation in<br>Residential<br>Districts |

**TABLE 23.202-22: R-S LOT COVERAGE STANDARDS**

|                          | STANDARD BASED ON BUILDING HEIGHT |           |           |           | SUPPLEMENTAL STANDARDS      |
|--------------------------|-----------------------------------|-----------|-----------|-----------|-----------------------------|
|                          | 1 STORY                           | 2 STORIES | 3 STORIES | 4 STORIES |                             |
| Lot Coverage, Maximum    |                                   |           |           |           | 23.304.120– Lot<br>Coverage |
| Interior and Through Lot | 65%                               | 65%       | 60%       | 55%       |                             |
| Corner Lot               | 70%                               | 70%       | 65%       | 60%       |                             |

### 23.202.140 – R-SMU Residential Southside District

- A. **District Purpose.** The purpose of the Residential Southside Mixed Use (R-SMU) district is to:
1. Implement General Plan and Southside Plan policy by encouraging high-density, multi-story residential development close to major shopping, transportation, and employment centers;
  2. Make housing available for persons who desire a convenient location, but who require relatively small amounts of usable open space, yet assure adequate light, air, privacy and usable open space to promote and protect their physical and mental health;
  3. Protect adjacent properties from unreasonable obstruction of light and air;
  4. Permit the construction of residential structures, such as apartments and residential hotels, which will provide housing opportunities for transient or seasonal residents;
  5. Permit the construction of institutional, neighborhood serving retail, and office uses when such uses are not detrimental to the immediate neighborhood;
  6. Provide locations for relocation of office space from other locations in the Southside Plan area;
  7. Encourage the construction of new housing and mixed-use development on vacant properties and surface parking lots;
  8. Encourage the redevelopment of single-story structures that are not historically significant resources with housing and mixed-use development; and
  9. Protect and enhance historically and architecturally significant buildings by ensuring that new development and alterations complement their existing architectural character.
- B. **Allowed Land Uses.**
1. **General.** See Table 23.202-1: Allowed Land Uses in Residential Districts.
  2. **Commercial Uses.**
    - a. Any project that creates new commercial floor area requires a Use Permit. Creating new floor area includes constructing a new building or accessory building, adding floor area to an existing building, or installing a new floor or mezzanine level within or onto an existing building.
    - b. Tenant space reconfiguration of an existing commercial building requires an AUP.
  3. **Food Product Stores.** Food product stores are limited to 3,000 square feet in the R-SMU district.

C. **Additional Permit Requirements.** See Section 23.202.030.A– Additional Permit Requirements (Residential Additions).

D. **Design Review.** All commercial, mixed-use, and community and institutional use projects, as defined in Chapter 23.502—Glossary, require Design Review.

E. **Development Standards.**

1. **Basic Standards.**

- a. Table 23.202-23: R-SMU Lot and Height Standards shows lot and height standards that apply in all areas in the R-SMU district.

**TABLE 23.202-23: R-SMU LOT AND HEIGHT STANDARDS**

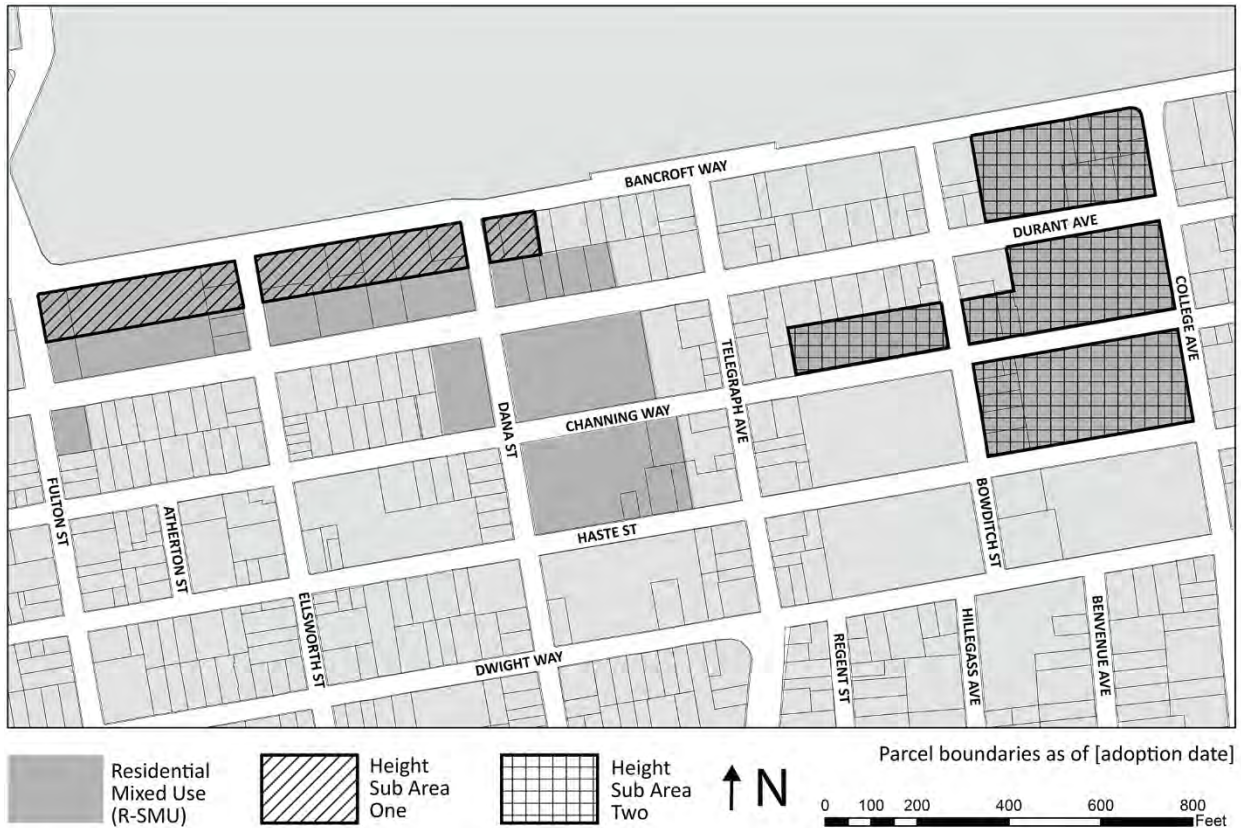
| BASIC STANDARDS                                                                                   |                      | SUPPLEMENTAL STANDARDS        |
|---------------------------------------------------------------------------------------------------|----------------------|-------------------------------|
| Lot Area, Minimum                                                                                 |                      | 23.304.020– Lot Requirements  |
| New Lots                                                                                          | 5,000 sq. ft.        |                               |
| Per Group Living Accommodation Resident                                                           | 175 sq. ft. [1]      |                               |
| Floor Area Ratio, Maximum                                                                         |                      | No maximum                    |
| Usable Open Space, Minimum                                                                        |                      | 23.304.090– Usable Open Space |
| Per Dwelling Unit                                                                                 | 40 sq. ft.           |                               |
| Per Group Living Accommodation Resident                                                           | 20 sq. ft.           |                               |
| Main Building Height, Maximum                                                                     |                      | 23.304.050– Building Height   |
| New Buildings                                                                                     | 60 ft. and 4 stories |                               |
| Residential Additions                                                                             | 16 ft. [2]           |                               |
| Notes:                                                                                            |                      |                               |
| [1] One additional person is allowed for between 100 and 175 square feet of remaining lot area.   |                      |                               |
| [2] Maximum 60 feet and 4 stories allowed with an AUP, or up to the district limit with a UP(PH). |                      |                               |

- b. Table 23.202-24 and Table 23.202-25 show setback, building separation, and lot coverage standards that apply to main buildings:

- i.* With dwelling units or group living accommodations; or
- ii.* Are located north of Durant Avenue

2. **Supplemental Standards.** Supplemental development standards that apply in the R-SMU district are noted in Table 23.202-23 to Table 23.202-27.
3. **Increase in Building Height.**
  - a. The ZAB may approve a Use Permit to increase the allowed height of a main building or residential addition in the two subareas shown in Figure 23.202-2: R-SMU Subareas. Maximum allowed height is:
    - i. 75 feet and 5 stories in Subarea One; and
    - ii. 65 feet and 5 stories in Subarea Two.

**FIGURE 23.202-2: R-SMU SUBAREAS**



- b. To approve the Use Permit for increased building height, the ZAB must make the following findings:
      - i. At least 50 percent of the total floor area is designated for residential use.
      - ii. The project meets the purposes of the R-SMU district as stated in Section 23.202.140.A (District Purpose).
4. **Increase in Density for Group Living Accommodation.** The ZAB may approve a Use Permit to increase the density of a group living accommodation use (i.e.,

decrease the minimum lot area per group living accommodation room as shown in Table 23.202-23: R-SMU Lot and Height Standards). To approve the Use Permit, the ZAB must make the following findings:

- a. At least 50 percent of the total building floor area is designated for residential use.
- b. The increased density will not be detrimental to the immediate neighborhood.
- c. The project meets the purposes of the R-SMU district as stated in Section 23.202.140.A – R-SMU Residential Southside District (District Purpose).

**TABLE 23.202-24: R-SMU SETBACK AND BUILDING SEPARATION STANDARDS FOR MAIN BUILDINGS WITH DWELLING UNITS OR GROUP LIVING ACCOMMODATIONS OR LOCATED NORTH OF DURANT AVENUE**

|                                                                                                                                                                                                             | STANDARDS BY BUILDING STORY |                 |                 |                 |                     | SUPPLEMENTAL STANDARDS                                      |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|-----------------|-----------------|-----------------|---------------------|-------------------------------------------------------------|
|                                                                                                                                                                                                             | 1 <sup>ST</sup>             | 2 <sup>ND</sup> | 3 <sup>RD</sup> | 4 <sup>TH</sup> | 5 <sup>TH</sup> [1] |                                                             |
| Lot Line Setbacks, Minimum                                                                                                                                                                                  |                             |                 |                 |                 |                     |                                                             |
| Front                                                                                                                                                                                                       | 10 ft.                      | 10 ft.          | 10 ft.          | 10 ft.          | 10 ft.              | 23.304.030–<br>Setbacks                                     |
| Rear                                                                                                                                                                                                        | 10 ft.                      | 10 ft.          | 10 ft.          | 17 ft.          | 19 ft.              |                                                             |
| Interior                                                                                                                                                                                                    | 4 ft.                       | 4 ft.           | 6 ft.           | 8 ft.           | 10 ft.              |                                                             |
| Street Side                                                                                                                                                                                                 | 6 ft.                       | 8 ft.           | 10 ft.          | 10 ft.          | 10 ft.              |                                                             |
| Building Separation, Minimum                                                                                                                                                                                | 8 ft.                       | 12 ft.          | 16 ft.          | 20 ft.          | 24 ft.              | 23.304.040–<br>Building Separation in Residential Districts |
| [1] The 5 <sup>th</sup> story regulations are not applicable to buildings with less than 50% residential floor area nor for buildings outside of Subareas 1 and 2 (even if located north of Durant Avenue). |                             |                 |                 |                 |                     |                                                             |

**TABLE 23.202-25: R-SMU LOT COVERAGE STANDARDS FOR MAIN BUILDINGS WITH DWELLING UNITS OR GROUP LIVING ACCOMMODATIONS OR LOCATED NORTH OF DURANT AVENUE**

|                       | STANDARD BASED ON BUILDING HEIGHT |           |           |           |           | SUPPLEMENTAL STANDARDS      |
|-----------------------|-----------------------------------|-----------|-----------|-----------|-----------|-----------------------------|
|                       | 1 STORY                           | 2 STORIES | 3 STORIES | 4 STORIES | 5 STORIES |                             |
| Lot Coverage, Maximum |                                   |           |           |           |           | 23.304.120–<br>Lot Coverage |

|                           |     |     |     |     |     |  |
|---------------------------|-----|-----|-----|-----|-----|--|
| Interior and Through Lots | 55% | 55% | 50% | 45% | 40% |  |
| Corner Lots               | 60% | 60% | 55% | 50% | 45% |  |

d. Table 23.202-26 and Table 23.202-27 show setback, building separation, and lot coverage standards that apply to main buildings:

- i. Without dwelling units or group living accommodations: or
- ii. Located south of Durant Avenue.

**TABLE 23.202-26: R-SMU SETBACK AND BUILDING SEPARATION STANDARDS FOR MAIN BUILDINGS WITHOUT DWELLING UNITS OR GROUP LIVING ACCOMMODATIONS OR LOCATED SOUTH OF DURANT AVENUE**

|                              | BUILDING STORY STANDARD |                 |                 |                 | SUPPLEMENTAL STANDARDS                                      |
|------------------------------|-------------------------|-----------------|-----------------|-----------------|-------------------------------------------------------------|
|                              | 1 <sup>ST</sup>         | 2 <sup>ND</sup> | 3 <sup>RD</sup> | 4 <sup>TH</sup> |                                                             |
| Lot Line Setback, Minimum    |                         |                 |                 |                 |                                                             |
| Front                        | 15 ft.                  | 15 ft.          | 15 ft.          | 15 ft.          | 23.304.030–<br>Setbacks                                     |
| Rear                         | 15 ft.                  | 15 ft.          | 15 ft.          | 17 ft.          |                                                             |
| Interior                     | 4 ft.                   | 4 ft.           | 6 ft.           | 8 ft.           |                                                             |
| Street Side                  | 6 ft.                   | 8 ft.           | 10 ft.          | 10 ft.          |                                                             |
| Building Separation, Minimum | 8 ft.                   | 12 ft.          | 16 ft.          | 20 ft.          | 23.304.040–<br>Building Separation in Residential Districts |

**TABLE 23.202-27: R-SMU LOT COVERAGE STANDARDS FOR MAIN BUILDINGS WITHOUT DWELLING UNITS OR GROUP LIVING ACCOMMODATIONS OR LOCATED SOUTH OF DURANT AVENUE**

|                          | STANDARD BASED ON BUILDING HEIGHT |           |           |           | SUPPLEMENTAL STANDARDS      |
|--------------------------|-----------------------------------|-----------|-----------|-----------|-----------------------------|
|                          | 1 STORY                           | 2 STORIES | 3 STORIES | 4 STORIES |                             |
| Lot Coverage, Maximum    |                                   |           |           |           |                             |
| Interior and Through Lot | 45%                               | 50%       | 40%       | 35%       | 23.304.120–<br>Lot Coverage |
| Corner Lot               | 50%                               | 50%       | 45%       | 40%       |                             |



**5. Increase in Lot Coverage.**

- a. An AUP may be approve to increase lot coverage up to 100 percent for a main building that contains dwelling units, contains group living accommodations, or is located north of Durant Avenue.
- b. To approve an AUP, a finding must be made that the increase is appropriate given the setbacks and architectural design of surrounding buildings.

## **23.204 COMMERCIAL DISTRICTS**

---

### **Sections:**

- 23.204.010– Chapter Purpose
- 23.204.020– Allowed Land Uses
- 23.204.030– Additional Permit Requirements
- 23.204.040– Use-Specific Permit Requirements and Regulations
- 23.204.050– C-C Corridor Commercial District
- 23.204.060– C-U University Commercial District
- 23.204.070– C-N Neighborhood Commercial District
- 23.204.080– C-E Elmwood Commercial District
- 23.204.090– C-NS North Shattuck Commercial District
- 23.204.100– C-SA South Area Commercial District
- 23.204.110– C-T Telegraph Avenue Commercial District
- 23.204.120– C-SO Solano Avenue Commercial District
- 23.204.130– C-DMU Downtown Mixed-Use District
- 23.204.140– C-W West Berkeley Commercial District
- 23.204.150– C-AC Adeline Corridor Commercial District

### **23.204.010 – Chapter Purpose**

This chapter identifies allowed land uses, permit requirements, and development standards for the Commercial Districts.

### **23.204.020 – Allowed Land Uses**

- A. **Allowed Land Use Table.** Table 23.204-1: Allowed Uses in the Commercial Districts identifies allowed land uses and required permits in the Commercial Districts. All land uses are defined in Chapter 23.502 (Glossary). Permit requirements are described in Chapter 23.406 (Specific Permit Requirements). Permits required for land uses shown in Table 23.204-1 apply to both:
1. The initial establishment of a land use in a new building; and
  2. The change of use in an existing building or portion of a building.

**TABLE 23.204-1: ALLOWED USES IN THE COMMERCIAL DISTRICTS**

| ZC = Zoning Certificate<br>AUP = Administrative Use Permit<br>UP(PH) = Use Permit<br>NP = Not Permitted<br>-- = Permitted with AUP, see<br>23.204.030(B)<br>[#] = Table Note Permit Requirement<br>* 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                   |                          |                                   |
| <b>Residential Uses</b>                                                                                                                                                                                                             |                                     |             |        |        |        |        |             |        |        |        |                        |                          |                                   |
| Accessory Dwelling Unit                                                                                                                                                                                                             | See 23.306—Accessory Dwelling Units |             |        |        |        |        |             |        |        |        |                        |                          |                                   |
| Dwellings                                                                                                                                                                                                                           |                                     |             |        |        |        |        |             |        |        |        |                        |                          |                                   |
| Single-Family                                                                                                                                                                                                                       | UP(PH)                              | UP(PH)<br>* | 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)<br>* | 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)<br>* | 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)<br>* | 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)<br>* | 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)<br>* | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH)<br>* | UP(PH) | UP(PH) | UP(PH) | See Table<br>23.204-41 | UP(PH)                   | 23.204.060.B.3;<br>23.204.100.B.4 |
| Senior Congregate Housing                                                                                                                                                                                                           | See 23.302.070.H                    |             |        |        |        |        |             |        |        |        |                        |                          |                                   |
| <b>Public and Quasi-Public Uses</b>                                                                                                                                                                                                 |                                     |             |        |        |        |        |             |        |        |        |                        |                          |                                   |
| 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)                 | UP(PH)                   |                                   |
| Cemetery/Crematory/Mausoleum                                                                                                                                                                                                        | NP                                  | 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)                 | UP(PH)                   |                                   |
| Columbaria                                                                                                                                                                                                                          | See 23.302.070.C                    |             |        |        |        |        |             |        |        |        |                        |                          |                                   |

| ZC = Zoning Certificate<br>AUP = Administrative Use Permit<br>UP(PH) = Use Permit<br>NP = Not Permitted<br>-- = Permitted with AUP, see<br>23.204.030(B)<br>[#] = Table Note Permit Requirement<br>* 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   |                          |
| 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) |                          |

| ZC = Zoning Certificate<br>AUP = Administrative Use Permit<br>UP(PH) = Use Permit<br>NP = Not Permitted<br>-- = Permitted with AUP, see<br>23.204.030(B)<br>[#] = Table Note Permit Requirement<br>* 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        |                                                                        |
| School, Vocational                                                                                                                                                                                                                  | AUP                  | AUP         | AUP         | AUP     | AUP         | AUP         | AUP         | AUP         | AUP         | UP(PH)      | AUP         |                                                                        |
| <b>Retail Uses</b>                                                                                                                                                                                                                  |                      |             |             |         |             |             |             |             |             |             |             |                                                                        |
| Alcoholic Beverage Retail Sale                                                                                                                                                                                                      | UP(PH)<br>*          | UP(PH)<br>* | UP(PH)<br>* | UP(PH)* | UP(PH)<br>* | UP(PH)<br>* | NP          | UP(PH)<br>* | UP(PH)<br>* | UP(PH)<br>* | UP(PH)<br>* | 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)<br>*          | UP(PH)<br>* | UP(PH)<br>* | UP(PH)* | UP(PH)<br>* | UP(PH)<br>* | UP(PH)<br>* | UP(PH)<br>* | NP          | UP(PH)      | UP(PH)<br>* | 23.302.070.D                                                           |
| 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*         | 23.204.040.E (for department stores)<br>23.204.040.F (for drug stores) |
| Smoke Shop                                                                                                                                                                                                                          | UP(PH)<br>*          | UP(PH)<br>* | UP(PH)<br>* | UP(PH)* | UP(PH)<br>* | UP(PH)<br>* | UP(PH)<br>* | UP(PH)<br>* | NP          | UP(PH)<br>* | UP(PH)<br>* | 23.302.070.I                                                           |
| <b>Personal and Household Service Uses</b>                                                                                                                                                                                          |                      |             |             |         |             |             |             |             |             |             |             |                                                                        |
| Personal and Household Services,                                                                                                                                                                                                    | ZC [1]               | ZC [1]      | ZC [2]      | ZC [2]  | ZC [2]      | ZC [1]      | ZC          | ZC [2]      | ZC          | ZC [5]      | ZC          |                                                                        |

| ZC = Zoning Certificate<br>AUP = Administrative Use Permit<br>UP(PH) = Use Permit<br>NP = Not Permitted<br>-- = Permitted with AUP, see<br>23.204.030(B)<br>[#] = Table Note Permit Requirement<br>* 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   |                                                      |
| <b>General</b>                                                                                                                                                                                                                      |                      |             |         |         |         |             |             |         |        |             |        |                                                      |
| <b>Kennels and Pet Boarding</b>                                                                                                                                                                                                     | NP                   | NP          | NP      | NP      | NP      | NP          | NP          | NP      | NP     | UP(PH)      | NP     |                                                      |
| <b>Laundromats and Cleaners</b>                                                                                                                                                                                                     | AUP                  | AUP         | UP(PH)  | UP(PH)  | UP(PH)  | AUP         | AUP         | UP(PH)  | UP(PH) | AUP [4]     | AUP    |                                                      |
| <b>Veterinary Clinic</b>                                                                                                                                                                                                            | UP(PH)               | UP(PH)      | UP(PH)  | UP(PH)  | UP(PH)  | UP(PH)      | UP(PH)      | UP(PH)  | UP(PH) | UP(PH)      | UP(PH) |                                                      |
| <b>Video Tape/Disk Rental</b>                                                                                                                                                                                                       | ZC [1]               | ZC [1]      | ZC [2]  | AUP     | ZC [2]  | -           | ZC          | ZC [2]  | ZC     | ZC [5]      | NP     |                                                      |
| <b>Office Uses</b>                                                                                                                                                                                                                  |                      |             |         |         |         |             |             |         |        |             |        |                                                      |
| <b>Business Support Services</b>                                                                                                                                                                                                    | 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                                       |
| <b>Banks and Financial Services, Retail</b>                                                                                                                                                                                         | AUP                  | AUP         | UP(PH)  | UP(PH)  | UP(PH)  | ZC [1]      | AUP*        | UP(PH)  | ZC*    | AUP         | ZC     | 23.204.110.B.6;<br>23.204.130.B.3;<br>23.204.130.D.3 |
| <b>Insurance Agents, Title Companies, Real Estate Agents, Travel Agents</b>                                                                                                                                                         | 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;<br>23.204.130.D.3       |
| <b>Medical Practitioners</b>                                                                                                                                                                                                        | ZC [1]               | ZC [1]      | AUP     | NP      | UP(PH)  | ZC [1]      | AUP*        | UP(PH)  | ZC*    | ZC [5]      | ZC [6] | 23.204.040.D;<br>23.204.110.B.6;<br>23.204.130.D.3   |
| <b>Non-Chartered Financial Institutions</b>                                                                                                                                                                                         | UP(PH)<br>*          | UP(PH)<br>* | NP      | NP      | NP      | UP(PH)<br>* | UP(PH)<br>* | NP      | NP     | UP(PH)<br>* | UP(PH) | 23.302.070.F<br>23.204.110.B.6                       |
| <b>Office, Business and Professional</b>                                                                                                                                                                                            | ZC [1]               | ZC [1]      | AUP*    | AUP*    | AUP*    | ZC [1]      | AUP*        | AUP*    | ZC*    | ZC [5]      | ZC [6] | 23.204.040.B;<br>23.204.110.B.6;<br>23.204.130.D.3   |

| ZC = Zoning Certificate<br>AUP = Administrative Use Permit<br>UP(PH) = Use Permit<br>NP = Not Permitted<br>-- = Permitted with AUP, see<br>23.204.030(B)<br>[#] = Table Note Permit Requirement<br>* 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   |                                                  |
| <b>Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses</b>                                                                                                                                                          |                      |             |             |        |         |             |             |        |             |             |        |                                                  |
| Adult-oriented Business                                                                                                                                                                                                             | UP(PH)<br>*          | UP(PH)<br>* | NP          | NP     | NP      | NP          | NP          | NP     | UP(PH)<br>* | UP(PH)<br>* | NP     | 23.302.070.A                                     |
| Amusement Device<br>Arcade                                                                                                                                                                                                          | UP(PH)<br>*          | UP(PH)<br>* | NP          | NP     | NP      | UP(PH)<br>* | NP          | NP     | UP(PH)<br>* | UP(PH)<br>* | UP(PH) | 23.302.070.B                                     |
| Bar/Cocktail<br>Lounge/Tavern                                                                                                                                                                                                       | UP(PH)<br>*          | UP(PH)<br>* | UP(PH)<br>* | -      | NP      | UP(PH)<br>* | UP(PH)<br>* | NP     | UP(PH)<br>* | UP(PH)<br>* | UP(PH) | 23.204.100.B.3;<br>23.204.110.B.2;<br><br>23.310 |
| Commercial Recreation<br>Center                                                                                                                                                                                                     | See 23.204.040.A     |             |             |        |         |             |             |        |             |             |        |                                                  |
| Dance/Exercise/Martial<br>Arts/Music Studio                                                                                                                                                                                         | ZC [1]               | ZC [1]      | ZC [2]      | AUP    | AUP [4] | ZC [1]      | ZC          | AUP    | ZC          | ZC [7]      | ZC     |                                                  |
| Entertainment<br>Establishment                                                                                                                                                                                                      | UP(PH)               | UP(PH)      | UP(PH)      | NP     | UP(PH)  | UP(PH)      | UP(PH)      | UP(PH) | UP(PH)      | UP(PH)      | UP(PH) |                                                  |
| Food Service<br>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) |                                                  |



| ZC = Zoning Certificate<br>AUP = Administrative Use Permit<br>UP(PH) = Use Permit<br>NP = Not Permitted<br>-- = Permitted with AUP, see<br>23.204.030(B)<br>[#] = Table Note Permit Requirement<br>* 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   |                                                      |
| <b>Vehicle Service and Sales Uses</b>                                                                                                                                                                                               |                      |        |        |        |        |             |     |        |        |             |        |                                                      |
| 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;<br>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)<br>* | UP(PH) | 23.204.140.B.3                                       |
| Large Vehicle Sales and Rental                                                                                                                                                                                                      | AUP                  | NP     | NP     | NP     | NP     | NP          | NP  | NP     | NP     | AUP*<br>[8] | NP     | 23.204.140.B.3                                       |
| Small Vehicle Sales and Service                                                                                                                                                                                                     | AUP                  | NP     | NP     | NP     | NP     | UP(PH)<br>* | NP  | NP     | UP(PH) | UP(PH)<br>* | NP     | 23.204.100.B.5;<br>23.204.140.B.3                    |
| Tire Sales and Service                                                                                                                                                                                                              | UP(PH)               | NP     | NP     | NP     | NP     | NP          | NP  | NP     | NP     | UP(PH)<br>* | 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*<br>[8] | ZC     |                                                      |
| Vehicle Rentals                                                                                                                                                                                                                     | AUP                  | NP     | NP     | NP     | NP     | NP          | NP  | NP     | UP(PH) | AUP*<br>[8] | NP     | 23.204.140.B.3                                       |
| Vehicle Repair and Service                                                                                                                                                                                                          | AUP                  | NP     | NP     | NP     | NP     | NP          | NP  | NP     | NP     | AUP*<br>[8] | NP     |                                                      |
| Vehicle Sales, New                                                                                                                                                                                                                  | AUP                  | NP     | NP     | NP     | NP     | UP(PH)<br>* | NP  | NP     | UP(PH) | AUP*<br>[8] | NP     | 23.204.140.B.3                                       |
| Vehicle Sales, Used                                                                                                                                                                                                                 | AUP                  | NP     | NP     | NP     | NP     | UP(PH)<br>* | NP  | NP     | UP(PH) | UP(PH)<br>* | NP     | 23.204.100.B.5;<br>23.204.140.B.3;<br>23.204.140.D.4 |
| Vehicle Wash                                                                                                                                                                                                                        | UP(PH)               | NP     | NP     | NP     | NP     | NP          | NP  | NP     | NP     | UP(PH)<br>* | NP     | 23.204.140.B.3                                       |
| Vehicle Wrecking                                                                                                                                                                                                                    | NP                   | NP     | NP     | NP     | NP     | NP          | NP  | NP     | NP     | NP          | NP     |                                                      |

| ZC = Zoning Certificate<br>AUP = Administrative Use Permit<br>UP(PH) = Use Permit<br>NP = Not Permitted<br>-- = Permitted with AUP, see<br>23.204.030(B)<br>[#] = Table Note Permit Requirement<br>* 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   |                          |
| <b>Industrial and Heavy Commercial Uses</b>                                                                                                                                                                                         |                      |        |        |        |        |        |        |        |        |         |        |                          |
| 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)  | --     |                          |

| ZC = Zoning Certificate<br>AUP = Administrative Use Permit<br>UP(PH) = Use Permit<br>NP = Not Permitted<br>-- = Permitted with AUP, see<br>23.204.030(B)<br>[#] = Table Note Permit Requirement<br>* 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   |                          |
| 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)<br>* | 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                                                                                                                                                                                                            | -                    | -      | -      | -      | -      | -      | -      | -      | -           | 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] | --     |                          |
| <b>Incidental Uses</b>                                                                                                                                                                                                              |                      |        |        |        |        |        |        |        |             |         |        |                          |
| Amusement Devices                                                                                                                                                                                                                   | AUP*                 | AUP*   | AUP*   | AUP*   | AUP*   | AUP*   | AUP*   | AUP*   | AUP*        | AUP*    | UP(PH) | 23.302.070.B             |
| Alcoholic Beverage                                                                                                                                                                                                                  | See 23.310           |        |        |        |        |        |        |        |             |         |        |                          |

| ZC = Zoning Certificate<br>AUP = Administrative Use Permit<br>UP(PH) = Use Permit<br>NP = Not Permitted<br>-- = Permitted with AUP, see<br>23.204.030(B)<br>[#] = Table Note Permit Requirement<br>* 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   |                          |
| Service                                                                                                                                                                                                                             |                      |        |             |         |        |        |        |        |             |        |        |                          |
| 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 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    |                          |
| 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    | 23.302.020.C             |
| Wholesale Activities                                                                                                                                                                                                                | AUP*                 | AUP*   | UP(PH)<br>* | UP(PH)* | NP     | AUP*   | AUP*   | AUP*   | AUP*        | AUP    | AUP    | 23.204.080.B.3           |
| <b>Other Miscellaneous Uses</b>                                                                                                                                                                                                     |                      |        |             |         |        |        |        |        |             |        |        |                          |
| Art/Craft Studio                                                                                                                                                                                                                    | 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    | 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)<br>* | AUP    | 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) |                          |
| Drive-in Uses                                                                                                                                                                                                                       | UP(PH)               | NP     | NP          | NP      | UP(PH) | UP(PH) | NP     | UP(PH) | NP          | NP     | UP(PH) |                          |

| ZC = Zoning Certificate<br>AUP = Administrative Use Permit<br>UP(PH) = Use Permit<br>NP = Not Permitted<br>-- = Permitted with AUP, see<br>23.204.030(B)<br>[#] = Table Note Permit Requirement<br>* 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 |                          |
| 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   | UP(PH)  | AUP  |                          |
| Public Market, Enclosed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | AUP                                          | AUP  | AUP  | AUP  | AUP  | AUP  | AUP  | AUP  | AUP   | AUP [9] | AUP  |                          |
| Short-Term Rental                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | See 23.314                                   |      |      |      |      |      |      |      |       |         |      |                          |
| Urban Agriculture, Low-Impact                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 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  | 23.318                   |
| Wireless Telecommunication Facility                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | See 23.332—Wireless Communication Facilities |      |      |      |      |      |      |      |       |         |      |                          |
| <b>Notes:</b><br>[1] Change of use of floor area over 3,000 square feet requires an AUP.<br>[2] Change of use of floor area over 2,000 square feet requires an AUP.<br>[3] 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.<br>[4] Requires a Use Permit if 5,000 sq. ft. or more.<br>[5] 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.<br>[6] 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.<br>[7] Requires a Use Permit if 7,500 square feet or more.<br>[8] 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.<br>[9] Requires a Use Permit if more than 10,000 sq. ft. |                                              |      |      |      |      |      |      |      |       |         |      |                          |

**Unlisted Land Uses.** Any use not listed in Table 23.204-1: Allowed Uses in the Commercial Districts is permitted with an AUP. To approve the AUP, the Zoning Officer must find that the use is compatible with the purposes of the district where it is located. Any use found to be incompatible with the purposes of the district is not permitted.

**B. Use-Specific Regulations.** Uses subject to supplemental regulations are shown in Table 23.204-1: Allowed Uses in the Commercial Districts with an asterisk (\*) following the permit requirement (e.g., ZC\*). The Use-Specific Regulations column in Table 23.204-1 identifies the location of these regulations in the Zoning Ordinance.

### **23.204.030 – Additional Permit Requirements**

#### **A. Change of Use.**

1. Uses subject to additional permit requirements with a change of use are shown in Table 23.204-1: Allowed Uses in the Commercial Districts with a note [1] or [2] following the permit requirement (e.g., ZC [1]).
2. A change of use means a change to a different category of commercial or manufacturing use but does not include changes between uses that are classified in the same category of commercial or manufacturing use. For example, changing a pet store (in “Retail Use” category) to a medical practitioner (in “Offices” category) is subject to change of use permit requirements in Table 23.204-1. Changing a pet store to general retail (also in “Retail Use” category) is not subject to the change of use permit requirements.

#### **B. 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                                 |
| 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.

**C. 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 |

#### D. 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.

E. **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.

F. **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.

### 23.204.040 – Use-Specific Permit Requirements and Regulations

A. **Commercial Recreation Centers.** See Table 23.204-4: Commercial Recreation Center Permit Requirements for commercial recreation centers in the Commercial Districts.

**TABLE 23.204-4: COMMERCIAL RECREATION CENTER PERMIT REQUIREMENTS**

| DISTRICT/USE SIZE                                         | PERMIT REQUIRED |
|-----------------------------------------------------------|-----------------|
| C-C, C-U, C-T, C-DMU, C-W                                 |                 |
| Under 5,000 sq. ft indoor use                             | ZC              |
| 5,000 to 10,000 sq. ft. indoor use                        | AUP             |
| Over 10,000 sq. ft. indoor use or outdoor use of any size | UP(PH)          |
| C-N, C-E, C-NS, C-SA, C-SO, C-AC                          |                 |
| Under 3,000 sq. ft indoor use                             | AUP             |
| Over 3,000 sq. ft. indoor use or outdoor use of any size  | UP(PH)          |

**B. Group Class Instruction.**

- C-NS and C-DMU Districts.** When group class instruction in the C-NS or C-DMU districts are located on the ground floor adjacent to a street frontage, storefront windows must include a window display or to be transparent and provide pedestrian viewing at least 10 feet into the storefront area.
- C-NS District.** Group class instruction uses in the C-NS may not exceed 2,500 square feet.
- C-T District.** Group class instruction uses in the C-T district are not permitted on the ground floor.

**C. Gyms and Health Clubs.**

- Permits Required.** Table 23.204-5: Gym and Health Club Permit Requirements shows permits required for gyms and health clubs in the Commercial Districts.

**TABLE 23.204-5: GYM AND HEALTH CLUB PERMIT REQUIREMENTS**

| DISTRICT/USE SIZE         | PERMIT REQUIRED [1] |
|---------------------------|---------------------|
| C-C, C-U, C-DMU           |                     |
| Under 7,500 sq. ft        | ZC                  |
| 7,500 sq. ft. and greater | AUP                 |
| C-N, C-E, C-NS, C-SO      | AUP                 |
| C-SA, C-T, C-AC           | ZC                  |
| C-W                       |                     |
| Under 7,500 sq. ft        | ZC                  |

|                                                                                                                                                                                                                                                                                                                                                                                                         |        |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| 7,500 sq. ft. and greater                                                                                                                                                                                                                                                                                                                                                                               | UP(PH) |
| <p>Note:<br/>                 [1] Change of use permit requirements as described in Section – Additional Permit Requirements. A (Change of Use) also apply. In the C-C, C-U, and C-SA districts, a change of use of gross floor area over 3,000 square feet requires an AUP. In the C-N, C-E, C-NS, and C-SO districts, a change of use of gross floor area over 2,000 square feet requires an AUP.</p> |        |

2. **C-DMU District.** When located on the ground floor adjacent to a street frontage, storefront windows for a gym and health club in the C-DMU district must include a window display or to be transparent and provide pedestrian viewing at least 10 feet into the storefront area.

D. **Transparency Requirement for Office Uses.** When office uses shown in are located on the ground floor adjacent to a street frontage, storefront windows shall either:

1. Include a storefront window display; or
2. Be transparent and provide pedestrian viewing at least 10 feet into the storefront area.

**TABLE 23.204-6: OFFICE USES SUBJECT TO TRANSPARENCY REQUIREMENT**

| OFFICE USE                                                           | DISTRICT                        |
|----------------------------------------------------------------------|---------------------------------|
| Insurance Agents, Title Companies, Real Estate Agents, Travel Agents | CN, C-E, C-NS, CT, C-SO, C-DMU  |
| Medical Practitioners                                                | C-T                             |
| Office, Business and Professional                                    | CN, C-E, C-NS, C-T, C-SO, C-DMU |

E. **Department Stores.** Table 23.204-7: Department Store Permit Requirements shows permits required for department stores in the Commercial Districts.

**TABLE 23.204-7: DEPARTMENT STORE PERMIT REQUIREMENTS**

| DISTRICT/USE SIZE     | PERMIT REQUIRED [1] |
|-----------------------|---------------------|
| C-SA, C-T             |                     |
| 3,000 sq. ft. or less | ZC                  |
| Over 3,000 sq. ft.    | AUP                 |
| C-E, C-NS, C-SO       |                     |

|                                                                                                                                                                                                                                                                                                                                                                                         |               |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| 3,000 sq. ft. or less                                                                                                                                                                                                                                                                                                                                                                   | ZC            |
| Over 3,000 sq. ft.                                                                                                                                                                                                                                                                                                                                                                      | Not Permitted |
| C-N                                                                                                                                                                                                                                                                                                                                                                                     |               |
| 3,000 sq. ft. or less                                                                                                                                                                                                                                                                                                                                                                   | AUP           |
| Over 3,000 sq. ft.                                                                                                                                                                                                                                                                                                                                                                      | Not Permitted |
| C-C, C-U                                                                                                                                                                                                                                                                                                                                                                                | ZC            |
| C-AC                                                                                                                                                                                                                                                                                                                                                                                    |               |
| 3,000 sq ft or less                                                                                                                                                                                                                                                                                                                                                                     | ZC            |
| Over 3,000 sq ft                                                                                                                                                                                                                                                                                                                                                                        | UP(PH)        |
| <p>Note:<br/> [1] Change of use permit requirements as described in Section – Additional Permit Requirements. A (Change of Use) also apply. In the C-C, C-U, and C-SA districts, a change of use of gross floor area over 3,000 square feet requires an AUP. In the C-N, C-E, C-NS, and C-SO districts, a change of use of gross floor area over 2,000 square feet requires an AUP.</p> |               |

F. **Drugstores.** The following requirements apply to drugstores in the C-N, CE, C-NS, and C-SO districts.

1. **Where Prohibited.** A new or expanded drugstore is not permitted if it is:
  - a. Over 5,000 square feet in gross floor area; and
  - b. Within 1,000 feet of any property containing an existing drugstore.
2. **Measurement of Distance.** Distances between drugstores are measured by a straight line from the nearest point of the property line of the parcel on which the drugstore is proposed to the nearest point of the lot line of the lot on which the nearest drugstore is located.

### 23.204.050 – C-C Corridor Commercial District

A. **District Purpose.** The purpose of the Corridor Commercial (C-C) district is to:

1. Implement the General Plan's designations for Avenue Commercial areas;
2. Provide locations for a wide variety of activities along thoroughfares;
3. Encourage development in underutilized neighborhood and community shopping areas; and
4. Promote development compatible with adjacent commercial and residential areas.

B. **Allowed Land Uses.** See Table 23.204-1: Allowed Uses in the Commercial Districts.

C. **Additional Permit Requirements.** See Section 23.204.030– Additional Permit Requirements.

D. **Development Standards.**

1. **Basic Standards.** See Table 23.204-8: C-C Development Standards. For residential-only projects, see also Table 23.204-9: C-C Setbacks and Building Separation for Residential-Only Uses and Table 23.204-10: C-C Lot Coverage Standards for Residential-Only Uses.

2. **Lots Abutting or Confronting a Residential District.** See Section 23.304.130– Non-Residential Districts Abutting a Residential District for additional building feature requirements for lots that abut or confront a Residential District.

**TABLE 23.204-8: C-C DEVELOPMENT STANDARDS**

|                                         | PROJECT LAND USE     |                              |                      | SUPPLEMENTAL STANDARDS |
|-----------------------------------------|----------------------|------------------------------|----------------------|------------------------|
|                                         | NON-RESIDENTIAL      | MIXED USE                    | RESIDENTIAL ONLY     |                        |
| Lot Area Minimum                        |                      |                              |                      | 23.304.020             |
| New Lots                                | No minimum           |                              | 5,000 sq. ft         |                        |
| Per Group Living Accommodation Resident | 350 sq. ft. [1]      |                              |                      |                        |
| Usable Open Space, Minimum              |                      |                              |                      | 23.304.090             |
| Per Dwelling Unit                       | 200 sq. ft.          | 200 sq. ft. [2]              | 200 sq. ft.          |                        |
| Per Group Living Accommodation Resident | 90 sq. ft.           |                              |                      |                        |
| Floor Area Ratio, Maximum               | 3.0                  |                              | No maximum           |                        |
| Main Building Height, Minimum           | No minimum           |                              |                      |                        |
| Main Building Height, Maximum           | 40 ft. and 2 stories | 40 ft. and 3 stories [3] [4] | 35 ft. and 3 stories | 23.304.050             |
| Lot Line Setbacks, Minimum              |                      |                              |                      | 23.304.030– Setbacks   |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                               | PROJECT LAND USE   |           |                  | SUPPLEMENTAL STANDARDS                                   |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|-----------|------------------|----------------------------------------------------------|
|                                                                                                                                                                                                                                                                                                                                                                                                                                                               | NON-RESIDENTIAL    | MIXED USE | RESIDENTIAL ONLY |                                                          |
| Abutting/Confronting a Non-residential District                                                                                                                                                                                                                                                                                                                                                                                                               | No minimum         |           |                  |                                                          |
| Abutting/Confronting a Residential District                                                                                                                                                                                                                                                                                                                                                                                                                   | See 23.304.130.C.2 |           |                  |                                                          |
| Building Separation, Minimum                                                                                                                                                                                                                                                                                                                                                                                                                                  | No minimum         |           |                  | 23.304.040– Building Separation in Residential Districts |
| Lot Coverage, Maximum                                                                                                                                                                                                                                                                                                                                                                                                                                         | 100%               |           |                  | 23.304.120– Lot Coverage                                 |
| <p>Notes:</p> <p>[1] One additional resident is allowed for remaining lot area between 200 and 350 square feet.</p> <p>[2] Minimum open space for mixed use projects can be reduced with a UP(PH). See 23.204.050.D.3.</p> <p>[3] In mixed use buildings, the third and higher stories must be used for residential purposes.</p> <p>[4] The maximum height of a mixed use project can be increased to 50 ft and 4 stories with the issuance of a UP(PH).</p> |                    |           |                  |                                                          |

**TABLE 23.204-9: C-C SETBACKS AND BUILDING SEPARATION FOR RESIDENTIAL-ONLY USES**

|                            | STANDARDS BY BUILDING STORY [1] |                 |                 | SUPPLEMENTAL STANDARDS |
|----------------------------|---------------------------------|-----------------|-----------------|------------------------|
|                            | 1 <sup>ST</sup>                 | 2 <sup>ND</sup> | 3 <sup>RD</sup> |                        |
| Lot Line Setbacks, Minimum |                                 |                 |                 | 23.304.030– Setbacks   |
| Front                      | 15 ft.                          | 15 ft.          | 15 ft.          |                        |
| Rear                       | 15 ft.                          | 15 ft.          | 15 ft.          |                        |
| Interior                   | 4 ft.                           | 4 ft.           | 6 ft.           |                        |

|                                                                                                     |       |        |        |                                                          |
|-----------------------------------------------------------------------------------------------------|-------|--------|--------|----------------------------------------------------------|
| Street Side                                                                                         | 6 ft. | 8 ft.  | 10 ft. |                                                          |
| Building Separation, Minimum                                                                        | 8 ft. | 12 ft. | 16 ft. | 23.304.040– Building Separation in Residential Districts |
| [1] Development standards included in this table may be modified with a UP(PH). See 23.204.050.D.3. |       |        |        |                                                          |

**TABLE 23.204-10: C-C LOT COVERAGE STANDARDS FOR RESIDENTIAL-ONLY USES**

|                                                                                                     | STANDARD BASED ON BUILDING HEIGHT [1] |           |           | SUPPLEMENTAL STANDARDS   |
|-----------------------------------------------------------------------------------------------------|---------------------------------------|-----------|-----------|--------------------------|
|                                                                                                     | 1 STORY                               | 2 STORIES | 3 STORIES |                          |
| Lot Coverage, Maximum                                                                               |                                       |           |           | 23.304.120– Lot Coverage |
| Interior and Through Lots                                                                           | 45%                                   | 45%       | 40%       |                          |
| Corner Lots                                                                                         | 50%                                   | 50%       | 45%       |                          |
| [1] Development standards included in this table may be modified with a UP(PH). See 23.204.050.D.3. |                                       |           |           |                          |

### 3. Modification to Standards – Mixed-Use Open Space and Residential-Only Projects.

- a. The ZAB may modify the following standards with a Use Permit:
  - i. Minimum usable open space for mixed use projects shown in Table 23.204-8.
  - ii. Any standard for residential-only projects in Table 23.204-9 and Table 23.204-10.
- b. To approve the modification, the ZAB must find that the modification achieves one or more of the following:
  - i. Encourages use of the ground floor for commercial purposes where appropriate.
  - ii. Encourages utilization of public transit and existing off-street parking facilities in the area of the proposed building.
  - iii. Facilitates the construction of residential or tourist hotel uses where appropriate.

*iv.* Permits consistency with the building setbacks existing in the immediate area where a residential building setback would not serve a useful purpose.

**E. Permit Findings.** To approve any AUP or Use Permit for a project in the C-C district, the review authority must make the findings in Section 23.406.040– Use Permits and find that the proposed use or structure:

1. Is compatible with the purpose of the district;
2. Is compatible with the surrounding uses and buildings;
3. Does not interfere with the continuity of retail and service facilities at the ground level; and
4. Does not exceed the amount and intensity of use that can be served by the available traffic capacity and potential parking supply.

### **23.204.060 – C-U University Commercial District**

**A. District Purpose.** The purpose of the C-U University Commercial district is to:

1. Implement the General Plan's designations for Avenue Commercial areas;
2. Provide locations for a wide variety of activities along thoroughfares;
3. Encourage development in underutilized neighborhood and community shopping areas; and
4. Promote development compatible with adjacent commercial and residential areas.
5. Implement the University Avenue Strategic Plan by:
  - a. Increasing public safety for residents, merchants, and customers;
  - b. Revitalize the University Avenue corridor through appropriate economic development and housing;
  - c. Protecting and improving neighborhood quality of life;
  - d. Encourage more pedestrian-oriented development and an appropriate mix of uses to improve neighborhood identity;
  - e. Enhancing University Avenue as a gateway to the city, a series of neighborhoods, and the downtown;
  - f. Coordinating and enhance public transit systems, pedestrian access, and bicycle circulation; and
  - g. Encouraging a concentration of commercial activity at the designated nodes.



**B. Allowed Land Uses.**

1. **General.** See Table 23.204-1: Allowed Uses in the Commercial Districts.
2. **Alcoholic Beverage Retail Sales.** Alcoholic beverage retail sales are allowed in the C-U district only in conjunction with a restaurant or general food product store.
3. **Residential Uses.**
  - a. **Ground Floor Residential Uses.** Ground floor residential uses, including leasing and management offices and other similar resident-serving uses, require a Use Permit.
  - b. **University Avenue Node Area.** In the University Avenue Node Area shown in Figure 23.204-1: C-U District Sub-Areas, new residential uses must be integrated with non-residential uses in a mixed-use development.
  - c. **Outside of Node Area.** Single use residential projects are permitted outside of the University Avenue Node Area with a Use Permit.

**FIGURE 23.204-1: C-U DISTRICT SUB-AREAS**



C. **Additional Permit Requirements.** See Section 23.204.030– Additional Permit Requirements.

D. **Development Standards.**

1. **Basic Standards.** See Table 23.204-11: C-U Development Standards and Table 23.204-12: C-U Setback Standards. For residential-only projects, see also Table 23.204-13: C-U Setback and Building Separation Standards for Residential Only Uses and Table 23.204-14: C-U Lot Coverage Standards for Residential-Only Uses. See Figure 23.204-1 for C-U district sub-area boundaries.

**TABLE 23.204-11: C-U DEVELOPMENT STANDARDS**

|                                                         | PROJECT LAND USE             |                  | SUPPLEMENTAL STANDARDS       |
|---------------------------------------------------------|------------------------------|------------------|------------------------------|
|                                                         | NON-RESIDENTIAL OR MIXED USE | RESIDENTIAL ONLY |                              |
| Lot Area, Minimum                                       |                              |                  | 23.304.020– Lot Requirements |
| New Lots                                                | No minimum                   | 5,000 sq. ft.    |                              |
| Per Group Living Accommodation Resident                 | 350 sq. ft. [1]              |                  |                              |
| Floor Area Ratio, Maximum                               |                              |                  |                              |
| Avenue Mixed Use Area – North Side of University Avenue | 2.2                          | No maximum       |                              |
| Avenue Mixed Use Area – South Side of University Avenue | 2.5                          |                  |                              |
| Node Area – North Side of University Avenue             | 2.5                          |                  |                              |
| Node Area – South Side of University Avenue             | 3.0                          |                  |                              |
| Main Building Height, Minimum                           | 30 ft. and 2 stories         |                  |                              |
| Main Building Height, Maximum                           |                              |                  | 23.304.050– Building Height  |
| Avenue Mixed Use Area, All Uses                         | 36 ft. and 3 stories [2]     | N/A              |                              |
| Node Area, Non-Residential                              | 40 ft. and 3 stories         |                  |                              |

|                                                                                                                                                                                                                                                                                                                                                                | PROJECT LAND USE             |                                                                                           | SUPPLEMENTAL STANDARDS                                   |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|-------------------------------------------------------------------------------------------|----------------------------------------------------------|
|                                                                                                                                                                                                                                                                                                                                                                | NON-RESIDENTIAL OR MIXED USE | RESIDENTIAL ONLY                                                                          |                                                          |
| Node Area, Mixed Use                                                                                                                                                                                                                                                                                                                                           | 48 ft. and 4 stories [2]     |                                                                                           |                                                          |
| Residential Only                                                                                                                                                                                                                                                                                                                                               | N/A                          | 36 ft. and 3 stories                                                                      |                                                          |
| Lot Line Setbacks, Minimum                                                                                                                                                                                                                                                                                                                                     | See Table 23.204-12          | See Table 23.204-13                                                                       | 23.304.030– Setbacks                                     |
| Building Separation, Minimum                                                                                                                                                                                                                                                                                                                                   | No minimum                   |                                                                                           | 23.304.040– Building Separation in Residential Districts |
| Lot Coverage, Maximum                                                                                                                                                                                                                                                                                                                                          | 100%                         | See Table 23.204-14 Table 23.204-14: C-U Lot Coverage Standards for Residential-Only Uses | 23.304.120– Lot Coverage                                 |
| Usable Open Space, Minimum                                                                                                                                                                                                                                                                                                                                     |                              |                                                                                           | 23.304.090– Usable Open Space                            |
| Per Dwelling Unit                                                                                                                                                                                                                                                                                                                                              | 200 sq. ft. [3]              |                                                                                           |                                                          |
| Per Group Living Accommodation Resident                                                                                                                                                                                                                                                                                                                        | 90 sq. ft. [3]               |                                                                                           |                                                          |
| <p>Notes:</p> <p>[1] One additional resident is allowed for remaining lot area between 200 and 350 square feet.</p> <p>[2] In mixed-use buildings, the third and higher floors must be used for residential purposes.</p> <p>[3] Minimum usable open space for mixed use and exclusive residential uses may be modified with a UP(PH). See 23.204.060.D.3.</p> |                              |                                                                                           |                                                          |

**TABLE 23.204-12: C-U SETBACK STANDARDS**

| LOT LINE & PROJECT CONDITIONS | REQUIRED SETBACK |
|-------------------------------|------------------|
| Front                         |                  |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                      |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|
| Ground-floor non-residential uses fronting University Avenue                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Average 2 ft.<br>2 ft. at all sidewalk pedestrian entries                            |
| Ground-floor residential uses fronting University Avenue                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Average 2 ft.<br>Maximum 10 ft.[1]                                                   |
| Fronting a street other than University Avenue and confronting a non-residential district                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | No min.                                                                              |
| <b>Rear</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                      |
| Lots on south side of University Avenue abutting lot in residential district                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Average 20 ft. [2] [3]                                                               |
| Lots on south side of University Avenue                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | See 23.204.060.D.5– C-U University Commercial District (Solar Access)                |
| All other lots                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 10 ft. or 10% of lot depth, whichever is greater                                     |
| Interior Side                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | No minimum                                                                           |
| Street Side                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 2 ft. average                                                                        |
| All setbacks for lots on South Side of University Avenue fronting a street other than University Avenue                                                                                                                                                                                                                                                                                                                                                                                                                                                            | As required by 23.304.030.C.2– Setbacks (Lots Adjacent to Residential Districts) [4] |
| <p>Notes:</p> <p>[1] A maximum setback of 10 feet is only permitted for landscaping that enhances the streetscape and provides privacy for residential units on the first floor.</p> <p>[2] Rear setback area must be greater than or equal to the width of the lot in feet multiplied by 20 feet.</p> <p>[3] See 23.304.030.C.2.b for allowed reductions.</p> <p>[4] If a lot fronting a side street is consolidated into a single project with the adjacent University Avenue-fronting lot, the project must conform to the setback standards in this table.</p> |                                                                                      |

**TABLE 23.204-13: C-U SETBACK AND BUILDING SEPARATION STANDARDS FOR RESIDENTIAL ONLY USES [1]**

|                            | STANDARDS BY BUILDING STORY      |                 |                 | SUPPLEMENTAL STANDARDS |
|----------------------------|----------------------------------|-----------------|-----------------|------------------------|
|                            | 1 <sup>ST</sup>                  | 2 <sup>ND</sup> | 3 <sup>RD</sup> |                        |
| Lot Line Setbacks, Minimum |                                  |                 |                 | 23.304.030– Setbacks   |
| Front                      | Average 2 ft. and 10 ft max. [2] |                 |                 |                        |
| Rear                       | 15 ft.                           | 15 ft.          | 15 ft.          |                        |

|                                                                                                                                                                                                                                                                                  |       |        |        |  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|--------|--------|--|
| Interior                                                                                                                                                                                                                                                                         | 4 ft. | 4 ft.  | 6 ft.  |  |
| Street Side                                                                                                                                                                                                                                                                      | 6 ft. | 8 ft.  | 10 ft. |  |
| Building Separation, Minimum                                                                                                                                                                                                                                                     | 8 ft. | 12 ft. | 16 ft. |  |
| Notes:<br>[1] Development standards included in this table may be modified with a UP(PH). See 23.204.060.D.3<br>[2] Setback area must be used to accommodate landscaping that enhances the streetscape and provides a sense of privacy for residential units on the first floor. |       |        |        |  |

**TABLE 23.204-14: C-U LOT COVERAGE STANDARDS FOR RESIDENTIAL-ONLY USES**

|                                                                                                     | STANDARD BASED ON BUILDING HEIGHT |           |           | SUPPLEMENTAL STANDARDS |
|-----------------------------------------------------------------------------------------------------|-----------------------------------|-----------|-----------|------------------------|
|                                                                                                     | 1 STORY                           | 2 STORIES | 3 STORIES |                        |
| Lot Coverage, Maximum [1]                                                                           |                                   |           |           | 23.304.120             |
| Interior and Through Lots                                                                           | 45%                               | 45%       | 40%       |                        |
| Corner Lots                                                                                         | 50%                               | 50%       | 45%       |                        |
| [1] Development standards included in this table may be modified with a UP(PH). See 23.204.060.D.3. |                                   |           |           |                        |

## 2. Lots Abutting or Fronting a Residential District.

- a. See 23.304.030.C.2– Setbacks (Lots Adjacent to Residential Districts) for additional setback and building feature requirements for lots:
  - i.* With a front lot line on University Avenue; and
  - ii.* That abut or confront a residential district.
- b. If the front lot line is not on University Avenue, 23.304.030.C.2– Setbacks (Lots Adjacent to Residential Districts) does not apply.

## 3. Modification to Standards – Mixed-Use Open Space and Residential-Only Projects.

- a. The ZAB may modify the following standards with a Use Permit:
  - i.* Minimum usable open space for mixed use projects and exclusive residential uses in Table 23.204-11.



|                                                                                                                                                                                                                         |                            |                            |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|----------------------------|
| Minimum floor to ceiling height                                                                                                                                                                                         | 12 ft.                     | 12 ft.                     |
| Minimum floor area [1]                                                                                                                                                                                                  | 15%<br>10% with Use Permit | 30%<br>20% with Use Permit |
| Minimum street frontage [2]                                                                                                                                                                                             | 50%                        | 75%                        |
| Minimum area for retail sales, personal and household services, or food service [3]                                                                                                                                     | No minimum                 | 75%<br>50% with Use Permit |
| Maximum area for office use [3]                                                                                                                                                                                         | No maximum                 | 25%                        |
| Notes:<br>[1] Calculated as percent of project land area.<br>[2] Calculated as percent of project's University Avenue frontage.<br>[3] Calculated as percentage of minimum required ground floor commercial floor area. |                            |                            |

- b. Ground level commercial space shall be designed to allow for the space to be easily divided or assembled.

**7. Ground Floor Commercial Uses – Minimum Floor Area Reductions.**

- a. The ZAB may allow a reduction in the minimum required floor area to no less than indicated in Table 23.204-15 with a Use Permit for projects on lots that are:
- i.* Less than 7,500 square feet; and
  - ii.* Without side street access (internal lots).
- b. To approve the reduction, the ZAB must find that:
- i.* Parking cannot be efficiently provided at grade and project parking conflicts with the requirement for ground floor commercial space;
  - ii.* The reduced commercial area will result in a project with an enhanced commercial configuration; and
  - iii.* The reduced commercial area promotes pedestrian-oriented activity along University Avenue through the mix of commercial uses, and/or the commercial uses will remain open beyond standard business hours, such as into the evening and on weekends, and the uses will be visible from University Avenue frontage.

- 8. Ground Floor Commercial Uses – Minimum Frontage Reduction.** The ZAB may allow a reduction in the minimum required frontage requirement along

University Avenue as shown in Table 23.204-15 with a Use Permit upon finding that the minimum frontage requirement conflicts with:

- a. Minimum project site egress requirements;
- b. Minimum required driveway access to parking areas; or
- c. Project utility needs.

9. **Parking Areas for Residential-Only Projects.** All residential-only projects shall limit ground level parking uses directly fronting on University Avenue to no more than 25 percent of the project's University Avenue frontage. All parking garage walls adjacent to University Avenue or side streets shall be articulated through design elements or material detailing to avoid blank walls extending more than 12 feet along the University Avenue or side street frontage.

10. **Open Space.** Projects shall provide open space features as shown in Table 23.204-16: C-U Open Space Features to enhance project entries and the University Avenue frontage.

**TABLE 23.204-16: C-U OPEN SPACE FEATURES**

| OPEN SPACE FEATURE                                                                                                                                                                                                                                       | MINIMUM REQUIREMENT |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| <b>Mixed Use and Residential-Only Projects</b>                                                                                                                                                                                                           |                     |
| Minimum open space that is either:<br><ol style="list-style-type: none"> <li>a. at street level; or</li> <li>b. on a parking podium directly connected to the project entries at the street level [1]</li> </ol>                                         | 10%                 |
| Minimum open space open to sky [1]                                                                                                                                                                                                                       | 75%                 |
| <b>Projects with 100 feet or more of University Avenue Frontage</b>                                                                                                                                                                                      |                     |
| Minimum area of pedestrian-oriented open spaces and improvements open to the sidewalk [2]                                                                                                                                                                | 1%                  |
| Minimum width and length of street level plaza or entry courtyard                                                                                                                                                                                        | 6 ft.               |
| <p>Notes:</p> <p>[1] Calculated as percentage of minimum resident-serving open spaced required by Section 23.304.090– Usable Open Space. Open space must be accessible to building occupants.</p> <p>[2] Calculated percentage of project land area.</p> |                     |



11. **Sidewalk/Curb and Gutter.** Projects shall provide sidewalk, curb and gutter, and street corner bulb-out improvements as necessary to comply with the current City standards.
  12. **Sidewalk Amenities.** Projects shall provide sidewalk amenities as necessary to comply with the current City standards. Required improvement may include:
    - a. Pedestrian-scaled lighting to illuminate the sidewalk areas;
    - b. New street trees and grates; and
    - c. Benches and bicycle racks.
- E. **Permit Findings.** To approve an AUP or Use Permit for a project in the C-U district, the review authority must make the findings in Section 23.406.040 (Use Permits) and find that the proposed use or structure:
1. Is compatible with the purpose of the district;
  2. Is compatible with the surrounding uses and buildings;
  3. Does not interfere with the continuity of retail and service facilities at the ground level; and
  4. Does not exceed the amount and intensity of use that can be served by the available traffic capacity and potential parking supply.

### **23.204.070 – C-N Neighborhood Commercial District**

- A. **District Purpose.** The purpose of the Neighborhood Corridor (C-N) district is to:
  1. Implement the General Plan's designations for Neighborhood Commercial areas;
  2. Provide locations for uses supplying convenience goods and services for residents of the immediate area;
  3. Provide locations for other activities compatible with allowed commercial uses;
  4. Minimize traffic and parking problems for the adjacent residential areas; and
  5. Promote compatibility between commercial areas and nearby residential areas.
- B. **Allowed Land Uses.** See Table 23.204-1: Allowed Uses in the Commercial Districts.
- C. **Additional Permit Requirements.** See Section 23.204.030 (Additional Permit Requirements).
- D. **Development Standards.**
  1. **Basic Standards.** See Table 23.204-17: C-N Development Standards. For

residential-only projects, see also Table 23.204-18: C-N Setback and Building Separation Standards for Residential-Only Uses and

2. Table 23.204-19: C-N Lot Coverage Standards for Residential-Only Uses.

**TABLE 23.204-17: C-N DEVELOPMENT STANDARDS**

|                                                 | Project Land Use     |                          |                      | Supplemental Standards        |
|-------------------------------------------------|----------------------|--------------------------|----------------------|-------------------------------|
|                                                 | Non-Residential      | Mixed Use                | Residential Only     |                               |
| Lot Area, Minimum                               |                      |                          |                      | 23.304.020– Lot Requirements  |
| New Lots                                        | No minimum           |                          | 5,000 sq. ft.        |                               |
| Per Group Living Accommodation Resident         | 350 sq. ft. [1]      |                          |                      |                               |
| Usable Open Space, Minimum                      |                      |                          |                      | 23.304.090– Usable Open Space |
| Per Dwelling Unit                               | 200 sq. ft.          | 200 sq. ft.[2]           | 200 sq. ft.          |                               |
| Per Group Living Accommodation Resident         | 90 sq. ft.           | 90 sq. ft. [2]           | 90 sq. ft.           |                               |
| Floor Area Ratio, Maximum                       | 3.0                  |                          | No maximum           |                               |
| Main Building Height, Maximum                   | 35 ft. and 2 stories | 35 ft. and 3 stories [3] | 35 ft. and 3 stories | 23.304.050– Building Height   |
| Lot Line Setbacks, Minimum                      |                      |                          |                      |                               |
| Abutting/Confronting a Non-residential District | No minimum           |                          | See Table 23.204-18  |                               |
| Abutting/Confronting a Residential District     | See 23.304.030.C.2   |                          |                      |                               |
| Building Separation, Minimum                    | No minimum           |                          |                      |                               |
| Lot Coverage, Maximum                           | 100%                 |                          | See Table 23.204-19  |                               |

|                                                                                                  | Project Land Use |           |                  | Supplemental Standards |
|--------------------------------------------------------------------------------------------------|------------------|-----------|------------------|------------------------|
|                                                                                                  | Non-Residential  | Mixed Use | Residential Only |                        |
| Notes:                                                                                           |                  |           |                  |                        |
| [1] One additional resident is allowed for remaining lot area between 200 and 350 square feet.   |                  |           |                  |                        |
| [2] Minimum open space for mixed use projects can be modified with a UP(PH). See 23.204.070.D.3. |                  |           |                  |                        |
| [3] In mixed use buildings, the third and higher stories must be used for residential purposes.  |                  |           |                  |                        |

**TABLE 23.204-18: C-N SETBACK AND BUILDING SEPARATION STANDARDS FOR RESIDENTIAL-ONLY USES**

|                                                                                                     | STANDARDS BY BUILDING STORY |                 |                 | SUPPLEMENTAL STANDARDS                                   |
|-----------------------------------------------------------------------------------------------------|-----------------------------|-----------------|-----------------|----------------------------------------------------------|
|                                                                                                     | 1 <sup>ST</sup>             | 2 <sup>ND</sup> | 3 <sup>RD</sup> |                                                          |
| Lot Line Setbacks, Minimum [1]                                                                      |                             |                 |                 | 23.304.030– Setbacks                                     |
| Front                                                                                               | 15 ft.                      | 15 ft.          | 15 ft.          |                                                          |
| Rear                                                                                                | 15 ft.                      | 15 ft.          | 15 ft.          |                                                          |
| Interior                                                                                            | 4 ft.                       | 4 ft.           | 6 ft.           |                                                          |
| Street Side                                                                                         | 6 ft.                       | 8 ft.           | 10 ft.          |                                                          |
| Building Separation, Minimum [1]                                                                    | 8 ft.                       | 12 ft.          | 16 ft.          | 23.304.040– Building Separation in Residential Districts |
| [1] Development standards included in this table can be modified with a UP(PH). See 23.204.070.D.3. |                             |                 |                 |                                                          |

**TABLE 23.204-19: C-N LOT COVERAGE STANDARDS FOR RESIDENTIAL-ONLY USES**

|                           | STANDARD BASED ON BUILDING HEIGHT |           |           | SUPPLEMENTAL STANDARDS   |
|---------------------------|-----------------------------------|-----------|-----------|--------------------------|
|                           | 1 STORY                           | 2 STORIES | 3 STORIES |                          |
| Lot Coverage, Maximum [1] |                                   |           |           | 23.304.120– Lot Coverage |
| Interior and Through Lots | 45%                               | 45%       | 40%       |                          |

|                                                                                                     |     |     |     |  |
|-----------------------------------------------------------------------------------------------------|-----|-----|-----|--|
| Corner Lots                                                                                         | 50% | 50% | 45% |  |
| [1] Development standards included in this table can be modified with a UP(PH). See 23.204.070.D.3. |     |     |     |  |

3. **Lots Abutting or Confronting a Residential District.** See Section 23.304.130– Non-Residential Districts Abutting a Residential District for additional building feature requirements for lots that abut or confront a Residential District.
4. **Modification to Standards – Mixed-Use Open Space and Residential-Only Projects.**
  - a. The ZAB may modify the following standards with a Use Permit:
    - i.* Minimum usable open space for mixed use projects shown in Table 23.204-17: C-N Development Standards.
    - ii.* Any standard for residential-only projects in Table 23.204-18: C-N Setback and Building Separation Standards for Residential-Only Uses and
    - iii.* Table 23.204-19: C-N Lot Coverage Standards for Residential-Only Uses.
  - b. To approve the modification, the ZAB must find that the modification achieves one or more of the following:
    - i.* Encourages use of the ground floor for commercial purposes where appropriate.
    - ii.* Encourages utilization of public transit and existing off-street parking facilities in the area of the proposed building.
    - iii.* Facilitates the construction of residential or tourist hotel uses where appropriate.
    - iv.* Permits consistency with the building setbacks existing in the immediate area where a residential building setback would not serve a useful purpose.
- E. **Permit Findings.** To approve any AUP or Use Permit for a project in the C-N district, the review authority must make the findings in Section 23.406.040– Use Permits and find that the proposed use or structure:
  1. Is compatible with the purpose of the district;
  2. Is compatible with the surrounding uses and buildings;
  3. Does not interfere with the continuity of retail and service facilities at the ground level; and

4. Does not exceed the amount and intensity of use that can be served by the available traffic capacity and potential parking supply.

**23.204.080 – C-E Elmwood Commercial District**

A. **District Purpose.** The purpose of the Elmwood Commercial (C-E) district is to:

1. Implement the General Plan’s designation for a community commercial district in this area;
2. Maintain a scale and balance of retail goods and services in the district to compatibly serve the everyday needs of surrounding neighborhoods by:
  - a. Providing locations for retail goods and service establishments to serve surrounding neighborhoods;
  - b. Preventing development which exceeds the amount and intensity of use that is compatible with adjacent residential neighborhoods;
  - c. Limiting the space occupied by businesses that generate high traffic and/or parking demands;
  - d. Controlling the proliferation of establishments which, if not limited, might expand to displace establishments needed to serve surrounding neighborhoods; and
  - e. Permitting other uses which serve this objective; and
3. Ensure that new buildings, alterations, and additions to existing buildings harmonize with their surroundings.

B. **Land Use Regulations.**

1. **Allowed Land Uses.** See Table 23.204-1: Allowed Uses in the Commercial Districts.
2. **Numerical and Size Limitations.**
  - a. Table 23.204-20 shows land uses subject to numerical and size limitations in the C-E district.

**TABLE 23.204-20: C-E LAND USE NUMBER AND SIZE LIMITATIONS**

| USE                                                      | NUMBER LIMIT | MAXIMUM SIZE  | PERMIT REQUIRED |
|----------------------------------------------------------|--------------|---------------|-----------------|
| Art/Craft Shops, Gift/Novelty Shops, Jewelry/Watch Shops | No limit     | 1,500 sq. ft. | ZC              |
| Bookstores, Periodical Stands                            | No limit     | 2,000 sq. ft. | ZC              |

|                                                                                                                                                                                                                                                                                   |          |               |                    |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|---------------|--------------------|
| Food Service Establishments [1]                                                                                                                                                                                                                                                   | 25 total | No max.       | No permit required |
| Photocopy Stores, Printing, Fax, Magnetic Disk Reproduction Services                                                                                                                                                                                                              | No limit | 1,000 sq. ft. | ZC                 |
| <p>Notes:</p> <p>[1] Excludes food service uses accessory to a food product store. Secondary food service uses associated with all other principal uses are subject to limitations in Table 23.204-20.</p> <p>[2] Change of use of over 3,000 square feet requires Use Permit</p> |          |               |                    |

- b. The ZAB may allow a use to exceed the limitations in Table 23.204-20 with a Use Permit upon finding that:
  - i. The use will result in the positive enhancement of the purposes of the district; and
  - ii. The use is likely to experience substantial patronage by surrounding residents as indicated by neighborhood resident support, merchant support, marketing surveys, or other information.

3. **Incidental Wholesale Activities.** In the C-E district, wholesale activities incidental to a primary use require permits as follows:

- a. Six or fewer employees: Zoning Certificate.
- b. Seven or more employees: AUP.
- c. New construction: Use Permit.

C. **Additional Permit Requirements.** See Section 23.204.030 (Additional Permit Requirements).

D. **Development Standards.**

- 1. **Basic Standards.** See Table 23.204-21: C-E Development Standards. For residential-only projects, also see Table 23.204-22: C-E Setback and Building Separation Standards for Residential-Only Uses and Table 23.204-23: C-E Lot Coverage Standards for Residential-Only Uses.

**TABLE 23.204-21: C-E DEVELOPMENT STANDARDS**

|                   | Project Land Use              |                  | Supplemental Standards |
|-------------------|-------------------------------|------------------|------------------------|
|                   | Non-Residential and Mixed Use | Residential Only |                        |
| Lot Area, Minimum | No minimum                    | 5,000 sq. ft.    | 23.304.020–            |

|                                                                                                   |                          |                      |                              |
|---------------------------------------------------------------------------------------------------|--------------------------|----------------------|------------------------------|
| New Lots                                                                                          | No minimum               | 5,000 sq. ft.        | Lot Requirements             |
| Per Group Living Accommodation Resident                                                           | 350 sq. ft. [1]          |                      |                              |
| Usable Open Space                                                                                 |                          |                      | 23.304.090–Usable Open Space |
| Per Dwelling Unit                                                                                 | 200 sq. ft. [2]          |                      |                              |
| Per Group Living Accommodation Resident                                                           | 90 sq. ft.[ 2]           |                      |                              |
| Floor Area Ratio, Maximum                                                                         |                          |                      |                              |
| Corner Lot                                                                                        | 1.0                      | No maximum           |                              |
| All Other Lot                                                                                     | 0.8                      |                      |                              |
| Main Building Height, Minimum                                                                     | No minimum               | No minimum           |                              |
| Main Building Height, Maximum                                                                     | 28 ft. and 2 stories [3] | 35 ft. and 3 stories |                              |
| Lot Line Setbacks, Minimum                                                                        |                          |                      | 23.304.030–Setbacks          |
| Abutting/Confronting a Non-residential District                                                   | No minimum               | See Table 23.204-22  |                              |
| Abutting/Confronting a Residential District                                                       | See Table 23.304-3       |                      |                              |
| Building Separation, Minimum                                                                      | No minimum               | See Table 23.204-22  |                              |
| Lot Coverage, Maximum                                                                             | 100%                     | See Table 23.204-23  | 23.304.120–Lot Coverage      |
| Notes:                                                                                            |                          |                      |                              |
| [1] One additional resident is allowed for remaining lot area between 200 and 350 square feet.    |                          |                      |                              |
| [2] Open space requirements for mixed use projects may be modified by the ZAB. See 23.204.060.D.3 |                          |                      |                              |
| [3] A basement level devoted exclusively to parking is not counted as a story.                    |                          |                      |                              |

**TABLE 23.204-22: C-E SETBACK AND BUILDING SEPARATION STANDARDS FOR RESIDENTIAL-ONLY USES**

|  | STANDARDS BY BUILDING STORY | SUPPLEMENTAL STANDARDS |
|--|-----------------------------|------------------------|
|--|-----------------------------|------------------------|

|                              | 1 <sup>ST</sup> | 2 <sup>ND</sup> | 3 <sup>RD</sup> |                                                                   |
|------------------------------|-----------------|-----------------|-----------------|-------------------------------------------------------------------|
| Lot Line Setbacks, Minimum   |                 |                 |                 | 23.304.030–<br>Setbacks                                           |
| Front                        | 15 ft.          | 15 ft.          | 15 ft.          |                                                                   |
| Rear                         | 15 ft.          | 15 ft.          | 15 ft.          |                                                                   |
| Interior                     | 4 ft.           | 4 ft.           | 6 ft.           |                                                                   |
| Street Side                  | 6 ft.           | 8 ft.           | 10 ft.          |                                                                   |
| Building Separation, Minimum | 8 ft.           | 12 ft.          | 16 ft.          | 23.304.040–<br>Building Separation<br>in Residential<br>Districts |

**TABLE 23.204-23: C-E LOT COVERAGE STANDARDS FOR RESIDENTIAL-ONLY USES**

|                           | STANDARD BASED ON BUILDING HEIGHT |           |           | SUPPLEMENTAL STANDARDS      |
|---------------------------|-----------------------------------|-----------|-----------|-----------------------------|
|                           | 1 STORY                           | 2 STORIES | 3 STORIES |                             |
| Lot Coverage, Maximum     |                                   |           |           | 23.304.120– Lot<br>Coverage |
| Interior and Through Lots | 45%                               | 45%       | 40%       |                             |
| Corner Lots               | 50%                               | 50%       | 45%       |                             |

2. **Lots Abutting or Confronting a Residential District.** See 23.304.130 (Non-residential Districts Abutting a Residential District) for additional building feature requirements for lots that abut or confront a Residential District.
3. **Modifications to Standards – Mixed Use Open Space.** The ZAB may modify the usable open space requirement shown in Table 23.204-21 for mixed-use projects by finding that the modification achieves one or more of the following:
  - a. The modification encourages and maintains the present street frontage and pedestrian orientation of the district.
  - b. The modification is compatible in design and character with the commercial district and the adjacent residential neighborhoods.
  - c. The modification is compatible with the purposes set forth in Section 23.204.080.A (District Purpose) and the existing character of the district.
4. **Ground Floor Residential Uses.** A ground floor residential use must be setback at least 20 feet from a property line along College or Ashby Avenue.



## 5. Projections into Right-of-Way.

- a. Bay windows and balconies 11 feet or more above the sidewalk grade may project 3 feet into a street right-of-way.
- b. A maximum 60 percent of the length of a building frontage may project beyond the property line.
- c. All projections require a revocable encroachment permit from the City Council.

E. **Permit Findings.** To approve an AUP or Use Permit for a project in the C-E district, the review authority must make the findings in Section 23.406.040 (Use Permits) and find the following:

1. The proposed use or structure will:
  - a. Encourage and maintain the present street frontage and pedestrian orientation of the district;
  - b. Be compatible in design and character with the commercial district and the adjacent residential neighborhoods; and
  - c. Be compatible with the purposes set forth in Section 23.204.080.A (District Purpose) and the existing character of the district.
2. The proposed use or structure will not:
  - a. Interfere with the continuity of retail or compatible service facilities at the ground level;
  - b. Interrupt a continuous wall of building facades;
  - c. Generate traffic and parking demand beyond the capacity of the commercial district or significantly increase impacts on adjacent residential neighborhoods;
  - d. Result in domination of this district by one type of use; and
  - e. Generate objectionable odors nor excessive levels of noise.

### 23.204.090 – C-NS North Shattuck Commercial District

A. **District Purpose.** The purpose of the North Shattuck Commercial (C-NS) district is to:

1. Implement the General Plan's designations for Community Commercial and Commercial/Residential in this area;

2. Encourage the maintenance and establishment of retail and service activities that provide goods and services to serve the residents of the adjacent and outlying neighborhoods; but do not generate high traffic volume;
3. Provide locations for other activities compatible with these commercial activities;
4. Promote compatibility between such commercial areas and adjacent residential neighborhoods;
5. Limit the space occupied by businesses that generate high traffic volumes;
6. Support the retention of types of businesses serving adjacent neighborhoods;
7. Limit space occupied by commercial uses, especially offices, that are more appropriately located in the downtown business district;
8. Prevent development of commercial spaces exceeding the amount and intensity of use that can be served by available traffic capacity and potential parking supply;
9. Encourage an adequate commercial and residential mix along Shattuck Avenue; and
10. Ensure that new buildings and additions to existing buildings harmonize with their surroundings.

**B. Allowed Land Uses.** See Table 23.204-1: Allowed Uses in the Commercial Districts.

**C. Additional Permit Requirements.** See Section 23.204.030 (Additional Permit Requirements).

**D. Development Standards.**

1. **Basic Standards.** See Table 23.204-24: C-NS Development Standards. See also Table 23.204-25: C-NS Setback Standards for Residential-Only Uses and Building Separation Standards for Mixed Use and Residential-Only Uses and Table 23.204-26: C-NS Lot Coverage Standards for Residential-Only Uses.

**TABLE 23.204-24: C-NS DEVELOPMENT STANDARDS**

|                                         | Project Land Use              |                  | Supplemental Standards |
|-----------------------------------------|-------------------------------|------------------|------------------------|
|                                         | Non-Residential and Mixed Use | Residential Only |                        |
| Lot Area, Minimum                       |                               |                  | 23.304.020             |
| New Lots                                | 4,000 sq. ft.                 | 5,000 sq. ft.    |                        |
| Per Group Living Accommodation Resident | 350 sq. ft. [1]               |                  |                        |

|                                                                                                                                 | Project Land Use              |                      | Supplemental Standards              |
|---------------------------------------------------------------------------------------------------------------------------------|-------------------------------|----------------------|-------------------------------------|
|                                                                                                                                 | Non-Residential and Mixed Use | Residential Only     |                                     |
| Usable Open Space, Minimum                                                                                                      |                               |                      | 23.304.090–<br>Usable<br>Open Space |
| Per Dwelling Unit                                                                                                               | 200 sq. ft.                   | 200 sq. ft.          |                                     |
| Per Group Living Accommodation Resident                                                                                         | No minimum                    | 90 sq. ft.           |                                     |
| Floor Area Ratio, Maximum                                                                                                       | 1.0                           | No maximum           |                                     |
| Main Building Height [2]                                                                                                        |                               |                      |                                     |
| Minimum                                                                                                                         | 2 stories                     | No minimum           |                                     |
| Maximum                                                                                                                         | 35 ft. and 3 stories          | 28 ft. and 2 stories |                                     |
| Lot Line Setbacks, Minimum                                                                                                      |                               |                      | 23.304.030                          |
| Abutting/Confronting a Non-residential District                                                                                 | No minimum                    | See Table 23.204-25  |                                     |
| Abutting/Confronting a Residential District                                                                                     | See 23.304.030.C.2            |                      |                                     |
| Building Separation, Minimum                                                                                                    | No minimum [4]                | See Table 23.204-25  | 23.304.040                          |
| Lot Coverage, Maximum                                                                                                           | 100%                          | See Table 23.204-26  | 23.304.120                          |
| Notes:                                                                                                                          |                               |                      |                                     |
| [1] One additional resident is allowed for remaining lot area between 200 and 350 square feet.                                  |                               |                      |                                     |
| [2] Basement levels devoted exclusively to parking are not counted as a story.                                                  |                               |                      |                                     |
| [3] For mixed-use projects, minimum building separation shall be as required for residential-only projects. See Table 23.204-25 |                               |                      |                                     |
| [4] No dimension may be less than 6 feet.                                                                                       |                               |                      |                                     |

**TABLE 23.204-25: C-NS SETBACK STANDARDS FOR RESIDENTIAL-ONLY USES AND BUILDING SEPARATION STANDARDS FOR MIXED USE AND RESIDENTIAL-ONLY USES**

|                            | STANDARDS BY BUILDING STORY |                 |                 | SUPPLEMENTAL STANDARDS |
|----------------------------|-----------------------------|-----------------|-----------------|------------------------|
|                            | 1 <sup>ST</sup>             | 2 <sup>ND</sup> | 3 <sup>RD</sup> |                        |
| Lot Line Setbacks, Minimum |                             |                 |                 | 23.304.030–            |

|                              |        |        |        |                                                          |
|------------------------------|--------|--------|--------|----------------------------------------------------------|
| Front                        | 15 ft. | 15 ft. | 15 ft. | Setbacks                                                 |
| Rear                         | 15 ft. | 15 ft. | 15 ft. |                                                          |
| Interior                     | 4 ft.  | 4 ft.  | 6 ft.  |                                                          |
| Street Side                  | 6 ft.  | 8 ft.  | 10 ft. |                                                          |
| Building Separation, Minimum | 8 ft.  | 12 ft. | 16 ft. | 23.304.040– Building Separation in Residential Districts |

**TABLE 23.204-26: C-NS LOT COVERAGE STANDARDS FOR RESIDENTIAL-ONLY USES**

|                          | STANDARD BASED ON BUILDING HEIGHT |           |           | SUPPLEMENTAL STANDARDS   |
|--------------------------|-----------------------------------|-----------|-----------|--------------------------|
|                          | 1 STORY                           | 2 STORIES | 3 STORIES |                          |
| Lot Coverage, Maximum    |                                   |           |           | 23.304.120– Lot Coverage |
| Interior and Through Lot | 45%                               | 45%       | 40%       |                          |
| Corner Lot               | 50%                               | 50%       | 45%       |                          |

1. **Lots Abutting or Confronting a Residential District.** See Section 23.304.130– Non-Residential Districts Abutting a Residential District for additional building feature requirements for lots that abut or confront a Residential District.
  2. **Ground Floor Dwelling Units in Mixed-Use Buildings.** Ground floor dwelling units in a mixed-use building shall be located at least 20 feet from a property line next to a public right-of-way.
  3. **Residential Window Setback.** Mixed-use buildings shall be setback at least ten feet from an interior property line opposite a required window in any habitable room of a residential use.
- E. **Permit Findings.** To approve an AUP or Use Permit for a project in the C-NS district, the review authority must make the findings in Section 23.406.040– Use Permits and find that the proposed use or structure:
1. Is compatible in design and character with the commercial district and the adjacent residential neighborhoods;
  2. Is compatible with the purposes and the existing character of the district.
  3. Does not interfere with the continuity of retail or compatible service facilities at the ground level;

4. Does not exceed the amount and intensity of use that can be served by available traffic capacity and potential parking supply.

### **23.204.100 – C-SA South Area Commercial District**

A. **District Purpose.** The purpose of the South Area Commercial (C-SA) district is to:

1. Implement the General Plan's designations for Community Commercial, and the Commercial/Residential areas, as well as the policies of the South Berkeley Area Plan;
2. Provide locations for both community-serving and regional-serving businesses, particularly those which reflect the culture of the surrounding area;
3. Provide an area of neighborhood and lower intensity community commercial uses, serving as a transition between the Downtown area and the neighborhood-serving area south of Ashby Avenue;
4. Encourage the location of a wide variety of community-oriented retail goods and services in South Berkeley;
5. Encourage residential development for persons who desire both the convenience of location and more open space than is available in the Downtown;
6. Provide limited locations for other activities such as offices which may be compatible with both retail and residential uses;
7. Encourage development and amenities that support pedestrian-oriented uses;
8. Encourage appropriate mixed-use development (retail/office/residential) on appropriate sites in the district; and
9. Increase the opportunities for the establishment of businesses which are owned and operated by local residents.

B. **Allowed Land Uses.**

1. **General.** See Table 23.204-1: Allowed Uses in the Commercial Districts
2. **Alcoholic Beverage Retail Sales.** The sale and service of distilled alcoholic beverages (hard liquor) is not permitted along Adeline Street, south of Ashby Avenue, except that such service is allowed when incidental to meals at full-service restaurants in accordance with Section 23.310—Alcoholic Beverage Sales and Service.
3. **Bar/Cocktail Lounge/Tavern.** Service of distilled alcoholic beverages is allowed along Adeline Street south of Ashby Avenue only when incidental to seated food service.
4. **Mixed-Use Permits Required.**

- a. **Zoning Certificate.** A mixed-use project is allowed with a Zoning Certificate if the project:
  - i.* Complies with all applicable standards in Table 23.204-27, Table 23.204-28, and Table 23.204-29;
  - ii.* Includes only residential uses above the ground floor; and
  - iii.* Is less than 5,000 square feet in gross floor area, including any existing floor area incorporated into the project.
- b. **Use Permit.** If a mixed-use project does not meet the criteria for approval with a Zoning Certificate as provided above, the project requires a Use Permit and is subject to the findings in Section 23.204.100.E– C-SA South Area Commercial District (Permit Findings).

## 5. **Automobile/Motorcycle 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 sales in the C-SA district shall comply with the requirements of this subsection.
  - iii.* Expansions or modifications of existing automobile or motorcycle 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.** New or relocated automobile or motorcycle 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.

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

C. **Additional Permit Requirements.** See Section 23.204.030– Additional Permit Requirements.



**D. Development Standards.**

1. **Basic Standards.** See Table 23.204-27: C-SA Development Standards and Table 23.204-28: C-SA Maximum Building Height. For residential-only projects, see also Table 23.204-29: C-SA Setback and Building Separation Standards for Mixed Use and Residential-Only Uses and Table 23.204-30: C-SA Lot Coverage Standards for Mixed Use and Residential-Only Uses.

**TABLE 23.204-27: C-SA DEVELOPMENT STANDARDS**

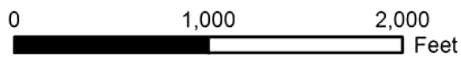
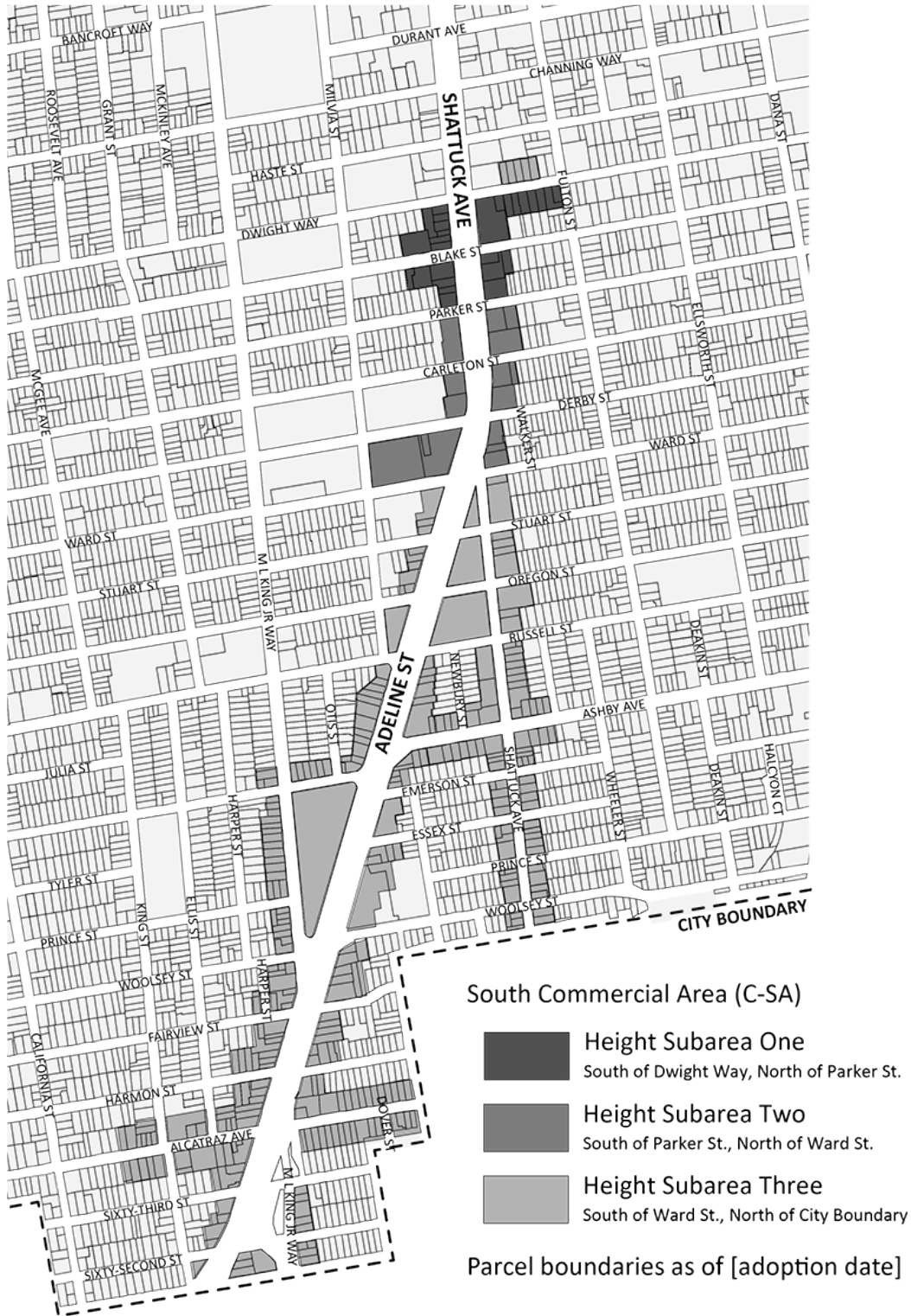
|                                                 | Project Land Use    |                     |                  | Supplemental Standards        |
|-------------------------------------------------|---------------------|---------------------|------------------|-------------------------------|
|                                                 | Non-Residential     | Mixed Use           | Residential Only |                               |
| Lot Area, Minimum                               |                     |                     |                  | 23.304.020                    |
| New Lots                                        | No minimum          | No minimum          | 5,000 sq. ft.    |                               |
| Per Group Living Accommodation Resident         | No minimum          | 350 sq. ft. [1]     |                  |                               |
| Usable Open Space, Minimum                      |                     |                     |                  | 23.304.090– Usable Open Space |
| Per Dwelling Unit                               | N/A                 | 40 sq. ft. [3]      | 200 sq. ft.      |                               |
| Per Group Living Accommodation Resident         | N/A                 | No minimum          | 90 sq. ft.       |                               |
| Floor Area Ratio, Maximum                       | 4.0                 | 4.0                 | No maximum       |                               |
| Main Building Height, Minimum                   | No minimum          |                     |                  |                               |
| Main Building Height, Maximum                   | See Table 23.204-28 |                     |                  |                               |
| Lot Line Setbacks, Minimum                      |                     |                     |                  | 23.304.030– Setbacks          |
| Abutting/Confronting a Non-residential District | No minimum          | See Table 23.204-29 |                  |                               |
| Abutting/Confronting a Residential District     | See 23.304.030. C.2 |                     |                  |                               |

|                                                                                                            | Project Land Use |                     |                  | Supplemental Standards                                      |
|------------------------------------------------------------------------------------------------------------|------------------|---------------------|------------------|-------------------------------------------------------------|
|                                                                                                            | Non-Residential  | Mixed Use           | Residential Only |                                                             |
| Building Separation, Minimum                                                                               | No minimum       | See Table 23.204-29 |                  | 23.304.040–<br>Building Separation in Residential Districts |
| Lot Coverage, Maximum                                                                                      | 100%             | See Table 23.204-30 |                  | 23.304.120–<br>Lot Coverage                                 |
| Notes:                                                                                                     |                  |                     |                  |                                                             |
| [1] One additional resident is allowed for remaining lot area between 200 and 350 square feet.             |                  |                     |                  |                                                             |
| [2] For mixed-use projects, minimum building separation shall be as required for residential-only projects |                  |                     |                  |                                                             |
| [3] No dimension may be less than 6 feet.                                                                  |                  |                     |                  |                                                             |

**TABLE 23.204-28: C-SA MAXIMUM BUILDING HEIGHT**

| BUILDING LAND USE                                                                                     | MAXIMUM HEIGHT       |                      |                      |
|-------------------------------------------------------------------------------------------------------|----------------------|----------------------|----------------------|
|                                                                                                       | SUBAREA 1            | SUBAREA 2            | SUBAREA 3            |
| Non-Residential Uses                                                                                  | 36 and 3 stories     | 24 and 2 stories     | 24 and 2 stories     |
| Mixed Use and Residential Only                                                                        | 60 and 5 stories [1] | 50 and 4 stories [1] | 36 and 3 stories [1] |
| Notes:                                                                                                |                      |                      |                      |
| [1] In mixed-use buildings, the third story and above must be used for residential purposes entirely. |                      |                      |                      |

FIGURE 23.204-3: C-SA BUILDING HEIGHT SUB-AREAS



**TABLE 23.204-29: C-SA SETBACK AND BUILDING SEPARATION STANDARDS FOR MIXED USE AND RESIDENTIAL-ONLY USES**

|                              | STANDARDS BY BUILDING STORY |                 |                 |                 |                 |                 | Supplemental Standards                                      |
|------------------------------|-----------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-------------------------------------------------------------|
|                              | 1 <sup>st</sup>             | 2 <sup>nd</sup> | 3 <sup>rd</sup> | 4 <sup>th</sup> | 5 <sup>th</sup> | 6 <sup>th</sup> |                                                             |
| Lot Line Setbacks, Minimum   |                             |                 |                 |                 |                 |                 | 23.304.030–<br>Setbacks                                     |
| Front                        | 15 ft.                      | 15 ft.          | 15 ft.          | 15 ft.          | 15 ft.          | 15 ft.          |                                                             |
| Rear                         | 15 ft.                      | 15 ft.          | 15 ft.          | 15 ft.          | 15 ft.          | 15 ft.          |                                                             |
| Interior                     | 4 ft.                       | 4 ft.           | 6 ft.           | 8 ft.           | 10 ft.          | 12 ft.          |                                                             |
| Street Side                  | 6 ft.                       | 8 ft.           | 10 ft.          | 12 ft.          | 14 ft.          | 15 ft.          |                                                             |
| Building Separation, Minimum | 8 ft.                       | 12 ft.          | 16 ft.          | 20 ft.          | 24 ft.          | 28 ft.          | 23.304.040–<br>Building Separation in Residential Districts |

**TABLE 23.204-30: C-SA LOT COVERAGE STANDARDS FOR MIXED USE AND RESIDENTIAL-ONLY USES**

|                           | STANDARD BASED ON BUILDING HEIGHT |           |           |           |           |           | SUPPLEMENTAL STANDARDS      |
|---------------------------|-----------------------------------|-----------|-----------|-----------|-----------|-----------|-----------------------------|
|                           | 1 STORY                           | 2 STORIES | 3 STORIES | 4 STORIES | 5 STORIES | 6 STORIES |                             |
| Lot Coverage, Maximum     |                                   |           |           |           |           |           | 23.304.120–<br>Lot Coverage |
| Interior and Through Lots | 45%                               | 45%       | 35%       | 35%       | 35%       | 35%       |                             |
| Corner Lots               | 50%                               | 50%       | 45%       | 40%       | 40%       | 40%       |                             |

2. **Modification for Mixed Use and Residential Projects.** The ZAB may modify development standards in Table 23.204-27, Table 23.204-28, and Table 23.204-29, and Table 23.204-30 for a mixed-use or residential-only project with a Use Permit upon making one of the following findings:
- The project encourages utilization of public transit and existing off-street parking facilities in the area of the proposed building;
  - The modification allows consistency with the building setbacks existing in the immediate area where a residential building setback would not serve a useful purpose;

- c. The modification facilitates the construction of affordable housing as defined by the U.S. Department of Housing and Urban Development (HUD) Guidelines; or
  - d. The modification provides consistency with the purposes of the district as listed in Section 23.204.100.A (District Purpose).
- E. **Findings.** To approve an AUP or Use Permit for a project in the C-SA district, the review authority must make the findings in Section 23.406.040 (Use Permits) and find that the proposed use or structure:
- 1. Is compatible with the purposes of the district;
  - 2. Is compatible in design and character with the district and the adjacent residential neighborhoods; and
  - 3. Will not result in the domination of one type of commercial/retail use in any one area of the district.

### **23.204.110 – C-T Telegraph Avenue Commercial District**

- A. **District Purpose.** The purpose of the Telegraph Avenue Commercial (C-T) district is to:
- 1. Implement the General Plan's designation of Avenue Commercial for this area;
  - 2. Implement the Southside Plan's designation for the Telegraph Avenue Commercial Subarea;
  - 3. Regulate development in the Telegraph Avenue area to satisfy the needs of the population groups using the district, especially the University population and the surrounding resident population;
  - 4. Encourage the availability of a variety of goods and services which serve residents in the district and the University population but do not generate a high volume of vehicular traffic;
  - 5. Allow for uses which maintain the cultural quality of the district giving it its regional appeal without generating substantial vehicular traffic;
  - 6. Discourage uses which, because of size, the type of the products sold, vehicular traffic generated or other considerations, are more appropriately located elsewhere in the city;
  - 7. Encourage a mix of goods and services which will prevent the dominance of any one type of use and which will produce variations within the same category of uses;

8. Encourage the establishment and maintenance of uses which will satisfy the needs of all age groups and attract a range of users and interests;
9. Encourage the creation of additional housing in the district which is affordable, including housing for those who work or study nearby;
10. Encourage those uses and structural architecture that reinforce, and discourage those uses and architecture that interrupt, the pedestrian orientation of the district;
11. Encourage mixed commercial and residential uses;
12. Encourage the construction of new housing in mixed use development on vacant properties and surface parking lots;
13. Encourage the redevelopment of single-story structures that are not historically significant resources with housing and mixed use development;
14. Protect and enhance historically and architecturally significant buildings by ensuring that new development and alterations complement their existing architectural character;
15. Encourage the establishment and survival of small, locally-owned businesses, thereby contributing to the vitality and diversity of the district;
16. Discourage the type of commercial use whose establishment will contribute to the displacement of businesses that supply neighboring residents with essential goods and services;
17. Ensure that new buildings, additions and renovations harmonize with and enhance the unique character of the district;
18. Provide environmental protection for the residents of mixed residential commercial structures and surrounding residents from such detriments as noise, fumes and litter;
19. Preserve the ethnic diversity of the resident population and users of the district and of the types of businesses providing ethnically diverse goods and services in the district;
20. Protect and encourage the development of properties accessible to the disabled for both residential and commercial use;
21. Discourage uses which are widely available in other shopping districts throughout the Bay Area and detract from the unique type and mix of goods and services available in the district.

## **B. Allowed Land Uses.**

1. **General.** See Table 23.204-1: Allowed Uses in the Commercial Districts.

2. **Bar/Cocktail Lounge/Taverns.** Service of distilled alcoholic beverages in the C-T district is allowed only when incidental to seated food service.
3. **Drug Paraphrenia Stores.** Any use involving the sale or distribution of drug paraphrenia is not permitted in the C-T district.
4. **Fuel Stations.** Alternative fuel and gasoline stations are allowed with Use Permit when located in a parking structure.
5. **Residential-Only Buildings.** Residential-only buildings are not permitted in the C-T district. Dwelling units and group living accommodations are allowed only above the ground floor in a mixed-use building.
6. **Office Uses.**
  - a. Table 23.204-31 shows permits required for office uses in the C-T district.

**TABLE 23.204-31: C-T OFFICE PERMIT REQUIREMENTS**

| Building Location            | Permit Required               |                    |
|------------------------------|-------------------------------|--------------------|
|                              | First and Second Story        | Above Second Story |
| Adjacent to Bancroft Way     | As required by Table 23.204-1 | AUP                |
| Not adjacent to Bancroft Way |                               | UP(PH)             |

- b. When office uses are located on the ground floor adjacent to street frontage, the storefront windows must either:
      - i. Include a window display; or
      - ii. Be transparent and provide pedestrian viewing at least 10 feet into the storefront area.
7. **Upper Story Uses.**
  - a. Floor area above the ground floor may be occupied only by a residential or office uses.
  - b. A commercial use that is an integral part of a ground floor establishment is permitted on the second story if the use:
    - i. Has no entrances or exits, other than required fire exits, outside of the ground floor space; and
    - ii. Does not exceed the ground-floor area of the use.

C. **Additional Permit Requirements.** See Section 23.204.030 (Additional Permit Requirements).

D. **Development Standards.**

1. **Basic Standards.** See Table 23.204-32: C-T Development Standards.

**TABLE 23.204-32: C-T DEVELOPMENT STANDARDS**

| BASIC STANDARDS                                 |                      | SUPPLEMENTAL STANDARDS        |
|-------------------------------------------------|----------------------|-------------------------------|
| Lot Area Minimum                                |                      | 23.304.020– Lot Requirements  |
| New Lots                                        | No minimum           |                               |
| Per Group Living Accommodation Resident         | 350 sq. ft. [1]      |                               |
| Usable Open, Minimum                            |                      | 23.304.090– Usable Open Space |
| Space Per Dwelling Unit                         | 40 sq. ft. [4]       |                               |
| Per Group Living Accommodation Resident         | No minimum           |                               |
| Floor Area Ratio, Maximum                       |                      |                               |
| South of Dwight Way                             | 4.0                  |                               |
| North of Dwight Way                             | 5.0 [2]              |                               |
| Telegraph/Channing Parking Garage [3]           | No maximum           |                               |
| Main Building Height, Minimum                   | 35 ft.               |                               |
| Main Building Height, Maximum                   |                      | 23.304.050– Building Height   |
| South of Dwight Way                             | 50 ft. [2]           |                               |
| North of Dwight Way                             | 65 ft. [2]           |                               |
| Telegraph/Channing Parking Garage [3]           | 85 ft. and 7 stories |                               |
| Lot Line Setbacks, Minimum                      |                      | 23.304.030– Setbacks          |
| Abutting/Confronting a Non-residential District | No minimum           |                               |
| Abutting/Confronting a Residential District     | See 23.304.030.C.2   |                               |



|                                                                                                                                                                                                                                                             |            |                                                                   |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|-------------------------------------------------------------------|
| Building Separation, Minimum                                                                                                                                                                                                                                | No minimum | 23.304.040–<br>Building Separation<br>in Residential<br>Districts |
| Lot Coverage, Maximum                                                                                                                                                                                                                                       | 100%       | 23.304.120– Lot<br>Coverage                                       |
| Notes:<br>[1] One additional resident is allowed for remaining lot area between 200 and 350 square feet.<br>[2] Increased FAR and height allowed with Use Permit. See Table 23.204-33.<br>[3] APN 55-1879-6-1.<br>[4] No dimension may be less than 6 feet. |            |                                                                   |

2. **Lots Abutting or Confronting a Residential District.** See 23.304.130 (Non-residential Districts Abutting a Residential District) for additional building feature requirements for lots that abut or confront a Residential District.
3. **Increased Group Living Density.**
  - a. Projects with group living accommodations occupying 50 percent or more of the total building floor area are eligible for increased density.
  - b. To approve a Use Permit to increase the density of a group living accommodation the ZAB must make the following findings:
    - i. The increase in density will not be detrimental to the immediate neighborhood; and
    - ii. The project meets the purposes of the district.
4. **Height and FAR Increases.**
  - a. Projects with 50 percent or more of the total building floor area for residential use are eligible for increased building height and FAR as shown in Table 23.204-33.

**TABLE 23.204-33: C-T ALLOWED HEIGHT 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                 |

- b. The ZAB may allow the increased height and FAR with a Use Permit upon finding that the project will not result in a significant reduction in sunlight on Telegraph Avenue sidewalks.

**5. Shade Studies.**

- a. A shade study is required for all proposed buildings exceeding three stories or 40 feet.
- b. Based on the findings of the shade study, the ZAB may require the fourth or higher story of a building to be set back to minimize shade impacts on adjacent properties or the public right-of-way.

**6. Environmental Impacts.** Projects that may create environmental impacts as described in the Southside Plan Final EIR shall be subject to the adopted Mitigation Monitoring Program (MMP).

**E. Permit Findings.** To approve an AUP or Use Permit for a project in the C-T district, the review authority must make the findings in Section 23.406.040 (Use Permits) and find that the proposed use or structure:

1. Is compatible with the purposes of the district;
2. Encourages and maintains the present street frontage of the district;
3. Does not interfere with the continuity of retail or compatible service facilities at the ground level;
4. Does not interrupt a continuous wall of building facades;
5. Is compatible in design and character with the district and the adjacent residential neighborhoods;
6. Does not generate traffic or parking demand significantly beyond the capacity of the district or significantly increase impacts on adjacent residential neighborhoods; and
7. Complies with the Southside Plan's adopted Mitigation Monitoring Program (MMP).

**23.204.120 – C-SO Solano Avenue Commercial District**

**A. District Purpose.** The purpose of the Solano Avenue Commercial (C-SO) district is to:

1. Implement the General Plan's designations for Community Commercial and Commercial Service areas;
2. Maintain a scale and balance of commercial activity on Solano Avenue that will:

- a. Enhance the surrounding neighborhood and serve its residents;
- b. Encourage the location of businesses on Solano Avenue that serve the everyday needs of local residents;
- c. Discourage the location of businesses on Solano Avenue that serve a larger regional clientele, and should more appropriately be located in the Central Business District;
- d. Limit the number of businesses on Solano Avenue that generate traffic or parking demand in excess of commercial parking availability, causing the overflow of traffic circulation and parking onto adjacent residential streets;
- e. Encourage location of late night commerce in appropriate areas in Berkeley, such as the downtown area, and allow businesses to address demand for late night service on Solano Avenue by establishing a 11:00 p.m. closing time for businesses on Solano Avenue; and
- f. Ensure that all construction, alterations, or additions to buildings will be in functional and aesthetic harmony with adjacent buildings and areas; and
- g. Protect local residents from commercial noise, offensive odors and parking and traffic problems.

**B. Allowed Land Uses.**

1. **General.** See Table 23.204-1: Allowed Uses in the Commercial Districts.
2. **Automatic Teller Machines (ATM).** A maximum of two exterior ATMs are allowed per bank establishment and only when off-street parking is provided.

**C. Additional Permit Requirements.** See Section 23.204.030 (Additional Permit Requirements).

**D. Development Standards.**

1. **Basic Standards.** See
2. Table 23.204-34: C-SO Development Standards. For residential-only projects, see also
3. Table 23.204-35: C-SO Setback and Building Separation Standards for Residential-Only Uses and Table 23.204-36: C-SO Lot Coverage Standards for Residential-Only Uses.

**TABLE 23.204-34: C-SO DEVELOPMENT STANDARDS**

|                                                 | Project Land Use              |               |                      | Supplemental Standards                                   |
|-------------------------------------------------|-------------------------------|---------------|----------------------|----------------------------------------------------------|
|                                                 | Non-Residential and Mixed Use | Mixed-Use [1] | Residential Only [1] |                                                          |
| Lot Area, Minimum                               |                               |               |                      |                                                          |
| New Lots                                        | No minimum                    |               | 5,000 sq. ft         | 23.304.020– Lot Requirements                             |
| Per Group Living Accommodation Resident         | 350 sq. ft. [2]               |               |                      |                                                          |
| Usable Open Space, Minimum                      |                               |               |                      | 23.304.090– Usable Open Space                            |
| Per Dwelling Unit                               | 40 sq. ft. [4]                | 200 sq. ft.   |                      |                                                          |
| Per Group Living Accommodation Resident         | No minimum                    |               | 90 sq. ft.           |                                                          |
| Floor Area Ratio, Maximum                       | 2.0                           | No maximum    |                      |                                                          |
| Main Building Height, Minimum                   | No minimum                    |               |                      |                                                          |
| Main Building Height, Maximum                   | 28 ft. and 2 stories          |               |                      | 23.304.050– Building Height                              |
| Lot Line Setbacks, Minimum                      |                               |               |                      | 23.304.030– Setbacks                                     |
| Abutting/Confronting a Non-residential District | No minimum                    |               | See Table 23.204-35  |                                                          |
| Abutting/Confronting a Residential District     | See 23.304.030.C.2            |               |                      |                                                          |
| Building Separation, Minimum                    | No minimum [3]                |               | See Table 23.204-35  | 23.304.040– Building Separation in Residential Districts |
| Lot Coverage, Maximum                           | 100%                          |               | See Table 23.204-36  | 23.304.120– Lot Coverage                                 |

|                                                                                                                                    | Project Land Use              |               |                      | Supplemental Standards |
|------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|---------------|----------------------|------------------------|
|                                                                                                                                    | Non-Residential and Mixed Use | Mixed-Use [1] | Residential Only [1] |                        |
| Notes-                                                                                                                             |                               |               |                      |                        |
| [1] For mixed use and residential only projects, development standards included in this table may be modified. See 23.204.120.D.2. |                               |               |                      |                        |
| [2] One additional resident is allowed for remaining lot area between 200 and 350 square feet.                                     |                               |               |                      |                        |
| [3] For mixed-use projects, minimum building separation shall be as required for residential-only projects                         |                               |               |                      |                        |
| [4] No dimension may be less than 6 feet.                                                                                          |                               |               |                      |                        |

**TABLE 23.204-35: C-SO SETBACK AND BUILDING SEPARATION STANDARDS FOR RESIDENTIAL-ONLY USES**

|                                                                                                                                    | STANDARDS BY BUILDING STORY |        |        | SUPPLEMENTAL STANDARDS                                   |
|------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|--------|--------|----------------------------------------------------------|
|                                                                                                                                    | 1ST                         | 2ND    | 3RD    |                                                          |
| Lot Line Setbacks, Minimum [1]                                                                                                     |                             |        |        |                                                          |
| Front                                                                                                                              | 15 ft.                      | 15 ft. | 15 ft. | 23.304.030– Setbacks                                     |
| Rear                                                                                                                               | 15 ft.                      | 15 ft. | 15 ft. |                                                          |
| Interior                                                                                                                           | 4 ft.                       | 4 ft.  | 6 ft.  |                                                          |
| Street Side                                                                                                                        | 6 ft.                       | 8 ft.  | 10 ft. |                                                          |
| Building Separation, Minimum [1]                                                                                                   | 8 ft.                       | 12 ft. | 16 ft. | 23.304.040– Building Separation in Residential Districts |
| [1] For mixed use and residential-only projects, development standards included in this table may be modified. See 23.204.120.D.2. |                             |        |        |                                                          |

**TABLE 23.204-36: C-SO LOT COVERAGE STANDARDS FOR RESIDENTIAL-ONLY USES**

|                           | STANDARD BASED ON BUILDING HEIGHT |           |           | SUPPLEMENTAL STANDARDS   |
|---------------------------|-----------------------------------|-----------|-----------|--------------------------|
|                           | 1 STORY                           | 2 STORIES | 3 STORIES |                          |
| Lot Coverage, Maximum [1] |                                   |           |           |                          |
| Interior and Through Lots | 45%                               | 45%       | 40%       | 23.304.120– Lot Coverage |

|                                                                                                                                    |     |     |     |  |
|------------------------------------------------------------------------------------------------------------------------------------|-----|-----|-----|--|
| Corner Lots                                                                                                                        | 50% | 50% | 45% |  |
| [1] For mixed use and residential-only projects, development standards included in this table may be modified. See 23.204.120.D.2. |     |     |     |  |

1. **Lots Abutting or Confronting a Residential District.** See 23.304.130 (Non-residential Districts Abutting a Residential District) for additional building feature requirements for lots that abut or confront a Residential District.
2. **Modification to Standards –Mixed Use and Residential-Only Projects.** The ZAB may modify development standards in
3. Table 23.204-34,
4. Table 23.204-35, and Table 23.204-36 for a mixed-use or residential-only project with a Use Permit upon making one of the following findings:
  - a. The modification will encourage public transit utilization and existing off-street parking facilities in the area of the proposed building.
  - b. The modification will facilitate the construction of residential or tourist hotel uses where appropriate.
  - c. The modification will permit consistency with the building setbacks existing in the immediate area where a residential building setback would not serve a useful purpose.
5. **Ground Floor Residential Uses.** A ground floor residential uses shall be setback at least 320 feet from a street side property line.
6. **Projections into Right-of-Way.**
  - a. Bay windows and balconies 11 feet or more above the sidewalk grade may project 3 feet into a street right-of-way.
  - b. A maximum 60 percent of the length of a building frontage may project beyond the property line.
  - c. All projections require an encroachment permit from the Public Works Department.
7. **Limitations Adjacent to a R District.** The following requirements apply to commercial uses adjacent to a residential district or fronting any street other than Solano Avenue.
  - a. All openings other than fixed windows and required fire exits must be setback at least 50 feet from any property located in an Residential District to reduce noise and odor problems in residential areas

- b. Customer use of rear or side exits which open onto residential streets (with the exception of emergency access) is not permitted.
  - c. Garbage and recycled materials may not be placed for collection on residential streets from storage areas located at the rear of any building. All such materials shall be stored in an enclosed area for health and sanitation reasons.
  - d. Deliveries to non-residential establishments from residential streets are not permitted.
- E. **Permit Findings.** To approve an AUP or Use Permit for a project in the C-SO district, the review authority must make the findings in Section 23.406.040 (Use Permits) and find that the proposed use or structure:
- 1. Encourages and maintains the character of the street frontage and pedestrian orientation of the district;
  - 2. Is compatible in design and character with the district and the adjacent residential neighborhood;
  - 3. Is compatible with the purposes set forth in this set of regulations and the existing character of Solano Avenue;
  - 4. Does not interfere with the continuity of retail or compatible service facilities at the ground level, or interrupt a continuous wall of building facades; and
  - 5. Does not generate traffic and parking demand to significantly increase impacts on adjacent residential neighborhoods.

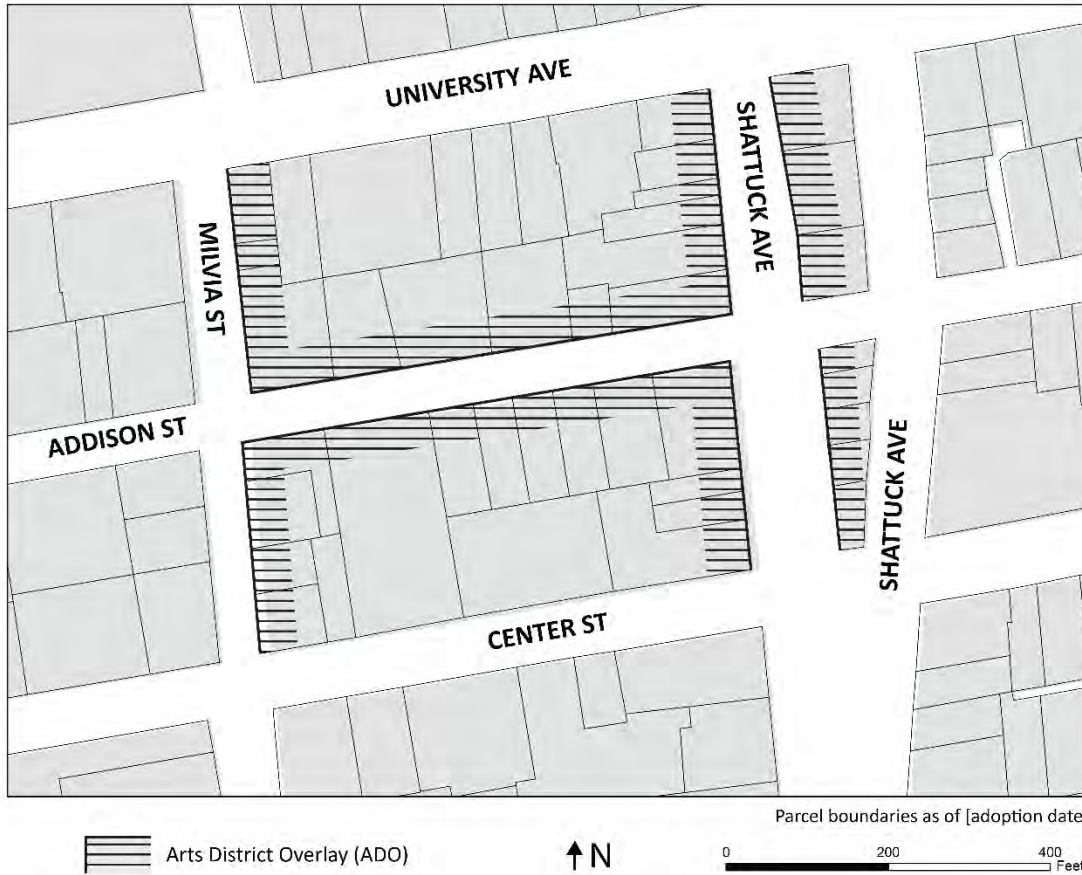
### **23.204.130 – C-DMU Downtown Mixed-Use District**

- A. **District Purpose.** The purpose of the C-DMU district is to implement the vision and goals of the Downtown Area Plan (adopted 2012), which include: Environmental Sustainability, Land Use, Access, Historic Preservation and Urban Design, Streets and Open Space, Housing and Community Health and Services, and Economic Development.
- B. **Allowed Land Use.**
- 1. **General.** See Table 23.204-1: Allowed Uses in the Commercial Districts.
  - 2. **Automatic Teller Machines (ATM).** An ATM inside a non-bank building is allowed with an AUP.
  - 3. **Banks and Financial Services, Retail.** Retail banks and financial services in the C-DMU require permits as follows:

- i.* Under 7,500 square feet outside of the Arts District Overlay: Zoning Certificate.
  - ii.* All other retail banks and financial service uses: AUP.
- 4. **Media Production.** Recording studios are allowed with an AUP. Broadcast studios require a Use Permit.
- C. **Additional Permit Requirements.** See Section 23.204.030– Additional Permit Requirements.
- D. **Arts Overlay District.**
  - 1. **Purpose.** The purpose of the Downtown Arts District Overlay (ADO) is to create a core of cultural activities and supportive retail and commercial uses in the C-DMU district. The ADO is intended to generate more pedestrian vitality in the downtown, promote Berkeley’s regional leadership in the arts, and encourage broader economic revitalization of the area. The types of uses which would enhance the Arts District include ground floor retail uses which would contribute to the cultural vitality of the area, seated food service, and uses which provide pedestrian scale and siting.
  - 2. **Boundaries.** The boundaries of the ADO are shown in Figure 23.204-4: C-DMU Downtown Arts District Overlay Boundaries.



**FIGURE 23.204-4: C-DMU DOWNTOWN ARTS DISTRICT OVERLAY BOUNDARIES**



3. **Use Limitations; Findings.** Food service establishments and offices on the ground floor adjacent to a street frontage require an AUP. To approve the AUP, the Zoning Officer must find that
  - a. The project meets the purposes of the Arts Overlay District as set forth above; and
  - b. The location, size, type, appearance, and signage of the proposed use will:
    - i. Animate and enhance the pedestrian experience on the street; and
    - ii. Be generally open to the public evenings and on weekends, whenever practicable.

**E. Development Standards.**

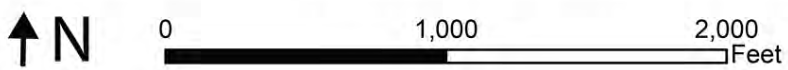
**1. Height.**

- a. **Height Limits.** Table 23.204-37: C-DMU Height Limits shows height limits in the C-DMU district, except as otherwise allowed by Paragraph 2 below. See Figure 23.204-5: C-DMU Sub-Areas for district sub-area boundaries.

**FIGURE 23.204-5: C-DMU SUB-AREAS**



- C-DMU Subareas
- Core Area
  - Outer Core
  - Corridor
  - Buffer



Parcel boundaries as of [adoption date]

**TABLE 23.204-37: C-DMU HEIGHT LIMITS**

| SUB-AREA   | MINIMUM    | MAXIMUM | MAXIMUM WITH USE PERMIT |
|------------|------------|---------|-------------------------|
| Core Area  | 50 ft.     | 60 ft.  | 75 ft.                  |
| Outer Core | 40 ft.     |         |                         |
| Corridor   | 40 ft.     |         |                         |
| Buffer     | No minimum | 50 ft.  | 60 ft.                  |

- b. **Parapet Walls.** For roofs with parapet walls, building height is measured to the top of the roof. Parapets may exceed the height limit by up to 5 feet as of right.
- c. **Minimum Height.** The minimum height standard applies to new buildings only, measured to the top of the plate. Theater and museum buildings are exempt.

## 2. Increased Height Allowance.

- a. **Allowed Height.** The ZAB may issue a Use Permit for up to five buildings that exceed the C-DMU height limits as shown in Table 23.204-38: C-DMU Increased Height Allowance.

**TABLE 23.204-38: C-DMU INCREASED HEIGHT ALLOWANCE**

| Sub-Area                     | Number of Buildings | Height  |         |
|------------------------------|---------------------|---------|---------|
|                              |                     | Minimum | Maximum |
| Combined Core and Outer Core | 2                   | 75 ft.  | 120 ft. |
| Core                         | 3                   | 120 ft. | 180 ft. |

- b. **Application Process.**
- i. Applications for any of the five buildings over 75 feet in height may be submitted on July 1, 2012. If no applications that satisfy the submittal requirements as determined by the Zoning Officer are submitted on that date, then the next deadline to submit applications will be no later than six months from that date, with application opportunity dates at six-month intervals until the first application has been submitted. Once the first

application has been submitted, then the application opportunity date will occur once yearly on the anniversary of the date of the first submittal.

- ii.* A project shall secure a position as one of the five allowed buildings over 75 feet in height following final Use Permit approval. Such Use Permits shall include a condition of approval that establishes a schedule for: submittal of a building permit application, timely response to plan check comments, payment of building permit fees such that a building permit can be issued, and beginning construction. The process for allowing extension of the timeline requirements, if any, shall be specified in the condition.
- iii.* Failure of a permit holder to strictly comply with the schedule established by the Use Permit is grounds for revocation of the Use Permit pursuant to Chapter 23.404.080 (Permit Revocation).

**c. Community Benefit Required.**

- i.* To approve a Use Permit for increased building height under this section, the ZAB must find that the project will provide significant community benefits, either directly or by providing funding for such benefits to the satisfaction of the City, beyond what would otherwise be required by the City.
- ii.* Significant community benefits may include, but are not limited to affordable housing, supportive social services, green features, open space, transportation demand management features, job training, and/or employment opportunities.
- iii.* This community benefit requirements shall be included as conditions of approval and the owner shall enter into a written agreement with the City that shall be binding on all successors in interest.

**3. Setbacks.**

**Basic Standards.** Table 23.204-39 shows minimum required lot line setbacks in the C-DMU district. Additional standards are listed in 23.204.130.3.d.

**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.     |        |

- a. **Modifications to Standards.** The ZAB may modify the setback standards in Table 23.204-39 with a Use Permit upon finding that the modified setbacks will not unreasonably limit solar access or create significant increases in wind experienced on the public sidewalk.
- b. **Residential Transitions.** The setback standards in Table 23.204-39 shall not apply to commercial lots abutting or confronting residential zoning. Such lots shall comply with Section 23.304.030.C.2– Setbacks (Lots Adjacent to Residential Districts).
- c. **Additional Standards.**
  - i. For buildings over 120 feet in height, that portion of the building over 120 feet must be less than 120 feet in width when measured at the widest point on the diagonal in plan view.
  - ii. For a lot that abuts the interior side or rear lot line of a residentially-zoned lot, a new building shall be set back from the shared property line by 20 feet where the building exceeds 45 feet in height.
  - iii. For a lot that confronts a residentially-zoned lot, a new building shall be set back 10 feet from the street-facing property line where the building exceeds 45 feet in height, except that this provision shall not apply to lots confronting public uses with a residential zoning designation, such as Berkeley High School, Civic Center Park, and Fire Station 2. However, this provision will apply for all lots with frontage on the Martin Luther King Jr. Way right-of-way.
  - iv. For lots with frontage on the Shattuck Avenue right-of-way south of Durant Avenue, a new building shall be set back 15 feet from the Shattuck Avenue property line where the building exceeds 65 feet in height.
  - v. Architectural features such as eaves, cornices, canopies, awnings, bay windows, uncovered porches, balconies, fire escapes, stairs and landings may project up to five feet into required setbacks of this section so long as the surface area of such projections does not exceed 50 percent of the surface area of the side of the building on which the projections are located.

4. **Usable Open Space.** Table 23.204-40 shows minimum required usable open space in the C-DMU district.

**TABLE 23.204-40: C-DMU USABLE OPEN SPACE REQUIREMENTS**

|                                                                                                                                                                                             | <b>MINIMUM USABLE OPEN SPACE</b>                                                        |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| Residential Uses                                                                                                                                                                            | 80 sq. ft./unit [1]                                                                     |
| Non-Residential Uses                                                                                                                                                                        | 1 sq. ft. of privately-owned public open space per 50 sq. ft. of commercial floor area. |
| <p>Note:<br/>                     [1] Each square foot of usable open space provided as privately-owned public open space is counted as two square feet of required on-site open space.</p> |                                                                                         |

5. **Privately-Owned Public Open Space.**

- a. If a privately-owned public open space is indoors or enclosed, it shall include natural light in the form of windows, skylights, entryways, or other openings.
- b. Privately-owned public open space must be:
  - i. Clearly identified with signage in a publicly conspicuous location at street level indicating the area that is open to the public, the hours the space is open, and the party responsible for maintenance; and
  - ii. Separated from the grade of the public sidewalk by a height no greater than 3 vertical feet unless an AUP is obtained.

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. To allow payment of in-lieu fee, the ZAB must find that the payment will support timely development of open space improvements that will serve the needs of both project residents and other people living in and using the downtown.
- c. 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.


**7. Ground Floor Street Frontage.**

- a. Special ground floor street frontage requirements in Paragraph (b) below apply to the following uses in the C-DMU district:
  - i.* Insurance Agents, Title Companies, Real Estate Agents, Travel Agents
  - ii.* Office, Business and Professional
  - iii.* Group Class Instruction
  - iv.* Gym/Health Club
- b. New ground floor uses listed in paragraph (a) above that are adjacent to a street frontage shall either:
  - i.* Include a storefront window display; or
  - ii.* Be transparent and provide pedestrian viewing at least 10 feet into the storefront area.

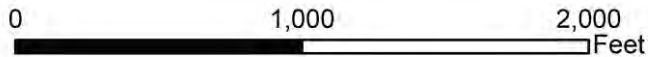
- 8. Residential Entrance Limitations.** In new buildings constructed on public serving frontages, as shown in Figure 23.204-6, entrances to individual dwelling units and to living quarters in group living accommodations are not permitted on the street-facing side of the street-level floor.

FIGURE 23.204-6: C-DMU PUBLIC SERVING FRONTAGES



 Public-Serving Frontage Required

Parcel boundaries as of [adoption date]





F. **Streets and Open Space Improvement Plan (SOSIP) Fee.** In addition to any other requirement of this section, projects shall be subject to payment of an impact fee to implement the Streets and Open Space Improvement Plan.

G. **Green Building Provisions.**

1. **New Buildings.** Construction of any new building shall attain either:
  - a. LEED Gold rating or higher as defined by the U.S. Green Building Council (USGBC); or
  - b. Building performance equivalent to this rating, as determined by the Zoning Officer.
2. **Additions 20,000 Square Feet or Less.** Additions of 20,000 square feet or less shall be required to meet all applicable standards of the Stopwaste Small Commercial Checklist, or equivalent, as determined by the Zoning Officer. The rating shall be appropriate to the use type of the proposed construction.
3. **Additions More than 20,000 Square Feet.** Additions of more than 20,000 square feet shall attain either:
  - a. LEED Gold rating or higher as defined by the U.S. Green Building Council (USGBC); or
  - b. Building performance equivalent to this rating, as determined by the Zoning Officer.

H. **Environmental Impacts.** Projects that may create potentially significant environmental impacts as described in the Downtown Area Plan Final EIR shall be subject to the adopted Mitigation Monitoring Program for the Downtown Area Plan.

- I. **Permit Findings.** To approve an AUP or Use Permit for a project in the C-DMU district, the review authority must make the findings in Section 23.406.040 (Use Permits) and find that the proposed use or structure:
1. Is compatible with the purposes of the district; and
  2. Is compatible with the surrounding uses and buildings.

### **23.204.140 – C-W West Berkeley Commercial District**

- A. **District Purpose.** The purpose of the West Berkeley Commercial (C-W) district is to:
1. Implement the West Berkeley Plan Commercial District designation;
  2. Provide locations for commercial services which primarily serve area residents and/or businesses;
  3. Support the retention and attraction of a balance of both smaller and larger stores and restaurants;
  4. Provide appropriate locations, consistent with West Berkeley Plan policies, for commercial services which serve a citywide or broader clientele;
  5. Provide a relatively compact, clearly bounded set of commercial areas in West Berkeley, so as to both improve the quality of West Berkeley shopping environments and to prevent commercial overspill into industrial areas;
  6. Encourage the intensification of commercial activity at designated nodes to help develop more pedestrian-oriented environments at those locations;
  7. Increase the opportunities for development of housing in commercial areas to support local retailing and use of transit lines and opportunities for mixed use projects combining pedestrian-oriented neighborhood-serving uses with mixed income housing in locations abutting residential districts;
  8. Encourage appropriately intense development in underutilized portions of commercial streets;
  9. Promote development compatible with adjacent commercial, residential and industrial areas;
  10. Provide a location for cultural and performing arts activities; and
  11. promote environmental protection for the residents and workers both within and adjacent to the district from such detriments as noise, fumes, and other detrimental environmental effects.
- B. **Land Use Regulations.**
1. **General.** See Table 23.204-1: Allowed Uses in the Commercial Districts.
  2. **Mixed-Use Residential.**
    - a. See Table 23.204-41 for mixed-use residential permit requirements in the C-W district.

**TABLE 23.204-41: C-W MIXED-USE RESIDENTIAL PERMIT REQUIREMENTS**

| Total Project Floor Area                                                                                             | Permit Required |
|----------------------------------------------------------------------------------------------------------------------|-----------------|
| Projects with both residential and retail uses where the retail space comprises 15% to 33% of total gross floor area |                 |
| Less than 20,000 square feet                                                                                         | ZC              |
| 20,000 square feet or more                                                                                           | UP(PH)          |
| All other mixed-use residential projects                                                                             |                 |
| Less than 5,000 square feet                                                                                          | ZC              |
| 5,000 to 9,000 square feet                                                                                           | AUP             |
| More than 9,000 square feet                                                                                          | UP(PH)          |

- b. All new retail uses in an existing mixed-use development are subject to the permit requirements for mixed use development as shown in Table 23.204-41.

### 3. Automotive Uses.

- a. As used in this paragraph, “automotive use” means a use classified in Table Table 23.204-1 as a vehicle service and sales use. “Automotive site” means a site which was legally used or approved for use as an automotive use as of March 1, 1997.
- b. On lots in the C-W district with frontage on San Pablo Avenue:
- i.* An automotive use may be established only on an automotive site; and
  - ii.* If an automotive use on an automotive site is discontinued for a period of two years or more, it may not be re-established.

### 4. Langendorf Building. See Section 23.206.030.D– Additional Permit Requirements (Langendorf Building).

### C. Additional Permit Requirements. See Section 23.204.030– Additional Permit Requirements.

### D. Designated Nodes.

1. **Purpose.** The purposes of the designated nodes in the C-W district are to:
- a. Intensify retail, commercial, and mixed-use activity around major intersections;

- b. Reflect and reinforce the major existing and developing concentrations of pedestrian-oriented uses;
  - c. Encourage intensified development around transit transfer points;
  - d. Help define the urban form of San Pablo Avenue by developing identifiable areas of concentrated development.
2. **Location.** Properties designated as nodes in the C-W district are shown in Figure 23.204-7: C-W Designated Nodes.
3. **Ground Floor Uses.** The ground floor of buildings in designated nodes may be used only for the following:
- a. Retail sales
  - b. Personal and household services
  - c. Retail financial services (banks)
  - d. Food and alcohol service
  - e. Lodging
  - f. Entertainment and assembly uses
  - g. Gasoline/vehicle fuel stations
  - h. Vehicle repair uses
  - i. New car sales
  - j. Used vehicles sales
  - k. Required access to and lobbies serving upper-story uses
4. **Prohibited Uses.** The following uses are not permitted in designated nodes:
- a. Vehicle rentals
  - b. Used vehicle sales when not principally in buildings
  - c. Vehicle washes
  - d. Tire sales and service
  - e. Open air markets
  - f. Circus/carnivals
  - g. Public utility substation buildings, tanks
5. **Findings.** To approve a Use Permit or AUP for a project in a designated node, the review authority must find that the project supports the development of a

strong retail commercial and pedestrian-oriented environment at the node.

Factors the review authority should consider when making this finding include:

- a. The placement of store entrances relative to the street and parking lots; and
- b. The size and prominence of display windows and areas facing the sidewalk.

**FIGURE 23.204-7: C-W DESIGNATED NODES**

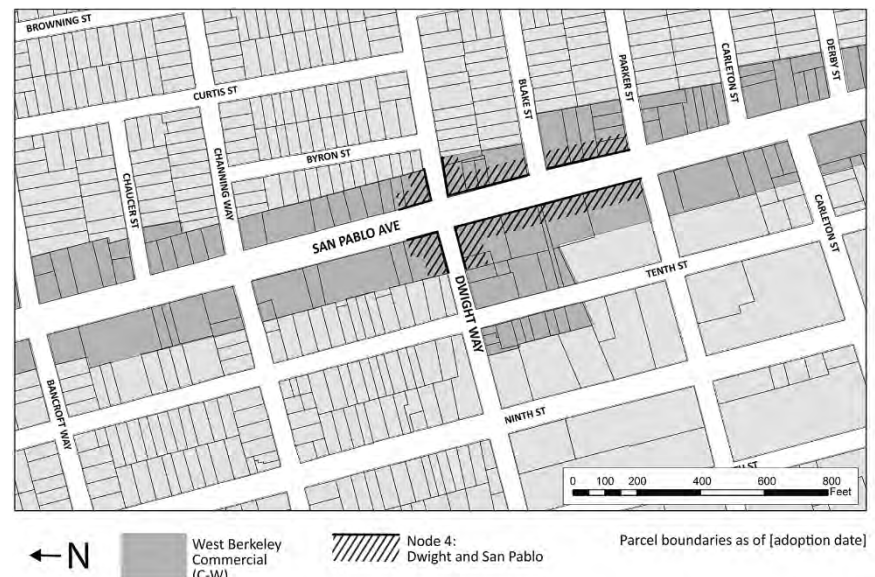
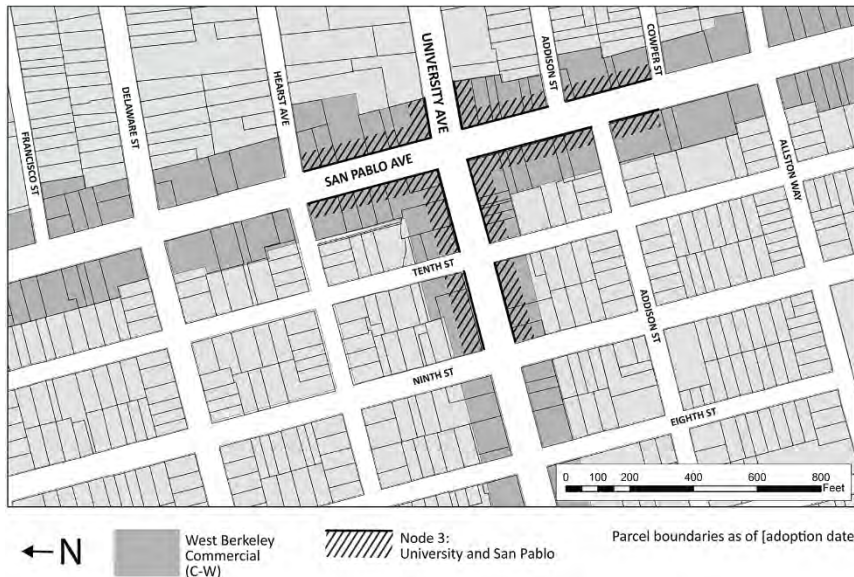
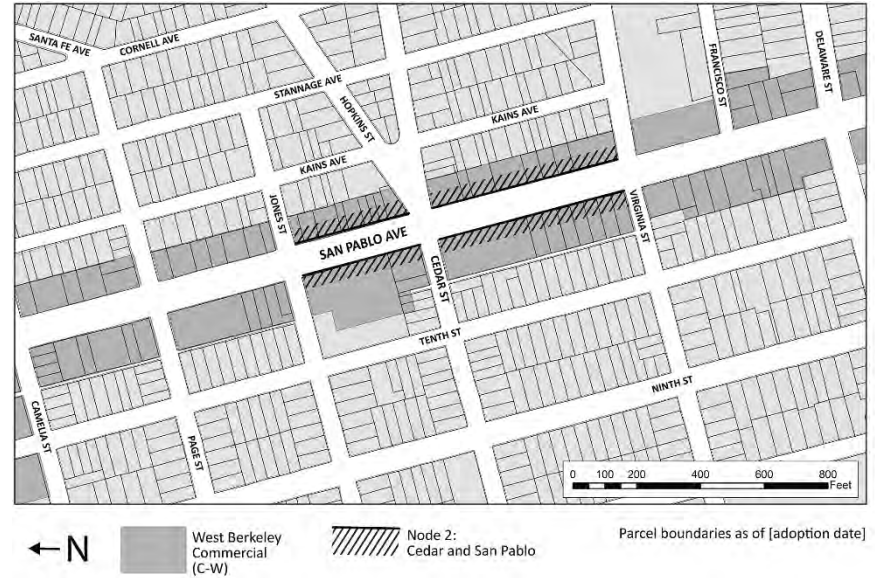
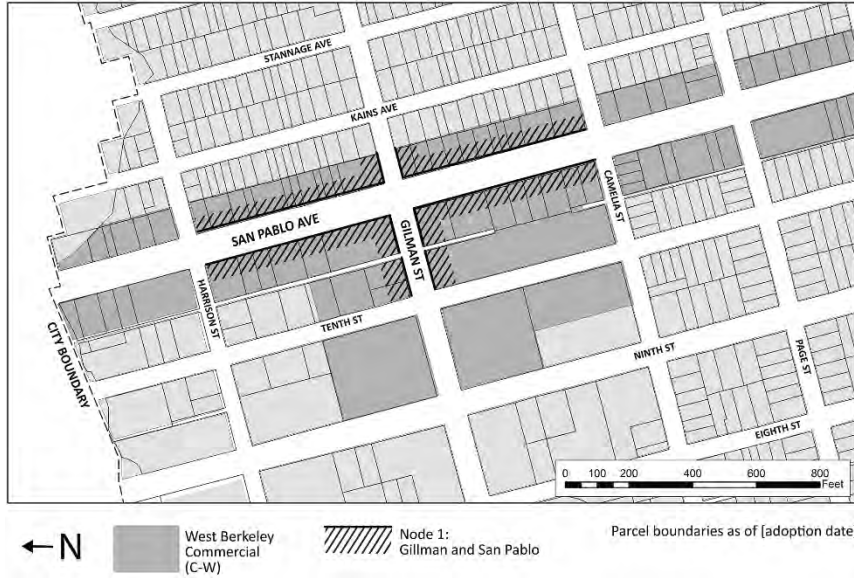
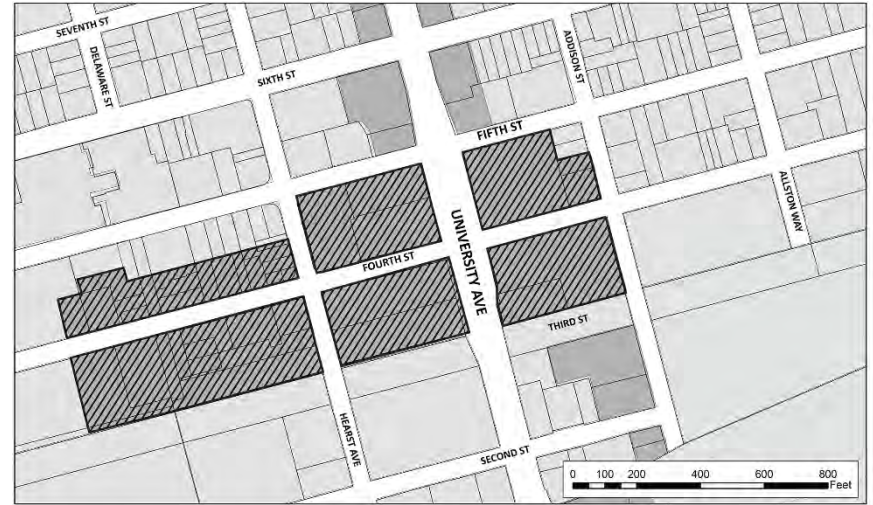


FIGURE 23.204-8: C-W DESIGNATED NODES



← N  
West Berkeley Commercial (C-W)  
Node 5: Ashby and San Pablo  
Parcel boundaries as of [adoption date]



← N  
West Berkeley Commercial (C-W)  
Node 6: 4th Street and University  
Parcel boundaries as of [adoption date]

## E. Development Standards.

1. **Basic Standards.** See Table 23.204-42 for development standards in the C-W district.

**TABLE 23.204-42: C-W DEVELOPMENT STANDARDS**

| BASIC STANDARDS                                                                                                                  |                            | SUPPLEMENTAL STANDARDS        |
|----------------------------------------------------------------------------------------------------------------------------------|----------------------------|-------------------------------|
| Lot Area Minimum                                                                                                                 |                            | 23.304.020– Lot Requirements  |
| New Lots                                                                                                                         | No minimum                 |                               |
| Per Group Living Accommodation Resident                                                                                          | 350 sq. ft.                |                               |
| Usable Open Space, Minimum                                                                                                       |                            | 23.304.090– Usable Open Space |
| 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] | 23.304.050– Building Height   |
| Lot Line Setbacks, Minimum                                                                                                       |                            | 23.304.030– Setbacks          |
| Abutting/Confronting a Non-residential District                                                                                  | No minimum                 |                               |
| Abutting/Confronting a Residential District                                                                                      | See 23.304.030.C.2         |                               |
| Building Separation, Minimum                                                                                                     | No minimum                 |                               |
| Lot Coverage, Maximum                                                                                                            | 100%                       | 23.304.120– Lot Coverage      |
| Notes:                                                                                                                           |                            |                               |
| [1] 50 ft. and 4 stories allowed for mixed-use projects. The fourth floor must be used for residential or live/work purposes.    |                            |                               |
| [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. |                            |                               |

2. **Parking Lot Design.** See 23.322.080.E.3 (C-W District).



3. **Minimum Height in Designated Nodes.** All newly constructed main structures in designated nodes, except gasoline stations, shall be at least two stories or 25 feet in height.
- F. **Permit Findings.** To approve an AUP or Use Permit for a project in the C-W district, the review authority must make the findings in Section 23.406.040 (Use Permits) and find that the proposed use or structure:
1. Is consistent with the purposes of the district;
  2. Is compatible with the surrounding uses and buildings;
  3. Complies with the adopted West Berkeley Plan;
  4. Supports an increase in the continuity of retail and service facilities at the ground level to the degree feasible;
  5. Does not substantially degrade the existing urban fabric of the street and area;
  6. Provides an intensity of development which does not underutilize the property (for with new floor area);
  7. Meets any applicable performance standards for off-site impacts; and
  8. Does not exceed the amount and intensity of use that can be served by available traffic capacity and potential parking supply.

### **23.204.150 – C-AC Adeline Corridor Commercial District**

- A. **District Purpose.** The purpose of the Adeline Corridor Commercial (C-AC) district is to:
1. Implement the General Plan's designation for Adeline Corridor Mixed Use area, as well as the policies of the Adeline Corridor Specific Plan;
  2. Preserve the unique character and cultural legacy of the Adeline Corridor, sustaining the community as a place where all people can live, work, play, learn, worship, dine, shop and thrive;
  3. Promote equitable access to housing by preserving existing affordable housing, preventing displacement, and producing a substantial number of new affordable housing units;
  4. Foster economic opportunity for South Berkeley residents and businesses by facilitating job training and workforce development, active community spaces, and a thriving environment for commerce along the Adeline Street/South Shattuck Corridor;

5. Provide safe, equitable transportation options that meet the mobility needs of all residents, regardless of age, means and abilities, and that further the attainment of greenhouse gas emission reduction goals;
6. Provide safe, sustainable, beautiful, healthy, and inclusive public spaces that encourage social interaction, provide opportunities for recreation and environmental health, and support active community life in South Berkeley;
7. Encourage development and amenities that support pedestrian-oriented uses; and
8. Maintain and encourage a wide range of community and commercial services, including basic goods and services. Provide locations for both community-serving and regional-serving: businesses, cultural and religious institutions, and non-profit organizations.

#### B. Allowed Land Uses.

1. **General.** See Table 23.204-1: Allowed Uses in the Commercial Districts.
2. **Mixed Use Buildings.**
  - a. In all mixed use buildings, all stories above the second story shall be used for residential uses.
  - b. All mixed use developments require a Use Permit.
3. **Permitted Ground Floor Uses.**
  - a. **Commercial and Active Commercial Required.** In addition to other requirements of the C-AC district, the first 30 feet of depth of the ground floor, as measured from the frontage which abuts the portions of Adeline Street, Shattuck Avenue, MLK, Jr. Way or Ashby Avenue identified in Table 23.204-43: C-AC Permitted Ground Floor Uses shall be reserved for either Active Commercial Uses, or for commercial uses. Ground floor tenant spaces with frontages on streets not identified below can be used for any use permitted in the district.

**TABLE 23.204-43: C-AC PERMITTED GROUND FLOOR USES**

| AREA                                      | PERMITTED GROUND FLOOR USE |
|-------------------------------------------|----------------------------|
| Shattuck Avenue between Dwight and Derby  | Commercial Uses            |
| Shattuck between Ward and Russell         | Active Commercial Uses     |
| Adeline between Russell and City boundary |                            |
| Ashby, east of Adeline                    |                            |
| North side of Ashby, west of Adeline      |                            |

- b. **Active Commercial Uses Defined.** Active Commercial uses are commercial uses which generate regular and frequent foot traffic. Uses include businesses in the following use categories: Retail Sales; Personal and Household Services; Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses; and the following uses: Banks and Financial Services, Retail, and Vehicle Parts Stores.
  - c. **Active Commercial Exceptions with Zoning Certificate.** The following uses are permitted on the ground floor in areas designated Active Commercial with a Zoning Certificate:
    - i. Office uses in tenant space 2,500 sf or less in area and 50 feet or less in width;
    - ii. Residential amenities (2,500 sf or less in area and 50 feet or less in width), associated with a residential use.
  - d. **Active Commercial Exceptions with AUP.** The following uses are permitted on the ground floor in areas designated Active Commercial with an AUP:
    - i. Office uses over 2,500 square feet in area or 50 feet in width.
    - ii. Art/Craft Studio.
  - e. **Affordable Residential Projects Allowed.** Residential uses where at least 50 percent of the units are affordable are permitted on the ground floor in areas designated commercial with an AUP.
  - f. **Live/Work Units Prohibited.** Live/Word units are not permitted on the ground floor in areas designated Active Commercial or commercial.
4. **Alcoholic Beverage Retail Sales.** The sale of distilled alcoholic beverages is not permitted along Adeline Street, south of Ashby Avenue.
- C. **Additional Permit Requirements.** See Section 23.204.030– Additional Permit Requirements.
- D. **Adeline Corridor Specific Plan Subareas.** The Adeline Corridor Specific Plan identifies four distinct subareas which have different physical characteristics and contexts. Different use limitations and development standards may apply to these subareas. See the Adeline Corridor Specific Plan for more specific information about each subarea.
1. **South Shattuck:** Parcels that have a frontage abutting Shattuck Avenue.
  2. **North Adeline.**
    - a. West of Adeline: Parcels located between Derby Street and Ashby Avenue, which do not front Shattuck Avenue.

- b. East of Adeline: Parcels located entirely between Russell Street and the point 110 feet south of Essex Street.

3. **Ashby BART.**

- a. West of Adeline: Parcels bounded by Ashby, MLK Jr. Way and Adeline.
- b. **East of Adeline:** Parcels located entirely between Tremont, Woolsey and Adeline, and at least 110 feet south of Essex.

- 4. **South Adeline:** Parcels located south of Woolsey Street.

E. **Development Standards.**

- 1. **Basic Standards.** See Table 23.204-44: C-AC South Shattuck Subarea Development Standards, and

3. Table 23.204-45: C-AC North and South Adeline Subarea Development Standards.
4. **Affordability Calculation.** Development standards are based on the percentage of affordable units and shall not exceed the requirements for each subarea. The minimum on-site affordable housing requirement applies to all residential and mixed use projects and must be provided as a mix of 50 percent at Low Income and 50 percent at Very Low Area Median Income (AMI) levels.
5. **Ashby BART Subarea.** Development standards for any future development in the Ashby BART area would be subject to process outlined in the MOU with BART and AB 2923.
6. **Parapet Walls.** For roofs with parapet walls, building height is measured to the top of the roof. Parapets may exceed the height limit by up to 5 feet as of right.
7. **Lots Abutting or Confronting a Residential District.**
  - a. **Setbacks.** The following standards supersede requirements in Section 23.304.030.C.2.– Setbacks (Lots Adjacent to Residential Districts).
    - i.* When a lot confronts a residentially-zoned lot, any portion of new construction that exceeds 45 feet in height shall be setback 10 feet from the front property line.
    - ii.* When a lot abuts a residentially-zoned lot, the setback shall be 10 feet from the shared lot line.
    - iii.* When a lot abuts a residentially-zoned lot, any portion of new construction that exceeds 35 feet in height shall be setback 20 feet from the shared lot line.
  - b. **Building Features.** See Section 23.304.130– Non-Residential Districts Abutting a Residential District for building feature requirements for lots that abut or confront a Residential District.

**TABLE 23.204-44: C-AC SOUTH SHATTUCK SUBAREA DEVELOPMENT STANDARDS**

|                                         | PROJECT LAND USE [5]                                                |                                                         |                                                         |                                                         |                                                   |                                |                 | SUPPLEMENTAL STANDARDS        |
|-----------------------------------------|---------------------------------------------------------------------|---------------------------------------------------------|---------------------------------------------------------|---------------------------------------------------------|---------------------------------------------------|--------------------------------|-----------------|-------------------------------|
|                                         | Residential and Mixed Use Tier 1 (Less than 14% affordable housing) | Residential & Mixed Use Tier 2 (14% affordable housing) | Residential & Mixed Use Tier 3 (21% affordable housing) | Residential & Mixed Use Tier 4 (25% affordable housing) | Residential & Mixed Use (100% affordable housing) | Group Living Accommodation [6] | Non-Residential |                               |
| Lot Area Minimum                        |                                                                     |                                                         |                                                         |                                                         |                                                   |                                |                 | 23.304.020– Lot Requirements  |
| New Lots                                | No minimum                                                          |                                                         |                                                         |                                                         |                                                   | 350 sq. ft.                    |                 |                               |
| Per Group Living Accommodation Resident | N/A                                                                 |                                                         |                                                         |                                                         |                                                   | 350 sq. ft. [1]                |                 |                               |
| Usable Open Space, Minimum [3]          | 40 sq. ft.                                                          |                                                         |                                                         |                                                         |                                                   |                                |                 |                               |
| Per Dwelling Unit/GLA Resident [4]      | 40 sq. ft.                                                          |                                                         |                                                         |                                                         |                                                   |                                |                 | 23.304.090– Usable Open Space |
| Floor Area Ratio, Maximum               | 2.5                                                                 | 4.0                                                     | 5.0                                                     | 5.5                                                     | 5.5                                               | 2.5                            | 2.5             |                               |

|                                                 | PROJECT LAND USE [5]                                                |                                                         |                                                         |                                                         |                                                   |                                                |                      | SUPPLEMENTAL STANDARDS         |
|-------------------------------------------------|---------------------------------------------------------------------|---------------------------------------------------------|---------------------------------------------------------|---------------------------------------------------------|---------------------------------------------------|------------------------------------------------|----------------------|--------------------------------|
|                                                 | Residential and Mixed Use Tier 1 (Less than 14% affordable housing) | Residential & Mixed Use Tier 2 (14% affordable housing) | Residential & Mixed Use Tier 3 (21% affordable housing) | Residential & Mixed Use Tier 4 (25% affordable housing) | Residential & Mixed Use (100% affordable housing) | Group Living Accommodation [6]                 | Non-Residential      |                                |
| Main Building Height, Maximum                   | 4 stories<br>45 feet                                                | 6 stories<br>65 feet                                    | 7 stories<br>75 feet                                    | 8 stories<br>85 feet                                    | 8 stories<br>90 feet                              | 4 stories<br>45 feet                           | 4 stories<br>45 feet | 23.304.050–<br>Building Height |
| Residential Density, Maximum (du/acre) [2]      | 120                                                                 | 210                                                     | 250                                                     | 300                                                     | 300                                               | 1 GLA<br>resident per<br>350 sf of lot<br>area | N/A                  |                                |
| Lot Line Setbacks, Minimum                      |                                                                     |                                                         |                                                         |                                                         |                                                   |                                                |                      | 23.304.030–<br>Setbacks        |
| Abutting/Confronting a Non-residential District | No minimum                                                          |                                                         |                                                         |                                                         |                                                   |                                                |                      |                                |
| Abutting/Confronting a Residential District     | See 23.204.150.G                                                    |                                                         |                                                         |                                                         |                                                   |                                                |                      |                                |
| Building Separation, Minimum                    | No minimum                                                          |                                                         |                                                         |                                                         |                                                   |                                                |                      |                                |
| Lot Coverage, Maximum                           |                                                                     |                                                         |                                                         |                                                         |                                                   |                                                |                      | 23.304.120–<br>Lot Coverage    |
| Interior Lot                                    | 60%                                                                 | 90%                                                     | 90%                                                     | 90%                                                     | 90%                                               | 60%                                            | 100%                 |                                |
| Corner Lot                                      | 70%                                                                 | 90%                                                     | 90%                                                     | 95%                                                     | 95%                                               | 70%                                            | 100%                 |                                |

|  | PROJECT LAND USE [5]                                                |                                                         |                                                         |                                                         |                                                   |                                |                 | SUPPLEMENTAL STANDARDS |
|--|---------------------------------------------------------------------|---------------------------------------------------------|---------------------------------------------------------|---------------------------------------------------------|---------------------------------------------------|--------------------------------|-----------------|------------------------|
|  | Residential and Mixed Use Tier 1 (Less than 14% affordable housing) | Residential & Mixed Use Tier 2 (14% affordable housing) | Residential & Mixed Use Tier 3 (21% affordable housing) | Residential & Mixed Use Tier 4 (25% affordable housing) | Residential & Mixed Use (100% affordable housing) | Group Living Accommodation [6] | Non-Residential |                        |

Notes:

- [1] One additional resident is allowed for remaining lot area between 200 and 350 square feet.
- [2] For the purposes of calculating the State Density Bonus the Tier 1 density shall constitute the maximum allowable gross residential density. Tier 2, 3, and 4 density is authorized as a local density bonus under Government Code section 65915(n).
- [3] An AUP may be granted to reduce useable open space requirements if shown to be necessary to build an all-electric building.
- [4] Each square-foot of open space that is designated as publicly accessible open space shall be counted as two square-feet of required on-site open space.
- [5] Affordable units calculated as percentage of total units



**TABLE 23.204-45: C-AC NORTH AND SOUTH ADELINE SUBAREA DEVELOPMENT STANDARDS**

|                                            | Project Land Use [6]                                                |                                                         |                                                         |                                                         |                                                   |                                       |                 | Supplemental Standards |
|--------------------------------------------|---------------------------------------------------------------------|---------------------------------------------------------|---------------------------------------------------------|---------------------------------------------------------|---------------------------------------------------|---------------------------------------|-----------------|------------------------|
|                                            | Residential and Mixed Use Tier 1 (Less than 14% affordable housing) | Residential & Mixed Use Tier 2 (14% affordable housing) | Residential & Mixed Use Tier 3 (21% affordable housing) | Residential & Mixed Use Tier 4 (25% affordable housing) | Residential & Mixed Use (100% affordable housing) | Group Living Accommodation            | Non-Residential |                        |
| Lot Area Minimum                           |                                                                     |                                                         |                                                         |                                                         |                                                   |                                       |                 | 23.304.020             |
| New Lots                                   | No minimum                                                          |                                                         |                                                         |                                                         |                                                   |                                       |                 |                        |
| Per Group Living Accommodation Resident    | N/A                                                                 |                                                         |                                                         |                                                         |                                                   | 350 sq. ft. [1]                       | N/A             |                        |
| Usable Open Space, Minimum [3]             | 40 sq. ft.                                                          |                                                         |                                                         |                                                         |                                                   |                                       |                 |                        |
| Per Dwelling Unit/GLA Resident [4]         | N/A                                                                 |                                                         |                                                         |                                                         |                                                   | 40 sq. ft.                            |                 | 23.304.090             |
| Floor Area Ratio, Maximum                  | 2.0                                                                 | 3.5                                                     | 4.0                                                     | 5.0                                                     | 5.0                                               | 2.5                                   | 2.8             |                        |
| Residential Density, Maximum (du/acre) [2] | 100                                                                 | 150                                                     | 210                                                     | 250                                                     | 250                                               | 1 GLA resident per 350 sf of lot area | N/A             |                        |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                               |                      |                      |                      |                      |                      |                      |                              |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|------------------------------|
| Main Building Height, Maximum                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 3 stories<br>35 feet                                                                                                                          | 5 stories<br>55 feet | 6 stories<br>65 feet | 7 stories<br>75 feet | 7 stories<br>80 feet | 4 stories<br>45 feet | 3 stories<br>45 feet |                              |
| Lot Line Setbacks, Minimum                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                               |                      |                      |                      |                      |                      |                      |                              |
| Abutting/Confronting a Non-residential District                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | No minimum                                                                                                                                    |                      |                      |                      |                      |                      |                      | 23.304.030                   |
| Abutting/Confronting a Residential District                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 10 ft<br>20 ft from any shared lot line for any portion exceeding 35 feet<br>45 ft from front property line for any portion exceeding 45 feet |                      |                      |                      |                      | N/A                  |                      | 23.304.030<br>23.204.150.E.4 |
| Building Separation, Minimum                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | No minimum                                                                                                                                    |                      |                      |                      |                      |                      |                      | 23.304.040                   |
| Interior Lot                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 60%                                                                                                                                           | 90%                  | 90%                  | 90%                  | 90%                  | 60%                  | 100%                 |                              |
| Corner Lot                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 70%                                                                                                                                           | 90%                  | 90%                  | 95%                  | 95%                  | 70%                  | 100%                 |                              |
| Lot Coverage, Maximum                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 100%                                                                                                                                          |                      |                      |                      |                      |                      |                      |                              |
| <p>Notes:</p> <p>[1] One additional resident is allowed for remaining lot area between 200 and 350 square feet.</p> <p>[2] For the purpose State Density Bonus calculation, the Tier 1 density is the maximum allowable gross residential density. Tier 2, 3, and 4 density is authorized as a local density bonus under Government Code section 65915(n).</p> <p>[3] An AUP may be granted to reduce useable open space requirements if shown to be necessary to build an all-electric building.</p> <p>[4] Each square-foot of open space that is designated as publicly accessible open space shall be counted as two square-feet of required on-site open space.</p> <p>[5] Affordable units calculated as percentage of total units</p> |                                                                                                                                               |                      |                      |                      |                      |                      |                      |                              |

## F. Design Standards.

1. **Adeline Corridor Specific Plan.** New buildings and additions shall be reviewed for conformance to the design guidelines in the Adeline Corridor Specific Plan.
2. **Ground Floor Frontages.**
  - a. **All New Buildings.** Except as set forth below, ground floor frontages of all new buildings are subject to the following design standards:
    - i.* Blank walls along the ground floor shall be less than 30 feet in length along sidewalks, pedestrian paths, or open space.
    - ii.* Ground floors shall have a minimum floor to floor height of 12 feet.
    - iii.* Facades shall provide at least 30 percent transparency between 3 and 10 feet above grade (doors and transparent windows) to allow maximum visual interaction between the sidewalk areas and building interiors. Dark or mirrored glass will not satisfy this requirement.
    - iv.* Window glazing shall provide a high degree of light transmittance and be non-reflective.
  - b. **Active Commercial Areas.** Ground floor frontages in areas identified as Active Commercial in Table 23.204-43 shall meet the requirements of 23.304.150.I.1 except:
    - i.* Ground floors shall have a minimum floor to floor height of 15 feet and a minimum floor to ceiling height of 12 feet.
    - ii.* Facades shall provide at least 75 percent transparency between 3 and 10 feet above grade (doors and transparent windows) to allow maximum visual interaction between sidewalk areas and the interior. Dark or mirrored glass will not satisfy this requirement.
  - c. **Commercial Use Areas.** Ground floor frontages in areas identified as commercial in Table 23.204-43 shall meet the requirements of 23.204.150.I.1 except:
    - i.* Ground floors shall have a minimum floor to floor height of 15 feet and a minimum floor to ceiling height of 12 feet.
    - ii.* Facades shall provide at least 65% transparency between 3 and 10 feet above grade (doors and transparent windows) to allow maximum visual interaction between sidewalk areas and the interior of office spaces. Dark or mirrored glass will not satisfy this requirement.
  - d. **Exceptions.** The Design Review Committee or Design Review staff may grant exceptions to the blank wall and transparency requirements.

## G. Permit Findings.

1. **General.** To approve any AUP or Use Permit for a project in the C-AC district, the review authority must make the findings in Section 23.406.040– Master Use Permits and find that the proposed use or structure:
  - a. Is consistent with the purpose of the district;
  - b. Is compatible in design and character with the district and the adjacent residential neighborhoods;
  - c. Encourages utilization of public transit and off-street parking facilities in the area of the proposed building; and
  - d. Complies with the Adeline Corridor Specific Plan’s adopted Mitigation Monitoring and Reporting Program (MMRP).
2. **New Residential Development.** In addition to the findings above, the ZAB shall find, for each Use Permit for new residential development, that the proposed use or structure facilitates the construction of affordable housing as defined by the U.S. Department of Housing and Urban Development (HUD) Guidelines.
3. **Office Uses.**
  - a. To approve an AUP for an office use over 2,500 square feet or over 50 feet wide on the ground floor of an Active Commercial area, the Zoning Officer must find that the use supports the development of a strong retail commercial, pedestrian-oriented environment.
  - b. Factors the Zoning Officer should consider shall include, but are not limited to, pedestrian activity that is expected to be generated at the site, the placement of store entrances relative to the street and the parking lots, and the size and prominence of display windows and areas facing the sidewalk.
4. **All-Electric Buildings.** An AUP may be granted to reduce useable open space requirements if shown to be necessary to build an all-electric building. To approve an AUP, the Zoning Officer must find that:
  - a. No other placement of the features to support construction of an all-electric building, including solar photovoltaic (PV) energy systems and water tanks for heat pump water heating, on the property is possible; and
  - b. Placement of the features to support construction of an all-electric building elsewhere on the property is not financially feasible.

## **23.206 MANUFACTURING DISTRICTS**

---

### **Sections:**

- 23.206.010– Chapter Purpose
- 23.206.020– Allowed Land Uses and Permit Requirements
- 23.206.030– Additional Permit Requirements
- 23.206.040– Use-Specific Regulations
- 23.206.050– Protected Uses
- 23.206.060– M Manufacturing District
- 23.206.070– MM Mixed Manufacturing District
- 23.206.080– MU-LI Mixed Use-Light Industrial District
- 23.206.090– MU-R Mixed Use-Residential District
- 23.206.100– Permit Findings

### **23.206.010 – Chapter Purpose**

This chapter identifies allowed land uses, permit requirements, and development standards for the Manufacturing Districts.

### **23.206.020 – Allowed Land Uses and Permit Requirements**

- A. **Allowed Land Uses.** Table 23.206-1 identifies allowed land uses and required permits in the Manufacturing Districts. All land uses are defined in Chapter 23.502—Glossary. Permit requirements are described in Chapter 23.406—Specific Permit Requirements. Permits required for land uses shown in Table 23.206-1 apply to both:
1. The initial establishment of a land use in a new building; and
  2. The change of use in an existing building or portion of a building.

**TABLE 23.206-1: ALLOWED LAND USES IN MANUFACTURING DISTRICTS**

| ZC = Zoning Certificate<br>AUP = Administrative Use Permit<br>UP(PH) = Use Permit<br>-- = Permitted with an AUP, see 23.206.020(B)<br>NP = Not Permitted<br>[#] = Floor Area Permit Requirement<br>* Use-Specific Standards Apply | <b>MANUFACTURING DISTRICTS</b> |           |              |                   | <b>Use-Specific Standards</b><br>Applies to uses with an asterisk following the permit requirement (e.g., ZC*) |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|-----------|--------------|-------------------|----------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                   | <b>M</b>                       | <b>MM</b> | <b>MU-LI</b> | <b>MU-R</b>       |                                                                                                                |
| <b>Residential Uses</b>                                                                                                                                                                                                           |                                |           |              |                   |                                                                                                                |
| Accessory Dwelling Unit                                                                                                                                                                                                           | P                              | NP        | NP           | See 23.306        |                                                                                                                |
| Dwellings                                                                                                                                                                                                                         |                                |           |              |                   |                                                                                                                |
| Single-Family                                                                                                                                                                                                                     | NP                             | NP        | NP           | AUP*              | 23.206.090.B.8                                                                                                 |
| Two Family                                                                                                                                                                                                                        | NP                             | NP        | NP           | AUP*              | 23.206.090.B.8                                                                                                 |
| Multi-Family                                                                                                                                                                                                                      | NP                             | NP        | NP           | UP(PH)*           | 23.206.090.B.7&8                                                                                               |
| Group Living Accommodation                                                                                                                                                                                                        | NP                             | NP        | NP           | UP(PH)*           | 23.206.090.B.8                                                                                                 |
| Hotel, Residential                                                                                                                                                                                                                | NP                             | NP        | NP           | NP                |                                                                                                                |
| Mixed-Use Residential                                                                                                                                                                                                             | NP                             | NP        | NP           | UP(PH)*           | 23.206.090.B.8&9                                                                                               |
| Senior Congregate Housing                                                                                                                                                                                                         | NP                             | NP        | NP           | See 23.302.040 .H |                                                                                                                |
| <b>Public and Quasi-Public Uses</b>                                                                                                                                                                                               |                                |           |              |                   |                                                                                                                |
| Child Care Center                                                                                                                                                                                                                 | NP                             | NP        | AUP*         | UP(PH)*           | 23.206.040.B&C                                                                                                 |
| Cemetery/Crematory/Mausoleum                                                                                                                                                                                                      | NP                             | NP        | NP           | NP                |                                                                                                                |
| Club/Lodge                                                                                                                                                                                                                        | UP(PH)*                        | UP(PH)*   | UP(PH)*      | UP(PH)            | 23.206.040.E                                                                                                   |
| Columbaria                                                                                                                                                                                                                        | NP                             | NP        | NP           | –                 |                                                                                                                |
| Community Care Facility                                                                                                                                                                                                           | NP                             | NP        | NP           | ZC*               | 23.206.090.B.3                                                                                                 |
| Community Center                                                                                                                                                                                                                  | NP                             | NP        | NP           | UP(PH)            |                                                                                                                |
| Emergency Shelter                                                                                                                                                                                                                 | NP                             | NP        | NP           | –                 |                                                                                                                |

| ZC = Zoning Certificate<br>AUP = Administrative Use Permit<br>UP(PH) = Use Permit<br>-- = Permitted with an AUP, see 23.206.020(B)<br>NP = Not Permitted<br>[#] = Floor Area Permit Requirement<br>* Use-Specific Standards Apply | <b>MANUFACTURING DISTRICTS</b> |           |              |             | <b>Use-Specific Standards</b><br>Applies to uses with an asterisk following the permit requirement (e.g., ZC*) |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|-----------|--------------|-------------|----------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                   | <b>M</b>                       | <b>MM</b> | <b>MU-LI</b> | <b>MU-R</b> |                                                                                                                |
| Family Day Care Home, Large                                                                                                                                                                                                       | NP                             | NP        | ZC*          | AUP*        | 23.206.040.C                                                                                                   |
| Family Day Care Home, Small                                                                                                                                                                                                       | NP                             | NP        | ZC*          | ZC*         | 23.206.040.C                                                                                                   |
| Hospital                                                                                                                                                                                                                          | NP                             | NP        | NP           | NP          |                                                                                                                |
| Library                                                                                                                                                                                                                           | NP                             | NP        | NP           | UP(PH)      |                                                                                                                |
| Mortuaries and Crematories                                                                                                                                                                                                        | NP                             | NP        | NP           | UP(PH)*     | 23.206.090.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)*     | 23.206.040.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)*     | 23.206.040.C                                                                                                   |
| School, Vocational                                                                                                                                                                                                                | NP                             | NP        | ZC* [1]      | UP(PH)      | 23.206.080.B.12                                                                                                |
| <b>Retail Uses</b>                                                                                                                                                                                                                |                                |           |              |             |                                                                                                                |
| Alcoholic Beverage Retail Sale                                                                                                                                                                                                    | NP                             | NP        | UP(PH)* [2]  | NP *        | 23.206.080.B.3;<br>23.206.090.B.2; 23.310                                                                      |
| 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]    | 23.206.080.B.6;                                                                                                |

| ZC = Zoning Certificate<br>AUP = Administrative Use Permit<br>UP(PH) = Use Permit<br>-- = Permitted with an AUP, see 23.206.020(B)<br>NP = Not Permitted<br>[#] = Floor Area Permit Requirement<br>* Use-Specific Standards Apply | <b>MANUFACTURING DISTRICTS</b> |           |              |             | <b>Use-Specific Standards</b><br>Applies to uses with an asterisk following the permit requirement (e.g., ZC*) |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|-----------|--------------|-------------|----------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                   | <b>M</b>                       | <b>MM</b> | <b>MU-LI</b> | <b>MU-R</b> |                                                                                                                |
|                                                                                                                                                                                                                                   |                                |           |              |             | 23.206.090.B.4                                                                                                 |
| Smoke Shop                                                                                                                                                                                                                        | NP                             | NP        | NP           | NP          |                                                                                                                |
| <b>Personal and Household Service Uses</b>                                                                                                                                                                                        |                                |           |              |             |                                                                                                                |
| 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          |                                                                                                                |
| <b>Office Uses</b>                                                                                                                                                                                                                |                                |           |              |             |                                                                                                                |
| 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]     | 23.206.070.B.2                                                                                                 |
| <b>Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses</b>                                                                                                                                                        |                                |           |              |             |                                                                                                                |
| Adult-oriented Business                                                                                                                                                                                                           | -                              | -         | NP           | NP          |                                                                                                                |
| Amusement Device Arcade                                                                                                                                                                                                           | NP                             | NP        | –            | NP          |                                                                                                                |



| ZC = Zoning Certificate<br>AUP = Administrative Use Permit<br>UP(PH) = Use Permit<br>-- = Permitted with an AUP, see 23.206.020(B)<br>NP = Not Permitted<br>[#] = Floor Area Permit Requirement<br>* Use-Specific Standards Apply | <b>MANUFACTURING DISTRICTS</b> |           |              |             | <b>Use-Specific Standards</b><br>Applies to uses with an asterisk following the permit requirement (e.g., ZC*) |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|-----------|--------------|-------------|----------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                   | <b>M</b>                       | <b>MM</b> | <b>MU-LI</b> | <b>MU-R</b> |                                                                                                                |
| 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 23.302.040.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          | 23.206.080.B.10                                                                                                |
| <b>Vehicle Service and Sale Uses</b>                                                                                                                                                                                              |                                |           |              |             |                                                                                                                |
| 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          | 23.206.060.B.3                                                                                                 |
| Vehicle Sales, Used                                                                                                                                                                                                               | AUP* [7]                       | NP        | NP           | NP          | 23.206.060.B.3                                                                                                 |

| ZC = Zoning Certificate<br>AUP = Administrative Use Permit<br>UP(PH) = Use Permit<br>-- = Permitted with an AUP, see 23.206.020(B)<br>NP = Not Permitted<br>[#] = Floor Area Permit Requirement<br>* Use-Specific Standards Apply | <b>MANUFACTURING DISTRICTS</b> |           |              |             | <b>Use-Specific Standards</b><br>Applies to uses with an asterisk following the permit requirement (e.g., ZC*) |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|-----------|--------------|-------------|----------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                   | <b>M</b>                       | <b>MM</b> | <b>MU-LI</b> | <b>MU-R</b> |                                                                                                                |
| Vehicle Wash                                                                                                                                                                                                                      | NP                             | NP        | NP           | NP          |                                                                                                                |
| Vehicle Wrecking                                                                                                                                                                                                                  | AUP [7]                        | AUP [4]   | AUP* [4]     | NP          | 23.206.080.B.11                                                                                                |
| <b>Industrial and Heavy Commercial Uses</b>                                                                                                                                                                                       |                                |           |              |             |                                                                                                                |
| Bus/Cab/Truck/Public Utility Depot                                                                                                                                                                                                | AUP [8]                        | AUP [8]   | AUP* [4]     | UP(PH)      | 23.206.080.B.4                                                                                                 |
| Commercial Excavation                                                                                                                                                                                                             | UP(PH)                         | UP(PH)    | UP(PH)       | NP          |                                                                                                                |
| Contractors Yard                                                                                                                                                                                                                  | AUP [7]                        | AUP [7]   | AUP [4]      | UP(PH)      |                                                                                                                |
| Dry Cleaning and Laundry Plant                                                                                                                                                                                                    | ZC* [9]                        | ZC [9]    | ZC [1]       | UP(PH)      | 23.206.060.B.2                                                                                                 |
| Laboratory                                                                                                                                                                                                                        |                                |           |              |             |                                                                                                                |
| Commercial Physical or Biological                                                                                                                                                                                                 | NP                             | AUP [4]   | UP(PH)*      | NP          | 23.206.080.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]    | 23.206.090.B.5                                                                                                 |
| Pesticides/Herbicides/Fertilizers                                                                                                                                                                                                 | NP                             | NP        | NP           | -           |                                                                                                                |
| Petroleum Refining and Products                                                                                                                                                                                                   | NP                             | NP        | NP           | -           |                                                                                                                |
| Pharmaceuticals                                                                                                                                                                                                                   | AUP [4]                        | AUP [4]   | AUP* [4]     | -           | 23.206.080.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          |                                                                                                                |

| ZC = Zoning Certificate<br>AUP = Administrative Use Permit<br>UP(PH) = Use Permit<br>-- = Permitted with an AUP, see 23.206.020(B)<br>NP = Not Permitted<br>[#] = Floor Area Permit Requirement<br>* Use-Specific Standards Apply | <b>MANUFACTURING DISTRICTS</b> |           |                  |                   | <b>Use-Specific Standards</b><br>Applies to uses with an asterisk following the permit requirement (e.g., ZC*) |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|-----------|------------------|-------------------|----------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                   | <b>M</b>                       | <b>MM</b> | <b>MU-LI</b>     | <b>MU-R</b>       |                                                                                                                |
| Recycled Materials Processing                                                                                                                                                                                                     | ZC* [9]                        | ZC* [9]   | UP(PH)*          | –                 | 23.206.040.H;<br>23.206.080.B.9                                                                                |
| Recycling Redemption Center                                                                                                                                                                                                       | AUP [7]                        | ZC [9]    | UP(PH)*          | AUP               | 23.206.080.B.9                                                                                                 |
| Repair Service, Non-Vehicle                                                                                                                                                                                                       | ZC* [9]                        | ZC* [9]   | ZC* [1]          | AUP               | 23.206.040.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]           | 23.206.080.B.13                                                                                                |
| <b>Incidental Uses</b>                                                                                                                                                                                                            |                                |           |                  |                   |                                                                                                                |
| Amusement Devices                                                                                                                                                                                                                 | NP                             | NP        | AUP              | AUP               |                                                                                                                |
| Alcoholic Beverage Service                                                                                                                                                                                                        | See 23.310                     |           |                  |                   |                                                                                                                |
| Cafeteria, On-Site                                                                                                                                                                                                                | ZC [2]                         | AUP [2]   | ZC [2]           | AUP               |                                                                                                                |
| Child Care Center                                                                                                                                                                                                                 | NP                             | NP        | See 23.206.040.B |                   |                                                                                                                |
| Columbaria                                                                                                                                                                                                                        | –                              | –         | –                | –                 |                                                                                                                |
| Food and Beverage for Immediate Consumption                                                                                                                                                                                       | –                              | AUP [2]   | –                | –                 |                                                                                                                |
| Food Service Establishment                                                                                                                                                                                                        | AUP [2]                        | -         | AUP [2]          | AUP               |                                                                                                                |
| Home Occupations                                                                                                                                                                                                                  | NP                             | NP        | NP               | See<br>23.206.040 |                                                                                                                |
| Live Entertainment                                                                                                                                                                                                                | NP                             | NP        | UP(PH)*          | UP(PH)*           | 23.302.020.D                                                                                                   |
| Retail Sales of Goods Manufactured On-Site                                                                                                                                                                                        | AUP* [13]                      | AUP* [14] | AUP* [14]        | AUP*              | 23.206.040.I                                                                                                   |

| ZC = Zoning Certificate<br>AUP = Administrative Use Permit<br>UP(PH) = Use Permit<br>-- = Permitted with an AUP, see 23.206.020(B)<br>NP = Not Permitted<br>[#] = Floor Area Permit Requirement<br>* Use-Specific Standards Apply | MANUFACTURING DISTRICTS |         |              |          | <b>Use-Specific Standards</b><br>Applies to uses with an asterisk following the permit requirement (e.g., ZC*) |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|---------|--------------|----------|----------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                   | M                       | MM      | MU-LI        | MU-R     |                                                                                                                |
| Storage of Goods Manufactured On-Site (>25% gross floor area)                                                                                                                                                                     | ZC                      | ZC      | ZC           | AUP      |                                                                                                                |
| Wholesale Activities                                                                                                                                                                                                              | ZC                      | ZC      | ZC           | AUP      |                                                                                                                |
| <b>Other Miscellaneous Uses</b>                                                                                                                                                                                                   |                         |         |              |          |                                                                                                                |
| Art/Craft Studio                                                                                                                                                                                                                  | ZC* [10]                | ZC [10] | ZC* [10]     | AUP [11] | 23.206.040.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)   | 23.206.040.D                                                                                                   |
| Drive-in Uses                                                                                                                                                                                                                     | NP                      | NP      | NP           | NP       |                                                                                                                |
| Live/Work                                                                                                                                                                                                                         | NP                      | NP      | See 23.312   |          |                                                                                                                |
| Parking Lot/Structure                                                                                                                                                                                                             | See 23.302.070.G        |         |              |          |                                                                                                                |
| Public Market, Open Air                                                                                                                                                                                                           | -                       | -       | UP(PH)* [15] | -        | 23.206.080.B.8                                                                                                 |
| Public Market, Enclosed                                                                                                                                                                                                           | -                       | -       | AUP [5]      | -        |                                                                                                                |
| Short-Term Rental                                                                                                                                                                                                                 | -                       | -       | -            | ZC*      | 23.314                                                                                                         |
| Urban Agriculture, Low-Impact                                                                                                                                                                                                     | ZC                      | ZC      | ZC           | ZC       |                                                                                                                |
| Urban Agriculture, High-Impact                                                                                                                                                                                                    | AUP                     | AUP     | AUP          | AUP      |                                                                                                                |
| <b>Notes:</b>                                                                                                                                                                                                                     |                         |         |              |          |                                                                                                                |
| [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.                                                                                                                                                                                              |                         |         |              |          |                                                                                                                |

| ZC = Zoning Certificate<br>AUP = Administrative Use Permit<br>UP(PH) = Use Permit<br>-- = Permitted with an AUP, see 23.206.020(B)<br>NP = Not Permitted<br>[#] = Floor Area Permit Requirement<br>* Use-Specific Standards Apply                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | MANUFACTURING DISTRICTS |    |       |      | <b>Use-Specific Standards</b><br>Applies to uses with an asterisk following the permit requirement (e.g., ZC*) |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|----|-------|------|----------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | M                       | MM | MU-LI | MU-R |                                                                                                                |
| [6] Not permitted over 3,000 sq. ft.<br>[7] Requires a Use Permit for uses more than 40,000 sq. ft.<br>[8] Requires a Use Permit for uses 20,000 sq. ft. to 40,000 square feet.<br>[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.<br>[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.<br>[11] Allowed with Zoning Certificate if under 1,000 sq. ft.. Requires Use Permit if over 20,000 sq. ft.<br>[12] Requires an AUP for uses more than 20,000 sq. ft.<br>[13] Not permitted 1,500 sq. ft. or more.<br>[14] Requires a Use Permit for sales area 1,501 to 3,000 sq. ft. Not permitted over 3,000 sq. ft.<br>[15] Requires Use Permit for markets over 5,000 sq. ft. |                         |    |       |      |                                                                                                                |

- B. **Unlisted Land Uses.** Any use not listed in Table 23.206-1 is permitted with an AUP. To approve the AUP, the Zoning Officer must find that the use is compatible with the purposes of the district where it is located. Any use found to be incompatible with the purposes of the district is not permitted.
- C. **Use-Specific Regulations.** Uses subject to supplemental regulations are shown in in Table 23.206-1 with an asterisk (\*) following the permit requirement (e.g., ZC\*). The Use-Specific Standards column in Table 23.206-1 identifies the location of these standards in the Zoning Ordinance.

**23.206.030 – Additional Permit Requirements**

- A. **New Floor Area.** A project that creates new floor area for any use requires additional permits as shown in Table 23.206-1. Creation of new floor area includes:
  1. Construction of new main buildings or accessory buildings;
  2. Additions to existing buildings; or
  3. The installation of new floor or mezzanine levels within or onto existing buildings.

**TABLE 23.206-2: NEW FLOOR AREA PERMIT REQUIREMENTS**

| District/New Gross Floor Area      | Permit Required for New Floor Area |
|------------------------------------|------------------------------------|
| M, MM                              |                                    |
| Less than 20,000 sq. ft.           | ZC                                 |
| 20,000 to less than 40,000 sq. ft. | AUP                                |
| 40,000 sq. ft. or more             | UP(PH)                             |
| MU-LI                              |                                    |
| Less than 10,000 sq. ft.           | ZC                                 |
| 10,000 to less than 20,000 sq. ft. | AUP                                |
| 20,000 sq. ft. or more             | UP(PH)                             |
| MU-R                               |                                    |
| Less than 5,000 sq. ft.            | ZC                                 |
| 5,000 to less than 10,000 sq. ft.  | AUP                                |
| 10,000 sq. ft. or more             | UP(PH)                             |

**B. Tenant Space Reconfiguration.**

1. Reconfiguration of tenant space in an existing building in the M, MM, and MU-LI districts requires a permit as listed in Table 23.206-3.

2. In the MU-R district, tenant space reconfiguration projects affecting 5,000 square or more require a Use Permit.
3. 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 23.206-3: TENANT SPACE RECONFIGURATION REQUIREMENTS IN THE M, MM, AND MU-LI DISTRICTS**

| Tenant Space Reconfiguration Project                     | Permit Required for Tenant Space Reconfiguration Project |
|----------------------------------------------------------|----------------------------------------------------------|
| Previously separated spaces combined into a larger space | ZC                                                       |
| Creating 2 to 5 separate new tenant spaces               | ZC                                                       |
| Creating 6 to 9 separate new tenant spaces               | AUP                                                      |
| Creating 10 or more separate new tenant spaces           | UP(PH)                                                   |

4. **MM District Findings.** To approve an AUP or Use Permit for a tenant reconfiguration project in the MM district, the review authority must find that the conversion is necessary to implement the purpose of the district.
5. **MU-LI District Findings.** To approve a Use Permit for a tenant reconfiguration project in the MU-LI district, the review authority must find that the reconfiguration would not create or contribute to a shortage of industrial spaces in West Berkeley for spaces of the size being converted and either:
  - a. The reconfiguration can be reasonably expected to better serve the purposes of the district than leaving the space intact; or
  - b. The reconfiguration would create spaces which could cross-subsidize larger industrial spaces.

**C. Major Residential Additions.**

1. **Where Allowed/Required Permits.**
  - a. Major residential additions in the MU-R district require an AUP.
  - b. Major residential additions are not permitted in MU-LI district.

- c. Major residential additions in the M and MM districts are subject to the requirement in Section 23.324 (Nonconforming Uses, Structures, and Buildings).
  - 2. **Findings.** To deny an AUP for a major residential addition in the MU-R district, the review authority must find that:
    - a. The proposed addition would unreasonably interfere with existing or reasonably foreseeable adjacent land uses in the M or MM district; or
    - b. Existing or reasonably foreseeable adjacent land uses in the M and/or MM district would have a material adverse effect on the use of the proposed addition.
  - 3. **Recorded Acknowledgement.** For a residential addition in the MU-R district, the residential property owner shall record an acknowledgement on the title that existing or reasonably foreseeable adjacent land uses in the M and/or MM District may create noise, dust, odors, light/glare, and other impacts that shall not be considered a nuisance if they are developed and conducted pursuant to the standards of the district.
- D. **Langendorf Building.** The following applies to the property occupied by the Langendorf Building (2929 Seventh Street, APN 053-0164300102):
- 1. Commercial physical and biological laboratories are allowed with a Use Permit if at least 6,000 square feet of gross floor area is occupied by a permitted use.
  - 2. Retail, office, and food and alcohol service uses allowed in the C-W district are allowed in the MU-LI portion of the property if the total gross floor area of these uses are less than 10,000 square feet.
- E. **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.
- F. **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).

### **23.206.040 – Use-Specific Regulations**

- A. **Art/Craft Studios in the M and MU-LI Districts.** Art/craft studios are allowed in the M and MU-LI districts only as workspaces. Live/work is not permitted.



- B. Child Care Centers in the MU-LI and MU-R Districts.** Table 23.206-4 shows permit requirements for child care centers in the MU-LI and MU-R districts.

**TABLE 23.206-4: MU-LI AND MU-R CHILD-CARE CENTER PERMIT REQUIREMENTS**

| Use Characteristic                     | Permit Required |
|----------------------------------------|-----------------|
| Incidental Use                         |                 |
| Providing childcare for employees only | ZC              |
| Providing childcare for non-employees  | AUP             |
| Principal Use                          | UP(PH)          |

**C. Child-Serving Uses in the MU-LI and MU-R Districts.**

1. As used in this section, “child-serving use” means a school, child care center, family day care, or park/recreational facility used by children.
2. Before acting on an application to establish or expand a child-serving use in the MU-LI or MU-R districts, the applicant shall prepare and submit to the City an appropriate risk analysis or risk assessment, as determined by the City, that evaluates the risk to children in the use from other activities near the site.
3. All child-serving uses in the MU-LI and MU-R districts must notify in writing, on a form approved by the City, all parents of children in the child-serving use that the use is in the MU-LI or MU-R district, light manufacturing is a permitted activity in the district, and that primary production manufacturing or construction products manufacturing may be permitted uses in adjacent districts. The child-serving use must require each parent or guardian to confirm in writing that they have read and understood this information. Written confirmations shall be returned to the child-serving use and maintained at the use for City review.
4. To approve an AUP or Use Permit to establish or expand a child-serving use, the review authority must find that:
  - a. The child-serving use is not incompatible with adjacent and nearby uses, including industrial uses;
  - b. The risk analysis or risk assessment shows that there is not significant risk to children in the use from other activities near the site; and
  - c. The applicant has made adequate provisions to comply with the parent/guardian notification requirement in Paragraph (3) above.

- D. Circuses and Carnival in the MM and MU-LI Districts.** Circuses and carnivals are allowed in the MM and MU-LI districts only as a temporary use.

- E. **Club and Lodges in the M, M-M, and MU-LI Districts.** Clubs and lodges are allowed in the M, M-M, and MU-LI districts only for persons working in the district.
- F. **Manufacturing Uses in the M, MM, and MU-LI Districts.** For manufacturing uses in the M, MM, and MU-LI districts otherwise allowed with a Zoning Certificate, an AUP is required to establish the use within 150 feet of a residential use in a Residential District or in the MU-R district.
- G. **Non-Vehicle Repair Service in the M, MM, and MU-LI Districts.** Retail sales associated with a non-vehicle repair service are not permitted in the M, MM, and MU-LI districts.
- H. **Recycled Materials Processing in the M and MM Districts.** For recycled materials processing facilities under 10,000 square feet in the M and MM districts, an AUP is required if processing occurs outside of a building.
- I. **Retail Sale of Goods Manufactured On-Site.** The following requirements apply to incidental retail sales in all Manufacturing Districts:
1. The size and character of signs for the retail use shall clearly indicate that the retail use is not the primary use of the site
  2. Maximum retail floor area: 10 percent of total gross floor area.
  3. Outdoor sales or food service is not permitted.
- J. **Storage, Wholesale, Manufacturing as Incidental Use.** If a storage, wholesale, or manufacturing use is allowed in the M, MM, and MU-R district with a Zoning Certificate, the use is allowed incidental to another permitted use without the need to obtain an AUP or Use Permit.
- K. **Noise.** For purposes of the Noise Ordinance, Municipal Code Chapter 13.40, the Manufacturing Districts are considered Industry Districts.

### 23.206.050 – Protected Uses

- A. **Protected Industrial Uses in the MM and MU-LI Districts.** The industrial use protections in this subsection apply in the MM and MU-LI districts.
1. **Uses Subject to Protection.** Table 23.206-5 identifies protected industrial uses in the MM and MU-LI districts and when the requirements in this subsection apply to these uses. Protections apply only to legally-established uses.

**TABLE 23.206-5: PROTECTED INDUSTRIAL USES**

| Zoning District | Protected Industrial Uses                   | Applicability of Requirements                               |
|-----------------|---------------------------------------------|-------------------------------------------------------------|
| MM              | Manufacturing, warehousing, wholesale trade | Ground-level protected uses on or after January 1, 1988 [1] |

|                                                                                                                     |                                                                           |                                                                  |
|---------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------|------------------------------------------------------------------|
| MU-LI                                                                                                               | Material recovery enterprise, manufacturing, warehousing, wholesale trade | Buildings with 33% protected use on or after January 1, 1996 [1] |
| <p><u>Note:</u><br/>[1] Includes protected uses that were previously used on or after this date but now vacant.</p> |                                                                           |                                                                  |

- a. In the MM district, requirements in this subsection apply if protected use space is used, or has been used, for the manufacture, assembly, processing, repair, testing (including prototype manufacturing), storage, display (other than in retail stores) or distribution of goods. Requirements do not apply in the MM district if the protected use is or was demonstrably ancillary to another use.

2. **Permits Required.** Table 23.206-6 identifies permits required if a protected industrial use is changed to any use that is not a protected industrial use.

**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 20,000 sq. ft. or less and 25% of protected use to a non-protected use | AUP             |
|                 | Change over 20,000 sq. ft. or 25% of protected use to a non-protected use     | UP(PH)          |

**3. Permit Findings.**

- a. To approve a permit required by Table 23.206-6 for changes to a protected industrial use in the MM and MU-LI districts, the review authority must find that replacement space is provided as required by Paragraph 4 (Replacement Space) below.
- b. To approve a Use Permit for a change of 25 percent more to a protected use in the MU-LI district, the Zoning Adjustments Board (ZAB) must also find that either:
- i.* The City has approved necessary Use Permits to provide comparable quality replacement space in Berkeley at a comparable rent that will be available before the demolition or change of use of the space; or
  - ii.* Both of the following:

1. As a result of lawful business and building activities, there are exceptional physical circumstances (exclusive of the presence of hazardous materials in the building(s), soil or groundwater) found at the building not generally found in industrial buildings in the MU-LI district which make it financially infeasible to reuse the building for any of protected industrial uses permitted in the district. The analysis of the financial feasibility effects (which shall be verified by the City) of these physical circumstances shall consider those costs necessary to make the building meet current minimum standards for manufacturing, wholesale trade or warehouse buildings.
2. Appropriate mitigation has been made for loss of the protected industrial use space in excess of 25 percent of that space through providing such space elsewhere in the City, payment into the West Berkeley Building Acquisition Fund, or by other appropriate means.
4. **Replacement Space.** Floor area occupied by a protected industrial use that is changed to a non-protected use must be replaced, in the West Berkeley Plan area, by a comparable space devoted to one or more of protected industrial uses.
5. **Minimum Protected Use Floor Area – MM District.** For properties in the MM district where 25 percent or more of the total gross floor area was occupied by a protected industrial use as of January 1, 1996, protected industrial uses may not be reduced to less than 25 percent of the total gross floor area on the property.
6. **Cumulative Limitations – MU-LI District.** Permit requirements for changes to protected industrial uses in the MU-LI district are cumulative.
7. **Exceptions.** Changes to protected industrial uses in the MM and MU-LI districts described below are exempt from the requirements in Paragraphs 2-6 above.
  - a. **Changes to R&D Uses.**

A protected warehouse or wholesale trade use established before January 1, 2010 may be changed to a research and development (R&D) use with the permits shown in Table 23.206-7.

**TABLE 23.206-7: PERMITS FOR CHANGES FROM PROTECTED TO R&D USES**

| Change in Protected Use<br>Gross Floor Area | Permit Required |
|---------------------------------------------|-----------------|
| 20,000 square feet or less                  | AUP             |
| Over 20,000 square feet                     | UP(PH)          |

- i.* A maximum of 150,000 square feet of protected warehouse or wholesale trade space occupied on or after August 1, 2011 may be converted to R&D. This maximum applies regardless of whether or not the protected warehouse or wholesale trade space was legally established.
- b. Changes to Warehouse-Based Non-Store Retail, Art/Craft Studio, and Contractor Uses.** A protected industrial use may be changed to a warehouse-based non-store retail, art/craft studio, or contractor use with the permit required by Section 23.206.020 (Allowed Land Uses and Permit Requirements).
- c. Langendorf Building.** Protected industrial uses in the Langendorf Building (2929 Seventh Street) may be changed to a non-protected use if at least 30,000 square feet of total gross floor area remains as a protected industrial use.
- d. MU-LI Lots with Multiple Owners.** Protected industrial uses in the MU-LI district may be changed to a non-protected use if:
  - i.* The protected industrial use is on a lot or group of abutting and confronting lots under single ownership and with more than one building; and
  - ii.* 25 percent or less of the total gross floor area in all buildings on the lot(s) remains as a protected industrial use.
- e. Prior Protections Remain.** Establishing a new non-protected use under 23.206.050.A.7 (Exceptions) does not eliminate any protections for the prior protected use and such protections will remain if the new non-protected use ceases.

#### **8. Reports to City Council.**

- a.** The Planning and Development Department will report to the City Council once a cumulative total of 50,000 square feet in the MM and MU-LI districts of protected warehousing or wholesale trade use is converted to a R&D use (or at the end of one year, whichever occurs first). The Department will provide additional reports in the same increments after this first report. The reports will include the gross square footage of building space converted and the number and type of jobs expected to be created.
- b.** No later than April 15, 2016, the City Manager will provide a cumulative report to the City Council and schedule an action item for the Council's consideration so that it can provide direction as to what, if any, modifications it wishes to make to this section.

#### **B. Protected Industrial Uses in the MU-R District.**

1. **Protected Industrial Uses Defined.** Manufacturing, warehousing, and wholesale trade are protected industrial uses in the MU-R district. Protections apply only to legally-established uses.
2. **Permit Required.** Except as allowed by Section 23.206.050.B.4 (Exempt from Permit Requirement), a Use Permit is required to change a protected industrial use to any use that is not a protected industrial use.
3. **Permit Findings.** To approve a Use Permit when required by Section 23.206.050.B.2 (Permit Required), the review authority must find that:
  - a. The change of use will not have a materially detrimental impact on the character of the MU-R district as a light industrial district, with particular reference to the character of the blocks and parts of blocks in the part of the district that is contiguous with the site; and
  - b. Appropriate mitigation has been made for loss of the manufacturing, wholesale trade, or warehouse space in excess of 25 percent of that space through providing such space elsewhere in Berkeley, payment into the West Berkeley Building Acquisition Fund, or by other appropriate means.
4. **Exempt from Permit Requirement.** A protected industrial use may be changed to an art/craft studio or contractor use with the permit required by Section 23.206.020 (Allowed Land Uses and Permit Requirements). Approval of an art/craft studio or contractor use within a protected industrial space does not eliminate any protections for the prior protected use and such protections will remain if the new non-protected use ceases.

**C. Protected Non-Industrial Uses in the MU-LI and MU-R Districts.**

1. **Protected Non-Industrial Uses Defined.** A use in the MU-LI or MU-R districts listed in Table 23.206-8 is classified as a protected non-industrial use, provided the use:
  - a. Was legally established as of July 6, 1989; and
  - b. Exists as a single stand-alone use or is combined with residential use in a live/work unit.

**TABLE 23.206-8: PROTECTED NON-INDUSTRIAL USES**

| Category          | Protected Uses                                                                                                                                                                                             |
|-------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Category 1</b> | Art/craft studio                                                                                                                                                                                           |
| <b>Category 2</b> | 1) Art galleries, ancillary to art/craft studios and when located in the same building<br>2) Child care facility<br>3) Family day care home<br>4) Fine arts performance, instruction and rehearsal studios |

|  |                                                                                                  |
|--|--------------------------------------------------------------------------------------------------|
|  | (dance, music, theater)<br>5) Theaters, stage performance, but excluding motion picture theaters |
|--|--------------------------------------------------------------------------------------------------|

## 2. Permit Required for Change of Use.

- a. Table 23.206-9 shows permits required to change a protected non-industrial use.

**TABLE 23.206-9: PERMITS REQUIRED FOR CHANGE TO PROTECTED NON-INDUSTRIAL USE**

| Existing Protected Use Gross Floor Area | New Use                              |                                         |                                                                                         |
|-----------------------------------------|--------------------------------------|-----------------------------------------|-----------------------------------------------------------------------------------------|
|                                         | A protected use in the same category | A protected use in a different category | A non-protected use that occupies all of the non-residential floor area in the building |
| Less than 5,000 sq. ft.                 | ZC                                   | AUP                                     | AUP                                                                                     |
| 5,000 sq. ft. or more                   | AUP                                  | UP(PH)                                  | UP(PH)                                                                                  |

3. **Owner-Occupied Exemption.** A protected non-industrial use which is owner-occupied and occupies all of the non-residential floor area in a building is exempt from the requirements of this section.

## 4. Findings.

- a. To approve a permit required by Table 23.206-9, the review authority must find that space occupied by the existing non-industrial protected use will be replaced with a comparable space in the West Berkeley Plan area, which is reserved for use by any protected use in the same category. Such replacement space may not qualify for exemption under Paragraph 3 (Owner-Occupied Exemption) above or by reason of having been established after July 6, 1989.
- b. When making additional findings required by Chapter 23.406 (Specific Permit and Approval Requirements), the review authority may only consider the potential detriment associated with the new use. Dislocation of any specific previous occupant or use may not be a basis for finding detriment.

### 23.206.060 – M Manufacturing District

- A. **District Purpose.** The purpose of the Manufacturing (M) district is to:

1. Implement the West Berkeley Plan Manufacturing District designation;

2. Encourage development of a general manufacturing district for the full range of manufacturers, including larger scale materials processing manufacturers sometimes known as heavy manufacturers;
3. Consistent with other goals expressed in these purposes, encourage development of a manufacturing district dedicated to manufacturing and industrial uses, so that manufacturers and industrial businesses will not be interfered with by incompatible uses;
4. Encourage the creation and continuation of well-paid (often unionized) industrial jobs for people without advanced degrees;
5. To the greatest degree possible and consistent with other goals expressed in these purposes, retain the stock of manufacturing and industrial buildings and/or sites, especially large buildings and sites, for manufacturing and industrial uses;
6. Support the development of industrial businesses which contribute to the maintenance and improvement of the environment;
7. Maintain and improve the quality of the West Berkeley environment, while allowing the lawful and reasonable operation of the full range of manufacturers;
8. Support the development of retail automobile sales uses because they contribute to the economic viability of the area and provide sales tax revenues for the City; and
9. Provide opportunities for vehicle sales uses when it will not unduly interfere with manufacturing uses.

**B. Land Use Regulations.**

1. **Allowed Land Uses.** See Table 23.206-1: Allowed Land Uses in Manufacturing Districts.
2. **Dry Cleaning and Laundry Plants.** Retail service at a dry cleaning and laundry plant in the M district is not permitted.
3. **Vehicle Sales.** The following standards apply to both new and used vehicle sales in the M district.
  - a. Permits required for vehicle sales in the M district is determined by size of lot, not floor area.
  - b. Vehicle sales are not permitted on City-owned land used for a materials recovery enterprise or solid waste transfer station as of January 1, 2008.
  - c. When a project results in construction of a new building with more than 10,000 square feet of new gross floor area, the following standards apply to the new building:



- i.* A minimum building frontage of 40 percent of the project's primary street frontage is required within 25 feet of the public right-of-way. The primary street frontage is the frontage towards which the primary building entrance is oriented.
  - ii.* Along Gilman Street a minimum building frontage of 50 percent of the Gilman Street frontage is required within 25 feet of the public right-of-way.
  - iii.* The minimum building height is 20 feet within 25 feet of the public right-of-way along the primary street frontage.
- d. Adequate landscaping and/or fencing shall be used to screen views from street level of dealership operations that are not located within a building. Outdoor vehicle storage and display does not need screening. Such screening is not required to obscure all visibility of interior activities but shall provide some filtering of outdoor dealership operations.
- e. For the purposes of this section and Design Review, areas used for outdoor vehicle storage and display are not considered parking areas.
- f. Appropriate site design measures shall be installed to the maximum extent practicable to ensure clean water standards are met. Permanent stormwater best management practices and on-site storm water treatment shall be used for all runoff generated by new impermeable surfaces. Runoff from automobile washing and maintenance activities shall be properly collected and treated, consistent with the requirements of the Public Works Department and the Toxics Management Division of the Planning Department. When new paving is proposed, pervious paving shall be used where feasible and shall be reviewed and approved by the Public Works Department and Office of Transportation.
- g. All noise-generating activities and equipment, such as vehicle repair, shall be shielded by noise-attenuating construction or equipment. Outdoor amplification is not permitted.
- h. Exterior light standards and fixtures shall not be taller than 20 feet, light cutoffs shall be used to control light spillover onto adjacent properties, and low energy light fixtures consistent with Berkeley's goals for energy efficiency shall be used.
- i. Vehicle test drives shall not be conducted in adjacent Residential Districts.
- j. Facilities for the loading and unloading of deliveries shall be provided on-site and may not occupy street parking or block public or private streets. On-street unloading is permitted with an AUP. To approve the AUP, the Zoning Officer must find that:

- i.* On-street loading will not be unreasonably disruptive or detrimental to activities in the vicinity; and
  - ii.* On-site deliveries are not feasible due to specific site or roadway constraints.
- k. To approve an AUP or Use Permit for an automobile sales use in the M district, the review authority must find that:
- i.* The project will not result in unreasonable impacts on circulation and parking on adjacent streets or in the immediate neighborhood;
  - ii.* The project will not result in a substantial adverse impact on existing uses in the immediate vicinity;
  - iii.* The project will not generate objectionable odors or excessive levels of noise;
  - iv.* Site design reflects the urban form of the surrounding area and new construction, materials and/or building forms reflect the area's industrial character;
  - v.* New construction along Gilman Street reflects the importance of a defined street wall along this main entry corridor to the city; and
  - vi.* The project will not materially interfere with the activities of the City-owned solid waste center.

C. **Additional Permit Requirements.** See Section 23.206.030 (Additional Permit Requirements).

D. **Development Standards.** See Table 23.206-10 for development standards in the M district.

**TABLE 23.206-10: M DEVELOPMENT STANDARDS**

| <b>BASIC STANDARDS</b>                       |                | <b>SUPPLEMENTAL STANDARDS</b> |
|----------------------------------------------|----------------|-------------------------------|
| Lot Area, Minimum                            | 20,000 sq. ft. | 23.304.020– Lot Requirements  |
| Usable Open Space Per Dwelling Unit, Minimum | n/a            |                               |
| Floor Area Ratio, Maximum                    | 2.0            |                               |
| Main Building Height, Maximum                | 45 ft.         | 23.304.050– Building Height   |
| Lot Line Setbacks, Minimum                   |                | 23.304.030– Setbacks          |

|                              |            |  |
|------------------------------|------------|--|
| Front                        | No minimum |  |
| Rear                         | No minimum |  |
| Interior Side                | No minimum |  |
| Street Side                  | No minimum |  |
| Building Separation, Minimum | No minimum |  |
| Lot Coverage, Maximum        | 100%       |  |

E. **Permit Findings.** See – Permit Findings (Permit Findings).

### **23.206.070 – MM Mixed Manufacturing District**

A. **District Purpose.** The purpose of the Mixed Manufacturing (MM) district is to:

1. Implement the West Berkeley Plan MM designation;
2. Encourage development of a general manufacturing district for the full range of manufacturers, including larger scale materials processing manufacturers sometimes known as heavy manufacturers;
3. Encourage development of a manufacturing district targeted to manufacturing and industrial uses, so that manufacturers and industrial businesses will not be interfered with by incompatible uses;
4. Encourage the creation and continuation of well paid (often unionized) jobs for men and women without advanced degrees;
5. Provide an appropriate location for the development of compatible industries which can provide high quality employment for people at all educational levels, and add significantly to the tax base, such as the biotechnology industry;
6. Allow reuse of upper story industrial space as offices to facilitate use of upper story space;
7. Maintain and improve the quality of the West Berkeley environment, while allowing the lawful and reasonable operation of the full range of manufacturers; and
8. Support the development of industrial businesses which contribute to the maintenance and improvement of the environment.

B. **Land Use Regulations.**

1. **Allowed Land Uses.** See Table 23.206-1: Allowed Land Uses in Manufacturing Districts.
2. **Office Uses.**

- a. Office uses are allowed in the MM district only above the ground floor. Ground floor office uses are not permitted unless ancillary to a permitted use.
- b. If the office use is established above a non-manufacturing use or replaces an existing manufacturing, warehousing or wholesale trade use, an AUP is required.

C. **Additional Permit Requirements.** See Section 23.206.030– Additional Permit Requirements.

D. **Development Standards.** See Table 23.206-11 for development standards in the MM district.

**TABLE 23.206-11: MM DEVELOPMENT STANDARDS**

| BASIC STANDARDS                              |                | SUPPLEMENTAL STANDARDS       |
|----------------------------------------------|----------------|------------------------------|
| Lot Area, Minimum                            | 20,000 sq. ft. | 23.304.020– Lot Requirements |
| Usable Open Space Per Dwelling Unit, Minimum | n/a            |                              |
| Floor Area Ratio, Maximum                    | 2.0            |                              |
| Main Building Height, Maximum                | 45 ft.         | 23.304.050– Building Height  |
| Lot Line Setbacks, Minimum                   |                | 23.304.030– Setbacks         |
| Front                                        | No minimum     |                              |
| Rear                                         | No minimum     |                              |
| Interior Side                                | No minimum     |                              |
| Street Side                                  | No minimum     |                              |
| Building Separation, Minimum                 | No minimum     |                              |
| Lot Coverage, Maximum                        | 100%           |                              |

E. **Permit Findings.** See Section 23.206.100– Permit Findings.

### **23.206.080 – MU-LI Mixed Use-Light Industrial District**

A. **District Purpose.** The purpose of the Mixed Use-Light Industrial (MU-LI) district is to:

1. Implement the West Berkeley Plan Light Manufacturing District designation;

2. Encourage development of a mixed use-light industrial area for a range of compatible uses;
3. Encourage development of an area where light manufacturers can operate free from the economic, physical and social constraints caused by incompatible uses;
4. Encourage the creation and continuation of well-paid jobs which do not require advanced degrees;
5. Provide for the continued availability of manufacturing and industrial buildings for manufacturing uses, especially of larger spaces needed by medium sized and larger light manufacturers;
6. Provide opportunities for office development when it will not unduly interfere with light manufacturing uses and/or the light manufacturing building stock;
7. Provide the opportunity for laboratory development in appropriate locations;
8. Support the development of businesses which contribute to the maintenance and improvement of the environment;
9. Allow on-site ancillary retail as a tool to maintain and enhance the economic viability of manufacturers in the district; and
10. Maintain and improve the quality of the West Berkeley environment, while allowing the lawful and reasonable operation of light industrial uses.

#### B. Land Use Regulations.

1. **Allowed Land Uses.** See Table 23.206-1: Allowed Land Uses in Manufacturing Districts.
2. **Use Permit Not Required.** An existing use in the MU-LI district may be modified or intensified without a Use Permit if:
  - a. A Use Permit is not required by this chapter; and
  - b. The Zoning Officer determines that the modification or intensification of the use can reasonably be expected not to increase any impact regulated under environmental performance standards.
3. **Alcoholic Beverage Retail Sales.** Alcoholic beverage retail sales are allowed in the MU-LI district only when incidental to food product stores.
4. **Bus/Cab/Truck/Public Utility Depot.** A Use Permit is required for a bus/cab/truck/public utility depot in the MU-LI district if the lot is over 20,000 square feet, regardless of use floor area.
5. **Commercial Physical or Biological Laboratories.** Commercial physical or biological laboratories using Class 3 organisms are not permitted the MU-LI district. Use of Class 2 organisms are permitted only in locations at least 500 feet from a Residential District or a MU-R district.

6. **General Retail.** Allowed general retail uses the MU-LI district are limited to food product stores and building materials and garden supply stores. Other types of general retail uses are not permitted.
  7. **Pharmaceuticals Manufacturing.** Pharmaceuticals manufacturing is allowed in the MU-LI district only in locations at least 500 feet from a Residential District or the MU-R district.
  8. **Public Market, Open Air.** Open air markets in the MU-LI district with 5,000 square feet or less of lot area are allowed with AUP.
  9. **Recycling Facilities.** Recycled materials processing and recycling redemption centers are allowed in the MU-LI district only on lots greater than 20,000 square feet.
  10. **Theaters.** Only live stage performances are allowed in a theater in the MU-LI district. Motion picture theaters are not permitted.
  11. **Vehicle Wrecking.** Permits required for vehicle wrecking the MU-LI district is determined by size of lot, not floor area.
  12. **Vocational Schools.** A vocational school in the MU-LI district must provide training for occupations and/or industries found in the West Berkeley Plan area.
  13. **Wholesale Trade Proximity to Residential Use.** For wholesale trade use in the MU-LI district otherwise allowed with a Zoning Certificate, an AUP is required to establish the use within 150 feet of a residential use in a Residential District or in the MU-R district.
- C. **Additional Permit Requirements.** See Section 23.206.030– Additional Permit Requirements.
- D. **Outdoor Recreation Sub-Zone.**
1. An Outdoor Recreation Sub-zone may be designated by the City Council, upon recommendation of the Planning Commission. In an Outdoor Recreation Sub-zone, parks and outdoor recreational uses are permitted with a Use Permit.
  2. Properties designated as an Outdoor Recreation Sub-zone must be:
    - a. Designated specifically for outdoor recreational use in the West Berkeley Plan;
    - b. Owned or under acquisition by a public agency which is subject to the Zoning Ordinance;
    - c. At least 5 contiguous acres in area;
    - d. Not primarily occupied by a conforming use as designated in the West Berkeley Plan; and

- e. At least 1,000 feet from any other Outdoor Recreation Sub-zone.
- 3. The initial designation of an Outdoor Recreation Sub-zone expires five years from the designation date. To permit outdoor recreational uses after that date, the Council must renew the Outdoor Recreation Sub-zone designation.

E. **Development Standards.** See Table 23.206-12 for development standards in the MU-LI district.

**TABLE 23.206-12: MU-LI DEVELOPMENT STANDARDS**

| BASIC STANDARDS                              |            | SUPPLEMENTAL STANDARDS       |
|----------------------------------------------|------------|------------------------------|
| Lot Area, Minimum                            | No minimum | 23.304.020– Lot Requirements |
| Usable Open Space Per Dwelling Unit, Minimum | n/a        |                              |
| Floor Area Ratio, Maximum                    | 2.0        |                              |
| Main Building Height, Maximum                | 45 ft.     | 23.304.050– Building Height  |
| Lot Line Setbacks, Minimum                   |            | 23.304.030– Setbacks         |
| Front                                        | No minimum |                              |
| Rear                                         | No minimum |                              |
| Interior Side                                | No minimum |                              |
| Street Side                                  | No minimum |                              |
| Building Separation, Minimum                 | No minimum |                              |
| Lot Coverage, Maximum                        | 100%       |                              |

F. **Permit Findings.** See Section 23.206.100– Permit Findings

### **23.206.090 – MU-R Mixed Use-Residential District**

- A. **District Purpose.** The purpose of the Mixed Manufacturing (MU-R) district is to:
1. Implement the West Berkeley Plan Mixed Residential District designation;
  2. Support the continued development of a mixed-use district which combines residential, live/work, light industrial, arts and crafts and other compatible uses;
  3. Strengthen residential concentrations which exist within the district;
  4. Provide appropriate locations for a broad range of live/work activities to occur;
  5. Provide a transitional district between the Residential Districts to the east of the district and the Manufacturing Districts to the west of the district;

6. Encourage light manufacturers and wholesalers which are compatible with a mixed use-residential district;
7. Support the development of businesses of all types which contribute to the maintenance and improvement of the environment;
8. Protect residents from unreasonably detrimental effect of nonresidential uses, such as noise, vibration, odors, smoke, fumes, gases, dust, heat and glare, to the extent possible and reasonable within a mixed-use West Berkeley context;
9. To the extent feasible, protect industrial uses, particularly light industrial uses, from unreasonable intrusions on their ability to operate lawfully; and
10. Permit retail and food service activities which are either limited and small scale, primarily serving persons living and/or working in the district, but not a citywide or regional clientele, or which are ancillary and designed to maintain and enhance the economic viability of manufacturers in the district.

#### B. Land Use Regulations.

1. **Allowed Land Uses.** See Table 23.206-1: Allowed Land Uses in Manufacturing Districts.
2. **Alcoholic Beverage Retail Sales.** Alcoholic beverage retail sales are allowed in the MU-R district only as ancillary sale of products produced or bottled on site with a Use Permit.
3. **Community Care Facility.** Community care facilities are allowed in the MU-R district only as a change of use. New construction is not permitted.
4. **General Retail.** Allowed types of general retail uses the MU-R district are limited to food product stores, building materials and garden supply stores, and arts and craft supplies. Other types of general retail uses are not permitted.
5. **Manufacturing Use Findings.** To approve an AUP or Use Permit to establish or expand a manufacturing use abutting one or more dwelling units located in the MU-R District, the review authority must find:
  - a. The manufacturer is capable of meeting all applicable performance standards; and
  - b. Permit conditions will specify all reasonable steps to minimize noise, odors, dust, vibration, glare and any other potential impacts on the abutting dwelling units.
6. **Mortuaries and Crematories.** Only mortuaries are permitted in the MU-R district. Crematories are not allowed.
7. **Multi-Family Dwellings.** Table 23.206-13 shows permits required for multi-family dwellings in the MU-R district.



**TABLE 23.206-13: MU-R MULTI-FAMILY DWELLING PERMIT REQUIREMENTS**

| NUMBER OF UNITS | PERMIT REQUIRED |
|-----------------|-----------------|
| 3 or 4          | AUP             |
| 5 or more       | UP(PH)          |

**8. Residential Uses.**

- a. A Use Permit is required to establish a dwelling unit, group living accommodation, or live/work unit MU-R that is within 150 feet of:
  - i. An M or MM district; or
  - ii. A construction product manufacturing or primary product manufacturing use.
- b. To deny a Use Permit required by Paragraph (a) above, the ZAB must find that:
  - i. The proposed residential use would unreasonably interfere with existing or reasonably foreseeable adjacent land uses in the M or MM district; or
  - ii. Existing or reasonably foreseeable adjacent land uses in the M or MM district would have a material adverse effect on the proposed residential use.
- c. As a condition of approval for a Use Permit required by Paragraph (a) above, the residential property owner shall record an acknowledgement that existing or reasonably foreseeable adjacent land uses in the M or MM district may create noise, dust, odors, light/glare, and other impacts that will not be considered a nuisance if they are developed and conducted pursuant to the standards of the district.

9. **Residential Mixed-Use.** To approve an AUP or Use Permit to establish or expand of a residential mixed-use building in the MU-R district, the review authority must find that the specific combination of proposed residential and non-residential uses will not be hazardous or detrimental to persons living and/or working on the site or within the project vicinity.

C. **Additional Permit Requirements.** See Section 23.206.030– Additional Permit Requirements.

D. **Development Standards.** See Table 23.206-14: MU-R Development Standards for development standards in the MU-R district.

**TABLE 23.206-14: MU-R DEVELOPMENT STANDARDS**

| BASIC STANDARDS | SUPPLEMENTAL STANDARDS |
|-----------------|------------------------|
|-----------------|------------------------|

|                                                                                                                                              |                          |                                            |
|----------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------------------------|
| Lot Area, Minimum                                                                                                                            |                          | 23.304.020– Lot Requirements<br>23.304.020 |
| New Lot                                                                                                                                      | No minimum               |                                            |
| Per Dwelling Unit or Live/Work Unit                                                                                                          | 1,250 sq. ft. [1]        |                                            |
| Lot Width, Minimum                                                                                                                           |                          | 40 ft.                                     |
| Usable Open Space, Minimum                                                                                                                   |                          | 23.304.090– Usable Open Space              |
| Per Dwelling Unit                                                                                                                            | 150 sq. ft.              |                                            |
| Per Live/Work Unit                                                                                                                           | 40 sq. ft.               |                                            |
| Floor Area Ratio, Maximum                                                                                                                    |                          | 1.0 [2]                                    |
| Main Building Height, Maximum                                                                                                                |                          | 23.304.050– Building Height                |
| Live/work                                                                                                                                    | 28 ft. and 3 stories [3] |                                            |
| Residential or mixed-use [4]                                                                                                                 | 35 ft. and 3 stories     |                                            |
| All other uses                                                                                                                               | 35 ft. and 2 stories [5] |                                            |
| Lot Line Setbacks, Minimum                                                                                                                   |                          | 23.304.030– Setbacks                       |
| Front                                                                                                                                        | 5 ft.                    |                                            |
| Rear                                                                                                                                         | No minimum [6]           |                                            |
| Interior Side                                                                                                                                | No minimum               |                                            |
| Street Side                                                                                                                                  | 5 ft.                    |                                            |
| Building Separation, Minimum                                                                                                                 |                          | No minimum                                 |
| Lot Coverage, Maximum                                                                                                                        |                          | 100%                                       |
| Notes:                                                                                                                                       |                          |                                            |
| [1] One additional dwelling unit allowed for remaining lot area between 750 and 1,250 square feet.                                           |                          |                                            |
| [2] Maximum 1.5 for buildings with 50 percent or more residential or live/work floor area                                                    |                          |                                            |
| [3] Maximum 35 ft. with a Use Permit.                                                                                                        |                          |                                            |
| [4] Mixed use is defined here as a building with 50 percent or more of gross floor area used for residential (including live/work) purposes. |                          |                                            |
| [5] Maximum 3 stories for arts/craft studios and light manufacturing (with no other non-residential uses) on a block without dwelling units. |                          |                                            |
| [6] Minimum 5 ft. if rear of lot abuts a street.                                                                                             |                          |                                            |
| [7] Setbacks required when abutting or confronting a Residential District. See 23.304.030.C.2.                                               |                          |                                            |

E. **Permit Findings.** See Section 23.206.100– Permit Findings.

### 23.206.100 – Permit Findings

- A. All Manufacturing Districts. To approve an AUP or a Use Permit in a Manufacturing District, the review authority must find that the project:
1. Is consistent with the purposes of the district;
  2. Is compatible with the surrounding uses and buildings;
  3. Complies with the adopted West Berkeley Plan; and
  4. Meets any applicable performance standards for off-site impacts.
- B. **Additional Findings.** In addition to the findings in Section 23.206.100.A (All Manufacturing Districts), the review authority must also make the following findings to approve an AUP or Use Permit in each of the Manufacturing Districts.
1. **M and MM Districts.** The project:
    - a. Is unlikely, under reasonably foreseeable circumstances, to induce a substantial change of use in buildings from manufacturing, wholesale trade, or warehousing uses; and
    - b. Is designed in such a manner to be supportive of the industrial character of the district. Such physical compatibility shall include materials used; facade treatments; landscaping; lighting; type, size and placement of awnings, windows, and signs; and all other externally visible aspects of the design of the building and site.
  2. **MU-LI District.** The project:
    - a. Is unlikely, under reasonably foreseeable circumstances, to induce a substantial change of use in buildings from manufacturing, wholesale trade, or warehousing uses;
    - b. Is designed in such a manner to be supportive of the industrial character of the district. Such physical compatibility shall include materials used; facade treatments; landscaping; lighting; type, size and placement of awnings, windows, and signs; and all other externally visible aspects of the design of the building and site; and
    - c. If the building and/or site is split between the MU-LI district and the C-W district, there are clear and appropriate distinctions in all design aspects between the portions of the building and site within the MU-LI district and the portions within the C-W district.
  3. **MU-R District.** The project:
    - a. Is unlikely, under reasonably foreseeable circumstances, to either induce or contribute to a cumulative change of use in buildings away from residential, live/work, light industrial, or arts and crafts uses; and

- b. Is designed to be supportive of the character and purposes of the district.

## 23.208 SPECIAL PURPOSE DISTRICTS

---

### Sections:

23.208.010– Specific Plan District

23.208.020– Unclassified District

### 23.208.010 – Specific Plan District

- A. **Purpose.** The Specific Plan (SP) district establishes allowed use and permit requirements in areas subject to an adopted Specific Plan.
- B. **Allowed Uses.** Allowed uses and permit requirements in the SP district are as established in the applicable Specific Plan.
2. If the applicable Specific Plan is silent on a use allowed in another district, the use is allowed with a Use Permit.
- C. **Required Permits.**
1. Before approving a permit application in a SP district, the City must approve a Master Development Plan Permit consistent with the applicable Specific Plan. To approve a Master Development Plan Permit, the review authority must make all findings required by the Specific Plan.
  2. Applications for a Master Development Plan Permit and subsequent required permits shall be submitted and processed in accordance with Section 23.404—Common Permit Requirements and 23.406—Specific Permit Requirements.

### 23.208.020 – Unclassified District

- A. **Purpose.** The purpose of the Unclassified (U) district is to:
1. Implement the General Plan designations for areas included in the U district zoning classification; and
  2. Provide a district designation until such areas are classified into a residential, commercial, or manufacturing district.
- B. **Allowed Uses.**
1. All uses not prohibited by law are permitted in the U district.
  2. A Use Permit is required to establish any use, consistent with the procedures in this section.
- C. **Use Permit Procedures.** The City shall review and act on Use Permit applications in the U district as follows:
1. Each application shall be first submitted to the Planning Commission with the Planning Commission making a report to the ZAB. If the Planning Commission

fails to take an action on the report within 30 days after a Use Permit application is deemed complete, the ZAB will consider the application without a Planning Commission report.

2. After Planning Commission review, the ZAB shall take an action to approve, conditionally approve, or deny the application. The ZAB's decision is not effective until after action by the City Council. ZAB decisions may not be appealed.
  3. The ZAB will send a report of its decision, including findings and any conditions, together with the Planning Commission report, to the City Clerk within 14 days of final action.
  4. The City Council will review and act on the application within 30 days of the ZAB decision.
  5. The Council may affirm, reverse, or modify the ZAB decision.
- D. **Development Standards.** All development standards in the U District shall be set forth in the Use Permit, including lot size, density, building height, setbacks, building separation, lot coverage, floor area ratio (FAR), usable open space, and off-street parking.
- E. **Use Permit Findings.** To approve a Use Permit in the U district, the ZAB, Planning Commission, and City Council must all make the findings in Section 23.406.030.F—Administrative Use Permits (Findings for Approval).

## 23.210 OVERLAY ZONES

---

### Sections:

23.210.010– Purpose of Overlay Zones

23.210.020– Hillside Overlay Zone

23.210.030– Civic Center District Overlay Zone

### 23.210.010 – Purpose of Overlay Zones

- A. **General.** An overlay zone is a defined geographic area shown on the Zoning Map where special requirements or limitations apply, in addition to the underlying base district requirements.
- B. **Conflicting Requirements.** Whenever a requirement of an overlay zone conflicts with a requirement of the underlying base district, the overlay zone requirement controls.

### 23.210.020 – Hillside Overlay Zone

- A. **Purpose.** The purpose of the Hillside (H) overlay zone is to:
  1. Implement General Plan policies for hillside development;
  2. Protect the character of Berkeley’s hillside areas and their immediate environs;
  3. Give reasonable protection to views yet allow appropriate development of all property;
  4. Allow modifications in standard setback and height requirements when justified because of steep topography, irregular lot pattern, unusual street conditions, or other special aspects of the hillside areas.
- B. **Allowed Uses.**
  1. **General.** Allowed uses in the H overlay zone are the same as the underlying base district except as provided in this subsection.
  2. **Multiple Dwellings in R-2.** When the H overlay zone is combined with the R-2 district, multiple dwellings on a single property are not permitted.
- C. **Development Standards.**
  1. **General.** Development standards in the H overlay zone are the same as the underlying base district except as provided in this subsection.
  2. **Main Building Height.**
    - a. Table 23.210-1 shows the maximum allowed building height in the H overlay zone.

- b. The Zoning Officer may approve an AUP to increase the allowed average and maximum main building height upon finding the project is consistent with the purpose of the H overlay zone as stated in 23.210.020.A (Purpose).

**TABLE 23.210-1: H OVERLAY ZONE MAXIMUM ALLOWED HEIGHT**

| UNDERLYING BASE DISTRICT      | ALLOWED HEIGHT                                                                                   |         | MAXIMUM STORIES |
|-------------------------------|--------------------------------------------------------------------------------------------------|---------|-----------------|
|                               | AVERAGE                                                                                          | MAXIMUM |                 |
| New Buildings                 |                                                                                                  |         |                 |
| R-1, R-1A, R-2, R-2A          | 28 ft.                                                                                           | 35 ft.  | 3 stories       |
| R-3, R-4, R-5, R-S, C-N, C-NS | 35 ft.                                                                                           | 35 ft.  | 3 stories       |
| Residential Additions         | As required by the base district or the highest existing portion of the roof, whichever is lower | 20 ft.  | N/A             |

- c. For a residential addition located above the lowest existing story that is partially or fully above grade, not habitable, and projects beyond the footprint of the habitable portion of the building, the average height is measured from the floor plate of the lowest habitable story. Maximum height is measured from grade in all cases.
- d. Height provisions in Section 23.304.050– Building Height apply in the H overlay zone.

**3. Accessory Building Height.**

- a. Accessory buildings are limited to 12 feet in average height and one story.
- b. The Zoning Officer may approve an AUP to increase the allowed height and/or stories upon finding that the proposed accessory building:
  - i. Will not be detrimental to the light, air, privacy, and view of adjacent property; and
  - ii. Is consistent with the purpose of the H overlay zone as stated in Section 23.210.020.A – Hillside Overlay Zone (Purpose).

**4. Setbacks and Building Separation.**



- a. The Zoning Officer may approve an AUP to reduce the minimum required main building lot line setbacks and the minimum required building separation in the underlying base district upon finding that the reduction is consistent with the purpose of the H overlay zone as stated in 23.210.020.A (Purpose).
- b. Setback provisions in Section 23.304.030– Setbacks apply in the H overlay zone.

### **23.210.030 – Civic Center District Overlay Zone**

#### **A. Purpose.**

1. **General.** The general purpose of the Civic Center District (CCD) overlay zone is to implement General Plan Policy LU-22 to "Maintain the Civic Center as a cohesively designed, well-maintained, and secure place for community activities, cultural and educational uses, and essential civic functions and facilities" and Downtown Area Plan Policy LU-1.4 to "Focus City government and civic activity in the Civic Center area, and recognize Downtown's central role in providing community services."
2. **Specific.** The specific purpose of the CCD overlay zone is to:
  - a. Preserve and protect the integrity of the City of Berkeley Historic Civic Center through preservation of existing buildings and open space listed in the Civic Center Historic District;
  - b. Allow a set of uses, which are civic in nature, and support active community use;
  - c. Promote uses, which combined or individually will maintain public access to the historic buildings and resources;
  - d. Promote appropriate uses which respect the Civic Center's historic significance in unifying the community and forming a link to Berkeley's past;
  - e. Promote the cultural and architectural heritage of the Civic Center;
  - f. Preserve the Civic Center District as a place for government functions, community activities, cultural and educational uses, and civic functions and facilities; and
  - g. Promote uses which could financially support the goal of upgrading and preserving the existing historic buildings and resources.

- B. **Applicability.** The CCD overlay zone boundaries are coterminous with the Civic Center Historic District designated under Municipal Code Chapter 3.24 and apply to the following parcels:

1. APN 057 201701601 (Old City Hall/Courthouse/Public Safety Building)

2. APN 057 202202000 (Veterans Memorial Building)
3. APN 057 202200600 (State Farm Insurance Building/City offices, 1947 Center Street)
4. APN 057 202100200 (Civic Center Park)
5. APN 057 202100100 (Civic Center Building)
6. APN 057 202601500 (Downtown Berkeley YMCA)
7. Portion of APN 057 202000503 which contains the Berkeley Community Theater/Florence Schwimley Little Theater
8. APN 057 202000400 (Berkeley High School)
9. APN 057 202700500 (Berkeley Main Post Office)

C. **Definitions.** The following definitions apply only in the CCD overlay zone:

1. **Live Performance Theatre.** An establishment that has a permanent stage for the presentation of live performances and entertainment and which contains an audience viewing hall or room with fixed seats.
2. **Museum.** A non-profit, permanent institution in the service of society and its development, open to the public, which acquires, conserves, researches, communicates, and exhibits the tangible and intangible heritage of humanity and its environment for the purposes of education, study, and enjoyment.
3. **Public Market.** An open air or enclosed marketplace, including a farmer's market, with multiple owner operated and/or independent merchants selling retail food items and handcrafted goods from local and regional producers, so long as:
  - a. At least 75 percent of retail space is devoted to the sale of general or specialized food products; and
  - b. No more than 25 percent of retail space is devoted to one or more of the following incidental uses:
    - i.* Owner operated and/or independent food service establishment selling food from local and regional producers; and
    - ii.* Sales of retail products from local and regional produce.

D. **Allowed Uses.**

E. Table 23.210-2 shows allowed uses and permit requirements in the CCD overlay zone. All properties in the CCD overlay zone are restricted to the uses in

F. Table 23.210-2, regardless of uses permitted in the underlying base district.

**TABLE 23.210-2: CCD OVERLAY ZONE ALLOWED USES**

| <b>ALLOWED USE</b>                                                                       | <b>REQUIRED PERMIT</b> |
|------------------------------------------------------------------------------------------|------------------------|
| Libraries                                                                                | UP(PH)                 |
| Judicial Courts                                                                          | AUP                    |
| Museums                                                                                  | UP(PH)                 |
| Parks and Playgrounds                                                                    | ZC                     |
| Public Safety and Emergency Services                                                     | UP(PH)                 |
| Government Agencies and Institutions                                                     | AUP                    |
| Public Schools/Educational Facilities                                                    | UP(PH)                 |
| Non-Profit Cultural, Arts, Environmental, Community Service and Historical Organizations | UP(PH)                 |
| Live Performance Theatre                                                                 | UP(PH)                 |
| Public Market                                                                            | UP(PH)                 |

**G. Development Standards.**

1. **General.** Development standards in the CCD overlay zone are the same as the underlying base district except as provided in this subsection.
2. **Building Height.** All new buildings and building additions are subject to a maximum building height of 50 feet.

## **DIVISION 3: CITYWIDE PROVISIONS**

### **23.302: Supplemental Use Regulations**

- 23.302.010– Purpose
- 23.302.020– General Use Regulations
- 23.302.030– Temporary Uses and Structures
- 23.302.040– Home Occupations
- 23.302.050– Bed and Breakfast Establishments in Residential Districts
- 23.302.060– Sidewalk Cafe Seating
- 23.302.070– Use-Specific Regulations

### **23.304: General Development Standards**

- 23.304.010– Purpose
- 23.304.020– Lot Requirements
- 23.304.030– Setbacks
- 23.304.040– Building Separation in Residential Districts
- 23.304.050– Building Height
- 23.304.060– Accessory Buildings and Enclosed Accessory Structures
- 23.304.070– Unenclosed Accessory Structures in Residential Districts
- 23.304.080– Fences
- 23.304.090– Usable Open Space
- 23.304.100– Site Features in Residential Districts
- 23.304.110– Dormers
- 23.304.120– Lot Coverage
- 23.304.130– Non-Residential Districts Abutting a Residential District
- 23.304.140– Area Plans

### **23.306: Accessory Dwelling Units**

- 23.306.010– Purposes
- 23.306.020– Applicability
- 23.306.030– Permit Procedures

### **23.308: Emergency Shelters**

- 23.308.010– Chapter Purpose
- 23.308.020– Applicability and Nonconformities
- 0– Required Permits
- 23.308.030– Standards for Emergency Shelters

**23.310: Alcoholic Beverage Sales and Service**

- 23.310.010– Chapter Purpose
- 23.310.020– General Requirements Excluding Incidental Beer and Wine Service
- 23.310.030– Alcoholic Beverage Service When Incidental to Food Service

**23.312: Live/Work**

- 23.312.010– Chapter Purpose
- 23.312.020– Applicability
- 23.312.030– Required Permits
- 23.312.040– Standards for Live/Work
- 23.312.050– Findings

**23.314: Short-Term Rentals**

- 23.314.010– Chapter Purpose
- 23.314.020– Definitions
- 23.314.030– Applicability
- 23.314.040– General Regulations
- 23.314.050– Operating Standards and Requirements
- 23.314.060– Violations and Remedies

**23.316: Percentage for Public Art on Private Projects**

- 23.316.010– Chapter Purpose
- 23.316.020– Applicability
- 23.316.030– Definitions
- 23.316.040– General Requirements
- 23.316.050– Required Permits
- 23.316.060– In-Lieu Fees
- 23.316.070– Administrative Regulations (Guidelines)

**23.318: Urban Agriculture**

- 23.318.010– Chapter Purpose
- 23.318.020– Applicability
- 23.318.030– Urban Agriculture Uses and Levels of Discretion
- 23.318.040– Thresholds
- 23.318.050– Operation Standards
- 23.318.060– Complaints

**23.320: Cannabis Uses**

- 23.320.010– Chapter Purpose
- 23.320.020– Cannabis Retail
- 23.320.030– Commercial Cannabis Cultivation
- 23.320.040– Cannabis Manufacturers, Testing Labs, and Distributors

23.320.050– Microbusinesses

### **23.322: Parking and Loading**

23.322.010– Chapter Purpose

23.322.020– Applicability

23.322.030– Required Parking Spaces

23.322.040– General Requirements

23.322.050– Parking Reductions

23.322.060– C-DMU Parking and Transportation Demand Management

23.322.070– Off-Street Parking Maximums for Residential Development

23.322.080– Parking Layout and Design

23.322.090– Bicycle Parking

23.322.100– On-site Loading Spaces

23.322.110– Parking Lots in Residential Districts

23.322.120– Transportation Services Fee

### **23.324: Nonconforming Uses, Structures, and Buildings**

23.324.010– Chapter Purpose

23.324.020– General

23.324.030– Nonconforming Lots

23.324.040– Nonconforming Uses

23.324.050– Nonconforming Structures and Buildings

23.324.060– Exemptions

### **23.326: Demolition and Dwelling Unit Control**

23.326.010– Chapter Purpose

23.326.020– General Requirements

23.326.030– Eliminating Dwelling Units through Demolition

23.326.040– Eliminating Dwelling Units through Conversion and Change of Use

23.326.050– Private Right of Action

23.326.060– Elimination of Residential Hotel Rooms

23.326.070– Demolitions of Non-Residential Buildings

23.326.080– Building Relocations

23.326.090– Limitations

### **23.328: Inclusionary Housing**

23.328.010– Chapter Purpose and Applicability

23.328.020– General Requirements

23.328.030– Payment of In-Lieu Fees as an Alternative to Providing Inclusionary Units

23.328.040– Requirements Applicable to All Inclusionary Units

23.328.050– Inclusionary Unit Requirements for Rental Housing Projects

23.328.060– Inclusionary Unit Requirements for Ownership Projects

- 23.328.070– Special Requirements for Avenues Plan Area
- 23.328.080– Administrative Regulations
- 23.328.090– Fees

**23.330: Density Bonus**

- 23.330.010– Chapter Purpose
- 23.330.020– Definitions
- 23.330.030– Application Requirements
- 23.330.040– Density Bonus Calculations and Procedures
- 23.330.050– Incentives and Concessions
- 23.330.060– Waivers and Reductions
- 23.330.070– Qualifying Units
- 23.330.080– Regulatory Agreements

**23.332: Wireless Communication Facilities**

- 23.332.010– Chapter Purpose and Applicability
- 23.332.020– Definitions
- 23.332.030– General Requirements
- 23.332.040– Minimum Application Requirements
- 23.332.050– Location Requirements
- 23.332.060– Height Requirements
- 23.332.070– Design Requirements
- 23.332.080– Operation and Maintenance Standards
- 23.332.090– Public Information Requirements
- 23.332.100– Certification Requirements
- 23.332.110– Permits and Findings Required for Approval
- 23.332.120– Cessation of Operations

**23.334: Transportation Demand Management**

- 23.334.010– Chapter Purpose
- 23.334.020– Applicability
- 23.334.030– Transportation Demand Management Program Requirements
- 23.334.040– Monitoring, Reporting and Compliance

## 23.302 SUPPLEMENTAL USE REGULATIONS

---

### Sections:

- 23.302.010– Purpose
- 23.302.020– General Use Regulations
- 23.302.030– Temporary Uses and Structures
- 23.302.040– Home Occupations
- 23.302.050– Bed and Breakfast Establishments in Residential Districts
- 23.302.060– Sidewalk Cafe Seating
- 23.302.070– Use-Specific Regulations

### 23.302.010 – Purpose

This chapter establishes land use regulations that apply in addition to regulations in Chapter 23.202—23.210 Zoning Districts.

### 23.302.020 – General Use Regulations

#### A. Accessory Uses.

1. **Long-Term Rental of Rooms in a Dwelling Unit.** Renting rooms and/or providing board in a dwelling unit to persons not living as a household is permitted by right as an accessory use in all Residential Districts. The room rental/boarding must comply with the following requirements:
  - a. Minimum time period for rental: 14 days.
  - b. Maximum number of renters: four persons.
  - c. A rented room:
    - i. Must be fully integrated within the dwelling unit such that it has interior access to the rest of the dwelling unit;
    - ii. May not have a separate kitchen; and
    - iii. May not have separate assigned street addresses.
  - d. All requirements for off-street parking must be met.
2. **Non-Processed Edibles.** The sale or donation of non-processed edibles grown or raised on the premises is permitted by right as an accessory use in all residential districts. All sale and donation activities must comply with the following requirements:
  - a. Sales and donations must be directly to the end consumer of the non-processed edibles.
  - b. Sales and donation-related activities must occur between the hours of 8am and 8pm.



- c. Sales and donation-related activities must be located either indoors or in an area generally shielded from view from the public right-of-way to the extent practical based on the accessibility of the subject lot.
- d. The sale or donation of non-processed edibles may not involve hazardous materials or processes or create offensive or objectionable noise, vibration, odors, heat, dirt, or electrical disturbance perceptible by the average person beyond the lot line of the subject lot.
- e. The sale or donation of non-processed edibles may not involve more than ten customer visits to the premises in one day.

**3. Chair Massage.**

- a. Chair massage is permitted by right as an accessory use when incidental to a retail use in the commercial districts and the MU-R district.
- b. No additional parking is required.

**4. Commercial Uses in Residential Districts.** A commercial use is allowed in a Residential District as an accessory use only if the use is specifically allowed by the Zoning Ordinance.

**B. Hours of Operation.**

1. **Allowed Hours.** Table 23.302-1: Allowed Hours of Operation shows allowed hours of operation for commercial uses in the commercial districts and the MU-R district.

**Exceptions.** The City may allow extended hours of operations with the approval of a permit as shown in Table 23.302-1.

2. **Alcohol Sales in C-T District.** A Use Permit is required in the C-T district for a business selling alcohol for off-site consumption to remain open past midnight. The Use Permit may be approved only if the business’s ABC license does not require sales of alcohol for off-site consumption to cease by midnight. The Zoning Adjustments Board (ZAB) may approve the Use Permit only upon finding that the extended hours will not generate excessive noise, traffic or parking problems affecting the well-being of the residents of the district.

**TABLE 23.302-1: ALLOWED HOURS OF OPERATION**

| DISTRICT                                | ALLOWED HOURS OF OPERATION | PERMIT REQUIRED TO EXTEND HOURS |
|-----------------------------------------|----------------------------|---------------------------------|
| C-C, C-U                                | 7:00 a.m. – 12:00 midnight | AUP                             |
| C-N, C-E, C-NS, C-SO, C-W outside nodes | 7:00 a.m. – 11:00 p.m.     | UP                              |

|                                                            |                                                                                                    |     |
|------------------------------------------------------------|----------------------------------------------------------------------------------------------------|-----|
| C-W nodes                                                  | 6:00 a.m. – 12:00 midnight with Zoning Certificate                                                 | UP  |
| C-SA                                                       | 7:00 a.m. – 12:00 midnight Sundays through Thursdays<br>7:00 a.m. – 12:00 Fridays and Saturday     | UP  |
| C-AC                                                       | 7:00 a.m. – 12:00 midnight Sundays through Thursdays<br>7:00 a.m. – 2:00 a.m. Fridays and Saturday | UP  |
| C-T between Bancroft Way and the north side of Dwight Way  | 24 hours per day 7 days a week                                                                     | N/A |
| C-T between the south side of Dwight Way and Parker Street | 7:00 a.m. – 12:00 midnight                                                                         | AUP |
| C-DMU                                                      | 6:00 a.m. and 2:00 a.m.                                                                            | AUP |
| MU-R                                                       | 6:00 a.m. and 10:00 p.m.                                                                           | AUP |

3. **C-T District Findings.** The Zoning Officer may approve an AUP to extend hours of operation in the C-T district upon finding that the extended hours will not generate excessive noise, traffic, or parking problems affecting the well-being of the residents of the district.

4. **Hours of Operation Defined.**

- a. For retail or customer-serving office commercial uses, hours of operation are those times that the business is open to customer access.
- b. For food service establishments, hours of operation include the time that the business is open for customer access to the departure of the last patron. These limitations do not apply to:
  - i. The delivery, maintenance, security, product preparation and other pre-opening activities, and
  - ii. Cleanup, shutdown, and other post-closure activities which do not involve presence of customers.
- c. For other commercial and manufacturing uses which do not involve customer access, hours of operation are those times that employees are present who are engaged in non-maintenance or security activities.

- C. **Indoor Storage of Goods.** In the Commercial Districts, an AUP is required for the indoor storage of goods as an incidental use occupying over 25 percent of the gross floor area.

D. **Live Entertainment.**

**Permits Required.** Live entertainment incidental to a permitted use is allowed as shown in

Table 23.302-2.

**TABLE 23.302-2: PERMIT REQUIREMENTS FOR LIVE ENTERTAINMENT**

| ZONES                                  | PERMIT REQUIRED |               |
|----------------------------------------|-----------------|---------------|
|                                        | AMPLIFIED       | UNAMPLIFIED   |
| C-C, C-U, C-SA, C-T, C-SO, C-DMU, C-AC | AUP             | ZC            |
| C-N, C-NS, C-W                         | UP(PH)          | ZC            |
| C-E                                    | Not Permitted   | ZC            |
| M, MM                                  | Not Permitted   | Not Permitted |
| MU-LI, MU-R                            | UP(PH)          | UP(PH)        |

**1. Allowed Activities.**

- a. In the S-O district, food service establishments may have no live entertainment other than unamplified music, poetry reading, comedy or other quiet activities.
- b. In the C-NS district, food service establishments may have no live entertainment other than unamplified background music, unless a Use Permit is obtained.

**E. Outdoor Uses.**

1. **Applicability.** This subsection applies to outdoor uses including but not limited to exterior service windows, outside automatic teller machines, and the outside storage of goods, containers and/or materials.
2. **General.** Commercial and manufacturing uses shall be conducted solely within an interior of a building unless:
  - a. The permit as required by Paragraph 3 (Permits Required) is obtained; or
  - b. the outdoor use is specifically allowed by the Zoning Ordinance.
3. **Permits Required.**
4. Table 23.302-3: Permit Requirements for Outdoor Uses shows permits required for uses outside of a building in the Commercial and Manufacturing Districts.

**TABLE 23.302-3: PERMIT REQUIREMENTS FOR OUTDOOR USES**

| <b>DISTRICT/USE CHARACTERISTICS [1]</b>                                                                                                                                                               | <b>PERMIT REQUIRED</b> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| All Commercial Districts Except for C-W                                                                                                                                                               |                        |
| Not abutting a residential district                                                                                                                                                                   | AUP                    |
| Abutting a residential district                                                                                                                                                                       | UP(PH)                 |
| C-W                                                                                                                                                                                                   |                        |
| Not abutting a residential district and less than 10,000 s. ft.                                                                                                                                       | AUP                    |
| Abutting a residential district                                                                                                                                                                       | UP(PH)                 |
| 10,000 sq. ft. or more                                                                                                                                                                                | UP(PH)                 |
| M, MM [2]                                                                                                                                                                                             |                        |
| Less than 20,000 sq. ft.                                                                                                                                                                              | ZC                     |
| 20,000 sq. ft. or more                                                                                                                                                                                | AUP                    |
| MU-LI                                                                                                                                                                                                 |                        |
| Less than 20,000 sq. ft.                                                                                                                                                                              | ZC                     |
| 20,000 to 30,000 sq. ft.                                                                                                                                                                              | AUP                    |
| More than 30,000 sq. ft.                                                                                                                                                                              | UP(PH)                 |
| MU-R                                                                                                                                                                                                  |                        |
| Not abutting a residential district                                                                                                                                                                   | AUP                    |
| Abutting a residential district                                                                                                                                                                       | UP(PH)                 |
| Notes:<br>[1] Size is measured as the lot area of the outdoor activity or storage<br>[2] In the M and MM district permits are required only for activity or storage not ancillary to a permitted use. |                        |

5. **C-W District.** In the C-W district, uses outside of a building must be permitted or incidental to permitted use in the district.
6. **M, MM, MU-LI Districts.** Outside uses in the M, MM, and MU-LI districts may not abut a residential district.

### **23.302.030 – Temporary Uses and Structures**

#### **A. Permitted By Right.**

1. **Temporary Uses.** The following temporary uses are permitted by right:

- a. Using a dwelling, school, church, community center, or other facility as a polling or voting place for an election conducted by the City or other government agency.
- b. Conducting a garage, yard, or rummage sale on a residential property or a block sale of several properties. A sale may not exceed two days and is limited to one sale in any month's period of time.
- c. Temporary sidewalk sales conducted adjacent to, and in conjunction with, an approved commercial retail lease space, when all other City regulations are met.
- d. The use of a property as temporary parking during football games in the University of California Memorial Stadium under the provisions of Ordinance # 2435-N.S.
- e. A temporary retail use where:
  - i. The temporary sales are on the same property with an established commercial business holding a valid City business license; and
  - ii. The temporary sales conform with the approved permit for the commercial business.

2. **Temporary Structures.** The following accessory and temporary structures are permitted by right as long as they do not change the character of, and are in keeping with the purposes of the district in which they are located:

- a. Lines, wires, poles and devices to transmit electricity, telephone/telecommunications or cable television, including pipelines, conduits and appurtenances to containing such wires and devices. Allowed activities include installing, maintaining, undergrounding, and repairing such facilities. A Use Permit or AUP is required for wireless telecommunication antennas other than those located within the public right-of-way.
- b. Pipelines or conduits and appurtenances to transport oil, gas, sewage or water.
- c. Temporary construction offices, scaffolding, utility connections, on-site construction material yards and/or debris containers for not more than the time period authorized in a valid building permit.

#### B. **AUP Required.**

- 1. **When Required.** An AUP is required to establish, maintain, or operate a temporary use or structure not identified in Subsection A (Permitted By Right) above.

2. **Scope of Approval.** An AUP for a temporary use or structure applies only to the circumstances of the temporary use or structure existing at the time the application is granted.
  3. **Seasonal Product Sales.** Temporary seasonal product sales activity may not exceed a 45-day period and may not be established in any Residential district.
  4. **Time Period.**
    - a. The AUP shall specify the time period for the temporary use or structure, including a required ending date.
    - b. A time extension is not allowed unless approved by the Zoning Officer.
  5. **Findings.** To approve the AUP, the Zoning Officer must make the findings in Section 23.406.030.F– Administrative Use Permits (Findings for Approval). When making this finding, the Zoning Officer shall consider whether the temporary nature of the use or structure will make it not detrimental.
  6. **Appeals.**
    - a. An AUP decision for seasonal product sales of pumpkins and Christmas trees, including the temporary use of a structure for an office, may not be appealed.
    - b. All other AUP decisions for a temporary uses and structures may be appealed as provided in Chapter 23.410—Appeals and Certifications.
- C. **Violations.** Permits for temporary uses may be revoked for non-compliance with any conditions of approval and the Zoning Officer may issue an immediate cease and desist order.
- D. **Temporary Outdoor Uses on Private Property -- COVID-19 Local Emergency.**
1. **Applicability.**
    - a. This subsection is valid during and up to 90 days after a locally-declared state of emergency related to COVID 19.
    - b. An eligible business must:
      - i.* Have a valid City of Berkeley Business License;
      - ii.* Be located on private property in one of the following districts:
        1. Any commercial zoning district; or
        2. The Manufacturing (M) District, the Mixed Manufacturing (MM) district, or the Mixed-Use Light Industrial (MU-LI) district; and

- iii.* Be authorized by the Governor's Executive Orders and Public Health Orders and the Public Health Orders of the City Health Officer, include appendices, to conduct outdoor business
- c. The following businesses are not covered by this subsection:
- i.* Delivery-Only (Cannabis) Retailers.
  - ii.* Liquor Stores/Wine Shops.
  - iii.* Adult-Oriented Businesses.
  - iv.* Smoke Shops.
  - v.* Firearm/Munitions Businesses
2. **Definitions.** The definitions below shall govern the meaning of the terms as used in this subsection.
- a. Temporary Outdoor Use: An allowable temporary use on private property conducted by a legally-established business in the same zoning district as it currently operates. A Temporary Outdoor Use may be conducted:
    - i.* On private property at the address listed on a business's City of Berkeley Business License;
    - ii.* On private property at an address other than that listed on a business's City of Berkeley Business License if the property is used solely for commercial purposes, is a vacant lot, or it a vacant building; or
    - iii.* As a new stand-alone outdoor business, subject to obtaining a City of Berkeley Business License for the temporary location.
  - b. Temporary Fixtures and Structures: Physical equipment necessary to safely conduct business outdoors.
3. **Zoning Certificate.**
- a. An eligible business may conduct business outdoors as a Temporary Outdoor Use with a Zoning Certificate and compliance with 23.302.303.D.4 (Operating Standards).
  - b. An application for a Zoning Certificate must be accompanied by a site plan, business description and operational plan that certifies compliance with 23.302.303.D.4 (Operating Standards). The site plan must include any proposed Temporary Fixtures and Structures.
  - c. The operator of a Temporary Outdoor Use must have the written permission of the property owner.

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

#### 4. **Operating Standards.**

- a. A business must comply with State and local regulations for normal business operations, including previously-imposed conditions of approval related to hours of operation and other conditions of approval not in conflict with the allowances in this subsection, in addition to State regulations for outdoor operations.
- b. A business must follow the Governor's Executive Orders, Public Health Orders, and the City of Berkeley Public Health Orders, including Appendices.
- c. A business must comply with American with Disabilities Act (ADA) requirements and the Berkeley Building Code.
- d. A Temporary Outdoor Use must maintain a 10-foot setback adjacent to any property in a residential district.
- e. A Food Service Establishment with incidental beverage service must comply with all applicable regulations of the California Department of Alcohol Beverage Control and obtain a COVID-19 temporary catering authorization.
- f. Operating Hours for a Temporary Outdoor Use are limited to 9 a.m. to 9 p.m. Operating Hours include the time that the business is open for customer access to the departure of the last patron.
  - i. Operating Hours limitations do not apply to delivery, maintenance, security, product preparation and other pre-opening activities, and cleanup, shutdown and other post-closure activities which do not involve the presence of customers.
- g. Temporary Outdoor Uses must be conducted in a manner that protects the residential character of surrounding neighborhoods from adverse impacts, including, but not limited to, commercial noise and offensive odors.
- h. Smoking is prohibited in areas designated for Temporary Outdoor Uses (BMC Section 12.70.030).
- i. Temporary outdoor lighting fixtures must be oriented in a manner to direct light away from adjacent parcels.

#### 5. **Sanitation.**

- a. A business must provide garbage, recycling and compost services in accordance with the Alameda County Mandatory Recycling Ordinance.
- b. A Food Service Establishment must provide restrooms and sanitation during hours of operation.



- c. A Food Service Establishment must comply with BMC Ch. 11.64 (Single Use Foodware and Litter Reduction).
6. **Existing Parking and Loading.** Non-residential parking and loading requirements on private property are temporarily suspended if a Temporary Outdoor Use displaces areas designated for these purposes.
7. **Temporary Fixtures and Structures.**
- a. Movable fixtures such as tables and chairs, umbrellas, heaters, generators, trucks or trailers must be stored in a secure place on private property when not in use.
  - b. Fixed structures, such as semi-permanent tents, shipping containers, portable sinks and toilets, must occupy no more than 50% of the outdoor space dedicated to a Temporary Outdoor Use, in order to allow for social distancing.
  - c. The location, type and operation of Temporary Fixtures and Structures must comply with requirement of, and be inspected by, the Building and Safety Division, Health Department, Fire Department, Police Department and/or Public Works Department, as applicable.
8. **Safety.**
- a. If a Temporary Outdoor Use is located within an active parking lot, a business must provide temporary barriers to separate vehicle traffic from pedestrians and commercial activity.
  - b. If a Temporary Outdoor Use fully occupies a parking lot, a business must provide temporary barriers to prevent vehicle traffic from entering the parking lot.
9. **Remedies.**
- a. A Zoning Certificate for a Temporary Outdoor Use may be revoked for non-compliance with any conditions in this subsection, and the Zoning Officer may issue a cease and desist order immediately.
  - b. A Temporary Outdoor Use that meets the nuisance criteria set forth in 23.414.404.B (Nuisances Prohibited) is subject to abatement, a set forth in 23.414 (Nuisance Abatement).

### **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. **Permits Required.** Table 23.302-4 shows permits required for home occupations.

**TABLE 23.302-4: 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. **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 23.406 (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.

#### B. **General Provisions.**

1. **Where Allowed.** A home occupation is allowed in any dwelling unit, accessory dwelling unit, accessory building, or group living accommodation room.
2. **Incidental Use.** A home occupation in compliance with this section is considered a lawful incidental use of a primary residence and is not considered a change of use thereof.

#### C. **Standards for All Home Occupations.** The following standard apply to all home occupations.

1. A home occupation is allowed as an incidental use within a dwelling unit, accessory dwelling units, accessory building, or group living accommodation room.
2. No firearm/munitions business may operate as a home occupation
3. Customer visits are not allowed in the ES-R district.
4. A Home Occupation may occupy no more than the greater of: 400 square feet or 20 percent of the gross floor area of the dwelling unit, accessory dwelling units, accessory building, or group living accommodation room from which it operates.

5. Only residents of the subject dwelling unit, accessory dwelling units, accessory building, or group living accommodation room, who live in the unit or room full-time, may operate a home occupation business.
6. Customer visits may occur only between the hours of 10am and 8pm.
7. Storage, services, repairs and other business activities, other than permitted arrival and departure of customers and goods in transit, may not be conducted outdoors.
8. A home occupation shall not involve hazardous materials or waste as defined by Municipal Code Section 15.08.060 (Hazardous Materials or Waste), or any other materials or waste that is deemed by the Hazardous Material Manager (or their designee or successor) to be inappropriate or unsafe in a residential setting.
9. A home occupation shall not create offensive or objectionable noise, vibration, odors, smoke, heat, dirt, electrical or other disturbance perceptible by the average person beyond the unit in which the home occupation is permitted.
10. No on-site signs identifying or advertising the home occupation are allowed.
11. The operator of a Home Occupation shall pay gross receipts tax pursuant to the City's business license tax ordinance in Municipal Code Chapter 9.04 (Business Licenses).
12. A lessee in possession of a property may apply for a permit without the property owner's signature; however, home occupations are not exempt from conditions in rental and lease agreements which may limit or prohibit home occupations.

**D. Complaints and Imposition of Conditions.**

1. **General.** Home occupations are subject to review, the imposition of conditions, or revocation. Violations may be addressed by issuing an administrative citation pursuant to Chapter 1.28.
2. **Class I and Class II Home Occupations.** The Zoning Officer shall review documented complaints, business operations, and other factors when reviewing Class I and Class II home occupations, and may impose conditions as may be necessary to prevent detrimental effects, or may revoke the permit if adequate conditions of approval are not available.
3. **Class III Home Occupations.** The ZAB shall review documented complaints, business operations, and other factors when reviewing Class III home occupations and may impose conditions as may be necessary to prevent detrimental effects, or may revoke the permit if adequate conditions of approval are not available.

### 23.302.050 – Bed and Breakfast Establishments in Residential Districts

#### A. Section Purpose.

1. The purpose of this section is to sanction the time-limited continued operation of bed and breakfast establishments (B&Bs) in residential districts that meet the requirements in this section.
2. This section is intended solely to alleviate the hardship that might occur if the owners of B&Bs were required to cease operation immediately, as would otherwise be required by the Zoning Ordinance.
3. The purpose of this section is not to permanently legalize such B&Bs.

#### B. Continued Operation

1. **Eligibility.** B&Bs in operation in Berkeley as of December 13, 2003 are eligible for continued operation subject to this section if, and only so long as, they satisfy the following conditions:
  - a. The B&B has been in consistent operation since January 1, 2003.
  - b. The building or buildings of which the B&B consists are legally constructed and comply with all applicable building, fire and housing code requirements, or are brought into compliance with those requirements within a reasonable time, as determined by the City.
  - c. The B&B complies with all laws related to food service and food handling.
  - d. There is no City record of complaints about the B&B within the three years before January 1, 2003.
2. **Application.** To be granted continued operation under this section, owners of eligible B&Bs must:
  - a. Apply for continued operation no later than 90 days after November 13, 2003;
  - b. Identify all owners and operators of the B&B; and
  - c. Pay all transient occupancy and business license taxes, penalties and interest due and owing, as determined by the City Council.

#### C. Regulations. B&Bs that are allowed to continue in operation under Subsection B (Continued Operation) above shall comply with the following requirements.

1. The owner of the property on which the B&B is located must live there as their primary residence and must be the primary operator of the B&B.
2. No part of a B&B may be rented for social events or functions.
3. A B&B may not be expanded beyond the number of rooms or units in existence as of January 1, 2003.

4. Food service, if provided by the operator, may be provided only to paying guests.
5. A B&B shall comply with all applicable laws, ordinance and regulations concerning the preparation and service of food.
6. A B&B shall comply with all applicable disability access requirements.
7. A B&B shall pay all transient occupancy and business license taxes as they become due.

**D. Determinations by City Manager.**

1. The City Manager or his/her designee shall make the determinations required by this section, and their decision shall be final.
2. The City Manager may give applicants under this section a reasonable period, but not to exceed six months, in which to bring the B&B into compliance with the requirements of Subsections B (Continued Operation) and C (Regulations).

**E. Status of B&B Uses Under This Section.**

1. Any continued operation allowed under this section does not constitute a permit and shall not run with the land, but is limited to the owner(s)/operator(s) thereof identified under Subsection B.2 (Application) and is subject to the requirements in this section.
2. A B&B sanctioned by this section shall be treated as a lawful nonconforming use, subject to automatic termination of the B&B use as provided in this section.
3. The owner shall file a deed restriction with the County Recorder, in a form approved by the City's Zoning Officer, notifying purchasers of the effect of this section.

**F. Future Regulations Applicable.** By seeking and accepting continued operation under this section, and thereafter operating a B&B, owners of B&Bs expressly agree that they will be subject to any and all additional regulations that may be adopted by the City to permit and regulate new B&Bs, to the extent the City so requires.

**G. Automatic Repeal.** If the limitation of Subsection E (Status of B&B Uses Under This Section) above is declared unlawful or invalidated by any court of competent jurisdiction, this section shall be deemed automatically repealed, and all B&B uses sanctioned by it shall immediately terminate.

**23.302.060 – Sidewalk Cafe Seating**

**A. Section Purpose and Intent.**

1. This section establishes a process to terminate an AUP previously issued for sidewalk cafe seating and identifies new permits required for this use.

2. It is the intent of the City to discontinue issuance of new and terminate existing AUPs for sidewalk cafe seating because the City did not intend to create a land use entitlement which ran with the land for this use, which occurs on the public right-of-way. The City also intends to eliminate the discretionary aspect of permit issuance for sidewalk cafe seating and to simplify the permit process by incorporating specific, identifiable standards for issuance of permits.

#### **B. Termination of AUPs for Sidewalk Cafe Seating.**

1. **Automatic Termination.** Without any action required by the City, an AUP for sidewalk cafe seating terminates upon:
  - a. The abandonment, revocation, or termination of the food service establishment which the sidewalk cafe seating serves;
  - b. The replacement of the food service establishment with another use; or
  - c. The transfer of ownership of the food service establishment.
2. **Termination by Zoning Officer.**
  - a. After providing reasonable notice and an opportunity to be heard, the Zoning Officer may terminate an AUP for sidewalk cafe seating upon determining that the permit holder has not complied with the terms of the AUP or any applicable requirement of the Zoning Ordinance.
  - b. A decision by the Zoning Officer to terminate an AUP for sidewalk cafe seating may be appealed in accordance with Chapter 23.410 (Appeals and Certification).

#### **C. New Permit Required.**

1. After an AUP for sidewalk cafe seating is terminated, the sidewalk cafe seating may continue or resume only after the food service establishment obtains a permit under Municipal Code Chapter 14.48 (Miscellaneous Use of Streets and Sidewalks).
2. Any sidewalk cafe seating that does not obtain required permits is a prohibited encroachment under Municipal Code Chapter 16.18 (Right-Of-Way Encroachments and Encroachment Permits).

### **23.302.070 – Use-Specific Regulations**

#### **A. Adult-Oriented Businesses.**

1. **General Limitations.** An adult-oriented business may not be established:
  - a. Within 300 feet of the boundary of a Residential District, as measured along the public right-of-way;
  - b. Within a radius of 1,000 feet from any other adult-oriented business; or

c. Within a radius of 600 feet of any public park, public health clinic, public library, school or religious assembly use.

2. **District Limitations.** Adult-oriented businesses are not permitted:

- a. On lots with frontage on San Pablo Avenue in the C-W district; and
- b. On public-serving frontages in the C-DMU district.

**B. Amusement Devices Arcade.**

- 1. **Distance from Schools.** An amusement device arcade may not be established within a radius of 600 feet of a primary or secondary school.
- 2. **Incidental Use.** Table 23.302-5 shows permits required and maximum number of amusement devices allowed as an incidental use in the non-residential districts.

**TABLE 23.302-5: PERMIT REQUIREMENTS FOR AMUSEMENT DEVICES AS INCIDENTAL USES**

| DISTRICT                | PERMIT REQUIRED | MAXIMUM NUMBER |
|-------------------------|-----------------|----------------|
| C-C, C-U, C-N, C-T, C-W | AUP             | 3              |
| C-E, C-NS, C-SA, C-SO   | UP(PH)          | 3              |
| MU-LI                   | AUP             | No max.        |
| MU-R                    | AUP             | 3              |
| M, MM                   | Not Permitted   |                |

C. **Columbaria.** Columbaria require the permits shown in Table 23.302-6.

**TABLE 23.302-6: COLUMBARIA PERMIT REQUIREMENTS**

| PROJECT                                                                                                                                                                     | PERMIT REQUIRED |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| Columbaria that are incidental to a community and institutional use, limited to 400 niches, no more than 5% of the subject property area, and located in the main building. | ZC              |
| All other columbaria                                                                                                                                                        | AUP             |

D. **Firearms/Munitions Business.** In all districts, a firearms/munition business is not permitted on a property containing a residential use.

**E. Food Service Establishments.**

- 1. **Maximum Size in R-SMU.** Food service establishments in the R-SMU district may not exceed 1,200 square feet.



2. **Permits Required in Commercial Districts.** Table 23.302-7 shows permits required for food service establishments in the commercial districts.

**TABLE 23.302-7: PERMIT REQUIREMENTS FOR FOOD SERVICE ESTABLISHMENTS**

| DISTRICT/USE SIZE                                                                                                                                          | PERMIT REQUIRED |
|------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| C-C, C-U, C-T, C-W                                                                                                                                         |                 |
| Under 1,500 sq. ft                                                                                                                                         | ZC              |
| 1,500 sq. ft. or more                                                                                                                                      | AUP             |
| C-N, C-NS, C-SA, C-SO                                                                                                                                      |                 |
| Under 1,000 sq. ft                                                                                                                                         | ZC              |
| 1,000 sq. ft. or more                                                                                                                                      | AUP             |
| C-AC, South Shattuck and North Adeline Subareas                                                                                                            |                 |
| 3,000 sq ft or less                                                                                                                                        | ZC              |
| Over 3,000 sq ft                                                                                                                                           | AUP             |
| C-AC, South Adeline Subarea                                                                                                                                |                 |
| 1,500 sq ft or less                                                                                                                                        | ZC              |
| Over 1,500 sq ft                                                                                                                                           | AUP             |
| C-E                                                                                                                                                        | AUP [1]         |
| C-DMU                                                                                                                                                      |                 |
| Under 3,000 sq. ft outside the Arts District Overlay                                                                                                       | ZC              |
| 3,000 sq. ft. or more                                                                                                                                      | AUP             |
| Any size within the Arts District Overlay                                                                                                                  | AUP [2]         |
| Notes:                                                                                                                                                     |                 |
| [1] All food service uses in the C-E district require an AUP and may not be considered as an incidental use except when accessory to a food product store. |                 |
| [2] See 23.204.130.D.3 for required findings.                                                                                                              |                 |

3. **Notification of Decision.** Food service establishments requiring an AUP in the C-N, C-E, C-NS, C-SA, C-SO districts must provide public notification of decision (NOD) within a 300-foot radius of the subject property.
4. **Carry Out Limitations in C-U District.** Food service establishments in the C-U district that exclusively sell food for offsite consumption are not permitted at any location on University Avenue between Oxford Street and Martin Luther King Jr. Way until a Downtown Retail Plan is adopted by the City Council.

## 5. **Outdoor Cafe Seating.**

- a. Outdoor cafe seating on private property outside of the public right-of-way is allowed in the commercial districts with the following permits:
  - i.* Zoning Certificate when seating does not abut a residential district.
  - ii.* AUP when seating abuts a residential district.
- b. Outdoor seating is not permitted for food service establishments in the MU-LI District.
- c. Sidewalk cafe seating within the public right-of-way is subject to 23.302.060 (Sidewalk Cafe Seating).

## 6. **Building Openings – C-E and C-NS Districts.** Food service establishments in the C-E and C-NS districts may have no openings, other than fixed windows and required fire exits, within 50 feet of a residential district.

## 7. **C-W District Requirements.**

- a. Food service drive-through is not permitted on properties fronting San Pablo Avenue.
- b. To approve a Use Permit for a food service establishment on a lot with frontage on San Pablo Avenue, the ZAB must find that:
  - i.* The project does not conflict with the goals and policies of the C-W district;
  - ii.* The location, size, appearance and signage of the project will not adversely affect the San Pablo Avenue corridor;
  - iii.* The project supports pedestrian-oriented development;
  - iv.* The project is designed to protect the residential character of surrounding neighborhoods from the adverse impacts of fast food development, including, but not limited to increased traffic, litter, and noise; and
  - v.* For projects which include construction of new buildings, the project design:
    1. Provides intensity of development which does not underutilize the property; especially at or near intersections of major streets;
    2. Provides pedestrian scale and siting; and
    3. Incorporates continuity in street facades.

## 8. **Permits Required in Manufacturing Districts.** Table 23.302-8 shows permits required for food service establishments in the manufacturing districts.

**TABLE 23.302-8: PERMIT REQUIREMENTS FOR FOOD SERVICE ESTABLISHMENTS IN MANUFACTURING DISTRICTS**

| USE TYPE AND SIZE                                          | DISTRICT |           |         |         |
|------------------------------------------------------------|----------|-----------|---------|---------|
|                                                            | M        | MM        | MU-LI   | MU-R    |
| Incidental Use                                             |          |           |         |         |
| Under 20,000 sq. ft.                                       | AUP [1]  | AUP [1,2] | AUP [1] | AUP [1] |
| 20,000 sq. ft. or more                                     | -        | -         | -       | AUP     |
| Carry Out Food Service (Primary Use)                       |          |           |         |         |
| Under 5,000 sq. ft.                                        | -        | -         | AUP     | AUP     |
| 5,000 sq. ft. or more                                      | -        | -         | UP      | UP      |
| Quick Service Restaurant (Primary Use)                     |          |           |         |         |
| Under 5,000 sq. ft.                                        | -        | -         | AUP     | AUP     |
| 5,000 sq. ft. or more                                      | -        | -         | UP      | UP      |
| Full-Service Restaurant (Primary Use)                      |          |           |         |         |
|                                                            | -        | -         | UP      | UP      |
| Notes:                                                     |          |           |         |         |
| [1] Outdoor food service is not permitted.                 |          |           |         |         |
| [2] Limited to food or beverage for immediate consumption. |          |           |         |         |

**9. MU-LI and MU-R District – Findings.**

- a. To approve an AUP or Use Permit to establish or expand a food service establishment in the MU-LI or MU-R district, the review authority must find that the establishment of the use, given its size, location, physical appearance and other relevant characteristics, will not have a significant detrimental impact on the industrial character of the area.
- b. To approve an AUP for a food service establishment less than 5,000 square feet, the Zoning Officer must find that a substantial portion of the food consists of goods manufactured on site.

**F. Non-Chartered Financial Institutions.**

1. No more than four non-chartered financial institutions are permitted in the city.
2. Non-chartered financial institutions may not be located within a radius of 1,320 feet of another non-chartered financial institutions.

**G. Parking Lot/Structure.**

1. **Permits Required.**

2. Table 23.302-9 shows required permits for the exclusive or primary use of a lot for off-street parking spaces.

**TABLE 23.302-9: PERMIT REQUIREMENTS FOR PARKING LOTS/STRUCTURES**

| DISTRICT                                                                                             | PERMIT REQUIRED                                                                                                                                                                                                                                                                                                                  |
|------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Residential Districts</b>                                                                         |                                                                                                                                                                                                                                                                                                                                  |
| R-3                                                                                                  | Use Permit for all parking lots and structures. [1]                                                                                                                                                                                                                                                                              |
| R-S, R-SMU                                                                                           | Use Permit for parking structures only. Parking lots are not permitted.                                                                                                                                                                                                                                                          |
| All other residential districts                                                                      | Use Permit for all parking lots and structures.                                                                                                                                                                                                                                                                                  |
| <b>Commercial Districts</b>                                                                          |                                                                                                                                                                                                                                                                                                                                  |
| C-C, C-U                                                                                             | Zoning Certificate for parking lots and structures with 5 spaces or fewer. Use Permit for more than 5 spaces.                                                                                                                                                                                                                    |
| C-SO                                                                                                 | AUP for parking lots and structures with 5 spaces or fewer. Use Permit for more than 5 spaces.                                                                                                                                                                                                                                   |
| C-DMU                                                                                                | AUP for parking lots with 8 spaces or fewer. Use Permit for all parking structures. Lots with more than 8 spaces not permitted.                                                                                                                                                                                                  |
| C-N, C-E, C-NS, C-SA                                                                                 | Use Permit for all parking lots and structures.                                                                                                                                                                                                                                                                                  |
| C-T                                                                                                  | Use Permit for all parking structures. All parking lots not permitted.                                                                                                                                                                                                                                                           |
| C-W                                                                                                  | AUP for parking lots and structures with 10 spaces or fewer. Use Permit for parking lots and structures with more than 10 spaces.                                                                                                                                                                                                |
| <b>Manufacturing Districts</b>                                                                       |                                                                                                                                                                                                                                                                                                                                  |
| M, MM                                                                                                | AUP for parking lots and structures with 10 or fewer spaces exclusively for uses in the district. Use Permit for parking lots and structures with any number of spaces not exclusively for uses in the district.                                                                                                                 |
| MU-LI                                                                                                | Zoning Certificate for parking lots and structures with 10 or fewer spaces exclusively for uses in the district. AUP for parking lots and structures with 11 spaces or more exclusively for uses in the district. Use Permit for parking lots and structures with any number of spaces not exclusively for uses in the district. |
| MU-R                                                                                                 | Zoning Certificate for parking lots and structures exclusively for uses in the district. Use Permit for parking lots and structures not exclusively for uses in the district.                                                                                                                                                    |
| Notes:<br>[1] Parking lots and structures in the R-3 district are not permitted within the Southside |                                                                                                                                                                                                                                                                                                                                  |

|           |
|-----------|
| Plan area |
|-----------|

3. **Residential District Standards.** See 23.322.110– Parking Lots in Residential Districts for standards that apply to the exclusive or primary use of a lot for off-street parking spaces in a residential district.

H. **Senior Congregate Housing.** Table 23.302-10 shows permits required for senior congregate housing.

**TABLE 23.302-10: PERMIT REQUIREMENTS FOR SENIOR CONGREGATE HOUSING**

| PROJECT                                                                          | PERMIT REQUIRED |
|----------------------------------------------------------------------------------|-----------------|
| Change of use from an existing dwelling unit to accommodate six or fewer people  | ZC              |
| Change of use from an existing dwelling unit to accommodate seven or more people | AUP             |
| New construction to accommodate any number of people                             | UP(PH)          |

I. **Smoke Shops.** In all districts, smoke shops are not permitted within 1,400 feet of a school or public park.

J. **Warehouse Storage for Retail Use.**

1. In all districts where retail uses are allowed, on-site storage of goods is allowed as an accessory use to a primary retail use on the lot.
2. The storage of goods for a contiguous and directly accessible retail space is allowed in the MU-LI and MU-R districts subject to the following:
  - a. An AUP is required for storage 3,000 square feet or less; a Use Permit is required for storage more than 3,000 square feet.
  - b. Except for food product stores in the MU-LI district, the storage is permitted only for uses within the district. Storage for retail uses wholly or partially outside the district is not permitted.

## **23.304 GENERAL DEVELOPMENT STANDARDS**

---

### **Sections:**

- 23.304.010– Purpose
- 23.304.020– Lot Requirements
- 23.304.030– Setbacks
- 23.304.040– Building Separation in Residential Districts
- 23.304.050– Building Height
- 23.304.060– Accessory Buildings and Enclosed Accessory Structures
- 23.304.070– Unenclosed Accessory Structures in Residential Districts
- 23.304.080– Fences
- 23.304.090– Usable Open Space
- 23.304.100– Site Features in Residential Districts
- 23.304.110– Dormers
- 23.304.120– Lot Coverage
- 23.304.130– Non-Residential Districts Abutting a Residential District
- 23.304.140– Area Plans

### **23.304.010 – Purpose**

This chapter contains development standards that apply generally in Berkeley.

### **23.304.020 – Lot Requirements**

#### **A. All Districts.**

1. **Lot Changes.** A lot may not be subdivided or reduced in size and a lot line may not be adjusted or redrawn in a manner that conflicts with the Zoning Ordinance or:
  - a. Reduces the lot area, lot width, or lot depth below the district minimum requirement;
  - b. Reduces the area per dwelling unit, area for off-street parking spaces, or usable open space area below the district minimum requirement;
  - c. Reduces the setback or driveway dimension below minimum district requirements for any existing building; or
  - d. Creates a building site where setbacks or driveways for a new building would require a Use Permit or Variance.
2. **Transactions Contrary to Minimum Lot Size Requirements.** Any deed of conveyance, sale or contract to sell made contrary to the minimum lot size requirements of the Zoning Ordinance is voidable at the sole option of the grantee, buyer or person contracting to buy, their heirs, personal representative or trustee in insolvency or bankruptcy within one year after the date of execution of the deed of conveyance, sale, or contract.

3. **Front Lot Line Determination for Corner Lots.** For the purpose of determining lot frontage and setback requirements, the shorter of the two intersecting lot lines along the rights-of-way of a corner lot is considered the front of the lot. For lots with equal frontage, or for irregularly shaped corner lots, the Zoning Officer shall designate the front lot line in a manner to best promote the orderly development of the immediate area.
4. **Condominium Lots.** For condominium projects with a common area, all buildings and the common area together are treated as a single lot for the purpose of calculating minimum lot size, setback, density, FAR, coverage, usable open space and off-street parking requirements.
5. **Projections Over Lot Lines.** A building or structure may not project over a lot line except that:
  - a. Awnings and other architectural features may project over a lot line into the public right-of-way, and
  - b. Fences may be erected on shared lot lines.

**B. Residential Districts.**

1. **Lot Line Designations for Flag and Irregular Lots.** The Zoning Officer shall designate the front, side, and rear lot line for flag lots and irregular interior lots in a manner to best protect light, air, and privacy.

**23.304.030 – Setbacks**

- A. **All Districts.** A building or structure may not project into a required setback area except as specifically permitted by the Zoning Ordinance.
- B. **Residential Districts.**
  1. **Corner Lots with a Rear Lot Line Abutting a Key Lot.** For corner lots in the R-1, R-1A, R-2 and R-2A districts with a rear lot line abutting a key lot, the minimum street side setback is either:
    - a. One-half the front setback required or existing on the key lot, whichever is less; or
    - b. Four feet if the corner lot maintains 50 feet or more rear setback.
  2. **Setback Reductions.** Lot line setback reductions are only permitted as shown in Table 23.304-1. Otherwise, they are not permitted.

**TABLE 23.304-1: ALLOWED SETBACK REDUCTIONS IN RESIDENTIAL DISTRICTS**

| DISTRICT WHERE ALLOWED          | WHEN ALLOWED                                                                                                                 | MINIMUM SETBACK WITH REDUCTION | REQUIRED PERMIT | REQUIRED ADDITIONAL FINDINGS [1]                                                                                                                                                          |
|---------------------------------|------------------------------------------------------------------------------------------------------------------------------|--------------------------------|-----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Front Setback Reductions</b> |                                                                                                                              |                                |                 |                                                                                                                                                                                           |
| ES-R                            | On any lot                                                                                                                   | No minimum.                    | UP(PH) [2]      | The reduced setback is: 1) necessary to allow economic use of property due to the size, shape of the lot or the topography of the site; and 2) consistent with the ES-R district purpose. |
| R-S; R-SMU                      | On any lot                                                                                                                   | No minimum                     | AUP             | The reduced setback is appropriate given the setbacks and architectural design of surrounding buildings                                                                                   |
| R-SMU                           | For either: 1) a main building with dwelling units or group living accommodations; or 2) any building north of Durant Avenue | No minimum                     | AUP             | The reduced setback is appropriate given the setbacks and architectural design of surrounding buildings                                                                                   |
| <b>Rear Setback Reductions</b>  |                                                                                                                              |                                |                 |                                                                                                                                                                                           |
| ES-R [3]                        | On any lot                                                                                                                   | No minimum                     | UP(PH) [2]      | The reduced setback is: 1) necessary to allow economic use of property due to the size, shape of the lot or the topography of the site; and 2) consistent with the ES-R district purpose. |
| R-1, R-1A                       | On a lot less than 100 ft. deep                                                                                              | 20% of lot depth               | ZC              | None                                                                                                                                                                                      |



| DISTRICT WHERE ALLOWED               | WHEN ALLOWED                                                                                                                 | MINIMUM SETBACK WITH REDUCTION                  | REQUIRED PERMIT | REQUIRED ADDITIONAL FINDINGS [1]                                                                                                                                                          |
|--------------------------------------|------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------|-----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| R-1A                                 | To construct a dwelling unit                                                                                                 | 12 ft.                                          | AUP             | The unit would not cause a detrimental impact on emergency access; or on light, air or privacy for neighboring properties.                                                                |
| R-2, R-2A, R-3, R-4, R-5, R-S, R-SMU | On a lot with two or more main buildings with dwelling units                                                                 | No minimum                                      | AUP             | No additional findings                                                                                                                                                                    |
| R-SMU                                | For either: 1) a main building with dwelling units or group living accommodations; or 2) any building north of Durant Avenue | No minimum                                      | AUP             | The reduction is appropriate given the setbacks and architectural design of surrounding buildings                                                                                         |
| <b>Side Setback Reductions</b>       |                                                                                                                              |                                                 |                 |                                                                                                                                                                                           |
| ES-R [3]                             | Any lot                                                                                                                      | No minimum                                      | UP(PH) [2]      | The reduced setback is: 1) necessary to allow economic use of property due to the size, shape of the lot or the topography of the site; and 2) consistent with the ES-R district purpose. |
| R-1, R-1A                            | Lot width less than 40 ft. [4]                                                                                               | 10% of lot width or 3 ft., whichever is greater | ZC              | None                                                                                                                                                                                      |
| R-1A                                 | West of San Pablo Avenue to construct a dwelling unit                                                                        | No minimum                                      | AUP             | The unit would not cause a detrimental impact on emergency access; or on light, air or privacy for neighboring properties.                                                                |

| DISTRICT WHERE ALLOWED | WHEN ALLOWED                                                                                                                 | MINIMUM SETBACK WITH REDUCTION                                                                | REQUIRED PERMIT | REQUIRED ADDITIONAL FINDINGS [1]                                                                        |
|------------------------|------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|-----------------|---------------------------------------------------------------------------------------------------------|
| R-2, R-2A              | Lot width less than 40 ft.                                                                                                   | First and second stories: 10% of lot width or 3 ft., whichever is greater; Third story: 5 ft. | ZC              | None                                                                                                    |
| R-SMU                  | For either: 1) a main building with dwelling units or group living accommodations; or 2) any building north of Durant Avenue | No minimum                                                                                    | AUP             | The reduced setback is appropriate given the setbacks and architectural design of surrounding buildings |

## Notes:

[1] Findings are in addition to any AUP or Use Permit findings required in 23.406-Specific Permit Requirements.

[2] Fire Department must review and approve reduced setbacks in respect to fire safety.

[3] For lots less than 5,000 square feet, reductions are not allowed for property lines abutting a property under different ownership.

[4] Not permitted for rear main buildings in the R-1A district.

3. **Allowed Building Projections.** Table 23.304-2 shows building features which may project into a required setback. All projecting features must maintain a minimum 3-foot distance from an interior side lot line.

**TABLE 23.304-2: ALLOWED BUILDING PROJECTIONS**

| BUILDING FEATURE                                                        | MAXIMUM PROJECTION INTO REQUIRED SETBACK<br>(MUST MAINTAIN 3 FT MINIMUM FROM INTERIOR SIDE LOT LINE) |         |               |             |
|-------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------|---------|---------------|-------------|
|                                                                         | FRONT                                                                                                | REAR    | INTERIOR SIDE | STREET SIDE |
| Chimneys, Water Heater Enclosures, Flues, Heating and Cooling Equipment | 2.5 ft.                                                                                              | 2.5 ft. | 1.5 ft.       | 2.5 ft.     |

|                                                                                                                                  |         |         |         |         |
|----------------------------------------------------------------------------------------------------------------------------------|---------|---------|---------|---------|
| Eaves, Cornices, Canopies, Awnings and Bay Windows [1]                                                                           | 2.5 ft. | 2.5 ft. | 1.5 ft. | 2.5 ft. |
| Uncovered decks, porches, landings and stairs when 30 inches or more above grade at any point [2]                                | 6 ft.   | 6 ft.   | 1.5 ft. | 2.5 ft. |
| Balconies and fire escapes [1]                                                                                                   | 6 ft.   | 6 ft.   | 1.5 ft. | 2.5 ft. |
| Notes:                                                                                                                           |         |         |         |         |
| [1] Projecting bay windows and balconies may not exceed 25% of the length of building wall to which its attached.                |         |         |         |         |
| [2] Uncovered decks, porches, landings and stairs less than 30 inches in height are not subject to minimum setback requirements. |         |         |         |         |

4. **Accessibility for Persons with Disabilities.** Wheelchair ramps, lifts, and other structures to accommodate persons with disabilities may project into a required setback area with approval of a reasonable accommodation request. See Section 23.406.090 (Reasonable Accommodation). Preferred designs would comply with the following:
  - a. One side yard with a pedestrian pathway of at least 3 feet in width that provides access to the rear yard shall be maintained on the lot.
  - b. The projection may not block access to or encroach into any required off-street parking space or driveway leading to such space.
5. **Building Groups.** Where two or more main buildings are constructed as part of a single project, the Zoning Officer may approve an AUP to reduce the minimum side setback requirement if:
  - a. Each building is constructed on a separate contiguous lot; and
  - b. Each building satisfies the requirements of the Berkeley Fire Code and Berkeley Building Code.
6. **Subterranean Structures.**
  - a. A subterranean structure may project into required front, side, and rear setbacks if:
    - b. The structure has a roof;
    - c. The roof elevation does not exceed 3 feet above finished grade; and
    - d. The roof is landscaped and developed so as to qualify as usable open space in conformance with 23.304.090 (Usable Open Space).

- e. A subterranean structure that projects into a required setback must be setback at least 6 feet from the front, side, and rear lot lines.
- 7. **Solar Energy Equipment.** The Zoning Officer may approve an AUP for solar energy equipment to project into a required setback upon finding that:
  - a. The projection is necessary to install the solar energy equipment;
  - b. The proposed structures and equipment are installed with the primary purpose to collect, store, and use solar energy; and
  - c. The building served by the solar energy equipment complies with the Residential Energy Conservation Ordinance (RECO).

**C. Non-Residential Districts.**

- 1. **Single-Use Residential Development.** Allowed setback reductions and projections in 23.304.030.B (Residential Districts) also apply to single-use residential development in a Non-Residential District.
- 2. **Lots Adjacent to Residential Districts.**
  - a. **Standards.** Table 23.304-3 shows minimum setbacks on lots in a Non-Residential District that abut or confront one or more lots in a Residential District. Required setbacks apply to structures occupied by any use, including residential-only buildings.

**TABLE 23.304-3: SETBACKS ADJACENT TO RESIDENTIAL DISTRICTS**

| District                        | Minimum Lot Line Setback when Lot Line Abuts or Confronts a Lot in a Residential District |                                                        |               |                                                       |
|---------------------------------|-------------------------------------------------------------------------------------------|--------------------------------------------------------|---------------|-------------------------------------------------------|
|                                 | Front                                                                                     | Rear                                                   | Interior Side | Street Side                                           |
| All Commercial Districts, MU-LI | Same as required in adjacent Residential District [1]                                     | 10 feet or 10% of the lot depth, whichever is less     | 5 ft.         | Same as required in adjacent Residential District [1] |
| MU-R                            | 10 ft. [1]                                                                                | 10 feet or 10% of the lot width, whichever is less [2] |               |                                                       |

**Notes:**

[1] In the MU-LI and MU-R districts, setback may be reduced to the smaller of front setbacks on abutting lot with an AUP.

[2] This applies to lots that abut or confront a lot either in a Residential District or containing one or more dwelling units.

- b. **Modifications in Commercial Districts.** For lots in a Commercial District that abut or confront one or more lots in a Residential District, the Zoning

Adjustments Board (ZAB) may approve a Use Permit to allow setbacks smaller than required in Table 23.304-2 upon finding that the reduced setback would provide greater privacy or improved amenities to a lot in the Residential District.

**23.304.040 – Building Separation in Residential Districts**

A. Table 23.304-4 shows permits required to reduce to minimum building separation standards in Residential Districts, and when these reductions are allowed.

**TABLE 23.304-4: PERMITS REQUIRED FOR BUILDING SEPARATION REDUCTIONS IN RESIDENTIAL DISTRICTS**

| DISTRICT WHERE ALLOWED               | WHEN ALLOWED                                                  | PERMIT REQUIRED | FINDINGS [1]                                                                                                                                                                                                                                                                                      |
|--------------------------------------|---------------------------------------------------------------|-----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| R-1A                                 | On a lot with two or more main buildings with a dwelling unit | AUP             | The unit would not cause a detrimental impact on emergency access; or on light, air or privacy for neighboring properties.                                                                                                                                                                        |
| R-2, R-2A, R-3, R-4, R-5, R-S, R-SMU | On a lot with two or more main buildings with a dwelling unit | AUP             | No additional findings                                                                                                                                                                                                                                                                            |
| ES-R [2]                             | Any lot                                                       | UP(PH)          | 1) The reduced building separation is necessary to allow economic use of property for residential purposes; 2) the development complies with all other applicable setback, coverage, and floor requirements; and 3) the reduced building separation is consistent with the ES-R district purpose. |

Notes:

[1] Findings in addition to AUP or Use Permit findings required in in 23.406.

[2] Fire Department must review and approve reduced setbacks in respect to fire safety.

**23.304.050 – Building Height**

A. **Projections Above Height Limits.** Table 23.304-5 shows features that may project above allowed height limits. For rules that apply to wireless telecommunication facilities, see Chapter 23.332 (Wireless Telecommunication Facilities).

**TABLE 23.304-5: ALLOWED PROJECTIONS ABOVE HEIGHT LIMIT**

| Structures Allowed Above Height Limit                                                                                                                                        | Maximum Projection Above Height Limit                         |                           | Limitations                                                                                                                                                                                                                |                           | Permit Required |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------|---------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|-----------------|
|                                                                                                                                                                              | Residential Districts                                         | Non-Residential Districts | Residential Districts                                                                                                                                                                                                      | Non-Residential Districts |                 |
| Towers, antennas, poles used for the transmission of electricity, telephone, cable television or other messages                                                              | No maximum                                                    |                           | None                                                                                                                                                                                                                       |                           | None            |
| Flag poles, skylights, solar energy equipment, and similar structures                                                                                                        | No maximum                                                    |                           | None                                                                                                                                                                                                                       |                           | None            |
| Chimneys, water tanks, heating and air conditioning equipment, vents, pipes and necessary mechanical roof appurtenances                                                      | 4 ft. or the minimum height required by the Building Code [1] | No maximum                | Maximum 3 ft. in width [1]                                                                                                                                                                                                 | No additional limitations | None            |
| Other building and site features, including but not limited to, mechanical penthouses, elevator equipment rooms and cupolas, domes, turrets and other architectural elements | No maximum                                                    |                           | May not exceed 15% of the average floor area of all of the building's stories. No tower or similar structure may be used as habitable space or for any commercial purpose, other than the mechanical needs of the building |                           | AUP             |

Notes:

[1] May exceed allowed height and width with an AUP.

- B. **Rooftop Structures in Residential Districts.** Decks, railings, trellises, pergolas, and other similar structures may be built above a roof but less than the residential addition height limit of the district. These structures may exceed the residential addition height limit with an AUP.

### 23.304.060 – Accessory Buildings and Enclosed Accessory Structures

- A. **Applicability.** This section applies to accessory buildings and enclosed accessory structures as defined in 23.502 (Glossary). See Section 23.304.070 (Unenclosed Accessory Structures in Residential Districts) and Section 23.304.080 (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 23.326.030.C (Accessory Buildings) and 23.326.070.B (Accessory Buildings) for permits required to demolish accessory buildings.
- C. **Residential Districts.**
1. **Permits Required.** Table 23.304-6 shows permits required for accessory buildings and accessory structures in Residential Districts.

**TABLE 23.304-6: 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) |
| <b>Notes:</b>                                                      |        |
| [1] Horse stables are not permitted in the R-S and R-SMU districts |        |

## 2. Development and Use Standards.

- a. **Development Standards.** Table 23.304-7 shows development standards for accessory buildings and enclosed accessory structures in Residential Districts.

**TABLE 23.304-7: 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.                                                                                                                                                             |
| <b>Notes:</b>                                                        |                                                                                                                                                                    |
| [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 23.304-7. 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 23.314—Short-Term Rentals.

## 2. Rebuilding and Replacement.

- a. Notwithstanding the setback standards in this section and the coverage area standards in Chapter 23.202—Residential Districts, 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).

D. **Non-Residential Districts.** The following requirements apply to accessory buildings and enclosed accessory structures in Non-Residential Districts.

### 1. Permits Required.

- a. Accessory buildings and enclosed accessory structures in a Non-Residential District require the same permits as a main building in the district, except as provided in paragraphs (b) and (c) below.
- b. Accessory buildings and structures with urban agriculture are allowed with a Zoning Certificate.
- c. In a Commercial District, an accessory building or enclosed accessory structure associated with a residential-only project requires the same permits

as in all Residential Districts except ES-R as shown in Table 23.304-7: Accessory Building and Enclosed Accessory Structure Standards in Residential Districts.

## 2. **Development Standards.**

- a. Accessory buildings and enclosed accessory structures must comply with the same development standards that apply to main buildings in the district.
- b. A detached accessory building or enclosed accessory structure may not be erected or expanded within 5 feet of an alley.

### **23.304.070 – Unenclosed Accessory Structures in Residential Districts**

- A. **Applicability.** This section applies to unenclosed accessory structures as defined in 23.502 Glossary in a Residential District, excluding fences which are addressed in 23.304.080– Fences.
- B. **Placement on Lot.** Unenclosed accessory structures require an AUP if placed on the ground within a required setback.
- C. **Height.**
  1. For unenclosed accessory structure within a required setback, allowed height shall be specified in the AUP.
  2. No height limitations apply to unenclosed accessory structures outside of required setbacks.
  3. The height of an unenclosed accessory structure is measured as the vertical distance from the lowest existing grade point within a 3-foot radius of any point of the structure to the highest point of the structure.
- D. **Hot Tubs, Jacuzzis, and Spas.**
  1. An unenclosed outdoor hot tub, jacuzzi, or spa located anywhere on a lot requires:
    - a. An AUP in all Residential Districts except for the ES-R district; and
    - b. A Use Permit in the ES-R district.
  2. Any pump associated with an unenclosed outdoor hot tub, jacuzzi, or spa shall be mounted and enclosed so that its sound is not audible on an adjacent lot.

### **23.304.080 – Fences**

- A. **Permits Required.** Table 23.304-8 shows permits required for fences in all districts.

**TABLE 23.304-8: PERMITS REQUIRED FOR FENCES**

| District Location and Fences Height/Location                                                     | Permit Required |
|--------------------------------------------------------------------------------------------------|-----------------|
| All Districts Except ES-R                                                                        |                 |
| 6 ft. in height or less                                                                          | None required   |
| More than 6 ft in height and on lot line or within required lot line setbacks for main building  | AUP             |
| ES-R District                                                                                    |                 |
| 4 ft. in height or less                                                                          | None required   |
| More than 4 ft. in height and on lot line or within required lot line setbacks for main building | AUP [1]         |
| Notes:<br>[1] Requires Fire Department review and comment.                                       |                 |

**B. Height Measurement.** The height of a fence is measured as the vertical distance from the lowest existing grade point within a 3-foot radius of any point of the structure to the highest point of the structure.

**C. Prohibited Materials in Residential Districts.**

1. A fence in a Residential District may not contain strands of barbed or razor wire, sharp or jagged glass, sharp or jagged metal components (e.g., razor-spikes), or similar materials.
2. Prohibited fence materials on an existing fence may not be expanded or repaired. Table 23.304-9 shows the date by which existing non-conforming prohibited fence materials must be removed.

**TABLE 23.304-9: REMOVAL OF PROHIBITED FENCE MATERIALS**

| ADJUSTED MARKET VALUE OF PROHIBITED FENCE MATERIAL | REQUIRED REMOVAL DATE                                                                                           |
|----------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|
| \$1,500 or less                                    | October 16, 2004 or within one year from the date such feature became non-conforming, whichever date is earlier |
| More than \$1,500                                  | October 16, 2005 or within one year from the date such feature became non-conforming, whichever date is earlier |

3. For purposes of this section, the adjusted market value of the existing non-conforming prohibited fence feature is calculated as follows:
  - a. The "original cost" of the fence feature is the likely cost of substantially similar fence features at the time the fence feature was initially installed plus the likely costs of installation at that time.
  - b. The "original cost" is reduced by 10 percent for each year since the fence feature was installed, until the year that this section became effective. This reduced is considered the "adjusted market value."
4. If a property owner shows that the period of time in Table 23.304-9 is unreasonable as applied to a particular fence feature, the City may extend the period within which removal of such feature is required, after weighing the harm to the public interest from continued maintenance of the fence and other relevant factors. Any such determination will be made in the course of the proceedings to abate pursuant to Municipal Code Chapter 1.24 (Abatement of Nuisances).

**D. Barbed or Razor Wire in Non-Residential Districts.**

1. A fence adjacent to a street, sidewalk, path, or other public right-of-way in a Non-Residential District may have strands of barbed or razor wire if:
  - a. The lowest strand is more than 5 feet above the ground; and
  - b. The strands are at least 6 inches inside the property line of a privately-owned lot.
2. A fence on a lot line that abuts a Residential District must comply with 23.304.080.D– Fences (Prohibited Materials in Residential Districts).

**E. MU-R District.**

**1. Abutting Residential Uses.**

- a. If the side or rear of a lot in the MU-R district with a residential use abuts another lot with a residential use, a fence over six feet in height must be setback at least either:
  - i.* Eight feet from any main residential building on the abutting lot; or
  - ii.* Four feet from the property line if the main residential building on the abutting lot is less than 4 feet from the abutting lot line.
- b. This requirement does not apply when two lots sharing the lot line are under the same ownership.

**2. Manufacturing/Residential Buffers.**

- a. If a development project in the MU-R district results in a lot with a manufacturing use abutting the side or rear of a lot with a residential use, an

8-foot minimum fence with sound absorbent material is required between the manufacturing and residential uses.

- b. The Zoning Officer may approve an AUP to allow for an alternative method to provide a buffer between the manufacturing and residential uses.

### **23.304.090 – Usable Open Space**

- A. **Applicability.** The standards in this section apply to areas used to satisfy minimum usable open space requirements as shown in Chapters 23.202–23.202.110 (Zoning Districts).
- B. **Standards.**
  - 1. **Accessibility and Use.** Usable open space shall be accessible to the occupants of the building for active or passive recreation use.
  - 2. **Assignment to Unit.** An area which is accessible and/or usable only by the occupants of a particular dwelling unit may satisfy the usable open space area requirements only for that particular dwelling unit.
  - 3. **Minimum Dimensions.** Except for balconies, a usable open space area must have a minimum width and length of 10 feet.
  - 4. **Balconies.**
    - a. A maximum of 50 percent of the total required usable open space area may be satisfied by balconies.
    - b. A balcony must have a minimum width and length of 6 feet.
    - c. At least one exterior side must be open and unobstructed except for required railings.
  - 5. **Uncovered.** Except for balconies, usable open space shall be at least 75 percent open to the sky.
  - 6. **Slope.** Usable open space must have a slope of 8 percent grade or less.
  - 7. **Landscaping.**
    - a. At least 40 percent of the total required usable open space area, exclusive of balconies above the ground floor, shall be landscaped.
    - b. A landscaped area may not include off-street parking spaces, driveways, paved walkways and paths, patios and other surfaces covered by concrete or asphalt.
    - c. For multiple dwelling uses, required landscaped areas shall incorporate automatic irrigation and drainage facilities adequate to assure healthy growing conditions for plants.

8. **Amenities.** Usable open space which is not planted shall be developed to encourage outdoor active or passive recreational use and shall include such elements as decks, sports courts, outdoor seating, decorative paved areas and walkways which do not serve as entrance walkways.
  9. **Access Features Not Included.** Usable open space may not contain area designated for off-street parking and loading, service areas, driveways, required walkways or other features used for access to dwelling units.
- C. **Other Open Space Areas.** Areas of the lot which do not qualify as usable open space and which are not designated as driveways, off-street parking spaces or required walkways, shall be retained as landscaped areas.

### 23.304.100 – Site Features in Residential Districts

- A. **Applicability.** The standards in this section apply in all Residential Districts.
- B. **Garbage Cans.** All garbage cans shall be effectively screened from view from the public right-of-way and surrounding properties.
- C. **Utility Meters.** For buildings with two or more units, all utility meters shall be effectively screened from view from the public right-of-way and surrounding properties.
- D. **Pedestrian Walkway for Multiple Dwellings.**
  1. All multi-family dwellings shall have an unobstructed walkway for pedestrian access from the public right-of-way to the building.
  2. The required walkway shall be separated and physically protected from a driveway or off-street parking spaces with a minimum 2-foot wide landscaped strip.
- E. **Exterior Lighting.**
  1. All exterior lighting shall be shielded and directed downward and away from lot lines to prevent excessive glare beyond the property on which the light is located.
  2. Lights on motion sensors may not be triggered by movement or activity located off the property on which the light is located.

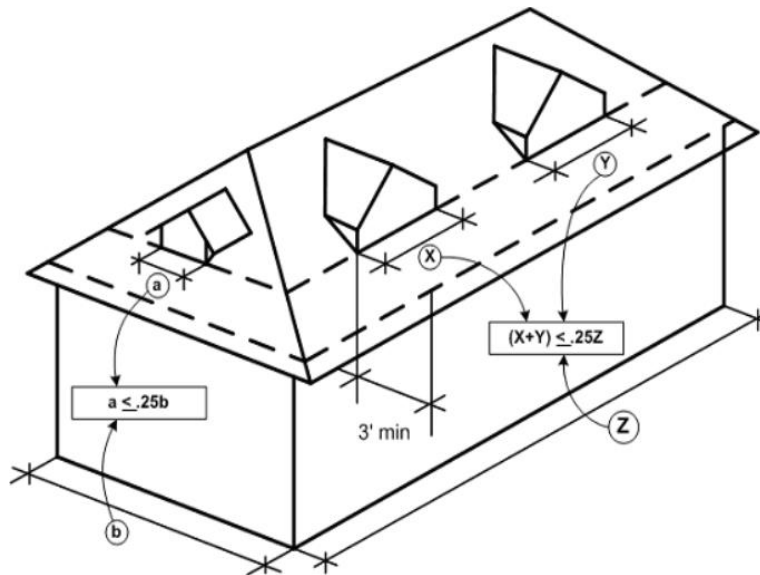
### 23.304.110 – Dormers

- A. **Wall Setback.** All features of a dormer shall be set back at least 3 feet from the exterior of the wall below, with the exception of the dormer's eaves, which may project horizontally not more than two feet from the exterior face of the dormer.
- B. **Placement Below Roof.** A dormer must be below the ridge of the portion of the building's roof where the dormer is located.

**C. Horizontal Dimension.** The total horizontal dimension of the dormer(s) facing the side of a building, as measured parallel to that side, may not exceed 25 percent of the length of the exterior wall, as shown in Figure 23.304-1: Dormers.

**D. Excluded from Average Height Calculation.** Dormers complying with this section are not included in the average building height calculation.

**FIGURE 23.304-1: DORMERS**



### 23.304.120 – Lot Coverage

- A. **Maximum Requirement.** A lot may not exceed the maximum lot coverage required in a district except as specifically permitted by the Zoning Ordinance.
- B. **Exception.** Solar energy equipment and wheelchair ramps and lifts in compliance with the Zoning Ordinance may exceed the maximum allowed lot coverage.

### 23.304.130 – Non-Residential Districts Abutting a Residential District

- A. **Applicability.** The standards in this section apply to lots in a Non-Residential District that abut or confront a lot in a Residential District.
- B. **Conflicting Provisions.** If the standards in this section conflict with a standard in Chapters 23.202–23.210 (Zoning Districts), the Chapters 23.202–23.210 standard governs.
- C. **Standards.**

1. **Display Window Orientation.** Display windows and customer entrances, other than required exits, shall not face abutting lots in a Residential District.
  2. **Exterior Lighting.** Exterior lighting shall be shielded in a manner which avoids direct glare onto abutting lots in a Residential District.
  3. **Lot Line Screening.** To provide screening, a solid wall or fence, measuring 6 feet in height from existing grade, shall be erected at the lot line of an abutting lot in a Residential District.
  4. **Exhaust Air Ducts.**
    - a. Exhaust air ducts shall be located or oriented to direct vented air flows away from a Residential District.
    - b. Exhaust air ducts shall include equipment to mitigate odors.
- D. **Modifications.** The ZAB may approve a Use Permit to reduce or waive the requirements of this section upon finding that requirement is unnecessary to minimize the effects of commercial uses on a lot in the Residential District.

#### 23.304.140 – Area Plans

- E. **Downtown Area Plan.** Projects in the Downtown Area Plan boundaries are subject to the applicable mitigation measure in the adopted Mitigation Monitoring Program of the Downtown Area Plan Final EIR.
- F. **Southside Plan.**
1. **Mitigation Measures.** Projects in the Southside Plan boundaries are subject to the applicable mitigation measures in the adopted Mitigation Monitoring Program of the Southside Plan Final EIR.
  2. **Permit Findings.** To approve an AUP or Use Permit for a project in the Southside Plan boundaries, the review authority must find that the project complies with the Southside Plan's adopted Mitigation Monitoring Program (MMP).
- G. **West Berkeley Plan.** Projects in the West Berkeley Plan boundaries are subject to the applicable mitigation measure in the adopted Mitigation Monitoring Program of the West Berkeley Plan Final EIR.
- H. **Adeline Corridor Plan.** Projects in the Adeline Corridor Plan boundaries are subject to the applicable mitigation measure in the adopted Mitigation Monitoring Program of the Adeline Corridor Plan Final EIR.



## **23.306 ACCESSORY DWELLING UNITS**

---

### **Sections:**

- 23.306.010– Purposes
- 23.306.020– Applicability
- 23.306.030– Permit Procedures

### **23.306.010 – Purposes**

The purposes of this chapter are to:

- A. Implement California Government Code Section 65852.2 and 65852.22.
- B. Increase overall supply and range of housing options in Berkeley.
- C. Expedite small-scale infill development.
- D. Support Housing Element goals of facilitating construction of accessory dwelling units and increasing the number of housing units that are more affordable to Berkeley residents.
- E. Encourage development of accessory dwelling units in zoning districts with compatible land uses and infrastructure.

### **23.306.020 – Applicability**

- A. The provisions of this chapter apply to all lots with at least one existing or proposed dwelling unit.

### **23.306.030 – Permit Procedures**

Zoning Certificates will be issued for Accessory Dwelling Units and Junior Accessory Dwelling Units per California Government Code Section 65852.2 and 65852.22.

**23.308 EMERGENCY SHELTERS**

**Sections:**

- 23.308.010– Chapter Purpose
- 23.308.020– Applicability and Nonconformities
- 0– Required Permits
- 23.308.030– Standards for Emergency Shelters

**23.308.010 – Chapter Purpose**

This chapter establishes standards for emergency shelters that ensure compatibility of shelter activities with surrounding uses and provide a safe place for individuals and families to obtain temporary shelter

**23.308.020 – Applicability and Nonconformities**

- A. **Applicability.** This chapter applies to all emergency shelters established after January 1, 2014.
- B. **Nonconformities.**
  - 1. Emergency shelters established before January 1, 2014 may continue to operate consistent with:
    - a. The conditions in those approvals and permits;
    - b. All other applicable provisions of the Zoning Ordinance; and
    - c. Any limitations and requirements imposed as a condition of funding.
  - 2. Except in the MU-LI district, such existing emergency shelters shall be treated as a lawful nonconforming use under Chapter 23.324(Nonconforming Uses, Structures, and Buildings). Existing shelters in the MU-LI district are not considered a nonconforming use and may add floor area with a Use Permit.

– Required Permits Table 23.308-1 shows permits required for emergency shelters.

**TABLE 23.308-1: PERMIT REQUIREMENTS FOR EMERGENCY SHELTERS**

| DISTRICTS                                            | PERMIT REQUIRED [1] |
|------------------------------------------------------|---------------------|
| <b>Residential Districts</b>                         |                     |
| R-1, R-1A, ES-R, R-2, R-2A, R-3                      | Not Permitted       |
| R-4, R-5, R-S, and R-SMU                             |                     |
| 15 beds or fewer [1]                                 | ZC                  |
| More than 15 beds                                    | UP(PH)              |
| <b>Commercial Districts</b>                          |                     |
| C-C, C-U, C-N, C-E, C-NS, C-SA, C-T, C-SO, C-W, C-AC |                     |

|                                                                                             |               |
|---------------------------------------------------------------------------------------------|---------------|
| 25 beds or fewer                                                                            | ZC            |
| More than 25 beds                                                                           | UP(PH)        |
| C-DMU                                                                                       |               |
| 60 beds or fewer                                                                            | ZC            |
| More than 60 beds                                                                           | UP(PH)        |
| <b>Manufacturing Districts</b>                                                              |               |
| M, MM, MU-LI, MU-R                                                                          | Not Permitted |
| Notes:<br>[1] See also permit requirements based on floor area of use in Table 23.308.040-1 |               |

### 23.308.030 – Standards for Emergency Shelters

A. **All Districts.** The following standards apply to emergency shelters in all districts.

1. No individual or household may be denied emergency shelter because of an inability to pay.
2. No emergency shelter shall be located within 300 feet of another emergency shelter, except when a Use Permit is approved to allow less of a buffer distance.
3. When abutting a Residential District, all areas for shelter activities and uses, including but not limited to waiting and intake, personal storage, facility storage, and recreation, shall be located indoors.
4. The following emergency shelter facilities are required:
  - a. An area for onsite client intake equal to one-quarter of the area provided for client beds. This may be a multi-use area.
  - b. Showers and restroom facilities.
5. The following emergency shelter facilities are optional:
  - a. Secure personal storage.
  - b. Daytime services.
  - c. Meal services.
  - d. Communal kitchen.
  - e. Laundry equipment for clients.
  - f. Child care.
  - g. Vehicle and/or bicycle parking.

6. Lighting shall be provided in all exterior areas, including pathways, parking areas, courtyards, rear yard areas, and spaces between structures. Lighting shall be directed in a manner that does not cast light onto neighboring properties.
7. On-site management shall be provided at all times the facility is in operation and at least one hour before and after facility operation hours.
8. The shelter operator shall prepare and implement a Shelter Safety and Management Plan. The Plan shall be available to the public upon request and shall address the following:
  - a. Client congregation outside of the shelter facility to prevent queuing within the public right-of-way.
  - b. Eligibility criteria, enforcement rules, and procedures for disruptive clients.
  - c. Number and responsibilities of on-site support staff, training standards, other management procedures, and a primary and secondary contact person.
  - d. Bed bug prevention.
  - e. Refuse collection.
  - f. Security procedures.
  - g. Separation of sleeping areas and restrooms by gender and for families.
  - h. Consistency with the Alameda County-Wide Homeless Continuum of Care: Health, Safety and Accessibility Standards for Shelter Facilities in Alameda County.
9. The shelter provider shall conduct a community meeting after giving notice to all owners and occupants on record with the Alameda County Assessor within a 100-foot radius of the proposed shelter location. A community meeting shall not be required when the target population of the proposed shelter requires privacy due to safety concerns as determined by the Zoning Officer.

#### **B. Seasonal Emergency Shelters.**

1. **Seasonal Emergency Shelter Defined.** A seasonal emergency shelter is an emergency shelter that may operate only during the wet weather season from November 15 through April 15, unless the City Manager determines in any given year that the wet season has begun earlier or extended later than these dates.
2. **Standards in Residential Districts.** In addition to the standards in Subsection A (Standards for All Emergency Shelters) above, the following standards apply to seasonal emergency shelters in a residential district.
  - a. A seasonal emergency shelter must be incidental to a community and institutional use.

- b. Table 23.308-2 shows permits required based on the percentage of the community and institutional use occupied by the seasonal emergency shelter.

**TABLE 23.308-2: FLOOR AREA PERMIT REQUIREMENTS IN RESIDENTIAL DISTRICTS**

| PERCENT OF COMMUNITY AND INSTITUTIONAL USE FLOOR AREA OCCUPIED BY EMERGENCY SHELTER | PERMIT REQUIRED |
|-------------------------------------------------------------------------------------|-----------------|
| 25% or less                                                                         | ZC              |
| More than 25% to less than 50%                                                      | UP(PH)          |
| 50% or more                                                                         | Not allowed     |

C. **Findings.** To approve a Use Permit for an emergency shelter under Section 23.304.030(Required Permits) or 23.308.030(Standards in Residential Districts), the Zoning Adjustments Board (ZAB) must find that:

1. A larger shelter facility will help meet the City’s goals pertaining to emergency housing of the homeless;
2. The circumstances of the subject property make the larger facility appropriate; and
3. Design features will minimize impacts on the surrounding area.

## **23.310 ALCOHOLIC BEVERAGE SALES AND SERVICE**

---

### **Sections:**

23.310.010– Chapter Purpose

23.310.020– General Requirements Excluding Incidental Beer and Wine Service

23.310.030– Alcoholic Beverage Service When Incidental to Food Service

### **23.310.010 – Chapter Purpose**

This chapter establishes general requirements for alcoholic beverage sales or service and permit requirements and standards for alcoholic beverage service when incidental to a food service establishment.

### **23.310.020 – General Requirements Excluding Incidental Beer and Wine Service**

#### **A. Applicability.**

1. This section applies to any application to begin or increase alcoholic beverage sales or service, excluding beer and wine service incidental to a food service establishment in a Commercial District (see 23.310 (Alcoholic Beverage Service When Incidental to a Food Service)).
2. As used in this section, an increase in alcoholic beverage sales or service includes, but is not limited to:
  - a. Adding the sales or service of distilled spirits to any existing sales or service of beer and/or wine;
  - b. Extending the hours of operation of any establishment that sells or serves any alcoholic beverage; and
  - c. Adding to the capacity, floor area, or shelf space devoted to alcoholic beverages of any establishment that sells or serves any alcoholic beverages.
3. An increase in alcoholic beverage sales or service does not include extending the hours of operation of any food service establishments with incidental beer and/or wine service.

**B. Permit Required.** A Use Permit is required to begin or increase alcoholic beverage sales or service in any way.

**C. Application – List of Nearby Establishments.** As part of an application to begin or increase alcoholic beverage sales or service, the applicant must provide a list of all establishments within a 1,000-foot radius which are in the same category of alcoholic beverage sales or service, as defined by the California Department of Alcoholic Beverage Control.

**D. Findings of Public Convenience or Necessity.** If the proposed use is within a 1,000-foot radius of the site of a use that is in the same category of alcoholic beverage sales or service, excluding food service establishments with incidental

service of beer and/or wine, the Zoning Adjustments Board (ZAB) may approve the application only if it makes all of the following findings:

1. The proposed establishment will promote the City’s economic health, contribute to General Plan or area plan policies, or further the district purpose.
2. The economic benefits associated with the establishment could not reasonably be achieved without the proposed alcohol sales or service.
3. If the applicant has operated a licensed establishment that has been the subject of violations regarding alcohol in the State of California, or violations of public safety or nuisance statutes or regulations in Berkeley as verified by the Police Department, such violations do not indicate a high likelihood of further violations and/or detrimental impacts from the proposed establishment. In making this finding, the ZAB may consider the number, frequency, and severity of prior violations, the time elapsed since the last violation, and other relevant factors.
4. If the proposed establishment is within 1,000 feet of any public park or public school, the ZAB has taken into consideration the effect of the proposed establishment upon such sensitive public uses.
5. The Police Department has reported that the proposed establishment would not be expected to add to crime in the area.

**23.310.030 – Alcoholic Beverage Service When Incidental to Food Service**

A. **Permits Required.** Table 23.310-1 shows permits required for alcoholic beverage service when incidental to a food service establishment.

**TABLE 23.310-1: PERMITS REQUIRED FOR ALCOHOLIC BEVERAGE SERVICE**

| District                              | Permit Required Based on Type of Beverages Served When Incidental to Food Service |                   |
|---------------------------------------|-----------------------------------------------------------------------------------|-------------------|
|                                       | Beer and Wine                                                                     | Distilled Spirits |
| R-SMU                                 | UP(PH)                                                                            | UP(PH)            |
| All Commercial Districts, except C-AC | ZC                                                                                | UP(PH)            |
| C_AC                                  | ZC                                                                                | AUP               |
| MU-LI, MU-R                           | UP(PH)                                                                            | UP(PH)            |

**B. Use Limitations.**

1. **R-SMU District.** In the R-SMU district, alcoholic beverage service is allowed only for full-service restaurants. Alcoholic beverage service is not allowed for carry out food stores and quick-service restaurants.

2. **Commercial Districts.** In Commercial Districts, beer and wine service is allowed by right when for on-site consumption with seated food service.
  3. **C-NS District.** In the C-NS district, distilled spirit service is allowed only for full-service restaurants. Distilled spirit service is not allowed for carry out food stores and quick-service restaurants.
  4. **C-T and C-SO Districts.** In the C-T and C-SO districts, distilled spirit service is allowed only for on-site consumption with seated food service.
  5. **C-AC District.** In the C-AC district, distilled spirit service is allowed along Adeline Street south of Ashby Avenue only for on-site consumption with seated food service.
- C. **Incidental Beer and Wine Service Standards.** The following standards apply to beer and wine service incidental to a food service establishment in a Commercial District.
1. **Licensing.**
    - a. The food service establishment shall comply with all applicable regulations of the California Department of Alcoholic Beverage Control.
    - b. An operator of the licensed establishment may not have a prior licensed establishment that was the subject of verified complaints or violations regarding alcohol, public safety, or nuisance statutes or regulations before issuance or transfer of a business license at this location.
  2. **Service.**
    - a. Beer and wine beverage service shall be incidental to the primary food service use.
    - b. Beer and wine service incidental to seated food service shall only be allowed at a bona fide eating place making actual and substantial sales of meals as determined and required by the California Department of Alcohol Beverage Control.
    - c. The sale of beer and wine for off-site consumption is not permitted.
    - d. Employees may not serve beer or wine to patrons who appear to be inebriated or otherwise unable to behave in an orderly manner upon consuming alcohol.
    - e. All beer and wine served to patrons must be served in durable restaurant tableware. Beer or wine may not be distributed in its original bottle or can, or in any other potentially disposable container.



- f. There shall be no bar or lounge area upon the licensed premises maintained for the sole purpose of sales, service, or consumption of alcoholic beverages directly to patrons for consumption.
- g. Hours of operation are subject to review and amendment by the ZAB as necessary to avoid detriment to the neighborhood or to achieve conformance with revised City of Berkeley standards or policies.

### 3. **Operation.**

- a. The food service establishment must operate at least five days a week.
- b. The service of beer and wine shall be limited to normal meal hours (per California Department of Alcoholic Beverage Control) during the food service establishment's hours of operation.
- c. During operating hours, 100 percent of the service area shall be designed and used for meal service and must possess the necessary utensils, and condiment dispensers with which to serve meals to the public.
- d. At no time shall the operator rent the restaurant space to a third-party.
- e. The owner or operator of the establishment shall take reasonable measures to prevent disturbances by patrons in the immediate vicinity. Such measures shall include:
  - i.* Signs reminding patrons of nearby residences and requests not to congregate or loiter near such residences nor operate vehicles in a noisy manner on residential streets; and
  - ii.* Surveillance to public areas near the establishment, keeping public areas free of trash and litter, providing lighting, and otherwise preventing conduct that might disturb the peace and quiet of residences in the vicinity.
- f. The operator shall assume reasonable responsibility for ensuring that patrons do not block the entrance or interfere with pedestrian activity on the adjacent public sidewalk.
- g. The applicant shall establish cash handling procedures to reduce the likelihood of robberies and theft.

### 4. **Advertising.**

- a. There shall be no exterior advertising or sign of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior constitute a violation of this requirement.

- b. Alcohol-dispensing facilities and signs advertising alcoholic beverages may not be visible from the public right-of-way.

**5. Training.**

- a. The operator shall finish a Crime Prevention through Environmental Design (CPTED) survey before beginning alcohol service.
- b. All employees selling and/or serving beer and wine, or directly supervising such sales and/or service, shall comply with Municipal Code Section 9.84.030 (Responsible Beverage Service Training) and finish the Licensee Education on Alcohol and Drugs (LEAD) program, or another equivalent program offered or certified by the California Department of Alcoholic Beverage Control within 90 days of employment at the establishment. Employees who have finished the course within the last 12 months are exempt from this requirement.

## **23.312 LIVE/WORK**

---

### **Sections:**

- 23.312.010– Chapter Purpose
- 23.312.020– Applicability
- 23.312.030– Required Permits
- 23.312.040– Standards for Live/Work
- 23.312.050– Findings

### **23.312.010 – Chapter Purpose**

This chapter establishes live/work standards that:

- A. Provide for the appropriate development of units which incorporate both living and working space;
- B. Provide flexibility as needed for the development of live/work units, particularly within existing buildings;
- C. Provide locations where appropriate new businesses can start up;
- D. Provide opportunities for people to live in mixed-use industrial and commercial areas where compatible with existing uses;
- E. Protect existing and potential industrial uses from conflicts with nearby residential uses;
- F. Protect existing and potential residential uses from conflicts with nearby industrial uses;
- G. Permit live/work units that function predominantly as workspaces and secondarily as residences;
- H. Ensure that the division of space between living and working space within these units reflects the priority of workspace; and
- I. Ensure that the exterior design of live/work buildings is compatible with the exterior design of commercial, industrial, and residential buildings in their area, while remaining consistent with the predominantly workspace character of live/work buildings.

### **23.312.020 – Applicability**

This chapter applies to all live/work units in any district in Berkeley.

**23.312.030 – Required Permits**

- A. **General Requirement.** A permit is required for a live/work unit and/or for a business that makes up the work portion of the unit.
- B. **Residential Districts.** Live/work units are not permitted in all residential districts.
- C. **Commercial Districts.**
  - 1. **All Commercial Districts Except C-SA and C-W.** In all commercial districts except the C-SA and C-W districts, live/work units are allowed with a Zoning Certificate. Special circumstances that require a Use Permit are identified in Section 23.312.040 (Standards for Live/Work).
  - 2. **C-SA District.** A Use Permit is required for all live/work units in the C-SA district.
  - 3. **C-W District.**
    - a. An AUP is required for live/work units in the C-W district when:
      - i.* Nine or fewer live/work units are created; and
      - ii.* A dwelling unit is not changed into a live/work unit.
    - b. A Use Permit is required when the AUP requirements in Paragraph (a) above are not met.
- D. **Manufacturing Districts.**
  - 1. **M and MM Districts.** Live/work units are not permitted in the M and MM districts.
  - 2. **MU-LI District.**
    - a. An AUP is required for live/work units in the MU-LI district when:
      - i.* No new floor area is created; and
      - ii.* A dwelling unit is not changed into a live/work unit.
    - b. A Use Permit is required when the AUP requirements in Paragraph (a) above are not met.
  - 3. **MU-R District.**
    - a. An AUP is required for live/work units in the MU-R district when:
      - i.* The applicable requirements 23.206.090.D (Development Standards) and 23.322 (Parking and Loading) are satisfied;
      - ii.* Less than 5,000 square feet of gross floor area is added or changed;
      - iii.* Four or fewer live/work units are created; and
      - iv.* A dwelling unit is not changed into a live/work unit.

- b. A Use Permit is required when the AUP requirements in Paragraph (a) above are not met.

### **23.312.040 – Standards for Live/Work**

A. **All Districts.** The following standards apply to live/work units in all districts.

#### **1. General Standards.**

- a. A cooking space and sanitary facility in conformance with applicable building standards adopted by the City is required.
- b. Adequate and clearly defined working space constituting no less than 50 percent of the gross floor area of the live/work unit is required.
  - i.* The working space must be reserved for and regularly used by one or more live/work unit residents and be consistent with City administrative guidelines for live/work design.
  - ii.* If the workspace is less than 60 percent (or less than 50 percent in units created by change of use from a dwelling unit), the unit is considered a dwelling unit and is subject to all requirements applicable to dwelling units.
- c. At least 40 square feet of usable open space shall be provided for each live/work unit.
- d. For live/work units established through change of use of an existing building, the Zoning Adjustments Board (ZAB) may approve a Use Permit to substitute interior space accessible to all residents for the required open space in the project, if it finds that it is not practical or desirable to provide exterior open space.

2. **Business License.** At least one resident in each live/work unit shall maintain at all times a valid City Business License and Zoning Certificate or Use Permit for a business on the premises.

#### **3. Employment, Client, and Customer Visits.**

- a. Except in the C-AC district, persons who do not live in the live/work unit may be employed in a live/work unit if an additional Use Permit is obtained and the required on-site parking space is provided.
- b. Client and customer visits to live/work units are permitted if an additional Use Permit is obtained and the required on-site parking is provided.
- c. In the C-AC district, clients, customers and employees are permitted at the site without a Use Permit.

4. **Unit Rental and Sale.** No portion of a live/work unit may be separately rented or sold as a commercial space for a person or persons not living on the premises, or as a residential space for a person or persons not working on the premises.
5. **Change of Use.**
  - a. To change a dwelling unit to a live/work unit, the findings required by Section 23.326.040 (Elimination of Dwelling Units and Accessory Dwelling Units through Conversion and Change of Use) must be made.
  - b. Establishing or changing the work use of a live/work unit to medical offices or group instruction requires ZAB approval of a Use Permit to subject to Section 23.312.050 (Findings) below.
  - c. In districts other than the MU-LI district, live/work units may be changed to exclusively residential use or the residential floor area increased above 40 percent, only if all requirements for establishing a residential use are met.
  - d. In districts other than the MU-R district, live/work units may be changed to an exclusively commercial use, provided that in the C-W district only ground floor space may be so changed. All such changes are subject to Section 23.326.040 (Elimination of Dwelling Units and Accessory Dwelling Units through Conversion and Change of Use).
6. **Low Income Inclusionary Units.** The following low income inclusionary standards apply to any project that creates five or more live/work units.
  - a. One inclusionary live/work unit shall be provided for each five live/work units in the project, notwithstanding a fraction of a unit.
  - b. Inclusionary live/work units shall be sold or rented at a price or rent affordable to a household with an income of 80 percent of the median income for the Oakland Primary Metropolitan Statistical Area.
  - c. Inclusionary units shall be affirmatively marketed by the developer of a project to income-eligible persons performing a work activity permitted in the district where the project is located whose type of work causes them to have a requirement for a space larger in size than typically found in residential units.
  - d. Inclusionary live/work units shall maintain affordable rents or resale prices in accordance with the standards in Chapter 23.328 (Inclusionary Housing).
  - e. At the applicant's sole discretion, inclusionary live/work units may:
    - i.* Have a lower grade of finishes than other units in the project.
    - ii.* Be located anywhere within the project.
    - iii.* Be smaller than other live/work units in the project as long as they meet the minimum size requirement for live/work units in the district.

- B. **C-W District.** In addition to the standards in Subsection A (All Districts) above, the following live/work standards apply in the C-W district.
1. Only ground floor space may be changed to live/work units.
  2. The total floor area of the live/work unit must be at least 800 square feet.
- C. **MU-LI District.** In addition to the standards in Subsection A (All Districts) above, the following live/work standards apply in the MU-LI district.
1. At least one resident in the live/work unit must be engaged in an art craft studio activity or in an activity which requires space not typically available in a conventional residential setting.
  2. The specific activity a live/work resident will engage in must be stated.
  3. The total floor area of the live/work unit must be at least 1,000 square feet.
- D. **MU-R District.** In addition to the standards in Subsection A (All Districts) above, the following live/work standards apply in the MU-R district.
1. The total floor area of the live/work unit must be at least 1,000 square feet.
  2. The live/work unit must meet the location limitations in 23.206.090.B.8 (MU-R Mixed Use-Residential District - Residential Uses).

### 23.312.050 – Findings

- A. **All Districts.**
1. To approve any Use Permit or AUP for a live/work unit in any district, the review authority must find that the proposed project is consistent with the purpose of this chapter.
  2. To approve a Use Permit to establish or change the work use of a live/work unit to medical office or group instruction, the ZAB must find that adequate parking for the use has been provided.
- B. **C-W District.** In addition to the findings in Subsection A (All Districts) above, the ZAB may approve a Use Permit to change a residential unit to a live/work unit and retain less than 75 percent of the pre-existing residential area as living area within the live/work unit only if it makes all of the following findings:
1. There are special circumstances particular to the application which make it appropriate to retain less than 75 percent of the pre-existing residential area as living space within the live/work unit; and
  2. The exterior appearance of the live/work unit has been designed to be compatible with adjacent and nearby residential uses.

- C. **MU-LI District.** In addition to the findings in Subsection A (All Districts) above, the review authority may approve a Use Permit or AUP for a live/work unit in the MU-LI district only if it makes all of the following findings:
1. The applicant has made adequate provisions to ensure that within the live/work units, occupants of the live/work units will only engage in the occupations listed in the definition of art/craft studios.
  2. Development of such live/work units is not incompatible with adjacent and nearby industrial uses.
  3. The applicant has recorded with the County Recorder a statement acknowledging that the live/work unit is being established in a district where manufacturers and other industries operate lawfully and that the applicant will not seek to impede their lawful operation. In addition, the applicant will require any tenants to sign such a statement, and require all persons purchasing live/work units to sign and record such a statement.
- D. **MU-R District.** In addition to the findings listed in Subsection A (All Districts) above, the review authority may approve a Use Permit or AUP to establish or modify a live/work unit in the MU-R district only if it makes all of the following findings:
1. Establishment of a live/work unit will not interfere with the lawful operation of manufacturers and other industries existing in or adjacent to the district and will not impede the lawful future establishment of manufacturers and other industries permitted under the West Berkeley Plan.
  2. The applicant has recorded with the County Recorder a statement acknowledging that the live/work unit is being established in a district where manufacturers and other industries operate lawfully and that he/she will not seek to impede their lawful operation. In addition, the applicant will require any tenants to sign such a statement, and require all persons purchasing live/work units to sign and record such a statement.
  3. If the applicant proposes to change one or more dwelling unit to a live/work unit, the elimination of dwelling unit and the change of use would not be materially detrimental to the housing needs and public interest of the affected neighborhood and the city.
  4. If the applicant proposes to change a residential unit to a live/work unit and retain less than 75 percent of the pre-existing residential area as living area within the live/work unit:
    - a. There are special circumstances particular to the application which make it appropriate to retain less than 75 percent of the pre-existing residential area as living space within the live/work unit; and



- b. The exterior appearance of the live/work unit has been designed to be compatible with adjacent and nearby residential uses.

## 23.314 SHORT-TERM RENTALS

---

### Sections:

- 23.314.010– Chapter Purpose
- 23.314.020– Definitions
- 23.314.030– Applicability
- 23.314.040– General Regulations
- 23.314.050– Operating Standards and Requirements
- 23.314.060– Violations and Remedies

### 23.314.010 – Chapter Purpose

This chapter establishes short-term rental standards that:

- A. Prevent long-term rental units from being replaced with short-term rentals and protect affordable housing units from conversion;
- B. Preserve and protect neighborhood character and livability from nuisances that are often associated with short-term rentals;
- C. Generate City revenue to share infrastructure cost and other public expenditures by operation of short-term rentals under established standards; and
- D. Provide alternative forms of lodging.

### 23.314.020 – Definitions

- A. **Terms Defined.** Terms used in this chapter are defined as follows:
  1. **Adjacent Properties.** The dwelling units abutting and confronting, as well as above and below, a dwelling unit within which a short-term rental is located.
  2. **Host.** Any owner or tenant host. An owner host is a person who is the owner of record of residential real property, as documented by a deed or other such evidence of ownership, who offers their host residence, or a portion thereof, as a short-term rental. A tenant host is a lessee of residential real property, as documented by a lease or other such evidence, who offers their host residence, or portion thereof, as a short-term rental.
  3. **Host Present or Host Presence.** The host is living in the host residence during the short-term rental period. In the case of a parcel comprised of a single primary unit and one or more authorized accessory dwelling units and/or accessory buildings, the host is considered present if he or she is present in any unit on such parcel.
  4. **Hosting Platform.** A business or person that provides a means through which a host may offer a dwelling unit, or portion thereof, for short-term rentals. A hosting

platform is usually, though not necessarily, provided through an internet-based platform. It generally allows a property owner or tenant to advertise the dwelling unit through a website provided by the hosting platform and provides a means for potential short-term rental transients to arrange short-term rentals, whether the short-term rental transient pays rent directly to the host or to the hosting platform.

5. **Host Residence.** A host's principal place of residence, as defined by whether the host carries on basic living activities at the dwelling place and, whether such dwelling place is the host's usual place of return. Motor vehicle registration, driver's license, voter registration or other evidence as may be required by the City shall be indicia of principal residency.
  6. **Local Contact.** A person designated by the host who shall be available during the term of any short-term rental for the purpose of
    - a. Responding within sixty minutes to complaints regarding the condition or operation of the dwelling unit or portion thereof used for Short-Term Rental, or the conduct of Short-Term Rental Transients; and
    - b. Taking appropriate remedial action on behalf of the Host, up to and including termination of the short-term rental, if allowed by and pursuant to the short-term rental agreement, to resolve such complaints.
  7. **No Fault Eviction.** An eviction pursuant to the Ellis Act or Sections 13.76.130.A.9 or 10 of the Municipal Code.
  8. **Short-Term Rental.** The use of any dwelling unit, authorized accessory dwelling unit or accessory building, or portions thereof for dwelling, sleeping or lodging purposes by short-term rental transients. Excludes tourist hotels and residential hotels.
  9. **Short-Term Rental Transient or STR Transient.** Any person who rents a dwelling unit, authorized accessory dwelling unit or accessory building, or portion thereof, for less than 14 consecutive days.
- B. **Terms Not Defined.** Terms not defined in this section shall be interpreted to give this chapter its most reasonable meaning and application, consistent with applicable state and federal law.

### **23.314.030 – Applicability**

This chapter applies to the rental of a dwelling unit, accessory dwelling unit or accessory building for a period of less than 14 consecutive days.

### **23.314.040 – General Regulations**

- A. **Host Residence.** Short-term rentals are permitted only in the host residence.

- B. **BMR Units.** Short-term rentals are not permitted in below market rate (BMR) units. BMR units for short-term rental purposes refer to dwelling units whose rents are listed as a result of deed restrictions or agreements with public agencies, and whose tenants must be income qualified.
- C. **No-Fault Evictions.** A property containing a unit with a no-fault eviction may not operate a short-term rental for five years from the date of the eviction unless it is a single-family home that has been vacated for purposes of owner occupancy in compliance with the Rent Stabilization Ordinance in Municipal Code Chapter 13.76 (Rent Stabilization and Eviction for Good Cause Ordinance).
- D. **Accessory Buildings.**
  - 1. Short-term rentals are allowed in:
    - a. Accessory buildings; and
    - b. Accessory dwelling units permitted before April 3, 2017 unless the accessory dwelling unit is used for long-term rentals, as defined in Municipal Code Chapter 13.76 (Rent Stabilization and Eviction for Good Cause Ordinance) or has been used for long-term rentals at any time before April 3, 2017.
  - 2. A short-term rental is not allowed in an accessory dwelling unit permitted after April 3, 2017.

### **23.314.050 – Operating Standards and Requirements**

A short-term rental must conform to all of the operating standards and requirements in this section.

#### **A. Proof of Host Residency.**

- 1. **Owner-Host.** An owner-host of a short-term rental must provide the Planning and Development Department documentation of owner-host and host residence status and, if applicable, host presence.
- 2. **Tenant-Host.** A tenant-host must provide the Planning and Development Department documentation of lessee status, host residence and host presence, if applicable. In addition, a tenant-host must present written authorization allowing for a short-term rental in the host residence from the building owner or authorized agent of the owner.

#### **B. Allowed Duration and Required Residency Timeframes.**

- 1. When the host is present, a short-term rental is allowed for an unlimited number of days during the calendar year.
- 2. When the host is not present, a unit may be used as a short-term rental for no more than 90 days per calendar year.

- C. **Number of Occupants.** The maximum number of short-term rental transients allowed for a short-term rental unit is as provided in Municipal Code Chapter 19.40 (Uniform Housing Code).
- D. **Notification.**
1. After the City approves a Zoning Certificate and Business License for a short-term rental, a host shall notify residents of all adjacent properties that a short-term rental has been established. Notification shall include host and local contact information.
  2. A host shall notify residents of all adjacent properties of updated host, local contact, or other information within one week of changes to such information.
- E. **Enforcement Fees.**
1. For the initial enforcement period, while enforcement costs are being determined, the host shall pay an additional enforcement fee in an amount equal to 2 percent of the rents charged by that host, not to exceed the cost of the regulatory program established by this chapter over time.
  2. Enforcement fees may be paid by the hosting platform on behalf of the host. After the initial enforcement period, the City Council may revise the enforcement fee by resolution.
- F. **Liability Insurance.** Liability insurance is required of the host, or hosting platform on behalf of the host, in the amount of at least \$1 million.
- G. **Documents Provided to Short-Term Rental Transients.** The host or hosting platform must provide to short-term rental transients upon booking and arrival electronic or paper copies of:
1. The Community Noise Ordinance in Municipal Code Chapter 13.40 (Community Noise); and
  2. The Smoke-Free Multi-Unit Housing Ordinance in Municipal Code Chapter 12.70 (Smoking Pollution Control).
- H. **Transient Occupancy Tax.** Either the host or hosting platform must pay the transient occupancy tax.
- I. **Housing Code Compliance.** Any building or portion of a building used for short-term rentals shall comply with Municipal Code Section 19.40 (Uniform Housing Code).
- J. **Payment of Taxes.** The host shall pay all City taxes and fees owed in a timely manner.
- K. **Host Responsibilities.**

1. The host shall list on any rental advertisement the Zoning Certificate number.
2. Upon request, the host must provide both the Business License number, if required by Municipal Code Chapter 9.04 (Business Licenses), and Zoning Certificate for the short-term rental to the City and/or a vendor hired by the City to administer this chapter.

### **23.314.060 – Violations and Remedies**

- A. **Compliance with Second-Response Ordinance.** The host shall comply with the Second Response Ordinance in Municipal Code Section 13.48 (Civil Penalties for Multiple Responses to Loud or Unruly Parties, Gatherings or Other Similar Events). The host is prohibited from operating short-term rentals for one year after issuance of a third violation affidavit.
- B. **Violations and Remedies of this Chapter.**
  1. Violation of this chapter is punishable as set forth in Municipal Code Sections 1.20 (General Penalty) and 1.28 (Administrative Citations).
  2. Violation of this chapter is a public nuisance subject to abatement under Municipal Code Sections 1.24 (Abatement of Nuisances), 1.26 (Violations Declared Public Nuisance), and 23.414 (Nuisance Abatement).
  3. In any enforcement action, the prevailing party is entitled to recover reasonable attorneys' fees and costs; provided that, pursuant to Government Code Section 38773.5, attorneys' fees are only available in an action or proceeding in which the City has elected, at the beginning of such action or proceeding, to seek recovery of its own attorneys' fees. An award of attorneys' fees to a prevailing party may not exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding.
  4. Any Berkeley resident may bring a private action for injunctive relief to prevent or remedy a public nuisance. No action may be brought under this subsection unless and until the prospective plaintiff has given the City and the prospective defendant(s) at least 30 days written notice of the alleged public nuisance and the City has failed to initiate proceedings within that period, or after initiation, has failed to diligently prosecute.
  5. The following constitute a public nuisance:
    - a. Any occurrence at a short-term rental unit that creates a substantial disturbance of the quiet enjoyment of private or public property in a significant segment of a neighborhood, such as excessive noise or traffic, obstruction of public streets by crowds or vehicles, public intoxication, the service to or consumption of alcohol by minors, fights, disturbances of the peace, litter or other similar conditions.

- b. Any short-term rental transient of a short-term rental unit where an event is taking place refusing access to, or interfering with access by, Fire Department or other City personnel responding to an emergency call or investigating a situation.
6. Notwithstanding any provision of Municipal Code Chapter 13.48 (Civil Penalties for Multiple Responses to Loud or Unruly Parties, Gatherings or Other Similar Events) to the contrary, a public nuisance as defined in this section is subject to remedies in this subsection.

## **23.316 PERCENTAGE FOR PUBLIC ART ON PRIVATE PROJECTS**

---

### **Sections:**

- 23.316.010– Chapter Purpose
- 23.316.020– Applicability
- 23.316.030– Definitions
- 23.316.040– General Requirements
- 23.316.050– Required Permits
- 23.316.060– In-Lieu Fees
- 23.316.070– Administrative Regulations (Guidelines)

### **23.316.010 – Chapter Purpose**

The purpose of this chapter is to establish a public art requirement for private developments to provide the following benefits to the community:

- A. Maintain Berkeley's art and culture for generations.
- B. Recognize the vital importance of the arts to the city as a whole.
- C. Enhance the economic sustainability of artists and arts organizations as a key to the vitality of the city.
- D. Make a lasting contribution to the intellectual, emotional and creative life of the community at large, and to create a more desirable community to live, work, and recreate.

### **23.316.020 – Applicability**

- A. **Districts.** This chapter applies in all districts in Berkeley.
- B. **Uses.** This chapter applies to:
  1. New multifamily residential projects of five or more dwelling units;
  2. New commercial structures; and
  3. New industrial structures
- C. **Project Size.** This chapter applies to all construction of building additions exceeding 10,000 square feet.
- D. **Exceptions.** This chapter does not apply to the following project types:
  1. Multifamily housing that has a regulatory agreement with a government agency restricting the rent and limiting tenancy to qualifying households not exceeding specified incomes for at least 60 percent of the units.
  2. Buildings with religious assembly uses as defined in Chapter 23.502 (Glossary) and buildings with arts and cultural uses. For purposes of this section, "arts and



cultural use" means buildings that have as their primary purpose the presentation of one or more cultural resources, and that are operated by public entities or nonprofit organizations dedicated to cultural activities available to a broad public.

3. Transitional housing.

### 23.316.030 – Definitions

A. **Terms Defined.** Terms used in this chapter are defined as follows:

1. **Artist.** An individual independent professional practitioner of the visual, performing, or literary arts, as judged by educational qualifications, a history of creating a body of public or publicly-displayed artwork, critical recognition in publications or online, a record of exhibitions and/or artwork sales. Members of the design team are not artists for on-site publicly accessible art projects. Individuals who have a conflict of interest, including a familial or financial relationship to the developer or design team, are not artists for on-site publicly accessible art projects.
2. **Construction Cost.** The amount determined by the Chief Building Official for purposes of setting the building permit fee in accordance with the most recent building valuation date specified in the building permit fees section of the resolution establishing fees and charges as adopted by the City Council.
3. **Developer.** A person or entity that is financially and legally responsible for the planning, development and construction, or maintenance and operation of any project subject to this chapter.
4. **On-Site Publicly Accessible Art.** An original work by an artist, including, but not limited to, functional art integrated into the building, landscape, or element of infrastructure, including sculpture, monument, mural, painting, drawing, photography, fountain, banner, mosaic, textile, art glass, digital media art, video, earthworks and multi-media installation, that is in a location that is accessible to and available for use by the general public during normal hours of business operation consistent with the operation and use of the premises.
5. **Guidelines.** The guidelines adopted by the City Council pursuant to Section 23.316.070 (Administrative Regulations (Guidelines)).

B. **Terms Not Defined.** Terms not defined in this section shall be interpreted to give this chapter its most reasonable meaning and application, consistent with applicable state and federal law.

### 23.316.040 – General Requirements

Developers subject to this chapter shall do one of the following:

- A. Include on-site publicly accessible art valued at 1.75 percent of the construction cost. If the value of on-site publicly accessible art as installed is less than 1.75 percent of the construction cost, an amount equal to 80 percent of the difference in value shall be paid to the City as an in-lieu fee.
- B. Pay an in-lieu fee top the City of 0.80 percent of the construction cost.

#### **23.316.050 – Required Permits**

- A. **Subject to Laws and Regulations.** On-site publicly accessible art is subject to, and shall comply with, all applicable City ordinances and laws and regulations of other governmental agencies.
- B. **Permits Must Be Obtained.**
  - 1. Before construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments.
  - 2. The process for identifying and securing required permits shall be set forth in the Guidelines.

#### **23.316.060 – In-Lieu Fees**

- A. **Alternative to On-Site Art.** As an alternative to providing on-site publicly accessible art, the developer may elect to pay an in-lieu fee to the City as set forth in this section.
- B. **Use of Fees.** Any in-lieu fees paid to the City pursuant to this chapter shall be used for art and cultural services as set forth in the Guidelines.
- C. **Amount of Fee.** The in-lieu fee shall be 0.80 percent of the construction cost.
- D. **Time of Payment.** The in-lieu fee shall be paid at the same time as other building permit fees.

#### **23.316.070 – Administrative Regulations (Guidelines)**

- A. **Adoption of Guidelines.** The Civic Arts Commission shall recommend and the Council, by resolution, shall adopt guidelines for the administration and implementation of this chapter.
- B. **Determining Compliance with Guidelines.** The Civic Arts Commission shall be responsible for determining if On-Site Publicly Accessible Art complies with the Guidelines.

## **23.318 URBAN AGRICULTURE**

---

### **Sections:**

- 23.318.010– Chapter Purpose
- 23.318.020– Applicability
- 23.318.030– Urban Agriculture Uses and Levels of Discretion
- 23.318.040– Thresholds
- 23.318.050– Operation Standards
- 23.318.060– Complaints

### **23.318.010 – Chapter Purpose**

This chapter establishes urban agriculture standards to provide the following community benefits:

- A. Support the local economy and increase access to fresh local produce.
- B. Strengthen the health and social fabric of communities by encouraging and supporting community gardens.
- C. Accomplish the Berkeley Climate Action Plan goal of supporting efforts to build more complete and sustainable local food production and distribution systems.

### **23.318.020 – Applicability**

These regulations supersede definitions of incidental or ancillary uses.

### **23.318.030 – Urban Agriculture Uses and Levels of Discretion**

- A. **Zoning Certificate.** When all of the thresholds in Section 23.318.040 (Thresholds) are met, the use is considered Low-Impact Urban Agriculture (LIUA) and is allowed by right with a Zoning Certificate.
- B. **Administrative Use Permit.** When one or more of the thresholds in Section 23.318.040 (Thresholds) are not met, the use is considered High-Impact Urban Agriculture (HIUA) requires an AUP.

### **23.318.040 – Thresholds**

The levels of discretion for urban agriculture are based on the following thresholds:

- A. Maximum parcel size of 7,500 square feet.
- B. Maximum lot coverage of 20 percent for accessory structures and buildings.
- C. Maximum group classes and workshops of 20 participants per class conducted no more than three times per week.

- D. Hours of operation from 8:00 a.m. to 8:00 p.m., including but not limited to activities related to gardening and planting of horticultural crops, group classes, and sales.
- E. Use of organic pesticides.

### **23.318.050 – Operation Standards**

- A. **Performance Standards.** The growing, production, or sale of urban agricultural products may not involve hazardous materials or processes or create offensive or objectionable noise, vibration, odors, heat, dirt, or electrical disturbance perceptible by a person beyond the lot line of the subject lot.
- B. **Sales and Donations.**
  - 1. Sales and/or donations of urban agricultural products grown and produced on-site are permitted.
  - 2. If selling or donating urban agricultural products to the public, the urban agriculture use shall comply with all applicable food safety laws, including the California Health and Safety Code.
- C. **Garbage and Compost.**
  - 1. Garbage and compost receptacles must be screened from the street and adjacent properties by utilizing landscaping, fencing, or storage structures and all garbage shall be removed from the site weekly.
  - 2. Compost piles and containers must be set back at least 10 feet from residential buildings when an urban agriculture use abuts a residential use.
- D. **Farm Equipment.** Use of mechanized farm equipment is not permitted in Residential Districts and when the urban agriculture use abuts a residential use, with the following exceptions:
  - 1. Heavy equipment may be used initially to prepare the land for agriculture use.
  - 2. Landscaping equipment designed for household use is permitted.
  - 3. Equipment when not in use must be enclosed or otherwise screened from sight.

### **23.318.060 – Complaints**

Uses, activities, or events associated with urban agriculture are subject to Municipal Code Chapters 23.414(Nuisance Abatement) and 12.92 (Anti-Blight) if found to be non-compliant with this chapter.

## 23.320 CANNABIS USES

---

### Sections:

- 23.320.010– Chapter Purpose
- 23.320.020– Cannabis Retail
- 23.320.030– Commercial Cannabis Cultivation
- 23.320.040– Cannabis Manufacturers, Testing Labs, and Distributors
- 23.320.050– Microbusinesses

### 23.320.010 – Chapter Purpose

This chapter establishes standards for cannabis uses that supplement the regulations in Municipal Code Chapter 12.21 (Cannabis Business: General Regulations) and Chapter 12.22 (Cannabis Business Operating Standards).

### 23.320.020 – Cannabis Retail

- A. **Definitions.** The terms cannabis retailer, storefront retailer, delivery-only retailer, A-Retailer, and M-Retailer are defined in Municipal Code Section 12.21.020 (Definitions).
- B. **Non-Conforming M-Retailers.**
  - 1. A medical cannabis dispensary (M-Retailer) existing and authorized as of January 1, 2010 that does not comply with this section may continue at its current medical cannabis dispensing location as a legal nonconforming use.
  - 2. Notwithstanding Chapter 23.324 (Nonconforming Uses and Structures) or the regulations in this section, the Zoning Officer may approve an AUP to allow the expansion of a lawful nonconforming medical cannabis dispensary onto an adjacent parcel.
- C. **Location Changes.**
  - 1. A cannabis retailer in good standing with state and City regulations, including obtaining all necessary licenses and full payment of all fees and with no outstanding violations, may seek approval for a change in location.
  - 2. An application for a change of location shall be evaluated based on the requirements to operate a cannabis business effective at the time of the proposed change.
- D. **Storefront Retailers.**
  - 1. A storefront retailer is permitted in Commercial Districts with a Zoning Certificate, and must maintain compliance with Municipal Code Chapters 12.21 (Cannabis Business: General Regulations) and 12.22 (Cannabis Business Operating Standards) and security regulations promulgated by the Chief of Police.

2. A storefront retailer shall be approved through the selection process described in Municipal Code Section 12.22.020 (Selection Process).
3. Up to seven storefront retail permits may be issued, one of which is reserved for an equity candidate as defined in Municipal Code Section 12.21.020 (Selection Process). This limit to the number of storefront retailers shall not be reconsidered for a period of three years from March 15, 2020.
4. Expansion of an approved storefront retailer must comply with the development standards for the zoning district in which it is located.
5. Storefront retailers may operate as a retail storefront microbusiness as defined in Municipal Code Chapter 12.21 (Cannabis Business: General Regulations) subject to obtaining all required state and local licenses.
6. **Buffers.**
  - a. A storefront retailer may not be located:
    - i. Within 600 feet of another storefront retailer, a public or private elementary school, or a City-operated community center or skate park; or
    - ii. Within 1,000 feet of a public or private middle school or high school.
  - b. Notwithstanding Paragraph (a) above, a seventh storefront retailer, to be operated by an equity business, may not be located within 600 feet of another storefront retailer or school.

#### **E. Delivery-Only Retailers.**

1. Seven delivery-only retailers are permitted citywide, four of which shall be operated by an equity business, and three of which shall be a non-equity business.
2. A delivery-only retailer shall be approved through the selection process described in Municipal Code Section 12.22.020 (Selection Process).
3. Delivery-only retailers are permitted with a Zoning Certificate in all Commercial Districts other than the C-N district.
4. Delivery-only retailers are permitted in the Manufacturing (M) district, shall be evaluated and regulated for zoning purposes in the same way as a warehouse-based non-store retailer, and shall be subject to the numeric and buffer requirements in this section for delivery-only retailers.
5. A delivery-only retailer may not be located within 300 feet of any school or City-operated community center or skate park.
6. A delivery-only retailer may not be located in a street-fronting tenant space in a Commercial District.

**F. Lounges.**

1. A Lounge, as defined in Municipal Code Section 12.21.020 (Definitions), may be permitted at an approved retailer with a Use Permit.
2. A Lounge must comply with the operational standards established by the City of Berkeley Department of Health, Housing and Community Services.

**23.320.030 – Commercial Cannabis Cultivation**

**A. Definition.** The term “commercial cannabis cultivation” as used in this chapter is defined in Municipal Code Chapter 12.21 (Cannabis Businesses: General Regulations).

**B. General Requirements.**

1. Commercial cannabis cultivation shall comply with Municipal Code Chapter 12.22 (Cannabis Business Operating Standards), security measured required by the Chief of Police, and the requirements of this chapter.
2. Commercial cannabis cultivation may include testing, processing, manufacturing, and food preparation only to the extent expressly permitted by MAUCRSA.

**C. Where Allowed.** Commercial cannabis cultivation is permitted with a Zoning Certificate in the Manufacturing (M) district, subject to the following limitations:

1. Commercial cannabis cultivation shall only occur at licensed cannabis businesses.
2. Cannabis may not be dispensed and client, patient or member services and retail sales are not permitted at cannabis cultivation facilities.

**D. Maximum Canopy Area.**

1. The total citywide canopy area of cannabis cultivation facilities may not exceed 180,000 square feet.
2. The total citywide canopy area of all minor cannabis cultivation facilities may not exceed 48,000 square feet plus any area not used by a major cannabis cultivation facility.

**E. Different Licenses.** Separate spaces used by different licensees may be aggregated at the same location.

**F. Outdoor Cultivation Prohibited.** Commercial cannabis cultivation is not permitted outside of a building.

**G. Cannabis Nurseries.** A cannabis nursery as defined in Municipal Code Section 21.21.020 (Definitions) is subject to the same regulations as a commercial cannabis cultivation cannabis cultivation facility.

H. **Buffer.** A commercial cannabis cultivation facility may not be located within 300 feet of a school or City-operated community center or skate park.

I. **Major Cannabis Cultivation Facilities.**

1. No more than six major cannabis cultivation facilities are permitted.
2. A major cannabis cultivation facility may not be approved until the City Council adopts licensing process and standards for such uses.
3. Adopted standards shall require indoor cultivation uses to offset the net increased energy used as compared to a regular industrial facility.
4. Adopted standards also may include whether:
  - a. Cannabis cultivation uses will provide a percentage of all usable product cultivated at no cost to very low-income patients;
  - b. Cannabis cultivation uses will use organic methods in cultivation and processing to the maximum extent reasonable; and
  - c. The form of organization, ownership, and practices of cannabis cultivation uses ensure equity and accountability, low prices, and an adequate supply of high-quality cannabis to customers.

**23.320.040 – Cannabis Manufacturers, Testing Labs, and Distributors**

A. **Equivalent Uses.** Cannabis manufacturers, testing labs, and distributors shall be evaluated and regulated in the same way as the equivalent non-cannabis uses shown in Table 23.320-1.

**TABLE 23.320-1: EQUIVALENT NON-CANNABIS USES**

| <b>CANNABIS USE</b>                         | <b>EQUIVALENT NON-CANNABIS USE</b> |
|---------------------------------------------|------------------------------------|
| Manufacturing, processing, food preparation | Light Manufacturing                |
| Testing labs                                | Testing labs                       |
| Distribution                                | Wholesale Trade                    |

B. **Buffer.** Cannabis manufacturers, testing labs and distributors may not be located within 300 feet of a school.



**23.320.050 – Microbusinesses**

- A. **Definition.** The term “microbusiness” as used in this chapter is defined in Municipal Code Chapter 12.21 (Cannabis Business: General Regulations).
- B. **General.** A microbusiness is subject to the development standards in this chapter for each use on the premises, with the following exceptions:
1. In cases where the development standards and permit thresholds for two or more uses are different, the more restrictive standards apply.
  2. Retail nursery microbusinesses are subject to 23.320.050.C (Retail Nursery Microbusinesses).
- C. **Retail Nursery Microbusinesses.**
1. A used in this section, “existing nursery” means a legally established plant nursery in Berkeley established as of March 15, 2020.
  2. Up to two existing nurseries may convert to a retail nursery microbusiness. Retail nursery microbusinesses are not subject to the numeric or canopy limitations of other retailers or cannabis cultivators.
  3. In a Commercial or Manufacturing District, an existing nursery may convert to a retail nursery microbusiness by right with a Zoning Certificate if each use conducted on the premises complies with the applicable development standards in the Zoning Ordinance.
  4. In a Residential District, an existing nursery may convert to a retail nursery microbusiness with a Use Permit for a substantial expansion or change in character to a non-conforming use as provided in Chapter 23.324 (Nonconforming Uses, Structures, and Buildings).
  5. The City shall issue the Zoning Certificates and/or Use Permits to existing nurseries on a first-come, first-served basis.
  6. The City shall determine the right to retain the allocated Zoning Certificates and/or Use Permits as follows:
    - a. For a Zoning Certificate, the date of issuance of a concurrent business license and establishing and continuously operating the business.
    - b. For a Use Permit is required, the date the Use Permit application is deemed complete so long as the Use Permit is implemented with a business license within 30 days of approval and establishing and continuously operating the business.
  7. The 600-foot buffer required between cannabis retailers in 23.320.020 (Cannabis Retail) does not apply between a storefront cannabis retailers and a retail nursery microbusiness.

## **23.322            PARKING AND LOADING**

---

### **Sections:**

- 23.322.010– Chapter Purpose
- 23.322.020– Applicability
- 23.322.030– Required Parking Spaces
- 23.322.040– General Requirements
- 23.322.050– Parking Reductions
- 23.322.060– C-DMU Parking and Transportation Demand Management
- 23.322.070– Off-Street Parking Maximums for Residential Development
- 23.322.080– Parking Layout and Design
- 23.322.090– Bicycle Parking
- 23.322.100– On-site Loading Spaces
- 23.322.110– Parking Lots in Residential Districts
- 23.322.120– Transportation Services Fee

### **23.322.010    – Chapter Purpose**

This chapter establishes parking and loading standards to:

- A. To efficiently allocate parking spaces in the City;
- B. Regulate the provision of off-street parking spaces within the City; and
- C. Reduce the amount of on-street parking of vehicles, thus increasing the safety and capacity of Berkeley’s street system.

### **23.322.020    – Applicability**

- A. **New Uses and Buildings.** In all districts, off-street parking and loading as required by this chapter shall be provided when:
  - 1. A new building is constructed or moved onto a lot; and
  - 2. A new use is established where no use previously existed.
- B. **Enlargement and Intensification.**
  - 1. Where an existing use or structure is enlarged or intensified, but where there is no change in use, additional off-street parking and loading is required to serve only the enlarged or intensified area. Additional parking is not required to remedy parking deficiencies existing before the expansion or enlargement.
  - 2. As used in this section, enlarging or intensifying a use or structure includes, but is not limited to adding or creating floor area, dwelling units, guest rooms, seats, or employees.
- C. **Changes of Use.**

1. **Commercial Districts.** In the Commercial Districts, off-street parking is required for a change in use only when the structure is expanded to include new floor area.
2. **Manufacturing and R-SMU Districts.**
  - a. In the Manufacturing and R-SMU districts, off-street parking is required for a change in use only when:
    - i. The structure is expanded to include new floor area; and/or
    - ii. The use is changed to one with a numerical parking standard greater than the district minimum.
  - b. If the new use is changed to one with a higher numerical parking standard than the district minimum, the new use must provide the incremental difference between the two numerical parking standards. A higher numerical parking standard may be reduced to the district minimum as provided in Section 23.322.050.A.2 (Change of Use).
  - c. As used in this section, the “district minimum” parking requirement is:
    - i. 2 spaces per 1,000 square feet of floor area in the Manufacturing Districts; and
    - ii. 1 space per 1,000 square feet of floor area in the R-SMU district.
3. **All Other Residential Districts.** In all Residential Districts except for R-SMU, off-street parking spaces are required for all changes in use.

### 23.322.030 – Required Parking Spaces

#### A. Residential Districts.

1. **Spaces Required.** Table 23.322-1 shows minimum required off-street parking spaces in the Residential Districts.

**TABLE 23.322-1: REQUIRED OFF-STREET PARKING IN RESIDENTIAL DISTRICTS**

| Land Use                                         | Number of Required Off-street Parking Spaces                                                                                                                                                                                                                                                         |
|--------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Residential Uses</b>                          |                                                                                                                                                                                                                                                                                                      |
| 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.<br>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 |

| Land Use                                                                                          | Number of Required Off-street Parking Spaces                                                                                                                            |
|---------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                   | <p>All Other Districts: If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per unit<br/> All Other Locations: None required</p>              |
| Dormitories, Fraternity and Sorority Houses, Rooming & Boarding Houses, Senior Congregate Housing | <p>If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per each 5 residents, plus 1 for manager.<br/> All Other Locations: None required.</p> |
| Rental of Rooms                                                                                   | <p>If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per each two roomers<br/> All Other Locations: None required</p>                       |
| <b>Non-Residential Uses</b>                                                                       |                                                                                                                                                                         |
| All non-residential uses except uses listed below                                                 | <p><u>R-SMU District</u>: 1 per 1,000 sq. ft.<br/> <u>All Other Residential Districts</u>: See 23.322.030.A.2</p>                                                       |
| Community Care Facility                                                                           | One per two non-resident employees                                                                                                                                      |
| Food Service Establishment                                                                        | 1 per 300 sq. ft.                                                                                                                                                       |
| Hospital                                                                                          | <p><u>R-SMU District</u>: 1 per 1,000 sq. ft.<br/> <u>All Other Residential Districts</u>: 1 per each 4 beds plus 1 per each 3 employees</p>                            |
| 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                                                                               | <p><u>R-SMU District</u>: 1 per 1,000 sq. ft.<br/> <u>All Other Residential Districts</u>: 1 per 400 sq. ft.</p>                                                        |
| Hotels, Tourist                                                                                   | 1 per 3 guest/sleeping rooms or suites plus 1 per 3 employees                                                                                                           |

**Notes:**

[1] Excludes community care facilities which under state law must be treated in the same manner as a single-family residence.

2. **Other Uses.** If a use requires an AUP or Use Permit and is not listed in Table 23.322-1, the review authority shall determine the required number of off-street

parking spaces based on the amount of traffic generated by the use and the number of spaces required for other similar uses.

**3. Offices.**

- a. In Residential Districts where offices are allowed, the Zoning Adjustments Board (ZAB) may reduce the parking requirement for non-medical offices to one parking space per 800 square feet of gross floor area.
- b. To approve the reduction, the ZAB must find that the reduction is justified because the amount of direct contact with clients, visitors, or the general public will be less than ordinarily is the case.

**4. ES-R Parking Requirement.**

- a. For purposes of calculating required parking in the ES-R district, “bedroom” means any habitable space in a dwelling unit or residential accessory structure other than a kitchen or living room that is intended for or capable of being used for sleeping and that is at least 70 square feet in area.
- b. A room identified as a den, library, study, loft, dining room, or other extra room that satisfies this definition is considered a bedroom.
- c. Bathrooms, toilet rooms, closets, halls, storage or utility spaces and similar areas are not considered habitable spaces.
- d. The division of existing habitable space does not require additional parking if there is no net increase in the gross floor area of the building and no more than one additional bedroom is created.

**B. Commercial Districts.**

- 1. **Spaces Required.** Table 23.322-2 shows minimum required off-street parking spaces in the Commercial Districts, excluding the C-T district.

**TABLE 23.322-2: REQUIRED OFF-STREET PARKING REQUIREMENTS IN COMMERCIAL DISTRICTS (EXCLUDING C-T)**

| Land Use                                         | Required Parking Spaces                                                                                                      |
|--------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|
| <b>Residential Uses</b>                          |                                                                                                                              |
| Accessory Dwelling Unit                          | See Chapter 23.306                                                                                                           |
| Dwellings, including Group Living Accommodations | If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per unit<br>All Other Locations: None required |
| Hotel, Residential                               | None required                                                                                                                |
| Mixed-Use Residential                            | None required                                                                                                                |

| <b>Land Use</b>                                   | <b>Required Parking Spaces</b>                                                                                                                                                                          |
|---------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (residential use only)                            |                                                                                                                                                                                                         |
| Senior Congregate Housing                         | None required                                                                                                                                                                                           |
| <b>Non-Residential Uses</b>                       |                                                                                                                                                                                                         |
| All non-residential uses except uses listed below | C-DMU District: 1.5 per 1,000 sq. ft.<br>All Other Commercial Districts: 2 per 1,000 sq. ft.                                                                                                            |
| Hospital                                          | 1 per each 4 beds plus 1 per each 3 employees                                                                                                                                                           |
| Library                                           | C-DMU District: 1.5 per 1,000 sq. ft.<br>All Other Commercial Districts: 1 per 500 sq. ft. of publicly accessible floor area                                                                            |
| Nursing Home                                      | 1 per 3 employees                                                                                                                                                                                       |
| Medical Practitioners                             | C-DMU District: 1.5 per 1,000 sq. ft.<br>All Other Commercial Districts: 1 per 300 sq. ft.                                                                                                              |
| Hotels, Tourist                                   | C-DMU District: 1 per 3 guest/sleeping rooms or suites<br>C-C, C-U, C-W Districts: 1 per 3 guest/sleeping rooms or suites plus 1 per 3 employees<br>All Other Commercial Districts: 2 per 1,000 sq. ft. |
| Motels, Tourist                                   | C-DMU District: 1 per 3 guest/sleeping rooms or suites<br>C-C, C-U, C-W Districts: 1 per guest/sleeping room plus 1 for owner or manager [1]<br>All Other Commercial Districts: 2 per 1,000 sq. ft.     |
| Large Vehicle Sales and Rental                    | C-DMU District: 1.5 per 1,000 sq. ft.<br>C-SA District: 1 per 1,000 sq. ft.<br>All Other Commercial Districts: 2 per 1,000 sq. ft.                                                                      |
| Small Vehicle Sales and Service                   | C-DMU District: 1.5 per 1,000 sq. ft.<br>C-SA District: 1 per 1,000 sq. ft.<br>All Other Commercial Districts: 2 per 1,000 sq. ft.                                                                      |
| Manufacturing                                     | C-DMU District: 1.5 per 1,000 sq. ft.<br>C-W District: 1 per 1,000 sq. ft [1]<br>All Other Commercial Districts: 2 per 1,000 sq. ft.                                                                    |
| Wholesale Trade                                   | C-DMU District: 1.5 per 1,000 sq. ft.<br>C-W District: 1 per 1,000 sq. ft<br>All Other Commercial Districts: 2 per 1,000 sq. ft.                                                                        |
| Live/Work                                         | If workers/clients are permitted in work area, 1 per first                                                                                                                                              |

| Land Use                                                                  | Required Parking Spaces                                                       |
|---------------------------------------------------------------------------|-------------------------------------------------------------------------------|
|                                                                           | 1,000 sq. ft. of work area and 1 per each additional 750 sq. ft. of work area |
| <b>Notes:</b><br>[1] Spaces must be on the same lot as building it serves |                                                                               |

2. **Exemptions.** Table 23.322-3 shows projects and land uses in the Commercial Districts that are exempt from parking requirements. No Use Permit or other discretionary approval is required for these exemptions.

**TABLE 23.322-3: PARKING EXEMPTIONS IN COMMERCIAL DISTRICTS**

| District | Projects/Uses Exempt from Parking Requirement                                                                      |
|----------|--------------------------------------------------------------------------------------------------------------------|
| C-SA     | First 1,000 square feet of new gross floor area in a development project                                           |
| C-E      | Commercial uses with less than 6,000 square feet of gross floor area                                               |
| C-DMU    | Additions up to 1,000 square feet of gross floor area or up to 25% of existing gross floor area, whichever is less |

3. **C-T District.**

- a. Off-street parking is not required in the C-T district.
- b. New off-street parking is not permitted on lots abutting Telegraph Avenue exclusively. New off-street parking is only permitted on lots abutting a street other than Telegraph Avenue where access to the parking is from curb cuts existing on July 6, 1989. A Use Permit is required to establish the new parking. To approve the Use Permit, the ZAB must find that traffic from the new parking will not significantly impede pedestrian circulation.

4. **C-W District.**

- a. **Required Parking Determined by Zoning Officer or ZAB.** For the following categories of uses as shown in Table 23.204-1 (Allowed Uses in Commercial Districts), the Zoning Officer or ZAB shall determine the number of required off-street parking spaces in the C-W district based on the amount of traffic generated by the use and the number of spaces required for other similar uses:
  - i.* Public and quasi-public uses.
  - ii.* Automobile and other vehicle oriented uses.

- iii.* Outdoor uses.
  - iv.* Residential and related uses.
  - v.* Other miscellaneous uses.
  - vi.* Other industrial uses.
- b. **Maximum Parking.** The number of parking spaces provided for new commercial floor area in the C-W district shall not exceed:
- i.* 5 spaces per 1,000 square feet of gross floor area of food service uses; and
  - ii.* 4 spaces per 1,000 square feet of gross floor area for all other commercial uses.

### C. Manufacturing Districts.

1. **Spaces Required.**
2. Table 23.322-4 shows minimum required off-street parking spaces in the Manufacturing Districts.

**TABLE 23.322-4: REQUIRED OFF-STREET PARKING IN MANUFACTURING DISTRICTS**

| Land Use                                          | Required Parking Spaces        |
|---------------------------------------------------|--------------------------------|
| <b>Residential Uses</b>                           |                                |
| Accessory Dwelling Unit                           | See Chapter 23.306             |
| Dwellings                                         | None required                  |
| Group Living Accommodation                        | None required                  |
| <b>Non-Residential Uses</b>                       |                                |
| All non-residential uses except uses listed below | 2 per 1,000 sq. ft.            |
| Art/Craft Studio                                  | 1 per 1,000 sq. ft.            |
| Community Care Facility                           | 1 per 2 non-resident employees |
| Food Service Establishment                        | 1 per 300 sq. ft.              |



| <b>Land Use</b>                                                                                                                                                                                                                                                                                     | <b>Required Parking Spaces</b>                                                                                                                                                                                                                  |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Library                                                                                                                                                                                                                                                                                             | 1 per 500 sq. ft. of publicly accessible floor area                                                                                                                                                                                             |
| Laboratories                                                                                                                                                                                                                                                                                        | 1 per 650 sq. ft.                                                                                                                                                                                                                               |
| Nursing Home                                                                                                                                                                                                                                                                                        | 1 per 5 residents, plus 1 per 3 employees                                                                                                                                                                                                       |
| Medical Practitioners                                                                                                                                                                                                                                                                               | One per 300 sq. ft.                                                                                                                                                                                                                             |
| Large Vehicle Sales and Rental                                                                                                                                                                                                                                                                      | MU-LI District: 1.5 per 1,000 sq. ft.<br>All Other Districts: 1 per 1,000 sq. ft. of display floor area plus 1 per 500 sq. ft. of other floor area; 2 per service bay                                                                           |
| Manufacturing                                                                                                                                                                                                                                                                                       | MU-R District: 1.5 per 1,000 sq. ft.<br>All Other Districts: 1 per 1,000 sq. ft. for spaces less than 10,000 sq. ft.; 1 per 1,500 sq. ft. for spaces 10,000 sq. ft. or more                                                                     |
| Storage, warehousing, and wholesale trade                                                                                                                                                                                                                                                           | 1 per 1,000 sq. ft. for spaces of less than 10,000 sq. ft.; 1 per 1,500 sq. ft. for spaces 10,000 sq. ft. or more                                                                                                                               |
| Live/Work                                                                                                                                                                                                                                                                                           | MU-LI District: 1 per 1,000 sq. ft. of work area where workers/clients are permitted<br>MU-R District: if workers/clients are permitted in work area, 1 per first 1,000 sq. ft. of work area and 1 per each additional 750 sq. ft. of work area |
| <u>Notes:</u><br>[1] For multiple dwellings where the occupancy will be exclusively for persons over the age of 62, the number of required off-street parking spaces may be reduced to 25% of what would otherwise be required for multiple-family dwelling use, subject to obtaining a Use Permit. |                                                                                                                                                                                                                                                 |

### 3. Required Parking Determined by Zoning Officer or ZAB.

- a. For the following categories of uses as shown in Table 23-206.020-1, the Zoning Officer or ZAB shall determine the number of required off-street parking spaces in the Manufacturing Districts based on the amount of traffic generated by the use and the number of spaces required for other similar uses:
  - i. Public and Quasi-Public Uses.
  - ii. Vehicle Sales and Service Uses.
  - iii. Other Miscellaneous Uses.
  - iv. Industrial and Heavy Commercial Uses, excluding manufacturing and wholesale trade.

### D. Calculating Required Spaces.

1. **Fractional Spaces.** When calculating the number of required off-street parking spaces results in a fractional space, any fraction below one-half is disregarded, and fractions one-half and above are counted as requiring one parking space.
  2. **Employees.** Where a parking requirement is based on the number of employees, the number of employees is based upon the shift or employment period when the greatest number of employees are present.
  3. **Floor Area.**
    - a. Where a parking requirement is based on floor area, the definition of gross floor area as set forth in 23.502 (Glossary) shall apply.
    - b. In Non-Residential Districts, the floor area calculation for the purpose of determining required parking shall also include outdoor dining areas, garden/building supply yards, customer-serving outdoor areas for retail sales, and other unenclosed areas of the lot.
- E. **Additional Required Parking.** If the expected demand for off-street parking spaces is found to exceed the number of spaces required by Table 23.322-1, Table 23.322-2, or
- F. Table 23.322-4, additional off-street parking may be required as a condition of approval.
- G. **Buildings with Multiple Uses.**
1. When a building contains two or more uses, the total required number of off-street parking spaces is the sum of the requirements for each use computed separately.
  2. A required off-street parking spaces for one use may not provide required off-street parking spaces for any other use except as allowed by Section 23.322.040.D (Joint Use of Parking).
- H. **Including Existing Uses.** Existing off-street parking spaces shall be counted towards meeting the overall parking requirements where new floor area is added to an existing site or project.
- I. **Spaces Serving Existing Uses.**
1. Unless otherwise allowed by this chapter, parking spaces serving an existing use may not be reduced below the number of spaces required by this section. If an existing use has fewer parking spaces than required by this section, the number of spaces serving the use may not be further reduced.
  2. In Non-Residential Districts, off-street parking spaces provided in conjunction with a use or structure existing on October 1, 1959, on the same property or on property under the same ownership, may not be reduced below, or if already less

than, may not be further reduced below, the requirements of this chapter for a similar use or structure.

3. Existing parking spaces in a non-residential district may be removed to meet ADA compliance or traffic engineering standards.

#### J. **In-Lieu Parking Fee.**

##### 1. **General.**

- a. In Non-Residential Districts with a public parking fund to create public parking, an applicant may pay a fee in lieu of providing required off-street parking spaces.
  - b. The in-lieu parking fee shall be established by City Council resolution.
  - c. In-lieu payments shall be used for the purposes stated in each ordinance establishing the public parking funds.
  - d. In-lieu fees may, at the applicant's option, be paid in a lump sum or in annual installments as specified in each ordinance establishing the parking fund and may be adjusted annually for inflation.
  - e. If paid annually, the first annual payment of an in-lieu fee is due as a condition of occupancy and subsequent payments are due on January 31 of succeeding years.
2. **C-DMU District.** Paying an in-lieu fee to reduce or waive required off-street parking in the C-DMU district requires a Use Permit. To approve the Use Permit, the ZAB must find that the applicant will pay an in-lieu fee to a fund established by the City that provides enhanced transit services.

### **23.322.040 – General Requirements**

#### A. **Compliance Required.**

1. The City may issue a Zoning Certificate or approve an AUP or Use Permit only for a use or structure that complies with this chapter.

#### B. **Modified Requirements.**

1. **Number of Spaces.** See Section 23.322.050 (Parking Reductions) for allowed reductions to the number of required off-street parking spaces.
2. **Other Requirements.**
  - a. The Zoning Officer or ZAB may reduce any parking requirement in this chapter that is unrelated to the number of required spaces for:
    - i. New floor area created through building expansions in the Commercial, Manufacturing, and R-SMU Districts; and



- b. The times demanded for joint-use parking spaces will not conflict substantially between the land uses sharing the spaces; and
  - c. The off-street parking spaces designated for joint use are not otherwise committed to satisfying the parking requirements for another land use at similar times.
2. **Offices in R-4 and R-5 Districts.** The ZAB may approve a Use Permit to allow offices in the R-4 or R-5 district to share parking spaces with a multi-family use. To approve the Use Permit, the ZAB must find that:
- a. No more than 20 percent of the off-street parking spaces required for the multiple dwelling use will serve as required off-street parking for offices; and
  - b. The shared off-street parking spaces are located on the same lot as the offices that they serve or are on property under the same ownership within 300 feet from the offices.
3. **Deed Restriction.** A property with joint-use parking spaces shall record a deed restriction as provided in Section 23.322.040.F (Deed Restrictions).

**E. Off-Site Parking Spaces.**

1. **Non-Residential Districts.** In Non-Residential Districts, the following requirements apply to required parking spaces not on the property where the use is located.
- a. Off-site parking spaces may not be used to satisfy the off-street parking requirement for another use.
  - b. Off-site parking must be available during the normal hours of operation of the use that it serves.
  - c. A deed restriction must be recorded as provided in Section 23.322.040.F (Deed Restrictions). Table 23.322-5 shows the maximum distance that off-site parking spaces may be located from the use or structure it serves and the permit required to exceed this distance.

**TABLE 23.322-5: OFF-SITE PARKING SPACE DISTANCE REQUIREMENTS**

| District                       | Maximum Distance from Use or Structure [1] | Permit Required to Exceed Maximum Distance |
|--------------------------------|--------------------------------------------|--------------------------------------------|
| Manufacturing Districts        | 500 ft.                                    | AUP                                        |
| C-W                            | 500 ft.                                    | AUP                                        |
| All Other Commercial Districts | 300 ft.                                    | UP(PH)                                     |
| <u>Note:</u>                   |                                            |                                            |

| District                                                                                                        | Maximum Distance from Use or Structure [1] | Permit Required to Exceed Maximum Distance |
|-----------------------------------------------------------------------------------------------------------------|--------------------------------------------|--------------------------------------------|
| [1] Measurement shall be from the closest two points of the respective parcels, as measured in a straight line. |                                            |                                            |

2. **CW District.** If the use or structure served by off-site parking is within a designated node in the C-W district, the off-site parking spaces must also be located within the same designated node.

#### F. Deed Restrictions.

1. If a required off-street parking space is located off-site or in a joint use agreement, a statement shall be recorded in the Office of the County Recorder that restricts the use of the property and designates the off-street parking that is to serve the other property.
2. The deed restrictions shall state that the property cannot be used so as to prevent the use of the parking requirements of the City, unless the restriction is removed by the City.
3. Upon submission of satisfactory evidence either that other parking space meeting the parking requirements has been provided or that the building or use has been removed or altered in use so as to no longer require the parking space, the City of Berkeley shall remove the restriction from the property.

#### G. Removal of Spaces.

1. **Permit Required.** A Use Permit is required to remove parking spaces as follows:
  - a. R-S, R-SMU, C-T districts: Removing existing off-street parking spaces for main buildings.
  - b. C-SO, C-NS districts: Removing existing off-street parking spaces in excess of the number required spaces.
2. **Findings.** To approve the Use Permit in the R-S, R-SMU, and C-T districts, the ZAB must find that the parking reduction is consistent with the purposes of the district and meets the findings in Section 23.322.050.B (Findings). No additional findings are required in the C-SO and C-NS districts.

- #### H. Required Parking Spaces for Persons with Disabilities.
- If the number of required off-street parking spaces in a non-residential district is reduced as allowed by this chapter, the number of required parking spaces for persons with disabilities shall be calculated as if there had been no reduction in required spaces.

#### I. Nonconforming Parking – ES-R District.

1. A lawfully established use that does not provide the required number of off-street parking spaces may be continued and maintained if there is no increase in the area, space, or volume occupied by or devoted to the use, except as allowed by Paragraph (2) below.
  2. A single-family detached structure that does not provide the required number of off-street parking spaces may be increased by a cumulative total of up to 200 square feet over the floor area that existed on June 6, 2010 if:
    - a. The addition or alteration complies with all other applicable standards;
    - b. The addition or alteration is not used as a bedroom; and
    - c. No portion of the building or any other structure on the same lot is used for rental rooms.
- J. **Access to Spaces.** A building, structure, alteration, fence, landscaping, or other site feature may not be constructed, erected, planted, or allowed to be established that impedes vehicle access to a required off-street parking space.
- K. **Parking Permits.** Residents in the following projects are not eligible to receive parking permits under the Residential Permit Parking Program (RPP) as provided in Municipal Code Chapter 14.72 (Preferential Parking Program):
1. Residential projects in the R-S, R-SMU, and C-T districts that are constructed without parking.
  2. Projects in the C-DMU district with residential units or group living accommodation units, including units converted from a non-residential use.

### **23.322.050 – Parking Reductions**

- A. **Allowed Reductions.** The Zoning Officer or ZAB may reduce or waive the number of off-street parking spaces required by Section 23.322.030 (Required Parking Spaces) for the following projects.
1. **Building Expansions.**
    - a. **Where Allowed:** All Commercial and Manufacturing Districts, R-SMU district.
    - b. **Eligible Uses:** Expansions to existing buildings (all uses).
    - c. **Required Permit:** AUP.
    - d. **Findings:** The Zoning Officer must make the findings in Subsection C (Findings) below.
  2. **Change of Use.**
    - a. **Where Allowed:** All Manufacturing Districts, R-SMU district.

- b. **Eligible Uses:** Change of use to a new use with a higher numerical parking standard. In a Manufacturing District, the reduction is allowed only if the change of use is 2,500 square feet or less.
  - c. **Required Permit:** Use Permit for projects that require ZAB approval. AUP for all other projects.
  - d. **Findings:** The review authority must make the findings in Subsection C (Findings) below.
3. **Non-Residential Uses in Main Residential Building.**
- a. **Where Allowed:** R-SMU district.
  - b. **Eligible Uses:** Non-residential uses in main buildings that contain dwelling units or group living accommodations.
  - c. **Required Permit:** AUP.
  - d. **Findings:** To approve the AUP, the Zoning Officer must find that the parking reduction is consistent with the purposes of the R-SMU district as stated in 23.202.140.A (District Purpose).
4. **Residential Uses in Mixed-Use Buildings.**
- a. **Where Allowed:** All districts.
  - b. **Eligible Uses:** The residential use portion of a mixed-use building (residential and commercial).
  - c. **Required Permit:** AUP
  - d. **Findings:** To approve the Use Permit, the ZAB must make findings in each district chapter:
    - i.* C-C district: 23.204.050.D.3.b
    - ii.* C-U district: 23.204.060.D.3.b
    - iii.* C-N district: 23.204.070.D.3.b
    - iv.* C-SA district: 23.204.100.D.2
    - v.* C-SO district: 23.204.120.D.2
5. **Exclusive Residential Uses.**
- a. **Where Allowed:** All districts.
  - b. **Eligible Uses:** Buildings occupied exclusively by residential uses.
  - c. **Required Permit:** AUP



d. **Findings:** To approve the AUP, the Zoning Officer must make findings in each district chapter:

- i.* C-C district: 23.204.050.D3.b
- ii.* CU district: 23.204.060.D.3.b
- iii.* C-N district: 23.204.070.D.3.b
- iv.* C-SA district: 23.204.100.D.2
- v.* C-SO district: 23.204.120.D.2

#### 6. **Commercial Uses in Mixed-Use Building.**

- a. **Where Allowed:** C-C, CU, C-SA districts.
- b. **Location Limitations:** In the C-C, C-U districts, the reduction is allowed only on blocks adjacent to University Avenue and lots north of University Avenue, south of Delaware Street, east of Bonita Avenue and west of Oxford Street.
- c. **Eligible Uses:** Any commercial use portion of a mixed-use building which combines retail products stores and/or personal household services and multi-family residential uses within the same building or located on the same lot (or contiguous lots as part of the same project).
- d. **Required Permit:** Use Permit.
- e. **Findings:** The ZAB must make the findings in Subsection C (Findings) below.

#### 7. **All Uses in Mixed-Use Building.**

- a. **Where Allowed:** C-W district.
- b. **Eligible Uses:** All uses in a mixed-use building (residential and commercial).
- c. **Permit Required:** Use Permit for projects that require ZAB approval. AUP for all other projects.
- d. **Finding:** To approve the permit, the review authority must find that:
  - i.* The reduction promotes any of the C-W district purpose statements in 23.204.140.A (District Purpose); and
  - ii.* The reduction in the parking requirement is not expected to cause a serious shortage of parking in the area.

#### 8. **Bicycle/Motorcycle Spaces.**

- a. **Where Allowed:** C-W and all Manufacturing Districts.
- b. **Eligible Uses:** All uses.

- c. **Allowed Reduction:** Up to 10 percent of required off-street automobile spaces may be designated as bicycle and/or motorcycle parking. Bicycle parking must be in addition to bicycle parking required by 23.322.090 (Bicycle Parking).
- d. **Permit Required:** Use Permit for projects that require ZAB approval. AUP for all other projects.
- e. **Finding:** To approve the permit, the review authority must find that:
  - i. The substitution will not lead to an undue shortage of automobile parking spaces; and
  - ii. It can be reasonably expected that there will be demand for the bicycle and/or motorcycle parking spaces.

#### 9. Proximity to Public Parking Facility.

- a. **Where Allowed:** C-W district.
- b. **Eligible Uses:** All uses within 1,000 feet of a public parking facility available to all members of the public.
- c. **Permit Required:** Use Permit.
- d. **Finding:** No additional findings.

#### 10. Downtown Reduction/Waiver.

- a. **Where Allowed:** C-DMU district.
- b. **Eligible Uses:** All uses.
- c. **Permit Required:** Use Permit or modified with an AUP.
- d. **Finding:** The Zoning Officer must make the findings in Subsection C (Findings) below.

#### 11. Adding Residential Units.

- a. **Where Allowed:** MU-R district.
- b. **When Allowed:** Adding a residential unit to a property with one or more existing residential units.
- c. **Permit Required:** AUP
- d. **Findings.** To approve the AUP Permit, the ZAB must find that:
  - i. Existing evening parking supply is adequate; and/or
  - ii. Other mitigating circumstances exist on the property.

#### 12. Limited Duration Reduction.

- a. **Where Allowed:** M and MM District.
  - b. **Eligible Uses:** All uses.
  - c. **Permit Required:** Use Permit valid for a specified duration not to exceed five years.
  - d. **Findings.** To approve the Use Permit, the ZAB must find that under the circumstances of the particular use and building, the demand for parking can be expected to be below the otherwise required level for a sustained period of time.
- B. **Findings.** Required findings below are in addition to permit findings required in Section 23.406 (Specific Permit Requirements).
- 1. **Commercial, R-S, and R-SMU Districts.** When required by Subsection A (Allowed Reductions) above or elsewhere in the Zoning Ordinance, the review authority must make the following findings to approve a reduction in required off-street parking spaces in a Commercial District, the R-S district, or the R-SMU district:
    - a. The reduction will not substantially reduce the availability of on-street parking in the vicinity of the use.
    - b. One of the following is true:
      - i.* The use is located one-third of a mile or less from a Bay Area Rapid Transit (BART) station, intercity rail station or rapid bus transit stops.
      - ii.* The use is located one-quarter of a mile or less from a public or private parking area, lot, or structure that is accessible by the employees of the use and sufficient parking supply is available therein to mitigate the reduction in parking for the use.
      - iii.* A parking survey conducted under procedures set forth by the Planning Department finds that within 500 feet or less of the use, on non-residential district streets, at least two times the number of spaces requested for reduction are available at on-street parking spaces during the peak hours of operation of the use.
    - c. One of the following is true:
      - i.* The parking requirement modification will meet the purposes of the district related to improvement and support for alternative transportation, pedestrian improvements, and activity, or similar policies.
      - ii.* There are other factors, such as alternative transportation demand management strategies or policies in place, that will reduce the parking demand generated by the use.

2. **Manufacturing Districts.** When required by Subsection A (Allowed Reductions) above or elsewhere in the Zoning Ordinance, the review authority must make the following findings to approve a reduction in required off-street parking spaces in a Manufacturing District:
- a. The reduction will not substantially reduce the availability of on-street parking in the vicinity of the use.
  - b. One of the following is true:
    - i.* The use is located one-third of a mile or less from a rapid bus transit stop, an intercity rail station, or a bus stop serving at least four lines.
    - ii.* The use is located one-quarter of a mile or less from a public or private parking area, lot, or structure that is accessible by the employees of the use and sufficient parking supply is available in these facilities to mitigate the reduction in parking.
    - iii.* A parking survey conducted under procedures set forth by the Planning Department finds that within 500 feet or less of the use, on non-residential district streets, at least two times the number of spaces requested for reduction are available at on-street parking spaces during the peak hours of operation of the use.
  - c. One of the following is true:
    - i.* The parking requirement modification will implement the West Berkeley Plan goals and policies related to improvement and support for alternative transportation, pedestrian improvements and activity, and similar policies.
    - ii.* There are other project-specific transportation demand management strategies or policies in place, including but not limited to employer sponsored transit subsidies, car sharing programs, bicycle storage, and flexible work schedules.

### **23.322.060 – C-DMU Parking and Transportation Demand Management**

The parking and transportation demand management requirements in this section apply in the C-DMU district.

#### **A. Dynamic Signage.**

1. New construction that results in an off-street total of more than 25 publicly available parking spaces shall install dynamic signage to Transportation Division specifications.
2. Required signage includes, but is not limited to:

- a. Real-time garage occupancy signs at the entries and exits to the parking facility with vehicle detection capabilities and enabled for future connection to the regional 511 Travel Information System; or
- b. Equivalent signs as determined by the Zoning Officer in consultation with the Transportation Division Manager.

**B. Unbundled Parking.**

- 1. For any new building with residential units or structures converted to a residential use, required parking spaces shall be leased or sold separate from the rental or purchase of dwelling units for the life of the dwelling unit.
- 2. The ZAB may approve a Use Permit to waive the requirement in Paragraph (1) above for projects that include financing for affordable housing. To approve the Use Permit, the ZAB must find that the applicant has shown that the combined parking is necessary to obtain financing or meeting other obligations.

**C. Employee/Resident Benefits.**

- 1. For new structures or additions over 20,000 square feet, the property owner shall provide at least one of the following transportation benefits at no cost to every employee, residential unit, and/or group living accommodation resident:
  - a. A pass for unlimited local bus transit service; or
  - b. A functionally equivalent transit benefit in an amount at least equal to the price of a non-discounted unlimited monthly local bus pass. Any benefit proposed as a functionally equivalent transportation benefit shall be approved by the Zoning Officer in consultation with the Transportation Division Manager.
- 2. A notice describing these transportation benefits shall be posted in a location visible to employees and residents.

**D. Vehicle Sharing Spaces.**

- 1. **Spaces Required.** For residential structures constructed or converted from a non-residential use that provide off-street parking, vehicle sharing spaces shall be provided in the amounts shown in Table 23.322-6. Vehicle sharing spaces are not required for projects that do not provide off-street vehicle parking.

**TABLE 23.322-6: REQUIRED VEHICLE SHARING SPACES**

| Number of Parking Spaces Provided | Minimum Number of Vehicle Sharing Spaces |
|-----------------------------------|------------------------------------------|
| 0-10                              | 0                                        |
| 11-30                             | 1                                        |
| 31-60                             | 2                                        |

| Number of Parking Spaces Provided | Minimum Number of Vehicle Sharing Spaces   |
|-----------------------------------|--------------------------------------------|
| 61 or more                        | 3, plus one for every additional 60 spaces |

**2. Requirements.**

- a. The required vehicle sharing spaces shall be offered to vehicle sharing service providers at no cost.
- b. The vehicle sharing spaces shall remain available to a vehicle sharing service provider as long as providers request the spaces.
- c. If no vehicle sharing service provider requests a space, the space may be leased for use by other vehicles.
- d. When a vehicle sharing service provider requests such space, the property owner shall make the space available within 90 days.

**E. Parking and Transportation Demand Management Compliance Report.**

- 1. Before issuance of a Certificate of Occupancy, the property owner shall submit to the Department of Transportation a completed Parking and Transportation Demand Management (PTDM) compliance report on a form acceptable to the City of Berkeley.
- 2. The property owner shall submit to the Department of Transportation an updated PTDM compliance report on an annual basis.

**23.322.070 – Off-Street Parking Maximums for Residential Development**

**A. Applicability.**

- 1. This section applies to new residential projects with two or more dwelling units on a parcel, including the residential portion of mixed-use projects, where any portion of the project is located either:
  - a. Within 0.25 miles of a major transit stop, as defined by Section 21064.3 of the California Public Resources Code; or
  - b. Along a transit corridor with service at 15-minute headways during the morning and afternoon peak periods.
- 2. **Exemptions.** The following types of projects are exempt from the requirements of this section:
  - a. Projects for which a building permit was issued before March 19, 2021.
  - b. Residential projects, including the residential portions of mixed-use projects, with the majority of the units subject to recorded affordability restrictions;

- c. Projects located on a roadway with less than 26 feet pavement width in the Hillside Overlay.
  - d. Projects located in the Environment Safety-Residential (ES-R) district.
- B. Off-Street Parking Maximum.** Any project subject to this chapter shall not include off-street residential parking at a rate higher than 0.5 parking spaces per Dwelling Unit.
- C. Adding Units to Existing Buildings or Properties.**
- 1. The parking maximum required by this section applies to new dwelling units added to an existing property or building where the addition results in two or more units on the parcel.
  - 2. Adding a unit to an existing property or building does not require the removal of any existing off-street parking spaces.
- D. Excess Off-Street Parking.**
- 1. Off-street residential parking in excess of the maximum number in Section 23.322.070.B (Off-Street Parking Maximum) may be approved with an AUP.
  - 2. To approve an AUP for excess off-street parking, the review authority must make one or both of the following findings:
    - a. Trips to the use or uses to be served, and the apparent demand for additional parking, cannot be satisfied by the amount of parking permitted by this section, by transit service which exists or is likely to be provided in the foreseeable future, or by more efficient use of existing on-street and off-street parking available in the area;
    - b. The anticipated residents of the proposed project have special needs or require reasonable accommodation that relate to disability, health or safety that require the provision of additional off-street residential parking.

### **23.322.080 – Parking Layout and Design**

#### **A. Traffic Engineering Requirements.**

- 1. All off-street parking spaces, access driveways, circulation patterns, and ingress and egress connections to the public right-of-way must conform to the City of Berkeley's Traffic Engineering requirements.
- 2. The Traffic Engineer shall determine whether the size, arrangement, and design of off-street parking spaces, access driveways, circulation patterns, and ingress and egress connections to the public right-of-way are adequate to create usable, functional, accessible, and safe parking areas, and are adequately integrated with Berkeley's overall street pattern and traffic flows.

- B. Dimensional Standards.** Dimensional requirements and standards for off-street parking spaces, driveways, and other access improvements, and maneuvering aisles shall be incorporated in administrative regulations, subject to the review and approval by the City Manager and ZAB.
- C. Access Orientation in Non-Residential Districts.** Access to new parking areas in a Non-Residential District that serve commercial uses shall be oriented in such a way as to minimize the use of streets serving primarily residential uses.
- D. Placement – Residential Districts.**
- 1. Side Setback Areas.**
    - a. One new off-street parking space in a required side setback area, where none exists, is allowed by right.
    - b. The space must be constructed of a permeable surface unless the Public Works Department or Office of Transportation determines it is infeasible.
    - c. The space must be screened as required by 23.322.080.G (Screening).
    - d. The location of the space shall minimize impact on usable open space.
  - 2. Other Setback Areas.** No portion of an off-street parking space may be located in a required front, street side, or rear setback area unless:
    - a. The parking space location is authorized by Chapter 23.306 (Accessory Dwelling Units); or
    - b. The Zoning Officer approves an AUP, in consultation with the Traffic Engineer, and the space meets all applicable requirements in this section.
  - 3. Multifamily Buildings.**
    - a. An off-street parking space may not be located closer than 10 feet in horizontal distance from a door or a window of a building with three or more dwelling units where the space is on the same or approximately the same level as the building.
    - b. For the purposes of this section, a window whose bottom edge or point is more than 6 feet in vertical height from the level of the subject off-street parking space is not considered on the same or approximately the same level.
    - c. The Zoning Officer may approve and AUP to grant an exception to this requirement.
- E. Placement – Non-Residential Districts.**



1. **Where Prohibited.** Except when otherwise allowed by this chapter, ground-level off-street parking spaces are not permitted within 20 feet of the lot’s street frontage unless the parking is entirely within a building with walls.
2. **Corner Lots.** For a corner lot, the ZAB may approve a Use Permit to allow the parking within 20 feet of the street frontage facing the secondary street.
3. **C-W District.**
  - a. Off-street automobile parking in the C-W district is not permitted between the front lot line and a main structure within a designated node.
  - b. Outside of a designated node, off-street automobile parking may be allowed between the front lot line and a main structure with a Use Permit or AUP. If the project requires ZAB approval, a Use Permit is required. An AUP is required for all other projects.
  - c. To approve the AUP or Use Permit, the review authority must find that one or more of the following is true:
    - i. Parking in the rear or on the side of the property is impractical because of the lot’s depth and/or width.
    - ii. Parking in the rear of the property would result in adverse impacts on abutting residential or other uses.
    - iii. Parking in the rear or on the side of the property would result in the placement of a driveway in an unsafe location.
    - iv. Continuation or re-establishment of parking in front of the building is necessary for the reuse of an existing structure which is substantially set back from the front lot line.

F. **Grade Change.** This subsection applies to off-street parking spaces in all districts, except for parking decks in Residential Districts.

1. The difference in elevation between a parking space and the finished grade on adjacent areas of the lot may not exceed 5 feet at any point.
2. Where there is a difference in elevation between a parking space and adjacent finished grade, the parking space shall be setback from a lot line as shown in Table 23.322-7.

**TABLE 23.322-7: REQUIRED SETBACKS FOR PARKING SPACES WITH ADJACENT GRADE CHANGES**

| Difference in Elevation                 | Minimum Setback |
|-----------------------------------------|-----------------|
| Parking space lower than finished grade |                 |
| 3 to 5 ft                               | 4 ft.           |

| Difference in Elevation                  | Minimum Setback |
|------------------------------------------|-----------------|
| Less than 3 ft                           | No min. setback |
| Parking space higher than finished grade | 6 ft.           |

### G. Screening.

- 1.
2. Table 23.322-8 shows required parking space screening. Screening must effectively screen parked vehicles from view from buildings and uses on adjacent, abutting, and confronting lots. Screening may not interfere with pedestrian safety.

**TABLE 23.322-8: REQUIRED PARKING SPACE SCREENING**

| Districts                                  | When Required                                                                                         | Required Screening Feature                                                                                                        | Screening Feature Height                                                                                                                                    |
|--------------------------------------------|-------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| All Residential Districts                  | 2 or more parking spaces, or any parking space partly or entirely within a required rear setback area | Continuous view-obscuring wood fence, masonry wall, or evergreen hedge which may be broken only for access driveways and walkways | 4 ft. min and 6 ft. max.                                                                                                                                    |
| All Commercial and Manufacturing Districts | 2 or more parking spaces                                                                              | Wall, fence, or evergreen shrubbery hedge in a landscape strip                                                                    | Parking adjacent to public right-of-way or front lot line: 3 ft. min. and 4 ft. max.<br>Parking adjacent to rear or side lot line: 4 ft. min and 6 ft. max. |

3. In the C-W, M, MM, MU-LI districts, screening and landscape buffers are not required for any portion of a parking lot adjacent to Third Street (Southern Pacific Railroad).

### H. Landscape Buffers.

1. All paved areas for off-street parking spaces, driveways, and any other vehicle-related paving must be separated from adjacent lot lines and the public right-of-way by a landscaped strip as shown in Table 23.322-9.

**TABLE 23.322-9: REQUIRED LANDSCAPE BUFFERS**

| District/Number of Spaces                     | Minimum Width of Landscape Strip         |                                                         |
|-----------------------------------------------|------------------------------------------|---------------------------------------------------------|
|                                               | Areas adjacent to side or rear lot lines | Areas adjacent to public right-of-way or front lot line |
| <b>Residential Districts</b>                  |                                          |                                                         |
| 1-3 spaces                                    | 2 ft.                                    | 2 ft.                                                   |
| 4 spaces or more                              | 4 ft. [1]                                | 4 ft. [1]                                               |
| <b>Commercial and Manufacturing Districts</b> |                                          |                                                         |
| 1 space                                       | None required                            | None required                                           |
| 2-3 spaces                                    | 2 ft.                                    | 3 ft.                                                   |
| 4 spaces or more                              | 4 ft. [1]                                | 4 ft. [1]                                               |

Note:

[1] Calculated as average width along the full length of landscape strip.

2. In all districts, this landscape buffer requirement does not apply to driveways that serve two adjacent lots when adjacent to a side lot line.
  3. In the Residential Districts, this landscape buffer requirement also does not apply to pedestrian walkways that are separated from such areas by a landscaped strip at least two feet wide.
- I. **Paved Setback Areas.** In Residential Districts, the total area of pavement devoted to off-street parking spaces, driveways, and other vehicle-related paving may not exceed 50 percent of any required setback area that runs parallel to and abuts a street.
- J. **Driveway Width.**
1. A driveway may not exceed 20 feet in width at any lot line abutting a street or one-half of the width of the street frontage of the lot, whichever is less.
  2. In a Non-Residential district, the Zoning Officer may modify this requirement with an AUP.
- K. **Driveway Separation.** On a single lot in a Residential District, driveways must be spaced at least 75 feet from one another, as measured along any continuous lot line abutting a street.
- L. **Tandem Parking.** Tandem spaces that provide required off-street parking require an AUP, except when allowed by right by Chapter 23.306 (Accessory Dwelling Units).

- M. **Residential Parking Lots in Non-Residential Districts.** Parking lots in a non-residential district used exclusively for residential parking must comply with standards in this section that apply in Residential Districts.
- N. **Carports.** A carport shall meet the minimum horizontal and vertical dimensions specified by the City's Traffic Engineer to be used for one or more legal parking spaces required under this chapter.

**23.322.090 – Bicycle Parking**

A. Parking Spaces Required.

- 1. **Non-Residential Bicycle Parking.** Table 23.322-10 shows districts where bicycle parking is required, land uses requiring bicycle parking, and the number of required spaces. Bicycle parking is required for new construction and for expansions to existing buildings that add new floor area.

**TABLE 23.322-10: REQUIRED NON-RESIDENTIAL BICYCLE PARKING**

| District                                           | When Required                                                                                            | Required Spaces     |
|----------------------------------------------------|----------------------------------------------------------------------------------------------------------|---------------------|
| R-S, R-SMU                                         | New commercial space                                                                                     | 1 per 2,000 sq. ft. |
| All Commercial Districts except for C-E and C-T    | New floor area or for expansions of existing industrial, commercial, and other non-residential buildings | 1 per 2,000 sq. ft. |
| All Manufacturing Districts except for C-E and C-T | New floor area or for expansions of existing industrial, commercial, and other non-residential buildings | 1 per 2,000 sq. ft. |
| C-E, C-T                                           | None required                                                                                            | N/A                 |

- a. In the C-DMU district, the Zoning Officer, in consultation with the City Traffic Engineer, may approve an AUP to modify the bicycle parking requirement in Table 23.322-10 for Tourist Hotels.

- 2. **Residential Parking.** Table 23.322-11 shows the types of residential projects, including the residential portion of mixed-use projects, for which bicycle parking is required.

**TABLE 23.322-11: REQUIRED RESIDENTIAL BICYCLE PARKING**

| Use                              | Long-Term Parking Requirement [1] | Short-Term Parking Requirement [1]          |
|----------------------------------|-----------------------------------|---------------------------------------------|
| Dwelling Units (1 to 4 units)    | None required                     | None required                               |
| Dwelling Units (5 units or more) | 1 space per 3 bedrooms            | 2, or 1 space per 40 bedrooms, whichever is |

| Use                                                                                                                                                                                                       | Long-Term Parking Requirement [1]                    | Short-Term Parking Requirement [1]                  |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------|-----------------------------------------------------|
|                                                                                                                                                                                                           |                                                      | greater                                             |
| Group Living Accommodations, Dormitories, Fraternity and Sorority Houses, Rooming and Boarding Houses, Transitional Housing                                                                               | 2, or 1 space per 2.5 bedrooms, whichever is greater | 2, or 1 space per 20 bedrooms, whichever is greater |
| [1] Long-Term Parking and Short-Term Parking shall meet the design standards included in Appendix F of the 2017 <i>Berkeley Bicycle Plan</i> , or as subsequently amended by the Transportation Division. |                                                      |                                                     |

**B. Bicycle Parking Standards.** The following standards apply to required bicycle parking spaces in a non-residential district:

1. Bicycle parking spaces shall be located in either a locker, or in a rack suitable for secure locks, and shall require location approval by the City Traffic Engineer and Zoning Officer.
2. Bicycle parking shall be located in accordance to the Design Review Guidelines and other design specifications promulgated by the Transportation Division.

### 23.322.100 – On-site Loading Spaces

**A. When Required.** Table 23.322-12 shows land uses that require on-site loading spaces consistent with this section. In Residential Districts, on-site loading spaces are required for any modifications to existing uses and for new construction. In Commercial and Manufacturing Districts, on-site loading spaces are required for new or additional construction of 10,000 square feet or more.

**TABLE 23.322-12: LAND USES REQUIRING OFF-STREET LOADING SPACES**

| District       | Land Use [1]                                                                                 |
|----------------|----------------------------------------------------------------------------------------------|
| R-1, R-1A, R-2 | Schools 10,000 sq. ft. or more                                                               |
| R-2A           | Senior congregate housing, nursing homes and schools 10,000 sq. ft. or more                  |
| R-3            | Senior congregate housing, hospitals, nursing homes, schools 10,000 sq. ft. or more          |
| R-4, R-5       | Senior congregate housing, hospitals, nursing homes, offices, schools 10,000 sq. ft. or more |
| R-S, R-SMU     | All non-residential uses 10,000 sq. ft. or more                                              |

| District                                                     | Land Use [1]                                                 |
|--------------------------------------------------------------|--------------------------------------------------------------|
| All C Districts except C-T                                   | All commercial uses 10,000 sq. ft. or more                   |
| C-T                                                          | No loading spaces required for all land uses                 |
| M Districts                                                  | All commercial and manufacturing uses 10,000 sq. ft. or more |
| <u>Note:</u><br>[1] Land use size is total gross floor area. |                                                              |

**B. Number of Loading Spaces.** For land uses that require an on-site loading space, Table 23.322-13 shows the minimum number of required spaces.

**TABLE 23.322-13: NUMBER OF REQUIRED OFF-STREET LOADING SPACES**

| District                                                     | Spaces Required [1]                                                                            |
|--------------------------------------------------------------|------------------------------------------------------------------------------------------------|
| Residential and Commercial Districts                         | 1 space for the first 10,000 sq. ft. plus 1 additional space for each additional 40,000 sq. ft |
| Manufacturing Districts                                      | 1 space for the first 10,000 sq. ft. plus 1 additional space for each additional 25,000 sq. ft |
| <u>Note:</u><br>[1] Land use size is total gross floor area. |                                                                                                |

**C. Loading Space Requirements.**

1. **General.** The following requirements apply to required on-site loading spaces in all districts except for the R-1, R-1A, R-2, R-2A districts.
  - a. **Dimensions.** A required loading space must be at least 12 feet wide and 25 feet long with a minimum vertical clearance of 14 feet.
  - b. **Location.** A required loading spaces must be located on the same lot as the structure or use the space is designed to serve.
  - c. **Parking Spaces.** A required parking space may not be used to satisfy the requirements for an off-street loading space.
  - d. **Access and Paving.** A required loading space must have adequate means of access from a street or alley. Both the space and access driveway must be paved with a durable, dustless material that is usable under all weather conditions.
2. **Residential Buffer.** An on-site loading space in a Non-Residential District may not be located within 35 feet of a lot in a Residential District unless the loading space is either:

- a. Located wholly within an enclosed building; or
  - b. Screened from such residential lot by a wall, hedge, or fence not less than 6 feet in height.
3. **C-W District.** A building or site in the C-W district may not be altered to deprive a leasable space used or designated for use by any manufacturing or wholesale trade of an on-site loading space consistent with Paragraph 1 (All Districts) above.
  4. **M and MM Districts.** All uses in the M and MM districts which have one or more on-site loading spaces shall retain at least one such space.
  5. **Modified Requirements.** In all Manufacturing and Commercial Districts other than the C-T district, the Zoning Officer in consultation with the City Traffic Engineer may approve an AUP to modify the on-site loading spaces standards in this section.

#### **23.322.110 – Parking Lots in Residential Districts**

- A. **Applicability.** This section applies to the exclusive or primary use of a lot for off-street parking spaces in a Residential District.
- B. **Use Limitations.** Commercial repair work or service of any kind is prohibited on the lot.
- C. **Standards.**
  1. Signs may only designate the parking lot name, entrances, exits, and conditions of use. No other types of signed may be erected or maintained.
  2. Lighting fixtures must be oriented to direct the light away from adjacent lots.
  3. Suitable wheel bumpers must be provided to protect screening and adjacent property.
  4. A durable and dustless surface must be provided and maintained.
  5. The lot must comply with 23.322.070.G (Screening) and 23.322.070.H (Landscape Buffers).
  6. The lot must be graded to dispose of all surface water.
- D. **Exceptions.** The ZAB may waive any of the requirements in this section with a Use Permit for a temporary parking lot.

#### **23.322.120 – Transportation Services Fee**

- A. **When Required.**

1. A Transportation Services Fee (TSF) may be required for all new construction of gross floor area pursuant to resolution of the City Council.
2. If so resolved, the following districts are required to pay a TSF: R-S, R-SMU, C-C, C-U, C-N, C-NS, C-T, C-SO, M, and MM.

**B. Paying and Collecting Fees.**

1. All TSF payments shall be made to the Finance Department and deposited into the City or Berkeley's traffic/transportation mitigation fund.
2. TSF payments shall be collected in the form of annual payments based on the fee rate applicable to each district multiplied by the square feet of gross floor area of new construction and may be adjusted annually for inflation.
3. TSF payments shall be made for 30 years from the issuance of a certificate of occupancy for any new floor area.
4. The first annual payment of the TSF shall be due as a condition of occupancy and subsequent payments shall be due on January 1 of each succeeding year for 29 years.

- C. Use of Funds.** TSF funds shall be used to purchase transit or paratransit passes, coupons, and tickets to be made available at a discount to employees and customers and to promote and support incentives for employee ride sharing.



## 23.324 NONCONFORMING USES, STRUCTURES, AND BUILDINGS

---

### Sections:

- 23.324.010– Chapter Purpose
- 23.324.020– General
- 23.324.030– Nonconforming Lots
- 23.324.040– Nonconforming Uses
- 23.324.050– Nonconforming Structures and Buildings
- 23.324.060– Exemptions

### 23.324.010 – Chapter Purpose

This chapter establishes regulations for nonconforming lots, uses, structures, and buildings. These regulations are intended allow for:

- A. The development and use of lawful nonconforming lots;
- B. Changes to nonconforming uses and the termination of abandoned uses;
- C. Maintenance, repair, and expansion of nonconforming structures and buildings; and
- D. Alterations to nonconforming structures and buildings when needed for public safety.

### 23.324.020 – General

- A. **Cause of Nonconformity.** A nonconformity may result from any inconsistency with the Zoning Ordinance, whether substantive or procedural, including, but not limited to:
  - 1. The inconsistency of the use, building, or structure or aspects thereof, with any requirement of the Zoning Ordinance; and
  - 2. The lack of a Zoning Certificate, AUP, or Use Permit.
- B. **Change to a Conforming Use or Structure.** A use, building, or structure which is nonconforming solely by reason of the lack of a Zoning Certificate, AUP, or Use Permit may be recognized as a conforming use, building, or structure by issuance of the required Zoning Certificate, AUP, or Use Permit.
- C. **Permit and Approvals Required.** A use, building, or structure conforms to the Zoning Ordinance only if it was established or constructed with the prior approval of, or legalized after the fact by, the issuance of the required Zoning Certificate, AUP, or Use Permit.
- D. **Nonconformities in Continuous Existence.** A lawful nonconforming use, structure, building, or lot shall be deemed to comply with the Zoning Ordinance if it has remained in continuous existence.

**23.324.030 – Nonconforming Lots**

A. **Lawful Nonconforming Lots.** A lot with an area less than the minimum lot size required by the Zoning Ordinance is considered a lawful nonconforming lot if the lot is:

1. Described in the official records on file in the office of the County Recorder of Alameda County or Contra Costa County as a lot of record under one ownership before November 30, 1950;
2. Shown as a lot on any recorded subdivision map, filed before November 30, 1950; or
3. In the Environmental Safety Residential (ES-R) district and described in the official records on file in the office of the County Recorder of Alameda County as either:
  - a. A lot of record under one ownership; or
  - b. A lot on any recorded subdivision map filed before February 13, 1975.

**B. Requirements.**

1. A lawful nonconforming lot may be used as building site subject to all other requirements of the Zoning Ordinance, except as provided in Paragraph (2) below.
2. If the total area of all contiguous vacant lots fronting on the same street and under the same ownership on or after September 1, 1958 is less than that required for one lot under the Zoning Ordinance, such lawful nonconforming lots may be used as only one building site.

**23.324.040 – Nonconforming Uses****A. Changes to Nonconforming Uses.**

1. Table 23.324-1 shows permits required to change a lawful nonconforming use.

**TABLE 23.324-1: PERMIT REQUIREMENTS FOR CHANGES TO NONCONFORMING USES**

| Change to Nonconforming Use                                                                                                                                                                                       | Permit Required |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| Changes to a use that is allowed by right, complies with floor area requirements, conforms to all applicable requirements of the Zoning Ordinance excluding parking requirements, and is in a conforming building | ZC              |
| Any change to a nonconforming use that does not require a Zoning Certificate or Use Permit by this table                                                                                                          | AUP             |
| Any project that substantially expands or changes a nonconforming use                                                                                                                                             | UP(PH) [1]      |
| <p><u>Notes:</u><br/>                     [1] In the ES-R district the increase in the area, space, or volume occupied by or devoted to a lawful nonconforming use is not allowed.</p>                            |                 |

2. Substantial expansions and changes to a nonconforming use, as used in Table 23.324-1, means:
  - a. All changes to a use listed in 23.404.070.B (Permit Modification Required); and
  - b. Extending the nonconforming use into an existing or expanded portion of a building which has not been previously occupied by that nonconforming use.

**B. Abandoned Uses.**

**1. Termination.**

- a. Subject to the exceptions in Paragraph 2 (Exceptions) below, the ZAB may declare a lawful nonconforming use to be terminated upon finding that:
  - i.* The use has not occurred for at least one year; and
  - ii.* The most recent prior user has not shown a good-faith intent to resume it.
- b. The ZAB may require any person claiming that the use should not be declared terminated to produce documentation to substantiate good faith intent to resume the use.

**2. Exceptions.**

- a. **Residential Uses.** No lawful residential use can lapse, regardless of the length of time of the non-use.
- b. **Uses with Major Investments.** Lawful nonconforming full or quick service restaurants with cooking or food preparation facilities, gas/auto fuel stations, theaters, manufacturing plants with specifically designed fixed facilities and

other uses which represent a major investment in physical plant or facilities shall not be considered or declared terminated, regardless of the duration of non-use, unless:

- i.* Such fixed structures, equipment, or facilities are removed; or
  - ii.* Other uses could not be established without major removal of or extensive remodeling or replacement of structures associated with the previous established use.
- c. **Alcoholic Beverage Retail Sales.** If a lawful nonconforming alcoholic beverage retail sale use is closed is more than 90 days, the Zoning Adjustments Board (ZAB) may not declare the use terminated if the use was closed due to:
- i.* Repair that does not change the nature of the license premises or increase the square footage of the business used for alcoholic beverages sales; or
  - ii.* Restoration of premises made totally or partially unusable by an act of nature, fire, accident, or other involuntary cause where the restoration does not increase the square footage of the business used for alcoholic beverage sales.

### **23.324.050 – Nonconforming Structures and Buildings**

- A. **Maintenance and Repair.** A lawful nonconforming structure or building may be maintained and repaired, as long as such maintenance or repair does not result in a change to the use of the structure or building.
- B. **Replacement.** Replacing portions of a nonconforming structure or building is allowed if the removed portions were lawfully constructed and are replaced to the same size, height, extent, and configuration as previously existed.
- C. **Removal.**
  - 1. A nonconforming portion of a nonconforming structure or building may be removed by right if such removal does not constitute demolition.
  - 2. For a structure or building subject to the Landmarks Preservation Ordinance, the regulations under Municipal Code Section 3.24 (Landmarks Preservation Commission) apply.
- D. **Expansion and Alteration.**
  - 1. **General.** An addition to or enlargements of a lawful nonconforming structure or building is allowed if:
    - a. The addition or enlargement complies with all applicable laws;

- b. The existing use of the structure or building is conforming, except as provided below in Paragraph 4 (Property with Nonconforming Use); and
- c. The addition or enlargement obtains all permits required by this subsection.

## 2. **Nonconforming Setbacks and Height.**

- a. An AUP is required for an addition or enlargement that:
  - i.* Vertically or horizontally extends a building wall projecting into a minimum required setback;
  - ii.* Horizontally extends the portion of a building exceeding the height limit;
  - iii.* Alters the portion of a building (including windows and other openings) projecting into a minimum required setback; or
  - iv.* Alters the portion of a building exceeding the height limit.
- b. The Zoning Officer may approve the AUP only if:
  - i.* The addition or enlargement does not increase or exacerbate any nonconforming setbacks; and
  - ii.* The addition or enlargement does not exceed maximum or calculated height limits.

## 3. **Nonconforming Coverage, FAR, and Density.**

- a. A Use Permit is required for an addition to and/or enlargement of a structure or building that exceeds the maximum allowed lot coverage, floor area ratio, or residential density.
- b. The ZAB may approve the Use Permit only if the project does not:
  - i.* Increase or exacerbate the nonconformity; or
  - ii.* Exceed the height limit.

## 4. **Property with Nonconforming Use.**

- a. A Use Permit is required for an addition to and/or enlargement of a lawful nonconforming structure or building on a property with a lawful nonconforming use.
- b. The Use Permit is required whether or not the nonconforming use occupies the subject structure or building.

## E. **Tenant Space Reconfigurations.**

- 1. The reconfiguration of non-residential tenant space in a nonconforming structure or building requires permits as follows:

- a. AUP for structures or buildings nonconforming to setback, height, or lot coverage standards.
  - b. Use Permit for structures or buildings nonconforming to FAR standards.
2. The reconfiguration is allowed only if the existing use of the property is conforming.

**F. Damage and Reconstruction.**

1. **Calculation of Appraisal Value.** As used in this subsection, the “appraised value” of a structure or building is the higher of:
  - a. The records of the Assessor of the County of Alameda for the fiscal year during which such destruction occurred; or
  - b. An appraisal performed by a certified appraiser.
2. **Damage Less than 50 Percent.** If 50 percent or less of its appraised value of a lawful nonconforming structure or building is damaged or destroyed for any reason, the replacement of the damaged portions of the structure or building is allowed by right if the replaced portions are the same size, extent, and configuration as previously existed.
3. **Damage More than 50 Percent.**
  - a. Except as provided in Paragraph 4 (Residential Buildings with Four Units or Less) below, if more than 50 percent of the appraised value of a lawful nonconforming structure or building is damaged or destroyed for any reason, the structure or building shall either:
    - i.* Be brought into full compliance with the requirements of the Zoning Ordinance; or
    - ii.* Receive ZAB approval of a Use Permit for the structure or building to be rebuilt to the same size, extent, and configuration as previously existed. To approve the Use Permit, the ZAB must find that the previous use will be continued in a manner that meets the requirements of this chapter.
4. **Residential Structures or Buildings with Four Units or Less.**
  - a. A residential-only structure or building with four residential units or less, including any accessory structures or buildings, that is involuntarily damaged or destroyed may be replaced or reconstructed with a Zoning Certificate.
  - b. The Zoning Certificate may be approved only if all of the following conditions exist:
    - i.* The structure or building, or any portion thereof, has been destroyed by any involuntary cause including fire, earthquake, or flood.

- ii. The replacement structure or building or portion thereof is substantially similar in use, dimensions, floor area, square footage, envelope, lot coverage, footprint, and number of units to the destroyed structure or building or portion thereof that it is designed to replace.
  - iii. The replacement or repair complies with all currently applicable building codes and any other regulations including any ordinance or emergency regulation adopted by the City Council or the Director of Emergency Services to protect against serious safety problems at the site such as engineering conditions and soil stability.
- c. Where a structure or building to be replaced or rebuilt does not conform to Paragraph (b)(ii) above and is to be expanded or changed, the structure or building is subject to all otherwise applicable regulations governing such expansion or change.
  - d. The Planning Director shall establish a process that allows an owner of a qualifying residential structure or building to apply for an advance determination that the proposed repair or replacement of a structure or building is substantially similar as required by Paragraph (b)(ii) above including the information required to document existing conditions.
  - e. The Planning Director shall develop a description or building information for owners of qualifying residential structures or buildings required by the City to document existing characteristics of the building in case of future damage or destruction.

### **23.324.060 – Exemptions**

#### **A. Public Safety Structural Alterations.**

1. **General.** The following public safety structural alterations or extensions to conforming and nonconforming buildings are permitted by right to the extent necessary, as determined by the Zoning Officer:
  - a. Vertical and/or horizontal extensions of a nonconforming setback.
  - b. Horizontal extensions of a nonconforming height.
  - c. Vertical extensions of a nonconforming height in residential districts.
  - d. Alterations of a portion of a building that encroaches into a nonconforming setback.
  - e. Extensions of nonconforming lot coverage.
  - f. Structural alterations to nonconforming residential density.

- g. Structural alterations to nonconforming buildings located on a property that also contains a lawful nonconforming use, whether or not that use occupies the subject building or structure.
2. **Parking.** Public safety structural alterations to a conforming or lawful nonconforming building or structure that reduce, relocate, or remove required parking spaces are permitted as follows:
    - a. Parking spaces may be converted to substandard compact spaces if approved by the Traffic Engineer.
    - b. Parking spaces may be relocated into a setback or other location by right to the extent necessary, as determined by the Zoning Officer, if:
      - i.* The requirements in Paragraph (a) above cannot be met.
      - ii.* The screening and landscaping requirements in Chapter 23.322 (Parking and Loading) are met.
      - iii.* The parking relocation is approved by the Traffic Engineer.
    - c. Required parking may be removed if the Traffic Engineer determines that the requirements of Paragraphs (a) and (b) above cannot be met.
  3. **Aesthetic Improvement or Screening.** Any aesthetic improvement or screening that the Zoning Officer determines is associated with a public safety structural alteration shall be treated as part of the public safety structural alteration.

#### B. Existing Public Libraries.

1. Notwithstanding any other provision in the Zoning Ordinance, a conforming or lawful nonconforming public library existing as of May 1, 2010 may be changed, expanded, or replaced by a new public library on the same site following demolition, subject to issuance of a Use Permit.
2. If the change, expansion, or new library is allowed by right under the Zoning Ordinance, a Use Permit is not required.
3. The ZAB may modify any requirement of the Zoning Ordinance applicable to such change, expansion, or new library as part of the Use Permit.



## 23.326 DEMOLITION AND DWELLING UNIT CONTROL

---

### Sections:

- 23.326.010– Chapter Purpose
- 23.326.020– General Requirements
- 23.326.030– Eliminating Dwelling Units through Demolition
- 23.326.040– Eliminating Dwelling Units through Conversion and Change of Use
- 23.326.050– Private Right of Action
- 23.326.060– Elimination of Residential Hotel Rooms
- 23.326.070– Demolitions of Non-Residential Buildings
- 23.326.080– Building Relocations
- 23.326.090– Limitations

### 23.326.010 – Chapter Purpose

This chapter establishes demolition and dwelling unit control standards that promote the affordable housing, aesthetic, and safety goals of the City.

### 23.326.020 – General Requirements

- A. **Applicability.** No dwelling unit or units may be eliminated or demolished except as authorized by this chapter.
- B. **Findings.** In addition to the requirements below, the Zoning Adjustments Board (ZAB) may approve a Use Permit to eliminate or demolish a dwelling unit only upon finding that eliminating the dwelling unit would not be materially detrimental to the housing needs and public interest of the affected neighborhood and Berkeley.

### 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. **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.

### 3. **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.

### 4. **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.

**B. Buildings with a Single Dwelling Unit.**

1. **Applicability.** This subsection only applies to buildings with a single dwelling unit.

2. **Limitations.**

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.

- C. **Accessory Buildings.** Notwithstanding anything in Municipal Code Title 23 (Zoning Ordinance) to the contrary, but subject to any applicable requirements in Municipal Code Section 3.24 (Landmarks Preservation Ordinance), accessory buildings of any size, including, but not limited to, garages, carports, and sheds, but not including any structure containing a lawfully established dwelling unit, which serves and is located on the same lot as a lawful residential use, may be demolished by right.

### **23.326.040 – Eliminating Dwelling Units through Conversion and Change of Use**

- A. **General.** The ZAB may approve a Use Permit for the elimination of a dwelling unit in combination with another dwelling unit used for occupancy by a single household if it finds that:
1. The existing number of dwelling units exceeds maximum residential density in the district where the building is located; and
  2. One of the following is true:
    - a. One of the affected dwelling units has been occupied by the applicant's household as its principal place of residence for no less than two years before the date of the application and none of the affected units are currently occupied by a tenant.
    - b. All of the affected dwelling units are being sold by an estate and the decedent occupied the units as their principal residence for no less than two years before the date of their death.
- B. **Limitations.**
1. Demolition is not allowed if:
    - a. The building was removed from the rental market under the Ellis Act during the preceding five years; or
    - b. There have been verified cases of harassment or threatened or actual illegal eviction during the immediately preceding three years.
  2. 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.
- C. **Effect of Noncompliance with the Two-Year Requirement.**

1. In a unit eliminated under Subsection A (General) is not occupied by the applicant's household for at least two consecutive years from the date of elimination, the affected unit must be restored to separate status.
2. This requirement shall be implemented by a condition of approval and a notice of limitation on the property, acceptable to the City of Berkeley.
3. The condition and notice will provide that if the owner's household does not occupy the unit for at least two years from the date of elimination the affected units must either be restored as separate dwelling units and the vacant unit(s) offered for rent within six months or the owner must pay a fee of \$75,000 in 2013 dollars, adjusted in May of each year according to the Consumer Price Index for the San Francisco Bay Area. The fee shall be deposited into the City of Berkeley's Housing Trust Fund.
4. The City of Berkeley may exempt an applicant from the two-year residency requirement if of an unforeseeable life change that requires relocation.

**D. Effect of Eliminating a Dwelling Unit.**

1. If eliminating a dwelling unit reduces the number of units in a building to four, the applicant shall record a notice of limitation against the subject property that the limitation on eviction of tenants under Chapter 13 (Public Peace, Morals and Welfare) shall continue to apply until:
  - a. The building is demolished; or
  - b. Sufficient units are added or restored such that the building contains at least five units.
2. The Zoning Officer may issue an AUP for a building conversion which eliminates a dwelling unit upon finding that the conversion will restore or bring the building closer to the original number of dwelling units that was present at the time it was first constructed, provided the conversion meets the requirements 23.326.040.A.1 and 2 and 23.326.040.B and C.

**E. Exceptions.**

1. The ZAB may approve a Use Permit for a change of use to a community care or a child care facility which eliminates a dwelling unit if it finds that such use is in conformance with the regulations of the district in which it is located.
2. The ZAB may approve a Use Permit to eliminate a dwelling unit through combination with another dwelling unit for the purpose of providing private bathrooms, kitchenettes, accessibility upgrades, and/or seismic safety upgrades to single-residential occupancy rooms in residential developments undergoing a publicly-funded rehabilitation.

3. Notwithstanding the general Use Permit requirement under 23.326.020 (General Requirements), a lawfully established accessory dwelling unit that is not a controlled rental unit may be eliminated with a Zoning Certificate if:
  - a. The re-conversion restores the original single-family use of the main building or lot; and
  - b. No tenant is evicted.

### **23.326.050 – Private Right of Action**

Any affected tenant may bring a private action for injunctive and/or compensatory relief against any applicant and/or owner to prevent or remedy a violation of Sections 23.326.030 (Elimination of Dwelling Units through Demolition) and 23.326.040 (Elimination of Dwelling Units through Conversion and Change of Use). In any such action a prevailing plaintiff may recover reasonable attorney's fees.

### **23.326.060 – Elimination of Residential Hotel Rooms**

- A. **General Requirements.** Before removal, the following requirements must be met for the ZAB to approve a Use Permit for the elimination of residential hotel rooms:
  1. The residential hotel owner shall provide or cause to be provided standard housing of at least comparable size and quality, at comparable rents and total monthly or weekly charges to each affected tenant
  2. One of the following three requirements shall be met:
    - a. The residential hotel rooms being removed are replaced by a common use facility, including, but not limited to, a shared kitchen, lounge, or recreation room, that will be available to and primarily of benefit to the existing residents of the residential hotel and that a majority of existing residents give their consent to the removal of the rooms.
    - b. Before the date on which the residential hotel rooms are removed, one-for-one replacement of each room to be removed is made, with a comparable room, in one of the methods set forth in this section.
    - c. Residential hotel rooms are removed because of building alterations related to seismic upgrade to the building or to improve access to meet the requirements of the American Disabilities Act (ADA).
- B. **Criteria for Replacement Rooms.** For purposes of this section, replacement rooms must be:
  1. Substantially comparable in size, location, quality, and amenities;

2. Subject to rent and eviction controls substantially equivalent to those provided by the Rent Stabilization Ordinance or those that applied to the original rooms which are being replaced; and
  3. Available at comparable rents and total monthly or weekly charges to those being removed. Comparable rooms may be provided by:
    - a. Offering the existing tenants of the affected rooms the right of first refusal to occupy the replacement rooms;
    - b. Making available comparable rooms, which are not already classified as residential hotel rooms to replace each of the rooms to be removed; or
    - c. Paying to the City of Berkeley's Housing Trust Fund an amount sufficient to provide replacement rooms.
      - i. The amount to be paid to the City of Berkeley shall be the difference between the replacement cost, including land cost, for the rooms and the amount which the City of Berkeley can obtain by getting a mortgage on the anticipated rents from the newly constructed rooms.
      - ii. The calculations shall assume that rents in the newly constructed rooms shall not exceed the greater of either a level comparable to the weekly or monthly charges for the replaced rooms or the level which would be charged if no current tenant paid more than 30 percent of such tenant's gross income for rent.
- C. **Exception for Non-Profit Ownership.** In a residential hotel owned and operated by a non-profit organization, recognized as tax-exempt by either the Franchise Tax Board and/or the Internal Revenue Service, residential hotel rooms may be changed to non-residential hotel room uses if the average number of residential hotel rooms per day in each calendar year is at least 95 percent of residential hotel rooms established for that particular residential hotel.

### **23.326.070 – Demolitions of Non-Residential Buildings**

- A. **Main Non-Residential Buildings.** A main building used for non-residential purposes may be demolished with a Use Permit.
- B. **Accessory Buildings.**
  1. Demolishing an accessory building with less than 300 square feet of floor area is permitted as of right.
  2. An accessory building with 300 square feet or more of floor area may be demolished with an AUP.
- C. **Landmarks Preservation Commission Review.**

1. Any application for a Use Permit or AUP to demolish a non-residential building or structure which is 40 or more years old shall be forwarded to the Landmarks Preservation Commission (LPC) for review before consideration of the Use Permit or AUP.
  2. The LPC may initiate a landmark or structure-of-merit designation or may choose solely to forward to the ZAB its comments on the application.
  3. The ZAB shall consider the recommendations of the LPC in when acting on the application.
- D. **Findings.** A Use Permit or an AUP for demolition of a non-residential building or structure may be approved only if the ZAB or the Zoning Officer finds that:
1. The demolition will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City of Berkeley; and
  2. The demolition:
    - a. Is required to allow a proposed new building or other proposed new use;
    - b. Will remove a building which is unusable for activities which are compatible with the purposes of the district in which it is located or which is infeasible to modify for such uses;
    - c. Will remove a structure which represents an inhabitable attractive nuisance to the public; or
    - d. Is required for the furtherance of specific plans or projects sponsored by the City of Berkeley or other local district or authority upon a demonstration that it is infeasible to obtain prior or concurrent approval for the new construction or new use which is contemplated by such specific plans or projects and that adhering to such a requirement would threaten the viability of the plan or project.

### **23.326.080 – Building Relocations**

#### **A. Treatment of Building Relocation.**

1. Relocating a building from a lot is considered a demolition for purposes of this chapter.
2. Relocating a building to a lot is considered new construction and is subject to all requirements applicable to new construction.
3. When a building is relocated to a different lot within in Berkeley, the lot from which the building is removed shall be known as the source lot and the lot on which the building is to be sited shall be known as the receiving lot. In such cases all notification requirements apply to both the source and receiving lots.



- B. **Findings.** The ZAB may approve a Use Permit to relocate a building upon finding that:
1. The building to be relocated is not in conflict with the architectural character, or the building scale of the neighborhood or area to which it will be relocated; and
  2. The receiving lot provides adequate separation of buildings, privacy, yards, and usable open space.

### **23.326.090 – Limitations**

A. **Unsafe, Hazard, or Danger.**

1. Notwithstanding anything to the contrary, if a building or structure is unsafe, presents a public hazard, and is not securable and/or is in imminent danger of collapse so as to endanger persons or property, as determined by the city's building official, it may be demolished without a Use Permit.
2. The Building Official's determination in this matter shall be governed by the standards and criteria in the most recent edition of the California Building Code that is in effect in the City of Berkeley.

- B. **Ellis Act.** This chapter shall be applied only to the extent permitted by state law as to buildings which have been entirely withdrawn from the rental market pursuant to the Ellis Act (California Government Code Chapter 12.75).

## **23.328 INCLUSIONARY HOUSING**

---

### **Sections:**

- 23.328.010– Chapter Purpose and Applicability
- 23.328.020– General Requirements
- 23.328.030– Payment of In-Lieu Fees as an Alternative to Providing Inclusionary Units
- 23.328.040– Requirements Applicable to All Inclusionary Units
- 23.328.050– Inclusionary Unit Requirements for Rental Housing Projects
- 23.328.060– Inclusionary Unit Requirements for Ownership Projects
- 23.328.070– Special Requirements for Avenues Plan Area
- 23.328.080– Administrative Regulations
- 23.328.090– Fees

### **23.328.010 – Chapter Purpose and Applicability**

**A. Purpose.** The purpose of this chapter is to:

1. Promote Housing Element goals to develop affordable housing for households with incomes below the median, as defined in this chapter, or, in the case of limited equity cooperatives, households with incomes below 120 percent of the median.
2. Require the inclusion of affordable dwelling units in specified proposed developments (“projects”).

**B. Applicability.**

1. The following types of projects must comply with the inclusionary housing requirements of this chapter:
  - a. Residential housing projects constructing five or more dwelling units.
  - b. Residential housing projects constructing one to four new dwelling units when:
    - i.* Such units are added to an existing one to four-unit property developed after August 14, 1986; and
    - ii.* The resulting number of units totals five or more.
  - c. Residential housing projects proposed on lots with a size and zoning designation that allows construction of five or more dwelling units.
2. This chapter does not apply to dormitories, fraternity and sorority houses, boarding houses, residential hotels, or live/work units.
3. Live/work units are subject to low income inclusionary provisions in Section 23.312 (Live/Work).

4. This chapter sets forth specific inclusionary housing requirements for the Avenues Plan Area, which prevails over any conflicting requirements set forth elsewhere.

### **23.328.020 – General Requirements**

#### **A. Minimum Percent of Units.**

1. Any project subject to this chapter is required to include at least 20 percent of the total number of dwelling units within the project as inclusionary units, except that limited equity cooperatives are required to include at least 51 percent of their units as inclusionary units.
2. In applying the percentages above, any decimal fraction above a whole number of dwelling units shall be paid as an in-lieu fee as stated in Section 23.328.040 (Requirements Applicable to All Inclusionary Units).

- B. Median Income Levels.** For the purpose of determining the median income levels for households under this chapter, the City shall use the Oakland Primary Metropolitan Statistical Area (PMSA) statistical figures that are available to the City from the most recent U.S. Census.

### **23.328.030 – Payment of In-Lieu Fees as an Alternative to Providing Inclusionary Units**

#### **A. Applicability.**

1. As an alternative to providing inclusionary units required in an ownership project, the applicant may elect to enter in an agreement with the City to pay fees as set forth in this section in-lieu of providing units that are not required to be provided at below market prices pursuant to Government Code Section 65915.
2. This section applies to projects for which all required permits have already been issued, as long as no units within such a project have been sold.

- B. Deposit.** The fee shall be deposited in the City's Housing Trust Fund.

#### **C. Fee Amount.**

1. The in-lieu fee shall be 62.5 percent of the difference between the permitted sale price for inclusionary units and the amounts for which those units are actually sold by the applicant.
2. The fee shall be calculated and collected based on the sales prices of all of the units in a project to which the inclusionary requirement applies, such that the fee as charged shall be a percentage of the difference between the actual sales price for each unit, and the sales price that would have been permitted had that unit been an inclusionary unit.

3. The percentage shall be determined using the following formula: the number of units for which an in-lieu fee is substituted for an inclusionary unit divided by the total number of units to which the inclusionary ordinance applies, multiplied by 62.5 percent.
4. This fee shall only apply to units in a project that are counted in determining the required number of inclusionary units in a project and shall not apply to any units provided as a density bonus.
5. If the City Manager determines that an actual sales price does not reflect the fair market value of a unit, the City Manager shall propose an alternate price based on the fair market value of the unit.
6. If the developer and the City Manager cannot agree on a fair market value, the City Manager shall select an appraiser to prepare an appraisal of the unit and the appraised value shall be used as the market value.

**D. Calculation of Inclusionary Sales Price.**

1. The allowable inclusionary sales price for the purpose of calculating the in-lieu fee amount shall be three times 80 percent of the Area Median Income (AMI) last reported as of the closing date of the sale of the unit, with the exception that if the developer has already been authorized to charge an inclusionary sale price based on development costs pursuant to Ordinance 6,790-N.S. (adopted January 27, 2004, sunsetted February 19, 2006) the allowable inclusionary sale price for the purposes of this section shall be the price permitted under that ordinance.
2. Area median income (AMI) shall be calculated in accordance with the affordability regulations established by the City Manager pursuant to Section 23.328.080 (Administrative Regulations).

- E. Time of Payment of Fee.** The developer shall pay the in-lieu fee no later than the closing date of the sale of a unit as a condition of the closing.

**23.328.040 – Requirements Applicable to All Inclusionary Units**

**A. Recipient Requirement.**

1. All inclusionary units other than those in limited equity cooperatives shall be sold or rented to:
  - a. The City or its designee; or
  - b. Low income, lower income, or very low-income households.
2. Units in limited equity cooperatives shall be sold or rented to households whose gross incomes do not exceed 120 percent of the Oakland PMSA median.

- B. **Agreement.** The applicant shall execute a written agreement with the City indicating the number, type, location, approximate size, and construction schedule of all dwelling units and other information as required to determine compliance with this chapter.
- C. **Timing.** All inclusionary units in a project and phases of a project shall be constructed concurrently with, or before, the construction of non-inclusionary units.
- D. **Criteria.** All inclusionary units shall be:
1. Reasonably dispersed throughout the project;
  2. Of the same size and contain, on average, the same number of bedrooms as the non-inclusionary units in the project; and
  3. Comparable with the design or use of non-inclusionary units in terms of appearance, materials, and finish quality.
- E. **In-Lieu Fee Requirement.** In projects where calculating the inclusionary requirement results in a fraction of a unit, the fraction shall be paid in the form of an in-lieu fee to the City.
1. Where Government Code Section 65915 does not apply, the in-lieu fee shall be the fractional value of the difference between development cost (excluding marketing costs and profit) and actual sales price for the average comparable unit in projects.
  2. Where Government Code Section 65915 does apply, the in-lieu fee shall be the difference between affordable cost for an appropriately-sized household and the fractional value of the average comparable actual sales price for the fraction of the unit in projects to require a density bonus or equivalent incentive.
- F. **Use of In-Lieu Fees.**
1. The in-lieu fee shall be used by the City or its designee (such as a non-profit housing development corporation) to provide, construct, or promote the creation or retention of low-income housing in Berkeley.
  2. The use of in-lieu fees for specific housing programs shall be brought before the Housing Advisory and Appeals Board for review and approval.
- G. **Exceptions.** Where the applicant shows, and the City agrees, that the direct construction and financing costs of the inclusionary units, excluding marketing cost and profit (and also excluding land costs if a density bonus or equivalent incentive is provided), exceeds the sales prices allowed for inclusionary units by this chapter, the Zoning Adjustments Board (ZAB) may approve one or more of the following measures to reduce costs or increase profitability:

1. Reduce the floor area or the interior amenities of the inclusionary units, provided that such units conform to applicable building and housing codes.
2. Increase the number of bedrooms in the inclusionary units.
3. In a home ownership project, construct rental units in a number required to meet the inclusionary provisions of this chapter applicable to rental housing projects.
4. Waive the in-lieu fees for fractions of units.

### **23.328.050 – Inclusionary Unit Requirements for Rental Housing Projects**

#### **A. General Rental Requirements.**

1. All inclusionary units shall be occupied by low, lower, or very low -income households.
2. The maximum rental price for inclusionary units shall be affordable to an appropriate-sized household whose income is 81 percent of the Oakland PMSA median.
3. In projects requiring more than one inclusionary unit, at least 50 percent of those units shall be rented at a price that is affordable to low or lower-income households, provided that the City can make available rental subsidies through the federal Section 8 Existing Housing Program or an equivalent program.
4. When there is an uneven number of inclusionary units, the majority of units shall be priced to be affordable to a household at 50 percent of median income if subsidies are available.
5. If no rental subsidies are available, all inclusionary unit prices shall be affordable to households at 81 percent income of the Oakland PMSA median.
6. If an applicant agrees to provide 10 percent lower income inclusionary units, the rental price for such units shall be affordable to a household with income that is 60 percent of the Oakland PMSA median.
7. Dwelling units designated as inclusionary units shall remain in conformance with the regulations of this section for the life of the building.
8. The City or its designee shall screen applicants for the inclusionary units and refer eligible households of the appropriate household size for the unit.
9. For purposes of occupancy, the appropriate household size standards used by the housing authority for the federal Section 8 Existing Housing Program or any future equivalent program shall be used.
10. The applicant or owner shall retain final discretion in the selection of the eligible households referred by the City.

11. The owner shall provide the City with data on vacancies and other information required to ensure the long-term affordability of the inclusionary units by eligible households.

**B. Affordability Defined.** A unit shall be considered affordable if the rent (including utilities) does not exceed 30 percent of a household's gross income.

1. Gross household income and utility allowance shall be calculated according to the guidelines used by the Berkeley Housing Authority for the federal Section 8 Existing Housing Program.
2. For purposes of calculating rent, appropriate household size shall be determined by using the schedule contained in the administrative regulations developed for this chapter.

### **23.328.060 – Inclusionary Unit Requirements for Ownership Projects**

**A. General Sale Requirements.** Inclusionary units in ownership projects shall be sold as set forth below:

1. Inclusionary units in ownership projects shall be sold at a price that is affordable to an appropriate-sized household whose income is no more than 80 percent of the area median income reported for the Oakland PMSA for households of that size, unless the cost of development of the unit is greater than the affordable sales price.
2. Appropriate sizes of household and the ratio of income to sales price for affordable units shall be defined by City Manager regulation.
3. Inclusionary ownership units shall be affirmatively marketed to tenants with Section 8 housing vouchers, and who are known to be interested in participating in the Section 8 homeownership program, or other equivalent program(s) of the City, which are in effect at the time the units are offered for sale by the developer.

**B. Right of First Refusal and Purchaser Preference.**

1. The applicant for a project other than a limited equity housing cooperative is required to give right of first refusal to purchase any or all new inclusionary units to the City or a City designee for a period of not less than 60 days as evidenced by issuance of a certificate of occupancy.
2. Should the City choose not to exercise its right of first refusal, it shall provide the applicant or owner with a purchaser or with a list of eligible purchasers within a period of not less than 60 days.
  - a. If the list is not provided, the applicant may select a low-income purchaser of the applicant's choice as long as the City verifies income eligibility and the unit is sold at an affordable price as described in this chapter.

- b. The City shall maintain a list of eligible low-income households and review the assets and incomes of prospective purchasers of the inclusionary units on a project-by-project basis and refer potential purchasers to the applicant or owner.
  - 3. All purchasers of inclusionary units shall be first-time home buyers from low, lower, or very low-income households.
  - 4. Purchasers are also required to occupy the unit except that such requirement may be waived with the approval of the City. In such cases, the unit shall be rented to a low, lower, or very low-income household at a rent affordable by such households.
  - 5. Preference of inclusionary units are as follows:
    - a. First preference will be given to eligible Berkeley residents.
    - b. Second preference will be given to eligible persons employed in Berkeley.
    - c. Other preferences may also be established administratively, with Planning Commission review, to help meet the City's Housing Element goals.
  - 6. The City shall advise all prospective purchasers on the City's eligibility list of the resale restrictions applicable to ownership of inclusionary units and shall provide purchasers with a Declaration of Restrictions applicable to ownership of inclusionary units.
  - 7. Purchasers of inclusionary units in limited equity cooperatives at time of first occupancy shall be first time home buyers with gross incomes no greater than 120 percent of the Oakland PMSA median.
  - 8. Subsequent purchasers of inclusionary units in limited equity cooperatives shall be first time home buyers whose yearly gross income is no more than 44 percent of the cost of a unit at the time of sale, provided that such income is no more than 110 percent of the Oakland PMSA median.
- C. **Resale Restrictions.** All inclusionary units developed under this chapter except for those in limited equity cooperatives are subject to the resale restrictions set forth below.
- 1. Home ownership inclusionary units offered for sale or sold under the requirements of this chapter shall be offered to the City or its designee for a period of at least 60 days by the first purchaser or subsequent purchasers from the date of the owner's notification to the City of intent to sell.
  - 2. The resale price of the unit shall not exceed the original price and customary closing costs, except to allow for:



- a. The lower of any increase of either the Consumer Price Index (CPI) for all urban consumers (as produced by the U.S. Bureau of Labor Statistics or its successor agencies) applicable to the Oakland PMSA; or
  - b. The increase as measured in household income guidelines published annually by the U.S. Department of Housing and Urban Development (or its successor agencies) for the Oakland PMSA.
3. The resale formula shall supersede and replace the earlier resale formula in deed restrictions executed between February 19, 1987 (adoption date for Ordinance 5791-N.S.) and May 23, 2006.
    - a. The City, or its designee, shall notify each such owner of this change to the resale formula contained in their deed restriction within 60 days of adoption of this section.
    - b. All other terms and conditions of these deed restrictions shall remain in effect.
  4. If the City does not act on its right of first refusal, the same procedure for new inclusionary units shall be used for selection of a purchaser.
  5. The seller shall not levy or charge any additional fees nor shall any finders fee or other monetary consideration be allowed, other than customary real estate commissions if the services of a licensed real estate agent are employed.
  6. The City or its designee may monitor resale of inclusionary units in limited equity cooperatives.
  7. The City or its designee shall monitor the resale of ownership of inclusionary units.
  8. The owners of any inclusionary units shall attach, lawfully reference in the grant deed conveying title of any such inclusionary ownership unit, and record with the County Recorder a Declaration of Restrictions provided by the City, stating the restrictions imposed pursuant to this chapter. Violators of any of the terms may be prosecuted by the City.

### **23.328.070 – Special Requirements for Avenues Plan Area**

- A. **City Council Findings.** The City Council finds and determines that:
  1. The Avenues Plan process identified several regional and Berkeley-specific barriers to housing development.
  2. Among the Berkeley-specific barriers were:
    - a. High land prices;
    - b. Lengthy, difficult, and uncertain permit processes; and
    - c. Insufficient financing, especially for affordable housing projects.

3. The Avenues Plan area represents a core area of Berkeley where it is particularly appropriate to encourage housing development because of the area's generally good access to workplaces, transit service, senior services, and retail stores.
4. The policy to encourage housing in this area is reflected in several documents, including, but not limited to, the City's Housing Element of the General Plan, the Concept Plan for the General Plan revision, the Downtown Plan, the South Berkeley Area Plan, the West Berkeley Plan, and the University Avenue statement of planning of goals.
5. Despite the City's support for housing in this area, new housing development here has been limited and this has hindered revitalization of the area.
6. As part of a multi-pronged experimental strategy to create incentives to encourage housing development, relaxation of various inclusionary zoning requirements within the Avenues Plan area as set forth in this section is appropriate.
7. These changes will also assist the buyer of below market rate inclusionary units, by allowing buyers to gain greater appreciation on their investments (market conditions permitting), making the investment more similar to conventional home ownership, while retaining the long term affordability of inclusionary units.
8. The changes will also encourage the construction of larger family-sized units, rather than the smaller units which have generally been built in multi-family developments.
9. These changes in inclusionary zoning will be followed by mechanisms to make more financing available and changes in zoning standards and permit processes.
10. The success of these changes will be reviewed annually until the five-year time period of the Avenues Plan experiment expires July 1, 2000.

#### **B. Applicability.**

1. This section shall remain in effect until July 1, 2000, at which time the Planning Commission, in consultation with other relevant commissions, shall re-examine its effectiveness. At that time the Commission may initiate modifications to, or an extension of, this section.
2. This section applies on the streets and the addresses listed in Table 23.328-1. The area of applicability consists of the entire C-DMU District and portions of the C-C, C-U, C-SA, C-W, C-N, R-2A, R-3, and R-4 districts as indicated in the table. Within this area, this section supersedes any inconsistent provisions in this chapter.

**TABLE 23.328-1: AVENUE AREAS PLAN AREA: STREET AND ADDRESS RANGE**

| <b>Street</b>   | <b>Address</b>                                               |
|-----------------|--------------------------------------------------------------|
| Acton           | 1940-2100                                                    |
| Addison         | 841-1145 odd, 1846 up                                        |
| Adeline         | All                                                          |
| Alcatraz Avenue | 1700-1937                                                    |
| Allston Way     | 1901-1999 odd, 2000 up                                       |
| Ashby Avenue    | 1830-2117, 2118-2198 even                                    |
| Bancroft Way    | 2000-2300                                                    |
| Berkeley Square | All                                                          |
| Berkeley Way    | 1200-1800 even only, 1800-1920, 1920-2000 even only, 2000 up |
| Blake           | 1800-2100                                                    |
| Bonar           | 2000-2099                                                    |
| Bonita          | 1900-1950 even, 1950-1999                                    |
| Browning        | portion of West Campus only                                  |
| California      | 1950-2009                                                    |
| Carleton        | 2000-2117                                                    |
| Center          | All                                                          |
| Channing Way    | 1800-1850 even, 2000-2200, 2200-2300 odd                     |
| Cowper          | All                                                          |
| Chestnut        | 1910-1950 even, 1950 up                                      |
| Curtis          | 1900-2100, portion BUSD                                      |
| Delaware        | 1041-1112, 2000-2200 even                                    |
| Derby           | 2000-2113                                                    |
| Dover           | All                                                          |
| Durant Avenue   | 2000-2300                                                    |
| Dwight Way      | 1800-1850 even, 1850-2200                                    |
| Ellis           | 3124-3320 odd                                                |
| Emerson         | 2000-2111                                                    |
| Essex           | 1901-2106                                                    |
| Fairview        | 1750 up                                                      |

| <b>Street</b>              | <b>Address</b>                                                         |
|----------------------------|------------------------------------------------------------------------|
| Fulton                     | 2200-2400, 2400-2606 even                                              |
| Grant                      | 1800-1900 odd, 1900-2050, 2501-2599 odd                                |
| Harold Way                 | All                                                                    |
| Harmon                     | 1750 up                                                                |
| Harper                     | 2901-3123 odd                                                          |
| Haste                      | 1900-1998 even, 2000-2200                                              |
| Hearst                     | 1032-1200, 1800-2000 even, 2000-2200                                   |
| Henry                      | 1900 up                                                                |
| Jefferson Avenue           | 2000-2050                                                              |
| King                       | 3221 up, odd                                                           |
| Kittredge                  | All                                                                    |
| Martin Luther King Jr. Way | 1900-2050, 2051-2199 odd, 2400-2450 even, 2450-2600, 2900 up           |
| McGee Avenue               | 1900-2050                                                              |
| McKinley Avenue            | 2400-2500 odd                                                          |
| Milvia                     | 1800-1950 odd, 1950-2199, 2200-2450 odd, 2450-2550, 2550-2900 odd only |
| Newbury                    | All                                                                    |
| Oregon                     | 2000-2122                                                              |
| Otis                       | All                                                                    |
| Oxford                     | 1800-2200                                                              |
| Parker                     | 1800-1998 even, 2000-2200                                              |
| Prince                     | 1830-2105                                                              |
| Russell                    | 1820-2000 even, 2000-2117                                              |
| Sacramento                 | 1900-2000, 2050-2100 even                                              |
| San Pablo Avenue           | 1800-2199                                                              |
| Shattuck Avenue            | 1800 up                                                                |
| Shattuck Square            | All                                                                    |
| Stuart                     | 2100-2107                                                              |
| Tremont                    | All                                                                    |
| University Avenue          | 840 up                                                                 |

| Street  | Address   |
|---------|-----------|
| Walnut  | 1800 up   |
| West    | 1950-1999 |
| Whitney | All       |
| Woolsey | 1750-2110 |
| 6th     | 1916-2099 |
| 7th     | 1912-2099 |
| 8th     | 1910-2099 |
| 9th     | 1910-2099 |
| 10th    | 1908-2099 |
| 62nd    | 1700 up   |
| 63rd    | 1700 up   |

**C. Definitions.** For purposes of this section, the following definitions apply:

1. "Project" means the total number of housing units planned to be built on a single lot or on a grouping of contiguous, commonly owned, or controlled lots, regardless of whether those units are all built simultaneously.
2. "Affordable family-sized unit" means a unit which:
  - a. Is at least 850 square feet in area if two bedrooms or 1,100 square feet if three bedrooms or more;
  - b. Contains at least two lawful bedrooms;
  - c. Contains at least as many bathrooms as the corresponding two-bedroom market rate units; and
  - d. Is sold at a price that is affordable to an appropriate sized household whose income is no more than 80 percent of the metropolitan area median as reported by the Department of Housing and Urban Development (HUD).

**D. Number of Inclusionary Units Required.**

1. The number of inclusionary units required are shown in the Table 23.328-2.

**TABLE 23.328-2: NUMBER OF INCLUSIONARY UNITS REQUIRED**

| Total Number of Units Built | Number of Required Inclusionary Units |
|-----------------------------|---------------------------------------|
| 10-14                       | 1                                     |
| 15-19                       | 2                                     |

| Total Number of Units Built         | Number of Required Inclusionary Units |
|-------------------------------------|---------------------------------------|
| Each additional multiple of 5 units | 1 additional                          |

2. For every five units which the applicant can show with bona fide sales documents have been sold at a price at or below that affordable to an appropriately sized household with an income of 100 percent of metropolitan area median, the applicant is released of the obligation to provide one inclusionary unit.
3. For every 10 affordable family-sized units, the applicant is released of the obligation to provide one inclusionary unit sold at a price at or below that affordable to an appropriately sized household with an income of 100 percent of metropolitan area median.
4. Within the area of applicability for that portion of a project wherein both the inclusionary and the non-inclusionary units contain at least as many bathrooms as the corresponding two-bedroom market rate units, only 10 percent of units must be inclusionary.

#### **E. Pricing Requirements.**

1. The first inclusionary unit in projects with units for sale shall be sold at a price that is affordable to an appropriately sized household whose income is no more than 80 percent of the Oakland PMSA median as reported by HUD.
2. Except as otherwise provided in Section 23.328.070.C.2.d above, the second inclusionary unit shall be sold at a price that is affordable to an appropriate sized household whose income is no more than 100 percent of the PMSA median and subsequent inclusionary units shall be sold alternately at these price levels.
3. Inclusionary sale units in projects in the Avenues Plan Area shall be sold at a price such that first year housing cost (including homeowners' association dues, if any) for a household of appropriate size with an income at the targeted level shall not exceed 33 percent of income.
4. This cost shall be calculated assuming that the buyer makes a 10 percent down payment, which shall not be considered a portion of the cost.
5. The housing cost shall be calculated for each project at the time the condominium association budget is approved by the California Department of Real Estate and shall not be changed after that time for that project, regardless of future changes in cost.
6. The resale price of inclusionary units within the Avenues Plan Area may increase at the rate of increase of the Consumer Price Index for all urban consumers (CPI-U) applicable to the metropolitan area.

**23.328.080 – Administrative Regulations**

The City Manager or the City Manager’s designee shall promulgate rules and regulations pertaining to this chapter, including but not limited to setting and administering gross rents and sale prices, requiring guarantees, entering into recorded agreements with applicants and taking other appropriate steps necessary to ensure that the required low income and very low income dwelling units are provided and occupied by low income households.

**23.328.090 – Fees**

The City Council, by resolution, may establish fees for the administration of this chapter.

## 23.330 DENSITY BONUS

---

### Sections:

- 23.330.010– Chapter Purpose
- 23.330.020– Definitions
- 23.330.030– Application Requirements
- 23.330.040– Density Bonus Calculations and Procedures
- 23.330.050– Incentives and Concessions
- 23.330.060– Waivers and Reductions
- 23.330.070– Qualifying Units
- 23.330.080– Regulatory Agreements

### 23.330.010 – Chapter Purpose

The purpose of this chapter is to:

- A. Establish procedures and local standards to implement California Government Code Sections 65915–65918 consistent with local zoning regulations and development standards; and
- B. Provide special provisions consistent with the intent of State and local law. Unless otherwise noted, all section references in this chapter are to the California Government Code.

### 23.330.020 – Definitions

- A. **Terms Defined.** Terms used in this chapter are defined as follows:
  1. **Administrative Regulations.** Guidelines and procedures promulgated by the Planning Director that may be modified from time to time to effectively implement this ordinance.
  2. **Base Project.** The maximum allowable residential density on a housing development site pursuant to the applicable zoning district or, where no density standard is provided, as set forth in the Administrative Regulations before applying the density bonus.
  3. **Density Bonus.** Those residential units, floor area, rental beds or bedrooms added to the Base Project pursuant to the provisions of Government Code Section 65915 and this chapter.
  4. **Eligible Housing Development.** As defined in Government Code Section 65917.2.
  5. **Housing Development.** As defined in Government Code Section 65915(i).
  6. **Incentive and Concession.** An incentive or a concession as the terms are used in Government Code Section 65915 and in particular as defined in Section



65915(k) thereof. The City may request reasonable documentation from the applicant to support the request.

7. **Qualifying Unit.** A unit that is provided at a below market-rate rent or sales price as set forth in Government Code Section 65915 to receive a Density Bonus and/or Waivers and Reductions and/or Incentives and Concessions.
8. **Waiver and Reduction.** A waiver or a reduction as the terms are used in Government Code Section 65915 and in particular in Section 65915(e) thereof, and means any and all changes to or exemptions from physical lot development standards that are required to avoid precluding the construction of a Housing Development with Density Bonus Units, as set forth in Section 65915(e). The City may request reasonable documentation from the applicant to support the request.

B. **Terms Not Defined.** Terms not defined in this section shall be interpreted to give this chapter its most reasonable meaning and application, consistent with applicable state and federal law.

### **23.330.030 – Application Requirements**

- A. **Required Information.** In addition to any other information required by the Zoning Ordinance, an application for a density bonus must include the following information:
  1. How the proposed project will satisfy the eligibility requirements of Section 65915 or 65917.2.
  2. For those districts without density standards, a density bonus schematic as set forth in the City of Berkeley Administrative Regulations.
  3. The requested density bonus pursuant to Municipal Code Section 23.330.040 (Density Bonus Calculations and Procedures).
  4. Any waivers and reductions that are sought under Section 65915.e that would be required to accommodate the housing development including the density bonus units.
  5. Any incentives and concessions that are sought under Section 65915.d accompanied by documentation of resulting cost reductions to provide for affordable housing costs.
  6. Any requested additional bonus units under Section 65915.n.
  7. Any requested parking reductions under Section 65915.p.
  8. Whether the applicant elects to receive a density bonus that is less than that mandated by Section 65915, including a density bonus of zero. In such cases, the applicant retains their entitlement to incentives and concessions.

9. Documentation of how a project complies with regulations regarding replacement units as described in Section 65915.c.3.

B. **Documentation Supporting Requests.** The City may request reasonable documentation from the applicant to support requested waivers/reductions and incentives/concessions.

### **23.330.040 – Density Bonus Calculations and Procedures**

A. **Calculation.** Density bonuses must be calculated as set forth in Section 65915, 65917.2, and pursuant to the Administrative Regulations.

B. **Procedures.** Density bonus requests must accompany housing development permit applications and will be decided upon concurrent with the underlying permit for the project.

### **23.330.050 – Incentives and Concessions**

A. **Calculation.** For purposes of this chapter, the number of incentives and concessions are counted as follows:

1. Any incentive and concession that would otherwise require discretionary approval by the Zoning Officer, the ZAB, or City Council of any single dimensional lot development standard, such as height or setbacks, or any single quantitative lot development standard, such as parking or open space, counts as one.
2. A proposed incentive and concession that would involve exceedance of a single physical lot development standard counts as one even if that exceedance would otherwise require more than one permit (e.g., extra height may require permits for height, floor area ratio, and/or number of stories but would count as one incentive and concession for height).
3. Where it is ambiguous as to whether a proposed incentive and concession involves one or more dimensional or quantitative lot development standards, the stricter interpretation applies, as determined by the review authority.

B. **Procedural Requirements.**

1. The City shall grant incentives and concession unless findings are made as set forth in Section 65915d.1.
2. The City is not required to deny a proposed incentive and concession solely because it can make a finding under Section 65915.d.1.
3. The City bears the burden of proof for the denial of a requested incentive and concession.

4. Unless denied under Section 65915, incentives and concessions are exempt from discretionary review of permits under the Zoning Ordinance, other than Design Review, and by law do not modify the CEQA review status of a project.

#### **23.330.060 – Waivers and Reductions**

- A. **Proposal.** An applicant may submit to the City a proposal for waivers and reductions of development standards that physically prevent construction of a housing development and density bonus units meeting the criteria of Section 65915.b.
- B. **Negotiated Process.** The City may negotiate changes to the requested waivers and reductions as part of the Use Permit and Design Review process, in coordination with the applicant, to address aspects of the project that may be of concern in the community or inconsistent with overarching principles of the General Plan, Zoning Ordinance, and Design Guidelines.
- C. **Denial.** The City may deny waivers and reductions for the reasons set forth in Section 65915.e.1.

#### **23.330.070 – Qualifying Units**

Qualifying units must meet the standards set forth in Section 23.328.040 (Requirements Applicable to All Inclusionary Units).

#### **23.330.080 – Regulatory Agreements**

Before issuance of a certificate of occupancy for a housing development that has received a density bonus, the applicant must enter into a regulatory agreement in a form provided by the City that implements Sections 65915–65918 and this chapter.

## **23.332 WIRELESS COMMUNICATION FACILITIES**

---

### **Sections:**

- 23.332.010– Chapter Purpose and Applicability
- 23.332.020– Definitions
- 23.332.030– General Requirements
- 23.332.040– Minimum Application Requirements
- 23.332.050– Location Requirements
- 23.332.060– Height Requirements
- 23.332.070– Design Requirements
- 23.332.080– Operation and Maintenance Standards
- 23.332.090– Public Information Requirements
- 23.332.100– Certification Requirements
- 23.332.110– Permits and Findings Required for Approval
- 23.332.120– Cessation of Operations

### **23.332.010 – Chapter Purpose and Applicability**

#### **A. Purpose.** The purpose of this chapter is to:

1. Provide a uniform and comprehensive set of standards for the development, siting, installation, and operation of wireless telecommunications antennas and related facilities (“wireless telecommunications facilities”) for personal wireless services;
2. Foster an aesthetically pleasing urban environment, prevent visual blight, protect and preserve public safety and general welfare, and maintain the character of residential areas, including those adjacent to commercial areas and neighborhood commercial areas, consistent with the General Plan and adopted area plans and in compliance with applicable state and federal legislation; and
3. Prevent the location of wireless telecommunications facilities in Residential Districts unless:
  - a. The City is required to permit them in such locations to avoid violating the Telecommunications Act of 1996.
  - b. The wireless telecommunications facilities are designed to interfere as little as possible with the character of the neighborhood.
4. Establish and maintain telecommunications facilities that are components of a wireless telecommunications infrastructure designed to enhance the City’s emergency response network and not interfere with such emergency systems in violation of applicable federal or state regulations.
5. Establish a process for obtaining necessary permits for wireless telecommunication facilities that provides greater certainty to both applicants and

interested members of the public while ensuring compliance with all applicable zoning requirements.

6. Provide opportunities for further reduction in potential aesthetic or land use impacts of wireless telecommunications facilities as changes in technology occur.
7. Support the use of personal wireless services to enhance personal and public health and safety as well as the public welfare of Berkeley.

B. **Applicability.** The regulations in this chapter apply to all wireless telecommunications facilities for personal wireless services on property other than the public right-of-way in Berkeley.

### 23.332.020 – Definitions

A. **Terms Defined.** Terms used in this chapter are defined as follows:

1. **Antenna.** Any system of wires, poles, rods, panels, whips, cylinders, reflecting discs, or similar devices used for transmitting or receiving electromagnetic waves when such system is either external to or attached to the exterior of a structure, or is portable or movable. "Antenna" includes devices having active elements extending in any direction, and directional beam-type arrays having elements carried by and disposed from a generally horizontal boom that may be mounted upon and rotated through a vertical mast or tower interconnecting the boom and antenna support, all of which elements are deemed to be a part of the antenna.
2. **Antenna - Facade Mounted (also known as Building Mounted).** Any antenna, directly attached or affixed to the elevation of a building, tank, tower, or other structure.
3. **Antenna - Ground Mounted.** Any antenna with its base, whether consisting of single or multiple posts, placed directly on the ground or a single mast less than 15 feet tall and 6 inches in diameter.
4. **Antenna - Parabolic (also known as Satellite Dish Antenna).** Any device incorporating a reflective surface that is solid, open mesh, or bar configured that is shallow dish, cone, horn, bowl or cornucopia shaped and is used to transmit or receive electromagnetic or radio frequency communication/signals in a specific directional pattern.
5. **Approved Engineer.** Radio frequency engineer or licensed electrical engineer specializing in EMF or RFR studies approved by City of Berkeley staff to conduct analysis required pursuant to this chapter.
6. **Co-Location.** Location of any telecommunication facility owned or operated by a different telecommunication service provider on the same tower, building, or property.

7. **Personal Wireless Services.** Commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services as defined in the Telecommunications Act of 1996.
8. **Readily Visible.** A wireless telecommunications facility is readily visible if it can be seen from street level or from the main living area of a legal residence in a residential district or from a public park by a person with normal vision, and distinguished as an antenna or other component of a wireless telecommunication facility, due to the fact that it stands out as a prominent feature of the landscape, protrudes above or out from the building or structure ridgeline, or is otherwise not sufficiently camouflaged or designed to be compatible with the appurtenant architecture or building materials. For purposes of this definition, "main living area" means the living and dining and similar areas of a dwelling, but not bedrooms, bathrooms or similar areas.
9. **Stealth Facility.** Any wireless telecommunications facility that is not readily visible because it has been designed to blend into the surrounding environment and is visually unobtrusive. Examples may include architecturally screened roof-mounted antennas, building-mounted antennas that are painted and treated as architectural element to blend with the existing building, monopoles that are disguised as flag poles or public art, or camouflaged using existing vegetation. A pole or tower with antennas that are flush with or do not protrude above or out from the pole or antenna is not considered to be a stealth facility unless the pole or tower is an existing pole or tower, existing utility pole or tower, or existing light standard or street light, or replacement thereof.
10. **Structure Ridgeline.** The line along the top of an existing roof or top of a structure, including existing parapets, penthouses, or mechanical equipment screens.
11. **Telecommunications.** The transmission, between or among points specified by the user, of information of the user's choosing, without change in the content of the information as sent and received as defined in the Telecommunications Act of 1996.
12. **Telecommunications Equipment.** Equipment, other than customer premises equipment, used by a Telecommunications Carrier to provide Telecommunications Services, and includes software integral to such equipment (including upgrades) that is not located, in whole or in part, in, above, or below Streets, Public Rights- of-Way or other Public Property.
13. **Telecommunications Service.** The offering of telecommunications for a fee directly or indirectly to any Person as defined in the Telecommunications Act of 1996.
14. **Telecommunications Tower.** Any mast, pole, monopole, lattice tower, or other structure designed and primarily used to support antennas. A ground or building

mounted mast greater than 15 feet tall and 6 inches in diameter supporting one or more antennas, dishes, arrays, etc. shall be considered a telecommunications tower.

**15. Wireless Telecommunications Facilities.** Personal wireless service facilities as defined in the Telecommunications Act of 1996, including, but not limited to, facilities that transmit and/or receive electromagnetic signals for cellular radio telephone service, personal communications services, enhanced specialized mobile services, paging systems, and related technologies. Such facilities include antennas, microwave dishes, parabolic antennas, and all other types of equipment used in the transmission or reception of such signals; telecommunication towers or similar structures supporting said equipment; associated equipment cabinets and/or buildings; and all other accessory development used for the provision of personal wireless services. These facilities do not include radio towers, television towers, and government-operated public safety networks.

**B. Terms Not Defined.** Terms not defined in this section shall be interpreted to give this chapter its most reasonable meaning and application, consistent with applicable state and federal law.

### **23.332.030 – General Requirements**

- A. In addition to any other requirements imposed by this chapter, all wireless telecommunications facilities on property other than the public right-of-way in Berkeley shall be consistent with the following:
- B. The General Plan, adopted area plans, and all other applicable provisions of the Zoning Ordinance.
- C. Applicable regulations and standards of any other governmental agency with jurisdiction over the installation or operation of wireless telecommunications facilities including, but not limited to, the Federal Communications Commission, the Federal Aviation Administration, and the California Public Utilities Commission.
- D. Any applicable discretionary permit affecting the subject property, except to the extent the Zoning Officer or Zoning Adjustments Board (ZAB) may modify such requirements.

### **23.332.040 – Minimum Application Requirements**

- A. **Section Purpose.** This section establishes limited additional application submittal requirements for wireless telecommunications facilities. The purpose of these requirements is to ensure that the purposes of this chapter are implemented to the extent permitted by the Telecommunications Act of 1996.

**B. Application Requirements.** In addition to meeting the standard application submittal requirements for permits shown in Chapter 23.404 (Common Permit Requirements), wireless telecommunication facility applications required this chapter shall include the following information:

**1. Coverage Map and General Information.**

- a. A narrative description and map showing the coverage area of the provider's existing facilities that serve customers in Berkeley and the specific site that is the subject of the application.
- b. A statement of the telecommunications objectives sought for the proposed location, whether the proposed facility is necessary to prevent or fill a significant gap or capacity shortfall in the applicant's service area, whether it is the least intrusive means of doing so, and whether there are any alternative sites that would have fewer aesthetic impacts while providing comparable service.
- c. An AUP application need not include information as to whether the proposed facility is necessary to prevent or fill a significant gap or capacity shortfall in the applicant's service area.

**2. Technical Information.**

- a. Copies of or a sworn statement by an authorized representative that the applicant holds all applicable licenses or other approvals to construct the proposed facility required by the Federal Communications Commission (FCC), the California Public Utilities Commission (PUC), and any other agency of the Federal or State government with authority to regulate telecommunications facilities.
- b. Documentation of or a sworn statement by an authorized representative that the applicant is in compliance with all conditions imposed in conjunction with such licenses or approvals, a description of the number, type, power rating, frequency range, and dimensions of antennas, equipment cabinets, and related wireless telecommunications facilities proposed to be installed, and engineering calculations demonstrating that the proposed facility will comply with all applicable FCC requirements and standards.

**3. Visibility.**

- a. A site plan, plans, and elevations drawn to scale.
  - i.* Plans shall include microcell, facade- or roof-mounted antennas, and all related equipment.
  - ii.* Elevations shall include all structures on which facilities are proposed to be located.



- b. A description of the proposed approach for screening or camouflaging all facilities from public view including plans for installation and maintenance of landscaping, sample exterior materials, and colors, and an explanation of the measures by which the proposed facility will be camouflaged or made not readily visible.
- c. Where any part of the proposed facility would be readily visible, the application shall include an explanation as to why it cannot be screened from view.
- d. A visual impact analysis including scaled elevation diagrams within the context of the building, before and after photo simulations, and a map depicting where the photos were taken.
- e. The Zoning Officer may require the submission of photo overlays, scaled models, renderings, or mockups to document the effectiveness of techniques proposed to minimize visibility.
- f. If a ground-mounted or freestanding tower is proposed, the application must include an explanation as to why other facility types are not feasible.

#### 4. **Peer Review.**

- a. The application shall include sufficient information for an approved radio frequency engineer or licensed electrical engineer specializing in EMF or RFR studies ("approved engineer") retained by the City to peer review the information provided in response to Sections 23.322.040.B.2 and 3.
  - b. The application shall include an agreement to pay the reasonable actual cost and a reasonable administrative fee for hiring an approved engineer to provide peer review.
  - c. Any proprietary information disclosed to the City or its engineer in confidence shall not be a public record and shall remain confidential and not be disclosed to any third party without the express consent of the applicant.
  - d. The City and/or its engineer shall return all proprietary information to the applicant and shall not retain any copies of such information once its decision is final.
5. **Monitoring.** An agreement to pay a reasonable one-time or annual fee for independent monitoring as required by this chapter.
6. **Statement of Financial Assurances.** A statement that before obtaining a building permit to erect or install the proposed facility, the applicant shall either secure a bond or provide financial assurances, in a form acceptable to the City Manager, for the removal of the facility if that its use is abandoned or the approval is otherwise terminated.

7. **Noise.** The Zoning Officer may require information concerning noise that might be generated by equipment associated with a wireless telecommunication facility, such as air conditioning equipment, if the physical circumstances of the proposed facility suggest that such noise may be detrimental.

### **23.332.050 – Location Requirements**

- A. **Visibility.** A wireless communications facility may not be sited on or above a ridgeline or at any other location readily visible from a public park, unless ZAB makes the applicable findings required in Section 23.332.110.E (Findings).
- B. **Distance Between Freestanding Facilities.** A new freestanding facility, including towers, lattice towers, and monopoles, may not be located within 1,000 feet of another freestanding facility, unless appropriate stealth techniques have been used to minimize the visual impact of the facility to the extent feasible, and mounting on a building or co-location on an existing pole or tower is not feasible.

### **23.332.060 – Height Requirements**

#### **A. Measurement.**

1. The height of a telecommunications tower is measured from existing grade below the center of the base of the tower to either:
  - a. The top of the tower; or
  - b. The tip of the highest antenna or piece of attached equipment if taller than the tower
2. The height of building-mounted antennas includes the height of that portion of the building on which the antenna is mounted.
3. In the case of “crank-up” or similar towers whose height is adjustable, the height of the tower is the maximum height to which it is capable of being raised.

#### **B. Conformance with District Requirements.**

1. No antenna telecommunications tower or facade-mounted antenna shall exceed or project above the height limits specified for the district in which the antenna is located.
2. Roof-mounted antennas affixed to an existing or proposed tower or pole shall not extend or project more than 15 feet above the height limit of the district.

### **23.332.070 – Design Requirements**

In addition to all other requirements set forth in this chapter, all wireless telecommunication facilities shall meet the design requirements in this section.

A. **Order of Preference of Facility Type.** Based on potential aesthetic impact, the order of preference for facility type is as follows (ordered from most preferred to least preferred): microcell, facade-mounted, roof-mounted, ground-mounted, and freestanding tower.

B. **Visibility.**

1. All facilities shall be designed and located to minimize their visibility to the greatest extent feasible, considering technological requirements, by placement, screening, and camouflage.
2. The applicant shall use the smallest and least visible antennas feasible to accomplish the owner/operator's coverage or capacity objectives.
3. A wireless telecommunications facility that would be readily visible from the public right-of-way or from the habitable living areas of residential units within 100 feet of the facility shall incorporate appropriate techniques to camouflage or disguise the facility, and/or blend it into the surrounding environment, to the greatest extent feasible.
4. Facilities shall be compatible in scale and integrated architecturally with the design of surrounding buildings or the natural setting.

C. **Location.**

1. **View Corridor Impacts.** No readily visible antenna shall be placed at a location where it would impair a significant or sensitive view corridor except as provided for in Subsection (3) below.
2. **Facilities in Setbacks and Between Buildings and Rights-of-Way.** If telecommunications antenna or ancillary support equipment is located within any required setback or between the face of a building and a public right-of-way, permits are required as follows:
  - a. An AUP is required for microcell facilities and facilities that are completely subterranean.
  - b. A Use Permit is required for all other facilities.
3. **Roof- and Ground-Mounted Antennas.**
  - a. Roof-mounted antennas shall be located in an area of the roof where the visual impact is minimized.
  - b. Roof-mounted and ground-mounted antennas shall not be placed in direct line of sight of significant or sensitive view corridors or where they adversely affect scenic vistas unless the Zoning Officer or ZAB finds that the facility incorporates appropriate, creative stealth techniques to camouflage, disguise, and/or blend into the surrounding environment to the extent feasible.

- c. Roof mounted antennas shall be designed and sited to minimize their visibility and shall be no taller than necessary to meet the operator's service requirements.
- d. Where roof-mounted antennas are readily visible, confirmation of necessary height for service requirements, at the Zoning Officer's discretion, shall be based on independent analysis by an approved engineer retained by the City.

#### 4. **Satellite Dish or Parabolic Antennas.**

- a. Satellite dish or parabolic antennas shall be situated as close to the ground as possible to reduce visual impact without compromising their function.
- b. When screened from pedestrian-level view from the public right-of-way and not readily visible from any property that contains a legally established residential use, satellite dish or parabolic antennas may be located in any required setback area subject to the approval of a Use Permit.
- c. No satellite dish or parabolic antenna may exceed 39 inches in diameter unless the Zoning Officer or ZAB finds that a smaller antenna cannot feasibly accomplish the provider's technical objectives and that the facility will not be readily visible. The Zoning Officer may require that this determination be based on independent technical analysis by an approved engineer.

- 5. **Monopoles and Lattice Towers.** All monopoles and lattice towers shall be designed to be the minimum functional height and width required to support the proposed antenna installation unless a higher monopole or lattice tower will facilitate co-location or other objectives of this chapter.

#### D. **Colors and Materials.**

- 1. Colors and materials for facilities shall be chosen to minimize visibility.
- 2. All visible exterior surfaces shall be constructed of non-reflective materials.
- 3. Facilities shall be painted or textured using colors to match or blend with the primary background.

#### E. **Lighting.**

- 1. Facility lighting shall be designed to meet but not exceed minimum requirements for security, safety, or FAA regulations, and in all instances shall be designed to avoid glare and minimize illumination on adjacent properties.
- 2. Lightning arresters and beacon lights shall not be included in the design of facilities unless required by the FAA.
- 3. Lightning arresters and beacons shall be included when calculating the height of facilities such as towers, lattice towers, and monopoles.

F. **Advertising.** No advertising shall be placed on telecommunications antennas or other equipment.

G. **Facility Design.**

1. All facilities shall be designed to be resistant to and minimize opportunities for unauthorized access, climbing, vandalism, graffiti, and other conditions that would result in hazardous conditions, visual blight, or attractive nuisances.
2. The Zoning Officer or ZAB may require the provision of warning signs, fencing, anti-climbing devices, or other techniques to prevent unauthorized access and vandalism when, because of their location and/or accessibility, antenna facilities have the potential to become an attractive nuisance.
3. The design of the fencing and other access control devices is subject to Design Review.

H. **Landscaping.**

1. Where appropriate and directly related to the applicant's placement, construction, or modification of wireless telecommunications facilities, the applicant shall maintain and enhance existing landscaping on the site, including trees, foliage and shrubs, when used for screening unless appropriate replacement landscaping is approved through the Design Review process.
2. Additional landscaping shall be planted as needed to minimize the visual impact of the facility and, when feasible, to block the line of sight between facilities and adjacent residential uses and properties in a residential district.
3. The appropriate minimum size of new trees and shrubs shall be approved through the Design Review process.

I. **Projection of Equipment.** Facade-mounted equipment, not including any required screening, shall not project more than 18 inches from the face of the building or other support structure unless specifically authorized by the Zoning Officer or ZAB.

J. **Ancillary Support Equipment.**

1. In order of preference, ancillary support equipment for facilities shall be located either within a building or structure, on a screened roof top area or structure, or in a rear yard if not readily visible from surrounding properties and the public right-of-way, unless the Zoning Officer or ZAB finds that another location is preferable under the circumstances of the application.
2. Above ground and partially buried ancillary equipment, including support pads, cabinets, shelters, and buildings, shall be located where they will be the least visible from surrounding properties and the public right-of-way. Such equipment shall be designed to be architecturally compatible with surrounding structures and/or screened using appropriate techniques to camouflage, disguise, and/or

blend into the environment including landscaping, color, and other techniques to minimize their visual impact.

3. If the Zoning Officer determines that an equipment cabinet is not or cannot be adequately screened from surrounding properties or from public view or architecturally treated to blend in with the environment, the equipment cabinet shall be placed underground or inside the existing building where the antenna is located unless the Zoning Officer or ZAB finds that such placement is not feasible or consistent with the objectives of this chapter and other applicable requirements.

**K. Co-Located Antennas.**

1. When antennas are co-located, the City may limit the number of antennas with related equipment and providers located on a site and adjacent sites to prevent negative visual impacts associated with multiple facilities.
2. Architectural and other camouflaging treatment shall be coordinated between all users on a site.

**L. Parking.** Proposed facilities shall not reduce the number of available parking spaces below the amount required by the Zoning Ordinance.

**M. Effect of Modification.** At the time of modification or upgrade of facilities, existing equipment shall, to the extent feasible, be replaced with equipment that reduces visual and noise impacts as feasible.

**23.332.080 – Operation and Maintenance Standards**

All wireless telecommunication facilities shall at all times comply with the following operation and maintenance standards. Failure to comply shall be considered a violation of conditions of approval subject to the enforcement provisions in this chapter.

**A. Emergency Sign Required.**

1. Each owner or operator of a wireless telecommunications facility shall provide signage identifying the name and phone number of a party to contact in event of an emergency.
2. The design, materials, colors, and location of signs is subject to Design Review.
3. Contact information must be kept current.

**B. Maintenance and Repair.**

1. Wireless telecommunications facilities and related equipment shall be maintained in good repair, free from trash, debris, litter, graffiti, and other forms of vandalism.
2. Damage from any cause shall be repaired as soon as reasonably possible so as to minimize occurrences of dangerous conditions or visual blight.

3. Graffiti shall be removed from any facility or equipment as soon as practicable, and in no instance more than 48 hours from the time of notification by the City.
4. Vehicle and personnel access to sites for maintenance and repairs shall not be from residential streets or adjacent residential properties to the maximum extent feasible.

**C. Landscaping.**

1. The owner or operator of a wireless telecommunications facility shall be responsible for maintaining landscaping in accordance with the approved landscape plan and for replacing any damaged or dead trees, foliage, or other landscaping elements shown on the approved plan.
2. Amendments or modifications to the landscape plan must be submitted to the Zoning Officer for approval.

**D. Operation Standards.**

1. Each wireless telecommunications facility shall be operated in a manner that will minimize noise impacts to surrounding residents and persons using nearby parks, trails, and similar recreation areas.
2. Except for emergency repairs, testing and maintenance activities that will be audible beyond the property line shall only occur between the hours of 8:00 a.m. and 7:00 p.m. on Monday through Friday, excluding holidays.
3. All air conditioning units and any other equipment that may emit noise audible from beyond the property line shall be enclosed or equipped with noise attenuation devices to the extent necessary to ensure compliance with applicable noise limitations under Chapter 13.40 (Community Noise).
4. Backup generators shall only be operated during periods of power outages or for testing.
5. At no time shall equipment noise from any source exceed the standards shown in Chapter 13.40 (Community Noise).

**E. Facilities Providing Service to the Government or General Public.** All wireless telecommunications facilities providing service to the government or the general public shall be designed to meet the following requirements:

1. The exterior walls and roof covering of all above ground equipment shelters and cabinets shall be constructed of materials rated as nonflammable.
2. Openings in all above ground equipment shelters and cabinets shall be protected against penetration by fire and windblown embers to the greatest extent feasible.
3. Material used as supports for antennas shall be fire resistant, termite proof, and comply with all applicable regulations.

4. Telecommunications antenna towers shall be designed to withstand forces expected during earthquakes to the extent feasible.
  - a. Building-mounted facilities shall be anchored so that an earthquake does not dislodge them or tip them over.
  - b. All equipment mounting racks and attached equipment shall be anchored so that an earthquake would not tip them over, throw equipment off their shelves, or otherwise damage equipment.
  - c. All connections between various components of the wireless telecommunications facility and necessary power and telephone lines shall, to the greatest extent feasible, be protected against damage by fire, flooding, and earthquake.
5. Reasonable measures shall be taken to keep wireless telecommunication facilities in operation in the event of a natural disaster.

#### **23.332.090 – Public Information Requirements**

- A. **Map and Inventory.** The Planning and Development Department shall maintain a map and inventory of all existing and proposed wireless telecommunication sites, which shall be available to members of the public and other interested parties for inspection.
- B. **Inventory Information.** The inventory shall, at a minimum, include the following information:
  1. Address of site.
  2. Number, type, power rating, and frequency range of all antennas at the site.
  3. Name of telecommunications carrier owning, operating, or leasing each antenna at the site.
  4. Date of most recent certification.

#### **23.332.100 – Certification Requirements**

- A. **General.**
  1. No wireless telecommunications facility or combination of facilities shall at any time produce power densities that exceed the FCC's limits for electric and magnetic field strength and power density for transmitters.
  2. To ensure continuing compliance with all applicable emission standards, all wireless telecommunications facilities shall submit reports as required by this section.



3. The City may require, at the operator's expense, independent verification of the results of any analysis.
4. If an operator of a telecommunications facility fails to supply the required reports or fails to correct a violation of the FCC standard following notification, the Use Permit or AUP is subject to modification or revocation by the ZAB following a public hearing.

**B. All Facilities.**

1. Within 45 days of initial operation or modification of a telecommunications facility, the operator of each telecommunications antenna shall submit to the Zoning Officer written certification by a licensed professional engineer that the facility's radio frequency emissions are in compliance with the approved application and any required conditions.
  - a. The engineer shall measure the radio frequency radiation of the approved facility, including the cumulative impact from other nearby facilities, and determine if it meets the FCC requirements.
  - b. A report of these measurements and the engineer's findings with respect to compliance with the FCC's Maximum Permissible Exposure (MPE) limits shall be submitted to the Zoning Officer.
  - c. If the report shows that the facility does not comply with applicable FCC requirements, the owner or operator shall cease operation of the facility until the facility complies with, or has been modified to comply with, this standard.
  - d. Proof of compliance shall be a certification provided by the engineer who prepared the original report.
  - e. The City may require, at the applicant's expense, independent verification of the results of the analysis.
2. Before January 31 of every year, an authorized representative for each wireless carrier providing service in the City shall provide written certification to the City that each facility is being operated in accordance with the approved local and federal permits and shall provide the current contact information.
3. Once every two years, at the operator's expense, the City may conduct or retain an approved engineer to conduct an unannounced spot check of the facility's compliance with applicable FCC radio frequency standards.
4. If there is a change in the FCC's MPE limits for electric and magnetic field strength and power density for transmitters, the operator of each wireless telecommunications facility shall submit to the Zoning Officer written certification by a licensed professional engineer of compliance with applicable FCC radio frequency standards within 90 days of any change in applicable FCC radio

frequency standards or of any modification of the facility requiring a new submission to the FCC to determine compliance with emission standards.

5. If calculated levels exceed 50 percent of the FCC's MPE limits, the operator of the facility shall hire an approved engineer to measure the actual exposure levels.
6. If calculated levels are not in compliance with the FCC's MPE limit, the operator shall cease operation of the facility until the facility is brought into compliance with the FCC's standards and all other applicable requirements.
7. A report of these calculations, required measurements, if any, and the engineer's findings with respect to compliance with the current MPE limits shall be submitted to the Zoning Officer.
8. If the Zoning Officer at any time finds that there is good cause to believe that a telecommunications antenna does not comply with applicable FCC radio frequency standards, the Zoning Officer may require the operator to submit written certification that the facility is in compliance with such FCC standards.

**C. Facilities Approved Before 2002.**

1. The owner or operator of a wireless telecommunications facility that was approved by the City before January 17, 2002, shall submit to the Zoning Officer, within six months from the date of notification, written certification by an engineer that the facility's radio frequency emissions are in compliance with the approved application and any required conditions.
2. The engineer shall measure the radio frequency radiation of the approved facility, including cumulative impact from other nearby facilities, and determine if it meets the FCC requirements.
3. If the report shows that the facility does not comply with applicable FCC requirements, the owner or operator shall cease operation of the facility until the facility is brought into compliance.
4. To ensure the objectivity of the analysis, the City may require, at the applicant's expense, independent verification of the results of the analysis.

**D. Nonconformities.**

1. Any facility that was approved by the City before January 17, 2002, and which does not comply with this chapter on the date of its adoption shall be considered a lawful nonconforming use; provided, that the owner or operator submits the information required in 23.332.100.C (Facilities Approved Before 2002).
2. Roof-mounted or facade-mounted antennas proposed on an existing building, tower, or pole that is legal nonconforming in terms of height shall not extend or project more than 15 feet above the existing height of the building or structure.

3. A lawful nonconforming personal wireless service facility is subject to the requirements of 23.324 (Nonconforming Uses, Structures, and Buildings) except to the extent that they are modified as allowed by this chapter.

**E. Violations.**

1. Failure to submit the information required in this section is considered a violation of the Zoning Ordinance.
2. Any facility found in violation may be ordered to terminate operations by the ZAB following a duly noticed public hearing.

**23.332.110 – Permits and Findings Required for Approval**

**A. Permit Required.**

1. All wireless telecommunications facilities in any district that require a Use Permit or an AUP are subject to the permit findings in this section and Chapter 23.406 (Specific Permit Requirements).
2. Required findings in Chapter 23.406—Specific Permit Requirements shall not be based on aesthetic impacts if the proposed facility would not be readily visible, or on any other matter that the City is prohibited from considering by the Telecommunications Act of 1996.

**B. Modifications.** The Zoning Officer may approve minor modifications and aesthetic upgrades that do not increase the size or visibility of any legally established wireless telecommunication facilities without notice or hearing, subject to compliance with all existing conditions of approval.

**C. Administrative Use Permit.** The following wireless telecommunications facilities require an AUP:

1. Microcell facilities in any district.
2. Modifications to existing sites in Non-Residential Districts.
3. Additions to existing sites in Non-Residential Districts when the site is not adjacent to a Residential District.
4. All new or modified wireless communication facilities in Manufacturing Districts.

**D. Use Permit.** All new or modified wireless telecommunications facilities not listed in Subsection C (Administrative Use Permit) above require a Use Permit except when otherwise required by Section Chapter 23.404.070– Permit Modifications or this chapter.

**E. Findings.** The ZAB or Zoning Officer may approve a Use Permit or AUP under this chapter only if it makes all of the following findings:

1. The proposed project is consistent with the general requirements of this chapter and any specific requirements applicable to the proposed facility.
  2. The proposed antenna or related facility, operating alone and in conjunction with other telecommunications facilities, will comply with all applicable state and federal standards and requirements.
  3. One of the following is true:
    - a. The proposed facility is not readily visible.
    - b. It is infeasible to incorporate additional measures that would make the facility not readily visible.
  4. Except for microcell facilities, the facility is necessary to prevent or fill a significant gap in coverage or capacity shortfall in the applicant's service area and is the least intrusive means of doing so.
  5. The wireless carrier complies with Paragraphs (1) and (2) of Subsection 23.332.090.B (All Facilities). If a wireless carrier has not complied with those sections, the wireless carrier may become compliant by providing current contact information and certification statements for any sites which are not current.
- F. **Basis for Findings.** All findings must be based on substantial information in the record such as, where required, technical analysis by an approved radio frequency engineer, calculations by a state-licensed structural engineer, or other evidence.

### **23.332.120 – Cessation of Operations**

- A. **General.** Within 30 days of cessation of operations of any wireless telecommunications facility approved pursuant to this chapter, the operator shall notify the Zoning Officer in writing.
- B. **Lapse of Permit.** The wireless telecommunications facility permit shall be deemed lapsed and of no further effect six months thereafter unless one of the following is true.
  1. The Zoning Officer has determined that the same operator resumed operation within six months of the notice.
  2. The City has received an application to transfer the permit to another operator.
- C. **Effect of Lapse.**
  1. No later than 30 days after a permit has lapsed, the operator shall remove all wireless telecommunication facilities from the site.
  2. If the operator fails to do so, the property owner shall be responsible for removal, and may use any bond or other assurances provided by the operator pursuant to the requirements of Section 23.332.050– Location Requirements to do so.

3. If such facilities are not removed, the site shall be deemed to be a nuisance pursuant to Chapter 23.414—Nuisance Abatement and the City may call the bond to pay for removal.

D. **Failure to Inform.** Failure to inform the Zoning Officer of cessation of operations of any existing facility constitutes a violation of the Zoning Ordinance and shall be grounds for any or all of the following:

1. Prosecution.
2. Revocation or modification of the permit.
3. Calling of any bond or other assurance secured by the operator pursuant to the requirements of Section 23.332.050— Location Requirements.
4. Removal of the facilities.

E. **Transfer of Ownership.**

1. Any FCC-licensed telecommunications carrier that is buying, leasing, or considering a transfer of ownership of an already approved facility, shall provide written notification to the Zoning Officer and request transfer of the existing Use Permit.
2. The Zoning Officer may require submission of any supporting materials or documentation necessary to determine that the proposed use is in compliance with the existing Use Permit and all of its conditions including, but not limited to, statements, photographs, plans, drawings, models, and analysis by a state-licensed radio frequency engineer demonstrating compliance with all applicable regulations and standards of the FCC and the California PUC.
3. If the Zoning Officer determines that the proposed operation is not consistent with the existing Use Permit, they shall notify the applicant who may revise the application or apply for modification to the Use Permit pursuant to the requirements of Chapter 23.404—Common Permit Requirements.

## **23.334 TRANSPORTATION DEMAND MANAGEMENT**

---

### **Sections:**

23.334.010– Chapter Purpose

23.334.020– Applicability

23.334.030– Transportation Demand Management Program Requirements

23.334.040– Monitoring, Reporting and Compliance

### **23.334.010 – Chapter Purpose**

- A. **Purpose.** The purpose of this chapter is to establish a Transportation Demand Management (TDM) Program that supports:
1. Transportation Element goals to reduce vehicle trips, encourage public transit use and promote bicycle and pedestrian safety, and
  2. Climate Action Plan goals to reduce private vehicle travel and promote mode shift to more sustainable transportation options.

### **23.334.020 – Applicability**

#### **A. Applicability.**

1. The requirements of this chapter apply to residential projects with ten or more units, including residential portions of mixed-use projects.
2. For projects that add ten or more units to an existing building or property, the requirements of this chapter apply to all of the units (existing and new) on the property.
3. The following types of projects are exempt from the requirements of this chapter:
  - a. Projects for which a building permit was issued before March 19, 2021.
  - b. Residential projects, including the residential portion of mixed-use projects or projects that add units to an existing building or property, in the C-DMU district;
  - c. Residential projects, including the residential portion of mixed-use projects, with the majority of the units subject to recorded affordability restrictions. If added to an existing building or property, the entire building or property is exempt.
4. Projects in the Southside Plan area are exempt from the transit benefit requirements in Section 23.334.030.B– Transportation Demand Management Program Requirements (Transit Benefit).

### **23.334.030 – Transportation Demand Management Program Requirements**

- A. **Unbundled Parking.** Parking spaces provided for residents shall be leased or sold separate from the rental or purchase of dwelling units for the life of the dwelling units.
- B. **Transit Benefit.**
  - 1. At least one of the following transit benefits shall be offered, at no cost, to project residents for a period of ten years after the issuance of a Certificate of Occupancy.
    - a. A monthly pass for unlimited local bus transit service; or
    - b. A functionally equivalent transit benefit in an amount at least equal to the price of a non-discounted unlimited monthly local bus pass. Any benefit proposed as a functionally equivalent transportation benefit shall be approved by the Zoning Officer in consultation with the Transportation Division Manager.
  - 2. For projects that include 99 dwelling units or fewer, the project shall provide one transit benefit per bedroom, up to a maximum of two benefits per dwelling unit. For projects of 100 dwelling units or more, the project shall provide one transit benefit for every bedroom in each dwelling unit.
  - 3. A notice describing these transportation benefits shall be posted in a location or locations visible to residents.
- C. **Real-Time Transportation Information.** Any project subject to this chapter shall provide publicly-available, real-time transportation information in a common area, such as a lobby or elevator bay, on televisions, computer monitors or other displays readily visible to residents and/or visitors. Provided information shall include, but is not limited to, transit arrivals and departures for nearby transit routes.

### **23.334.040 – Monitoring, Reporting and Compliance**

- A. **Site Inspection Before Certificate of Occupancy.** For projects subject to this chapter, before issuance of a Certificate of Occupancy, the property owner shall facilitate a site inspection by Planning Department staff to confirm that the physical improvements required in Section 23.334.030.C– Transportation Demand Management Program Requirements (Real-Time Transportation Information) and 23.322.090– Bicycle Parking have been installed. The property owner shall also provide documentation that the programmatic measures required in 23.334.030.A (Unbundled Parking) and 23.334.030.B (Transit Benefit) will be implemented.
- B. **Regular TDM Compliance Reporting.** The property owner shall submit to the Planning Department TDM Compliance Reports in accordance with Administrative

Regulations promulgated by the Zoning Officer that may be modified from time to time to effectively implement this chapter.

- C. **Administrative Fees.** Property owners may be required to pay administrative fees associated with compliance with this chapter as set forth in the City's Land Use Planning Fees schedule.



## **DIVISION 4: PERMITS AND ADMINISTRATION**

### **23.402: Administrative Responsibility**

- 23.402.010– Purpose
- 23.402.020– Review and Decision-Making Authority
- 23.402.030– Planning and Development Department
- 23.402.040– Zoning Officer
- 23.402.050– Landmarks Preservation Commission
- 23.402.060– Design Review Committee
- 23.402.070– Zoning Adjustments Board
- 23.402.080– Planning Commission
- 23.402.090– City Council

### **23.404: Common Permit Requirements**

- 23.404.010– Purpose and Applicability
- 23.404.020– Application Submittal
- 23.404.030– Application Review
- 23.404.040– Public Notice
- 23.404.050– Public Hearings and Decisions
- 23.404.060– Post-Decision Provisions
- 23.404.070– Permit Modifications
- 23.404.080– Permit Revocation

### **23.406: Specific Permit Requirements**

- 23.406.010– Purpose
- 23.406.020– Zoning Certificates
- 23.406.030– Administrative Use Permits
- 23.406.040– Use Permits
- 23.406.050– Variances
- 23.406.060– Master Use Permits
- 23.406.070– Design Review
- 23.406.080– Modification of Development Standards in West Berkeley Plan Area
- 23.406.090– Reasonable Accommodations

### **23.408: Green Pathway**

- 23.408.010– Purpose
- 23.408.020– Applicability
- 23.408.030– Eligibility Determination
- 23.408.040– Green Pathway Application

- 23.408.050– General Requirements
- 23.408.060– Requirements for Large Buildings and Hotels
- 23.408.070– Development Standards
- 23.408.080– Streamlined Permitting Process
- 23.408.090– Tolling
- 23.408.100– Compliance
- 23.408.110– City Manager Authority to Issue Regulations

### **23.410: Appeals and Certification**

- 23.410.010– Chapter Purpose
- 23.410.020– Appeal Subjects and Jurisdiction
- 23.410.030– Filing and Processing of Appeals
- 23.410.040– Hearing and Decision
- 23.410.050– City Council Certifications

### **23.412: Zoning Ordinance Amendments**

- 23.412.010– Purpose
- 23.412.020– Initiation
- 23.412.030– Application
- 23.412.040– Planning Commission Hearing and Action
- 23.412.050– City Council Hearing and Action
- 23.412.060– Findings for Approval
- 23.412.070– Limitations on Resubmittals after Denial
- 23.412.080– Zoning Map Amendment Notations

### **23.414: Nuisance Abatement**

- 23.414.010– Purpose
- 23.414.020– Enforcement Responsibility
- 23.414.030– Violations a Misdemeanor
- 23.414.040– Nuisances Prohibited
- 23.414.050– City Attorney Action
- 23.414.060– Abatement Procedures
- 23.414.070– Statements of Violations
- 23.414.080– Remedies
- 23.414.090– Recovery of Costs
- 23.414.100– Private Right of Action

## **23.402 ADMINISTRATIVE RESPONSIBILITY**

---

### **Sections:**

- 23.402.010– Purpose
- 23.402.020– Review and Decision-Making Authority
- 23.402.030– Planning and Development Department
- 23.402.040– Zoning Officer
- 23.402.050– Landmarks Preservation Commission
- 23.402.060– Design Review Committee
- 23.402.070– Zoning Adjustments Board
- 23.402.080– Planning Commission
- 23.402.090– City Council

### **23.402.010 – Purpose**

This chapter describes City roles and responsibilities when administrating the Zoning Ordinance.

### **23.402.020 – Review and Decision-Making Authority**

- A. **Summary Table.** Table 23.402-1 summarizes the review and decision-making authority when processing permit applications and other requested approvals.
- B. **Meaning of Notations.** Authority roles as noted in Table 23.402-1 mean the following:
  1. “Recommend” means the authority reviews and makes a recommendation to a higher decision-making body.
  2. “Decision” means the authority has the power to approve, conditionally approve, or deny an application.
  3. “Appeal” means the authority has the power to hear an appeal of a decision by a lower review authority.
  4. “–” means the authority role has no role in the application.

**TABLE 23.402-1: REVIEW AND DECISION-MAKING AUTHORITY**

| Type of Action                                          | Zoning Ordinance Location | Role of Authority                   |                |                          |                          |                     |              |
|---------------------------------------------------------|---------------------------|-------------------------------------|----------------|--------------------------|--------------------------|---------------------|--------------|
|                                                         |                           | Planning and Development Department | Zoning Officer | Design Review Commission | Zoning Adjustments Board | Planning Commission | City Council |
| <b>Legislative Actions</b>                              |                           |                                     |                |                          |                          |                     |              |
| Zoning Ordinance Amendments                             | 23.412                    | Recommend                           | –              | –                        | –                        | Recommend           | Decision     |
| <b>Permits</b>                                          |                           |                                     |                |                          |                          |                     |              |
| Administrative Use Permits                              | 23.406.030                | –                                   | Decision       | –                        | Appeal                   | –                   | Appeal       |
| Use Permits                                             | 23.406.040                | Recommend                           | –              | –                        | Decision                 | –                   | Appeal       |
| Master Use Permits                                      | 23.406.060                | Recommend                           | –              | –                        | Decision                 | –                   | Appeal       |
| <b>Design Review</b>                                    |                           |                                     |                |                          |                          |                     |              |
| Design Review                                           | 23.406.070                | Recommend                           | –              | Decision [1]             | Appeal                   | –                   | Appeal       |
| Staff-Level Design Review                               | 23.406.070                | –                                   | Decision       | Appeal                   | Appeal                   | –                   | Appeal       |
| <b>Flexibility and Relief</b>                           |                           |                                     |                |                          |                          |                     |              |
| Variances                                               | 23.406.050                | Recommend                           |                | –                        | Decision                 | –                   | Appeal       |
| Modifications to Development Standards in West Berkeley | 23.406.080                | Recommend                           | –              | –                        | Decision                 | –                   | Appeal       |

|                                                                                                                                                                                                                                                                                                                                           |            |   |          |              |   |   |        |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|---|----------|--------------|---|---|--------|
| Plan Area                                                                                                                                                                                                                                                                                                                                 |            |   |          |              |   |   |        |
| Reasonable Accommodations                                                                                                                                                                                                                                                                                                                 | 23.406.090 | – | –        | See Note [2] | – | – | Appeal |
| <b>Ministerial Actions</b>                                                                                                                                                                                                                                                                                                                |            |   |          |              |   |   |        |
| Zoning Certificates                                                                                                                                                                                                                                                                                                                       | 23.406.020 | – | Decision | –            | – | – | –      |
| <p>Note:</p> <p>[1] Landmarks Preservation Commission approval required for projects that involve landmarks, structures of merit or buildings within a historic district</p> <p>[2] Either the Zoning Officer or Zoning Adjustments Board takes action on reasonable accommodation applications as described in Section 23.406.090.C.</p> |            |   |          |              |   |   |        |

- C. **Multiple Permit Applications.** For projects that include multiple permits, see 23.404.020.F– Application Submittal (Multiple Permit Applications).

### **23.402.030 – Planning and Development Department**

The Planning and Development Department:

- A. Makes recommendations on requested permits and approvals as shown in Table 23.402-1: Review and Decision-Making Authority.
- B. Processes permit applications as provided in 23.404—Common Permit Requirements;
- C. Assumes responsibilities delegated by the Planning and Development Director and Zoning Officer; and
- D. Performs other duties as necessary to administer the Zoning Ordinance.

### **23.402.040 – Zoning Officer**

- A. **Established.** The City Manager shall designate a Planning and Development Department employee to act as the Zoning Officer.
- B. **Responsibilities and Powers.**
  - 1. **The Zoning Officer:**
    - a. Acts as the Secretary to the Zoning Adjustments Board (ZAB) and the Design Review Committee (DRC);
    - b. Determines if land uses, structures, and activities conform with the Zoning Ordinance;
    - c. Serves as the review authority on applications as shown in Table 23.402-1: Review and Decision-Making Authority;
    - d. Interprets the meaning and applicability of the Zoning Ordinance;
    - e. Enforces the Zoning Ordinance in accordance with Chapter 23.414—Nuisance Abatement;
    - f. Issues administrative regulations and procedures for the administration of the Zoning Ordinance;
    - g. Refers persons to a conflict resolution or mediation service in accordance with Section 23.404.050.K– Public Hearings and Decisions (Use of Conflict Resolution and Mediation Service);
    - h. Requests legal opinions from the City Attorney on legal questions regarding pending applications; and

- i. Performs other duties to administer the Zoning Ordinance as assigned by the ZAB, Planning Commission, and City Council.
  2. The Zoning Officer may designate one or more Planning and Development Department staff to perform the duties described in Paragraph (1) above.
- C. Duties as Secretary to ZAB and DRC.** As Secretary to the ZAB and DRC, the Zoning Officer or the Zoning Officer's designee shall:
1. Present to the ZAB and DRC applications for permits and other requested approvals;
  2. Prepare staff reports on applications;
  3. Advise the ZAB and DRC on the meaning and applicability of the Zoning Ordinance; and
  4. Transmit to the City Attorney requests for legal opinions on pending applications.

#### **23.402.050 – Landmarks Preservation Commission**

- A. Design Review.** The Landmarks Preservation Commission (LPC) shall consider Design Review applications for projects that involve landmarks, structures of merit, or buildings within a historic district. The LPC shall either approve, modify, or deny such applications in accordance with Section 23.406.070– Design Review.
- B. Other Responsibilities and Powers.**
1. As provided in Municipal Code Chapter 3.24 (Landmarks Preservation Commission), the LPC shall serve as the review authority for Structural Alteration Permits for designated landmarks, structures of merit, and buildings within a historic district.
  2. Municipal Code Chapter 3.24 identifies additional LPC responsibilities and powers which may affect land use and development in the city.

#### **23.402.060 – Design Review Committee**

- A. Established.** The City shall establish and maintain a Design Review Committee (DRC) to review and approve the design of development projects in accordance with Section 23.406.070– Design Review.
- B. Composition.**
1. The DRC shall consist of seven members, as follows:
    - a. Two members of the Zoning Adjustments Board (ZAB).
    - b. One member of the Landmarks Preservation Commission (LPC).
    - c. One member of the Civic Arts Commission (CAC).

- d. Three members of the public who are Berkeley residents.
- 2. DRC members from boards and commissions shall be appointed by their respective bodies, and members of the public shall be appointed by the ZAB.
- 3. DRC membership shall include at least two-licensed architects, one licensed landscape architect, and two laypersons (persons who are neither a planning or design professional nor an expert in the fields of land use planning, architecture, or landscape architecture).
- 4. The DRC shall elect a chairperson and vice chairperson

**C. Responsibilities and Powers.**

- 1. The DRC shall consider applications for Design Review and either approve, modify, or deny such applications in accordance with Section 23.406.070 (Design Review).
- 2. The DRC may make a recommendation on other matters upon request by the ZAB, Planning Commission, City Council, or other City boards or commissions. ZAB recommendations shall be limited to issues related to building and site design.

- D. Procedures.** The DRC shall adopt rules of procedure and shall keep a record of its proceedings. A majority of the appointed members shall constitute a quorum.

**23.402.070 – Zoning Adjustments Board**

- A. Established.** The City shall establish and maintain a Zoning Adjustments Board (ZAB) to administer the Zoning Ordinance as described in this section.

**B. Composition.**

- 1. The ZAB shall consist of nine members appointed by the City Council in accordance with Municipal Code Chapter 2.04 (City Council).
- 2. The ZAB shall elect a chairperson and vice chairperson.

**C. Responsibilities and Powers.**

- 1. The ZAB:
  - a. Serves as the review authority on applications as shown in Table 23.402-1: Review and Decision-Making Authority;
  - b. Hears appeals on decisions in accordance with Chapter 23.410—Appeals and Certifications;
  - c. Modifies previously approved permits in accordance with Section 23.404.070– Permit Modifications;



- d. Revokes Use Permits and Variances in accordance with Section 23.404.080–Permit Revocation;
  - e. Recommends actions to abate a public nuisance in accordance with Chapter 23.414—Nuisance Abatement;
  - f. Refers persons to a conflict resolution or mediation service in accordance with Section 23.404.050.K (Use of Conflict Resolution and Mediation Service);
  - g. Makes recommendations on other matters as requested by the City Council and Planning Commission; and
  - h. Adopts administrative regulations and procedures for the administration of the Zoning Ordinance.
2. The City Council may assign additional responsibilities to the ZAB as needed in the administration of the Zoning Ordinance.
- D. **Procedures.** The ZAB shall adopt rules of procedure and keep a record of its proceedings. A majority of the appointed members constitutes a quorum.

### **23.402.080 – Planning Commission**

The Planning Commission:

- A. Recommends to the City Council amendments to the Zoning Ordinance in accordance with Chapter 23.412 (Zoning Ordinance Amendments);
- B. Approves revisions to Design Review guidelines and standards as provided in Section 23.406.070 (Design Review); and
- C. Performs other duties as provided in Municipal Code Chapter 3.28 (Planning Commission).

### **23.402.090 – City Council**

The City Council:

- A. Takes action on proposed Zoning Ordinance amendments in accordance with Chapter 23.412 (Zoning Ordinance Amendments);
- B. Hears appeals on and certifies decisions in accordance with Chapter 23.410 (Appeals and Certification); and
- C. Assumes other responsibilities and take actions on other matters related to the Zoning Ordinance in accordance with the Municipal Code and state and federal laws.

## **23.404 COMMON PERMIT REQUIREMENTS**

---

### **Sections:**

- 23.404.010– Purpose and Applicability
- 23.404.020– Application Submittal
- 23.404.030– Application Review
- 23.404.040– Public Notice
- 23.404.050– Public Hearings and Decisions
- 23.404.060– Post-Decision Provisions
- 23.404.070– Permit Modifications
- 23.404.080– Permit Revocation

### **23.404.010 – Purpose and Applicability**

This chapter establishes requirements that apply to all discretionary permits required by the Zoning Ordinance.

### **23.404.020 – Application Submittal**

- A. **Application Submittal.** Applications for discretionary permits required by the Zoning Ordinance shall be submitted to the Planning and Development Department (“Department”).
- B. **Application Form and Contents.**
  1. Applications shall be made in writing on a form provided by the Department.
  2. Applications shall identify one person as the applicant.
  3. Applications shall be filed with all information and materials required by the Department. Depending on the type of project and required permit, required information and materials may include plans, renderings, models, photographs, material samples, reports, studies, and other items necessary to describe existing conditions and the proposed project.
  4. All submitted application materials become City property available to the public.
  5. The applicant is responsible for the accuracy and completeness of all information submitted to the City.
- C. **Eligibility for Filing.** An application may be filed by:
  1. The owner of the subject property;
  2. An agent with written authorization to represent the owner;
  3. A person under contract or with an exclusive option to purchase the property, with written consent of the current owner;
  4. A tenant with written consent of the owner or the owner’s authorized designee; or
  5. An agency lawfully instituting eminent domain proceedings.

**D. Pre-Application Notice Posted by Applicant.**

1. Before submitting an application for a discretionary permit, an applicant shall post a conspicuous notice of the proposed project readily visible from the street adjacent to the property's primary frontage.
2. The form and contents of the notice shall be as specified by the Department.

**E. Application Fees.****1. When Required.**

- a. An application shall be accompanied by all required fees listed in the current Fee Schedule approved by the City Council.
- b. The Department will process an application only if all required fees are paid, unless the City approves a fee waiver in accordance with Paragraph 2 (Fee Waivers) below. The Department will not deem an application complete if a required fee remains unpaid.
- c. Application fees are not required when the City is the applicant, or when a fee is waived under any other provision of the Municipal Code.

**2. Fee Waivers.** In addition to seeking a fee waiver or deferral under other provisions of the Municipal Code, an applicant may request a fee waiver or deferral as follows:

- a. An applicant shall submit to the Department a written request for a fee waiver or deferral before submitting the application. The request shall identify the amount of all Current Planning fees required for the project and describe the reasons why the fee waiver or deferral is necessary.
- b. The Director shall forward the request to the City Manager. The City Manager may approve the request upon finding that:
  - i.* The project will provide a significant public service or benefit, and
  - ii.* The waiver or deferral is necessary to make the project economically feasible to construct or establish.
- c. The City Manager shall notify the City Council of a decision to approve a requested fee waiver or deferral. At its discretion, the City Council may reverse the City Manager's decision and deny the request.
- d. If the request is approved, the applicant shall include with the application a letter from the City Manager authorizing the fee waiver or deferral. The Department will accept the application only if submitted with the City Manager's letter.

**3. Refunds and Withdrawals.**

- a. If an application is withdrawn before a decision, the applicant may be eligible for a refund of a portion of the fee.
- b. The amount of the refund shall be determined by the Zoning Officer based on the level of staff review conducted to date. Refunds of fees may not be made for denied applications.

#### **F. Multiple Permit Applications.**

1. **Zoning Ordinance Discretionary Permits.** The following procedures apply to proposed projects that require multiple discretionary permits under the Zoning Ordinance (e.g., Use Permit and Variance).
  - a. An applicant shall request City approval of all required permits as part of a single application unless the Zoning Officer waives this requirement.
  - b. The Department shall process multiple permit applications for the same project concurrently.
  - c. City action on projects requiring multiple permits shall occur as follows:
    - i.* Concurrently for permits reviewed by the same review authority (e.g., the Zoning Adjustments Board (ZAB) concurrently reviews and acts on a Variance and Use Permits required for a project); and
    - ii.* Sequentially for permits reviewed by different review authorities, as necessary (e.g., the City Council approves a Zoning Map amendment before ZAB action on a Use Permit).
2. **Design Review.** See Section 23.406.070 (Design Review) for the Design Review application process.
3. **Other Permits.**
  - a. Separate applications are required for permits required by portions of the Municipal Code outside of the Zoning Ordinance. The City will review and act on these applications in a separate but coordinated process from applications required under the Zoning Ordinance.
  - b. For example, if a project requires both a Use Permit approved by the ZAB and a Structural Alteration Permit (SAP) approved by the Landmarks Preservation Commission (LPC), then a separate SAP application is required. A SAP application is processed separately from the Use Permit applications and is scheduled for consideration at a hearing before the LPC.

### **23.404.030 – Application Review**

#### **A. Review for Completeness.**

1. **Determination of Completeness.** Department staff shall determine whether an application is complete based on the Department application submittal checklist.
  2. **Request for Additional Information.** If it is not complete, the Department shall inform the applicant in writing as to the information and materials needed to complete the application.
  3. **Review Timeline.** The Department shall review and determine whether an application is complete within the timelines required by Government Code Section 65920 et seq. (Permit Streamlining Act).
- B. Record of Date of Complete Application.** The Department shall record the date the application is deemed complete.
- C. Referrals to Landmarks Preservation Commission.** At every regular Landmarks Preservation Commission (LPC) meeting, the Department shall provide the LPC a list of all pending permit applications.
- D. Project Evaluation and Staff Reports.**
1. **Staff Evaluation.** The Department shall review all applications to determine if they comply with the Zoning Ordinance, the General Plan, and other applicable City policies and regulations and state laws.
  2. **Staff Report.** For all applications requiring review by the ZAB and City Council, the Department shall prepare a staff report describing the proposed project and including, where appropriate, a recommendation to approve, approve with conditions, or deny the application.
  3. **Report Distribution.** The staff report shall be given to the applicant after it is provided to the review authority and before action on the application.
- E. Environmental Review.**
1. **CEQA Review.**
    - a. After acceptance of a complete application, the Department shall review the project in compliance with the California Environmental Quality Act (CEQA) and any adopted City CEQA guidelines.
    - b. The City shall determine the required level of environmental review (e.g., exemption, Negative Declaration) within the timeframe required by CEQA.
  2. **Special Studies Required.** Special studies, paid for in advance by the applicant, may be required to supplement the City's CEQA compliance review.
- F. Summary Denial of Applications.**
1. **Section Purpose.** This section describes the process by which the Zoning Officer may deny an application without notice or hearing ("summary denial") for

property subject to City action to abate a public nuisance or correct a Zoning Ordinance violation.

**2. Applications Subject to Summary Denial.**

- a. The Zoning Officer may summarily deny an application that would legalize a structure or use subject to a final City order under 23.414 (Nuisance Abatement).
- b. The Zoning Officer shall not summarily deny applications for permits that are necessary comply with any such order.

**3. Factors to Consider.** When deciding whether to deny such an application, the Zoning Officer shall consider:

- a. Whether the project will be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of the proposed use;
- b. Whether the project will be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City;
- c. Whether the applicant had an adequate opportunity to submit the application before the adoption of a final order under Chapter 23.414 (Nuisance Abatement); and
- d. The level of permit applied for (i.e., AUP, Use Permit, or Variance). Applications for Variances as a means of legalizing a violation are particularly disfavored.

**4. Hearing Not Required.** A public hearing is not required for the Zoning Officer to summarily deny an application.

**5. Decision is Final.** A decision by the Zoning Officer to summarily deny an application is final and may not be appealed.

**23.404.040 – Public Notice**

**A. Notice of Administrative Decisions.**

1. **When Required.** A Notice of Administrative Decision shall be given after the Zoning Officer's decision on an Administrative Use Permit (AUP).
2. **Content of Notice.** A Notice of Administrative Decision shall contain the following information:
  - a. A description of the proposed project in the AUP application.
  - b. The Zoning Officer's decision on the AUP application.

- c. The location and times in which the application may be reviewed by the public.
  - d. The procedure and time period in which the decision may be appealed to the Zoning Adjustments Board (ZAB).
  - e. The address where appeals may be filed.
3. **Timing of Notice.** A Notice of Administrative Decision shall be posted and mailed after the Zoning Officer's decision on the AUP.
  4. **Notice Posting.** A Notice of Administrative Decision shall be posted at:
    - a. Three visible locations in the vicinity of the subject property; and
    - b. The lobby of the Permit Service Center.
  5. **Notice Mailing.**
    - a. **Minimum Requirement.** A Notice of Administrative Decision shall be mailed to the following:
      - i.* Neighborhood and community organizations with a registered interest in receiving notice of the proposed project. See Section 23.404.040.E (Public Notice).
      - ii.* For projects in or adjacent to a Residential District, the owners and residents of the abutting properties.
      - iii.* For major residential additions in the R-1 district within the Hillside overlay zone, the owners and residents of properties within a 300-foot radius of the subject property.
      - iv.* The City of Berkeley Central Library.
    - b. **Additional Notice.** The Zoning Officer may include a larger area to receive a mailed notice when the proposed project may impact a larger area.
  6. **Temporary Uses and Structures.** An AUP for a temporary use or structure is subject to the same notice requirements as other AUPs, except that notice shall be provided at least 14 days before the establishment of the temporary use or structure.
  7. **Failure to Receive Notice.** The validity of the decision shall not be affected by the failure of any property owner, resident, or neighborhood or community organization to receive a mailed notice.
- B. Public Hearing Notice.**
1. **When Required.** Public notice shall be given as required by this section for:

- a. Zoning Adjustment Board (ZAB) hearings on Use Permits, Variances, and other decisions requiring a public hearing as specified in the Zoning Ordinance; and
  - b. City Council hearings on appeals of ZAB decisions.
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 project, including the number of dwelling units and floor area if applicable.
  - c. Maps, plans, and other information needed to describe and illustrate the proposed project, as determined necessary by the Department.
  - d. The environmental review status under the California Environmental Quality Act (CEQA).
  - e. Directions on how to obtain further information about the proposed project or hearing.
  - f. The location and times the application may be reviewed by the public.
  - g. Instructions to submit written comments on the proposed project.
3. **Timing of Notice.** Notices shall be posted and mailed at least 14 days before the hearing unless a longer notice period is required by state law. The Zoning Officer or ZAB may extend the notice period to a maximum of 30 days for applications of major significance.
4. **Notice Posting.** A notice of public hearing shall be posted:
- a. At three visible locations in the vicinity of the subject property:
  - b. At the Civic Center (Old City Hall); and
  - c. In the lobby of the Permit Service Center.
5. **Notice Mailing.**
- a. **Minimum Requirement.** A notice of public hearing shall be mailed to the following:
    - i. The owners and residents of the abutting and confronting properties.
    - ii. For the construction or demolition of one or more dwelling units, all property owners and residents within 300 feet on the same street or streets as the proposed project, including the abutting properties to the rear and within a 300-foot radius of the subject property.



- iii. For a relocated building, all property owners and residents within a 300-foot radius of both the existing and proposed new location of the building.
  - iv. Neighborhood and community organizations with a registered interest in receiving notice of the proposed project. See Section 23.404.040.E (Public Notice).
  - v. The City of Berkeley Central Library.
  - vi. Any person who has filed a written request for notice.
- b. **Additional Notice.** The Zoning Officer, ZAB, or City Council may include a larger area to receive a mailed notice when deemed appropriate.
  - c. **Failure to Receive Notice.** The validity of the hearing shall not be affected by the failure of any property owner, resident, or neighborhood or community organization to receive a mailed notice.
6. **Master Use Permit.** For a Master Use Permit application, all businesses, residents, and property owners within 500 feet of the subject property shall receive a notice in addition to the notice recipients listed in Paragraph F.1 (Minimum Requirement) above.

### 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 14 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:
  - a. At least 14 days before the hearing; and then again
  - b. 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.

#### D. **Public Notice for Design Review.**

##### 1. **Staff-Level Design Review.**

- a. **When Required.** Notice of Design Review shall be posted on or adjacent to the subject property at least 14 days before staff decision on Design Review application.
- b. **Notice Contents.** A Notice of Design Review shall contain the following information:
  - i.* A description of the proposed project.
  - ii.* Staff's anticipated decision on the Design Review application.
  - iii.* The location and times at which the application may be reviewed by the public.
  - iv.* The procedure and time period in which appeals to the Design Review Committee may be made.
  - v.* The address where such appeals may be filed.

##### 2. **Design Review Committee Meetings.**

- a. **Meeting Agenda.** Agendas for Design Review Committee (DRC) meetings shall be posted at the Civic Center (Old City Hall) at least 72 hours before the meeting. The agenda must list all projects and discussion items to be considered at that DRC meeting.
- b. **Posting and Mailing Notice Not Required.** There is no requirement to mail notices or post a notice on a subject property in advance of the DRC meeting.

#### E. **Registry of Organizations to Receive Notice.**

1. The Department shall maintain a registry of neighborhood and community organizations to receive notices of public hearings and administrative decisions.
2. An organization shall be included in the registry shall submit a written request to the Department with the following information:
  - a. The name and address of the organization.
  - b. The names, addresses and phone numbers of the contact persons.
  - c. The geographic area of interest, shown on a map, for which notices will be sent to the organization.

3. It is the responsibility of the organization to inform the Department of any changes to the organization information identified in Paragraph (2) above.

### **23.404.050 – Public Hearings and Decisions**

- A. **General.** Hearings shall be conducted in a manner consistent with the procedures approved by the review authority.
- B. **Time and Place of Hearing.** A hearing shall be held at the date, time and place for which notice was given, unless the required quorum of review authority members is not present.
- C. **Public Comment.** All hearings shall be open to the public, which have the opportunity to present their views and be heard in accordance with established procedures.
- D. **Quorum Required for Action.** A majority of the members of review authority must be present to take action on an application.
- E. **Continued Hearings.**
  1. Any public hearing may be continued from time to time without further notice, provided that the chair of the review authority announces the date, time, and place to which the hearing will be continued before the adjournment or recess of the hearing.
  2. Hearings may not be continued beyond the time limits for reviewing applications established by the Permit Streamlining Act, CEQA, and other state and federal laws unless the applicant expressly waives their rights relating to time limits for City action on a pending application.
- F. **Action.**
  1. After the close of public hearing, the review authority shall either approve, modify, or deny the application; continue the hearing to a future date; or refer the application to a mediation or conflict resolution service.
  2. If an application is referred to mediation, it must return to the review authority for action.
- G. **CEQA.** For projects not subject to a CEQA exemption, the review authority that approves the application takes final action on the project's CEQA determination. Final action on the CEQA determination, when required, shall occur before or concurrent with action on required permits. The City is not required to take final action on CEQA documents for denied applications.
- H. **Conditions of Approval.**

1. The review authority may attach conditions to any permit as it deems reasonable or necessary to achieve consistency with the General Plan and Zoning Ordinance, and to promote the public health, safety, and welfare.
2. As a condition of approval, the City may require an applicant to provide adequate financial security to guarantee the proper completion of an approved project.
3. Any approval may be subject to time limits.

**I. Exceptions to Protect Constitutional Rights.**

1. The ZAB or City Council may waive or limit the application of any Zoning Ordinance requirement to a development project if it finds that such requirement would result in a deprivation of the applicant's constitutional rights.
2. The burden of establishing that this exemption applies is on the applicant.

**J. Use of Conflict Resolution or Mediation Service**

1. **General.** The ZAB or Zoning Officer may refer an applicant and neighbors to a conflict resolution or mediation service to resolve conflicts over a proposed project.
2. **Eligible Services.** The ZAB or Zoning Officer may refer participating parties only to a conflict resolution or mediation service on a pre-approved list maintained by the City.
3. **Non-Binding Results.** The results of the conflict resolution or mediation service shall be non-binding on the final decision of the ZAB or Zoning Officer.
4. **Timing of Referral.** A referral may be made at any time after an application is deemed complete and before a final decision on the application.
5. **Additional Meetings Allowed.** Nothing in this section prevents the parties from meeting on their own at any time, with or without a mediator, in an attempt to resolve their differences.
6. **Early Discussions Encouraged.** The City encourages applicants and neighbors to discuss proposed projects early in the project-planning process so that differences may be resolved before the submission of an application.
7. **Payment for Service.** The applicant shall pay for the cost of conflict resolution or mediation service.
8. **Rules and Expectations.** Mediation and conflict resolution shall be conducted in accordance with the following provisions, a copy of which shall be made available to participating parties, before beginning the process.

- a. The goal of mediation is to seek a mutually agreeable result for the pending application.
- b. Participation for the applicant and others parties is strictly voluntary.
- c. All participants shall be made aware that there is no City requirement to come to an agreement.
- d. The ZAB or Zoning Officer shall direct the mediator as to what issues are to be addressed in the mediation process. The mediator may ask the ZAB or the Zoning Officer for a clarification of these issues from time to time.
- e. Department staff will be available to provide the mediating parties with information on rights and requirements prescribed by the Zoning Ordinance.
- f. The mediation service will provide the ZAB or the Zoning Officer with a report as to the result of the mediation within 45 days of the referral.
- g. If no agreement between the parties is reached within 45 days, or at any time that the mediator indicates that further meetings between parties is futile, the ZAB or Zoning Officer shall proceed with making a decision on the application. If the parties to the mediation/conflict resolution agree to continue the mediation process, the process may be extended for an additional time period not to exceed 45 days. Unless the applicant expressly waives their rights relating to time limits for City action on a pending application, in no case shall the time periods for mediation cause the application review period to exceed the time limits prescribed by state or federal law.
- h. Participants in mediation are advised that the ZAB or Zoning Officer cannot deny applicants the opportunity to develop their properties in a reasonable manner. The Zoning Ordinance requires that a project must meet all minimum requirements and any other applicable City ordinances and regulations.
- i. Results of the mediation will in no way be binding upon the City, and the ZAB or Zoning Officer may approve, deny, or modify any aspect of any mediated agreement.
- j. A participant who has indicated either agreement or disagreement with the results of a mediation is in no way bound by their decision, and may change their mind after the mediation.
- k. Participation in a mediated meeting, or agreement with the results of a mediation, affects in no way the statutory right of any party to appeal the ZAB or Zoning Officer decision.
- l. Only those aspects of a mediated agreement that are either incorporated into the approved plans of a project, or are made conditions of approval, shall be enforceable by the City.

**K. Resubmittal of Same Application.**

1. **Resubmittals Prohibited.** For twelve months following the denial of a discretionary permit application, the Department may not accept an application that is the same or substantially similar to the previously denied application, unless:
  - a. The application was denied without prejudice; and/or
  - b. Evidence or substantially changed conditions warrant resubmittal as determined by the Zoning Officer.
2. **Determination.** The Zoning Officer shall determine whether an application is the same or substantially similar to the previously denied application.
3. **Appeal.** The determination of the Zoning Office may be appealed to the ZAB, in compliance with Chapter 23.410 (Appeals and Certification).

**L. Notice of ZAB Decisions.**

1. A Notice of Decision shall be issued after the ZAB:
  - a. Approves, modifies, or denies a Use Permit or Variance application; or
  - b. Takes action on an appealed decision.
2. The Notice of Decision shall be issued before the ZAB's next regular meeting and shall describe the ZAB's action, findings, and applicable conditions.
3. The Notice of Decision shall be posted in the lobby of the Permit Service Center and shall be mailed to:
  - a. The applicant;
  - b. The appellant, if applicable;
  - c. Any person who has filed a written request for notice; and
  - d. The City of Berkeley Central Library.
4. The Notice of Decision shall be filed with the City Clerk and provided to the ZAB. The City Clerk shall make the notice available to interested members of the City Council and the public.

**23.404.060 – Post-Decision Provisions****A. Effective Dates.**

1. **Council Decisions.**
  - a. A City Council decision on a Zoning Ordinance Amendment and other legislative matters is final and becomes effective 30 days after the decision is made.

b. A City Council decision on permits, appeals, and other non-legislative matters is final and effective on the date the decision is made.

2. **Other Decisions.** The following applies to decisions of the Zoning Officer, Design Review Committee, and ZAB.

a. A non-appealable decision is final and effective on the date the decision is made.

b. An appealable decision is final and effective upon the completion of the appeal period for the decision if the decision is not appealed or certified by the City Council as provided in Chapter 23.410 (Appeals and Certifications).

## B. Effect of Approval.

1. **Approval Limited to Proposed Project.** An approval authorizes only the proposed project described in the application. In no way does an approval authorize other uses, structures or activities not included in the project description.

2. **Replacement of Existing Uses.** When the City approves a new use that replaces an existing use, any prior approval of the existing use becomes null and void when permits for the new use are exercised (e.g., building permit or business license issued). To reestablish the previously existing use, an applicant must obtain all permits required by the Zoning Ordinance for the use.

3. **Periodic Review and Reporting.**

a. The City may require periodic review of an approved project to verify compliance with permit requirements and conditions of approval.

b. The permit holder or property owner is responsible for complying with any periodic reporting, monitoring, or assessments requirement.

4. **Conformance to Approved Plans.**

a. **Compliance.** All work performed under an approved permit shall be in compliance with the approved plans and any conditions of approval.

b. **Changes.** Changes to an approved project shall be submitted and processed in compliance with Section 23.404.070 (Permit Modifications).

C. **Time Limits.** This subsection applies to approved permits that have not been exercised.

1. **Exercised Defined.**

a. A permit authorizing a land use is exercised when both a valid City business license is issued (if required) and the land use is established on the property.



- b. A permit authorizing construction is exercised when both a valid City building permit (if required) is issued and construction has lawfully begun.

**2. Expiration of Permit.**

- a. The Zoning Officer may declare a permit lapsed if it is not exercised within one year of its issuance, except as provided in Paragraph (b) below.
- b. A permit authorizing construction may not be declared lapsed if the applicant has applied for a building permit or has made a substantial good faith effort to obtain a building permit and begin construction.
- c. The Zoning Officer may declare a permit lapsed only after 14 days written notice to the applicant.
- d. A determination that a permit has lapsed may be appealed to the ZAB in accordance with Chapter 23.410 (Appeals and Certification).

- 3. Effect of Lapsed Permit.** A permit declared lapsed shall be void and of no further force and effect. To establish the use or structure authorized by the lapsed permit, an applicant must apply for and receive City approval of a new permit.

- D. Permits Remain Effective for Vacant Property.** Once a permit for a use is exercised and the use is established, the permit authorizing the use remains effective even if the property becomes vacant. The same use as allowed by the original permit may be re-established without obtaining a new permit.

**23.404.070 – Permit Modifications**

- A. Purpose and Applicability.** This section establishes requirements and procedures for an applicant to request modification to an approved discretionary permit.
- B. Permit Modification Required.** City approval of a permit modification is required to:
1. Expand the floor or land area devoted to an approved use;
  2. Expand a customer service area and/or increase the number of customer seats;
  3. Change a building's occupant load rating under the City's Building Code so that it is classified in a different category with a higher occupancy rating;
  4. Increase the number of employees, beds, rooms or entrances;
  5. Establish a new product line, service, function or activity so as to substantially change the character of the use;
  6. Increase the volume of production, storage or capacity of any business manufacturing process or activity;

7. Change the type of alcohol sales and/or service; and
  8. Change, expand, or intensify a use or structure in any other manner or substantially alters the use or structure.
- C. **Review Authority.** A permit shall be modified by the review authority which originally approved the permit.
- D. **Public Notice and Hearing.**
1. **Exercised Permits.** Public notice and hearing in compliance with this chapter is required to modify a permit that has been exercised. See Section 23.404.060.C.1 (Exercised Defined).
  2. **Permits Not Yet Exercised.** For modifications to permits not yet exercised, the Zoning Officer or ZAB may act on the permit modification without a public hearing, or may set the matter for public hearing at its discretion. A noticed public hearing for a permit modification shall occur in compliance with this chapter.
- E. **New Building Permits Required.** A building permit may not be modified after construction is complete. New construction in accordance with a modified permit requires issuance of a new building permit.

### **23.404.080 – Permit Revocation**

#### **A. Purpose and Applicability.**

1. This section establishes procedures for the City to revoke or modify a discretionary permit for completed projects due to:
  - a. Violations of permit requirements;
  - b. Changes to the approved project; and/or
  - c. Vacancy for one year or more.
2. Notwithstanding anything to the contrary, no lawful residential use can lapse, regardless of the length of time of the vacancy.
3. Expiration of permits not yet exercised are addressed in Section 23.404.060.C (Time Limits).

#### **B. Initiation.**

1. Proceedings to revoke or modify a permit may be initiated by Zoning Officer, Zoning Adjustments Board (ZAB), or City Council referral.
2. Such referral shall identify the permit being considered, the property to which the permit applies, and the reason for the potential revocation or modification.
3. The Zoning Officer shall determine the public hearing date for all referrals.

### C. **ZAB Recommendation.**

#### 1. **Public Hearing.**

- a. The ZAB shall hold a public hearing on a permit revocation or modification in compliance with Section 23.404.050 (Public Hearings and Decisions). Notice shall be given in conformance with Section 23.404.040.B (Public Hearing Notice).
- b. The Department shall notify the current permit holder of the date, time, and location of the hearing.

#### 2. **ZAB Recommendation.**

- a. The ZAB may recommend that the City Council revoke or modify the permit based upon the findings shown in Subsection E (Findings) below.
- b. The ZAB recommendation shall be:
  - i.* Based on the evidence, testimony, and facts presented to the ZAB at the hearing;
  - ii.* Supported by written findings; and
  - iii.* Issued within 35 days after the conclusion of the hearing.

3. **Final Decision.** A ZAB recommendation to deny or modify a permit shall be deemed a final decision if the permit holder consents to the recommendation within 10 days after the recommendation is made. In such a case, there shall be no City Council review and action on the matter.

4. **Report to City Clerk.** The Department shall file the ZAB's recommendation with the City Clerk within 14 days following the recommendation.

### D. **City Council Action.**

1. **Report to Council.** The City Clerk shall present a ZAB recommendation to the City Council at soonest possible regular City Council meeting.

#### 2. **Public Hearing.**

- a. If the ZAB recommends that the City Council revoke or modify the permit, the City Council shall hold a public hearing on the matter within 60 days after the ZAB issued its recommendation.
- b. If the ZAB does not recommend that the City Council revoke or modify the permit, the City Council may hold a public hearing on the matter at its discretion.

3. **Council Decision.** The City Council may modify or revoke the permit based upon the findings shown in Subsection E (Findings) below.

E. **Findings.** The City Council may revoke or modify a permit if any of the following findings can be made:

1. The permit holder has failed to comply with one or more of the conditions of approval.
2. The use or structure has been substantially expanded or changed in character beyond the approved project.
3. The property has been vacant for one year and the permit holder has not made a good faith effort to re-occupy the property with the use allowed by the approved permit.

G. **Notice of Decision.**

1. If the City Council revokes or modifies a permit, the City Clerk shall issue a Notice of Decision describing the City Council's action, with its findings.
2. The City Clerk shall mail the notice to the permit holder, the property owner, the person who requested proceedings under this chapter (if any), and any person who requests such a notification.
3. The City Clerk shall file a copy of the Notice of Decision with the Department.

H. **Remedies.**

1. If the City revokes or modifies a permit, the City may impose any of the following remedies:
  - a. Enjoin the use in whole or in part.
  - b. Impose reasonable conditions upon any continued operation of the use, including existing non-conforming uses.
  - c. Require continued compliance with newly imposed any conditions.
  - d. Require the permit holder to guarantee compliance with newly imposed conditions.
2. If the permit holder fails to comply with newly imposed conditions, the City may impose additional conditions or enjoin the use in whole or in part.

I. **Recovery of Costs.**

1. **Permit Revocation and Modification.**

- a. The City may recover the costs to administer permit revocation and modification proceedings in accordance with Sections 1.24.140 through 1.24.210 of Municipal Code Chapter 1.24 (Abatement of Nuisances), except as provided in Paragraph (b) below.

- b. The hearing provided by Section 1.24.180 (Service of Notice of Hearing) shall be held by the City Manager or his/her designee and may be appealed to the City Council within ten days after a decision is mailed. The Council shall hold a hearing on appeals as shown in Section 1.24.180.

**2. Remedies.**

- a. The City Council may, by resolution, establish reasonable hourly rates which may be charged for the time spent by City employees in the performance of their employment under this section. These hourly rates may be charged on an on-going basis for time spent with respect to any building, structure or use if the City Council takes any action authorized by Subsection G (Remedies) above. In this case, payment of costs charged under this paragraph shall be made a condition of continued operation of the building, structure, or use.
- b. Payments submitted under this Paragraph 2 (Remedies) shall be deducted from any payments submitted under previous Paragraph 1 (Permit Revocation and Modification).

## **23.406 SPECIFIC PERMIT REQUIREMENTS**

---

### **Sections:**

- 23.406.010– Purpose
- 23.406.020– Zoning Certificates
- 23.406.030– Administrative Use Permits
- 23.406.040– Use Permits
- 23.406.050– Variances
- 23.406.060– Master Use Permits
- 23.406.070– Design Review
- 23.406.080– Modification of Development Standards in West Berkeley Plan Area
- 23.406.090– Reasonable Accommodations

### **23.406.010 – Purpose**

This chapter identifies procedures for specific types of permits required by the Zoning Ordinance. See Chapter 23.404 (Common Permit Requirements) for procedures that apply generally to all types of permits.

### **23.406.020 – Zoning Certificates**

A. **Purpose.** A Zoning Certificate is a ministerial approval to:

1. Confirm that a structure or land use complies with the Zoning Ordinance; and
2. Establish a record of the initial establishment of a structure or land use.

B. **When Required.**

1. Unless specifically stated otherwise in the Zoning Ordinance, a Zoning Certificate is required to:
  - a. Construct, modify, repair, or move a structure; and/or
  - b. Establish, change, or expand a land use.
2. A Zoning Certificate is not required to:
  - a. Continue a previously-approved use or structure; or
  - b. Establish a temporary use or structure allowed by right as shown in 23.302.030.A (Permitted By Right).

C. **Applications.**

1. Zoning Certificate applications shall be made in writing on a form provided by the Department accompanied by all fees, information, and materials as required by the Department.
2. An application fee is not required where the legal use of property or building is unchanged and no building alterations occur.

D. **Referrals.** The Zoning Officer may review applications referred from other City departments, including building permits and business licenses applications, and require that applicants submit Zoning Certificate applications and additional information as needed.

E. **Review and Action.**

1. The Zoning Officer shall review a Zoning Certificate application to verify compliance with the Zoning Ordinance. If the project complies with all applicable requirements, the Zoning Officer shall approve the application.
2. The Zoning Officer may attach to the Zoning Certificate project plans and other information as needed to document project compliance with the Zoning Ordinance.

F. **When Exercised.** A Zoning Certificate is considered exercised when either:

1. The approved use is established at the subject premises; or
2. In the case of construction, when a valid building permit, if required, is issued for the approved structure and construction has begun.

G. **Scope of Approval.** A Zoning Certificate applies only to the structures and uses shown in the application specifically approved through the application. A Zoning Certificate does not in any way validate or constitute approval of any building, structure, use, subdivision, or lot line adjustment not shown in the application.

H. **Appeals.** A decision on a Zoning Certificate may not be appealed.

I. **Non-Compliance.** A Zoning Certificate is considered null and void if a structure or land use is established:

1. Contrary to the project description attached to a Zoning Certificate approval; and
2. In a manner that violates the Zoning Ordinance or requires additional City approvals.

### **23.406.030 – Administrative Use Permits**

A. **Purpose.** An Administrative Use Permit (AUP) is a discretionary permit approved by the Zoning Officer to ensure that a proposed project will not adversely impact neighboring properties or the general public.

B. **Review Authority.**

1. The Zoning Officer takes action on AUP applications.
2. For a project with special neighborhood or community significance, the Zoning Officer may refer an AUP application to the Zoning Adjustments Board (ZAB) for

review and final decision. In such an instance, the ZAB shall review and act on the application following the requirements that apply to Use Permit applications.

**C. When Required.** An AUP is required for:

1. Land uses and development projects in each district as identified in Chapters 23.202 – 23.210 (Zoning Districts);
2. Temporary land uses and structures in accordance with Section 23.302.030.B (AUP Required); and
3. Other types of development projects when specifically required by the Zoning Ordinance.

**E. Public and City Franchise Uses.** The Zoning Officer may issue an AUP for any accessory building for public use or any use on City-owned property that is subject to franchise by the City. Such an AUP is subject to the same appeal and certification procedures as all other AUPs.

**F. Public Notice and Hearing.** See Section 23.404.040.A (Notice of Administrative Decisions).

**H. Findings for Approval.**

1. To approve an AUP, the Zoning Officer shall find that the proposed project:
  - a. Will not be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or working in the area or neighborhood, of the proposed use; and
  - b. Will not be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.
2. To approve the AUP, the Zoning Officer must also make any other AUP findings specifically required by the Zoning Ordinance for the proposed project.
3. When taking action on an AUP, the Zoning Officer shall consider the following when making findings:
  - a. The proposed land use; and
  - b. The structure or addition that accommodates the use.
4. Required findings shall be made based on the circumstances existing at the time a decision is made on the application.
5. The Zoning Officer shall deny an AUP application if unable to make any of the required findings.

**I. ZAB Notification.** The Zoning Officer shall inform the ZAB of all AUP decisions.



### 23.406.040 – Use Permits

- A. **Purpose.** A Use Permit is a discretionary permit approved by the Zoning Adjustments Board (ZAB) to ensure that a proposed project will be designed, located, and operated to be compatible with neighboring properties and minimize impacts to the general public.
- B. **Review Authority.** The ZAB takes action on all Use Permit applications.
- C. **When Required.** A Use Permit is required for:
1. Land uses and development projects in each district as identified in Chapters 23.202 – 23.210 (Zoning Districts).
  2. Other types of development projects when specifically required by the Zoning Ordinance.
- D. **Public Notice and Hearing.** The ZAB shall review and take action on a Use Permit application at a noticed public hearing in compliance with Chapter 23.404 (Common Permit Requirements).
- E. **Findings for Approval.**
1. To approve a Use Permit, the ZAB shall find that the proposed project:
    - a. Will not be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or visiting in the area or neighborhood of the proposed use; and
    - b. Will not be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City.
  2. To approve the Use Permit, the ZAB must also make any other Use Permit findings specifically required by the Zoning Ordinance for the proposed project.
  3. When taking action on a Use Permit, the ZAB shall consider in its findings:
    - a. The proposed land use; and
    - b. The structure or addition that accommodates the use.
  4. Required findings shall be made based on the circumstances existing at the time a decision is made on the application.
  5. The ZAB shall deny a Use Permit application if it determines that it is unable to make any of the required findings.

### 23.406.050 – Variances

- A. **Purpose.** A Variance is a discretionary approval that allows for deviations from development standards and land use regulations in the Zoning Ordinance. The City

may grant a Variance only when the strict application of development standards creates a unique hardship due to unusual circumstances associated with the property.

**B. When Allowed.**

1. **Deviations Allowed with a Variance.** 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.
2. **Deviations Allowed with a Use Permit.** The ZAB may allow deviations from building setback, lot coverage, and on-site parking standards with a Use Permit instead of a Variance if:
  - a. The property is 30 feet or less from an open creek; and
  - b. Deviation from the standard is necessary to comply with Chapter 17.08 (Preservation and Restoration of Natural Watercourses).

**C. Variances Not Allowed.** A Variance may not be granted to allow deviation from a requirement of the General Plan.

**D. Review Authority.** The ZAB takes action on all Variance applications.

**E. Public Notice and Hearing.** The ZAB shall review and act on a Variance application at a noticed public hearing in compliance with Chapter 23.404(Common Permit Requirements).

**F. Findings for Approval.**

1. To approve a Variance, the ZAB shall make all of the following findings:
  - a. There are exceptional circumstances applying to the property which do not apply generally in the same district.
  - b. The Variance is necessary to preserve a substantial property right.
  - c. The Variance will not adversely affect the health or safety of persons residing or working near the property.
  - d. The Variance will not be materially detrimental to the public welfare or injurious to nearby property or improvements.
  - e. The Variance will promote the municipal health, welfare, and safety and benefit the city as a whole.
  - f. Any other Variance findings required by Zoning Ordinance can be made.
2. The ZAB shall deny a Use Permit application if it determines that it is unable to make any of the required findings.

### 23.406.060 – Master Use Permits

- A. **Purpose.** A Master Use Permit is a discretionary approval that allows flexibility in the amount of space occupied by individual tenants in a multi-user site. The purpose of a Master Use Permit is to:
1. Facilitate the implementation of the General Plan and area plans, including the West Berkeley Plan;
  2. Expedite the reuse of large and multi-user sites that might otherwise prove difficult to reuse;
  3. Facilitate the development and reuse of large, multi-user sites as integrated units in a stable and desirable environment to benefit occupants, the neighborhood, and the city as a whole.;
  4. Allow the review and analysis of impacts of multi-tenant projects in a coordinated, consolidated manner; and
  5. Improve Berkeley's competitiveness in attracting and retaining businesses by allowing businesses to quickly move into a site once overall development requirements have been established.
- B. **Review Authority.** The ZAB takes action on all Master Use Permit applications.
- C. **Voluntary Option.** A Master Use Permit is a voluntary option for property owners. If a property owner does not request and receive a Master Use Permit, individual tenants are subject to the Use Permit requirements that ordinarily apply as required by the Zoning Ordinance.
- D. **Where Allowed.** A property that meets the following criteria may apply for a Master Use Permit:
1. The property is located entirely or partially in one of the following districts:
    - a. Any Commercial District.
    - b. Mixed Use-Light Industrial (MU-LI).
    - c. Mixed Manufacturing (MM).
    - d. Manufacturing (M).
  2. The property will be occupied by three or more independently operating businesses.
- E. **Use Allocation.**
1. A Master Use Permit may allow by right more than one individual business and/or use on a site, provided that all other applicable requirements of the Zoning Ordinance are met.

2. A Master Use Permit shall state the square feet of buildings and land allocated for the following uses:
  - a. Industrial (manufacturing, wholesaling, and warehousing).
  - b. Office (excludes offices ancillary to other uses).
  - c. Commercial (retail, personal service, restaurants).
  - d. Live/work units.
  - e. Residential.

**F. Allowed Variations.**

1. The area of a building or site occupied by a use may exceed the Master Use Permit allocation with the permits shown in Table 23.406-1.

**TABLE 23.406-1: ALLOWED VARIATION IN USE ALLOCATIONS**

| Variation in Use Allocation from Master Use Permit | Permit Required    |
|----------------------------------------------------|--------------------|
| 10% or less                                        | No Permit Required |
| More than 10% to 25%                               | AUP                |
| More than 25%                                      | UP(PH)             |

2. If the allocation of floor area for various uses as shown in Paragraph D (Where Allowed) above remains within the limits set forth in Table 23.406-1, lease spaces may be divided or aggregated in any manner as-of-right.

**G. Public Notice and Hearing.** The ZAB shall review and take action on a Master Use Permit application at a noticed public hearing in compliance with Chapter 23.404 (Common Permit Requirements).

**H. Findings for Approval.** To approve a Master Use Permit, the ZAB must find that approval will expedite occupancy and use of the site consistent with the purpose of the district, the General Plan, and any applicable area plan.

**23.406.070 – Design Review**

**A. Purpose.** Design Review is a discretionary process to ensure that exterior changes to non-residential buildings comply with the City of Berkeley Design Guidelines and other applicable City design standards and guidelines. The purpose of Design Review is to:

1. Encourage excellence in building and site design;
2. Ensure that development is compatible with its urban context; and

3. Provide a pleasing urban environment for persons living, working, or visiting the city.

**B. When Required.**

1. Design Review is required for:
  - a. Projects in all Non-Residential Districts.
  - b. Mixed use and community and institutional projects in the R-3 district within the Southside Plan area. See Figure 23.202-1: R-3 Areas Subject to Design Review; and
  - c. Commercial, mixed-use, and community and institutional projects in the R-4, R-SMU, and R-S districts.
2. As used in Paragraph (1) above, “project” means an activity requiring a building or sign permit that involves any of the following:
  - a. Modifying the exterior of an existing structure.
  - b. Additions to an existing structure.
  - c. Demolishing all or a portion of an existing structure.
  - d. Removing all or part of a building facade fronting the public right-of-way.
  - e. Constructing a new structure.
  - f. Installing or replacing a sign.

**C. Design Review Process.**

1. **Use Permit Projects.**
  - a. If a project requires a Use Permit, Preliminary Design Review is required before ZAB action on the Use Permit.
  - b. Review authority for Preliminary Design Review is described in Section 23.406.070.D (Review Authority).
  - c. The ZAB shall consider Preliminary Design Review recommendations when acting on the Use Permit. Before acting on the Use Permit, the ZAB may require further review by the Design Review Committee or Department staff as part of the Preliminary Design Review process.
  - d. As a condition of Use Permit approval, the ZAB may require Final Design Review to verify that the project conforms to design-related Use Permit conditions of approval or to review finalized project design details. The Design Review Committee conducts Final Design Review unless the ZAB directs staff to conduct Final Design Review as a condition of approval.

- e. If the ZAB requires Final Design Review, the City may issue a building permit only after Final Design Review is complete.

## 2. **Projects Not Requiring a Use Permit.**

- a. For a project that does not require a Use Permit, Department staff conducts Design Review before the Zoning Officer takes action on the required permit or approval.
- b. The Zoning Officer will consider the Design Review recommendations when acting on the required permit or approval. The Zoning Officer may require modifications to the project design as a condition of approval.
- c. The Department will verify conformance with Design Review recommendations and design-related conditions of approval when issuing a building permit, sign permit, or Zoning Certificate for the project. Final Design Review is not required.

## D. **Review Authority.**

1. **Department Staff.** Department staff, under the supervision and authority of the Zoning Officer, conducts Design Review for projects that do not require a Use Permit, except when the Landmarks Preservation Commission (LPC) conducts Design Review as provided in Paragraph (3) below. Design review conducted by Department staff is referred to as “Staff-Level Design Review.”
2. **Design Review Committee.**
  - a. For projects requiring a Use Permit, Design Review is conducted by the Design Review Committee except as provided by Paragraph (b) below or when the Landmarks Preservation Commission (LPC) conducts Design Review as provided in Paragraph (3) below.
  - b. The Zoning Officer may determine that, due to unique circumstances, Department staff will conduct Design Review for a project requiring a Use Permit. The Zoning Officer, or Department staff on their behalf, shall confer with the Design Review Committee Chair before making such a determination and shall consider project size, visibility, and degree of sensitivity to the neighboring properties or the general public.
3. **Landmarks Preservation Commission.** The Landmarks Preservation Commission (LPC) conducts Design Review of projects which involve landmarks, structures of merit, or buildings within a historic district in accordance with Chapter 3.24 (Landmarks Preservation Commission). The LPC conducts Design Review for landmarked properties through the Structural Alteration Permit process.

## E. **Zoning Officer and LPC Referrals.**

1. The Zoning Officer may refer any project subject to ZAB review to the Design Review Committee, staff, or the LPC for non-binding input on design-related issues. However, Design Review approval is required only for projects in Subsection B (When Required) above.
2. The LPC may refer any project subject to LPC review to the Design Review Committee for non-binding input on design-related issues.

**F. Referrals to Landmarks Preservation Commission.**

1. **Mandatory Referrals.** The following Design Review applications shall be referred to the LPC for review and comment before action on the application:
  - a. Projects that involve a building or structure listed on the State Historic Resources Inventory, or on the List of Structures and Sites adopted by the LPC under Chapter 3.24.
  - b. Projects that involve a building or a structure over 40 years old which may have special architectural or historical significance, as determined by the secretary to the LPC.
2. **Optional Referrals.** Department staff or the Design Review Committee may choose to refer the following projects to the LPC for review and comment before action of the application:
  - a. Projects that involve a building that is 40 years old or less that may have special architectural and/or historical significance, as determined by the secretary to the LPC.
  - b. Signs and awnings which involve a building or structure listed on the State Historic Resources Inventory, or on the LPC's current List of Structures and Sites.

**G. Design Guidelines.**

1. The City of Berkeley Design Guidelines provide direction to the City when reviewing proposed projects and assists applicants in planning and design of their projects. The Design Guidelines are intentionally generalized to encourage individual creativity. It is not expected that every project will respond to every guideline.
2. When conducting design review the Design Review Committee, the LPC, and staff shall use the Design Guidelines adopted by the Planning Commission as its official policy.
3. The Design Review Guidelines may be amended by the Planning Commission. The ZAB may comment to the Planning Commission on such amendments.

**H. Scope of Design Review.** Design Review considers only issues of building and site design and does not address land use issues. Site design included the

placement of buildings on a lot, vehicle access and circulation, pedestrian circulation, parking placement and design, landscaping, and other similar issues.

**I. Design Review Timeline.**

1. Design Review projects requiring an AUP or a Zoning Certificate shall be completed within 60 days of the date the application is deemed complete. If an applicant modifies the application, or if the applicant submits a written time extension, Department staff may extend the review period beyond 60 days.
2. Design Review for projects that require ZAB approval shall be completed within 60 days of submittal of complete final Design Review plans or within the time limit required by the Permit Streamlining Act, whichever is less.

**J. Public Notice.** Public notice of pending Design Review decisions shall be given in accordance with Section 23.404.040.D (Public Notice for Design Review).

**K. Public Hearing.** None required.

**L. Design Review Committee Proceedings.**

1. The Design Review Committee shall meet with the applicant and shall operate as a working group. Its meetings shall be open to the public.
2. Review of a project by the Design Review Committee may be continued as necessary subject to the timeline set forth in this chapter.
3. The Design Review Committee shall adopt its own rules and procedures.

**M. Basis for Approval.** The review authority shall consider a proposed project in relation to its surrounding context when acting on a Design Review application.

1. The review authority may approve a Design Review application only upon finding that the proposed project conforms with the City of Berkeley Design Guidelines and any City-adopted design standards and guidelines applicable to the project.
2. The review authority may consider public input during the Design Review process and may require modifications to the proposed project as a condition of Design Review approval.

**N. Changes to Approved Projects.**

1. **Design Review Modification (Minor Changes).** Before issuance of a building permit, Department staff may approve minor changes to a project with final Design Review approval if the change complies with all of the following criteria:
  - a. The change does not involve a feature of the project that was:
    - i.* A specific consideration by the review authority in granting the approval;
    - ii.* A condition of approval; or



- iii. A basis for a finding in the project CEQA determination.
  - b. The change is consistent with the spirit and intent of the original approval.
- 2. **Other Changes.** A project change that does not meet the definition of a minor change in previous Paragraph (1) shall be approved following the same procedures as the original Design Review approval.
- O. **Appeals.** Design Review decisions may be appealed in accordance with Chapter 23.410 (Appeals and Certification).
- P. **Review of Building Plans.** Department staff shall review all building permit applications subject to Design Review for compliance with the approved Design Review plans and conditions.

### **23.406.080 – Modification of Development Standards in West Berkeley Plan Area**

- A. **Purpose.** A Modification of Development Standards is a discretionary approval to modify land use and development standards for development projects in the West Berkeley Plan area. The purpose of these modifications is to:
  - 1. Facilitate the implementation of the West Berkeley Plan;
  - 2. Facilitate the reuse of large and multi-user sites which might otherwise prove difficult to reuse;
  - 3. Facilitate the development and reuse of large, multi-user sites as integrated units in a stable and desirable environment to benefit occupants, the neighborhood, and the city as a whole; and
  - 4. Allow modifications of standards when:
    - a. The modifications serve the overall purposes of their districts and the West Berkeley Plan on large, complex sites; and
    - b. The design of the project is compatible with the design and character of the surrounding area.
- B. **Eligibility.** A project must satisfy the following criteria to be eligible for a Modification of Development Standards.
  - 1. More than 50 percent of the site area must be within a C-W, MU-LI, MM or M district.
  - 2. The site must be either:
    - a. At least five contiguous acres within the City boundary under a single ownership and not primarily being used by a use conforming to the West Berkeley Plan; or

- b. Less than five acres and forms a full city block bounded on all sides by public streets (exclusive of alleys), mainline railroad tracks, and/or the borders of the City.
- C. **Allowed Modifications.** The ZAB may allow modifications to the following land use and development standards:
- 1. Permitted location of land uses within a building, site, or district.
  - 2. Development standards including but not limited to, height, yards, open space, and parking.
- D. **Project Phases.** The ZAB may approve a Modification of Development Standards application to allow a project to be built in phases.
- E. **Limitation.** A Modification of Development Standards may not allow any modification that would violate Section 23.206.050 (Protected Uses).
- F. **Review Authority.** The ZAB takes action on all Modification of Development Standards applications.
- G. **Public Notice and Hearing.** The ZAB shall review and act on a Modification of Development Standards application at a noticed public hearing in compliance with Chapter 23.404 (Common Permit Requirements).
- H. **Findings for Approval.**
- 1. To approve a Modification of Development Standards, the ZAB shall make all of the following findings:
    - a. The site is eligible for a Modification of Development Standards under Subsections B (Eligibility) and E (Limitation);
    - b. The project is likely to advance the purposes of the West Berkeley Plan and this section;
    - c. The project supports the attraction and/or retention of the types of businesses reflected in the purpose statement of the applicable district.
    - d. The modification is necessary and appropriate for the development of the proposed project.
  - 2. To approve a Modification of Development Standards, the ZAB shall also make all required Use Permit findings in Section 23.406.040 (Use Permits) and any additional Use Permit findings required by the Zoning Ordinance for the use or development in the applicable district.

### **23.406.090 – Reasonable Accommodations**

- A. **Purpose.** This section establishes a process for the City to approve modifications to development regulations to support equal access to housing for persons with

disabilities. This process is established in accordance with the Federal Fair Housing Act, the Americans with Disabilities Act, and the California Fair Employment and Housing Act.

## B. When Allowed.

### 1. Eligible Applicants.

- a. Any person with a disability, or their representative, may request reasonable accommodation as allowed by this section.
- b. A person with a disability is a person who has a physical or mental impairment that limits or substantially limits one or more major life activities, anyone who is regarded as having this type of impairment, or anyone who has a record of this type of impairment.

2. **Eligible Request.** An eligible applicant may request a modification or exception to any provision in the Zoning Ordinance or Subdivision Ordinance (Title 21) that acts as a barrier to fair housing opportunities for persons with disabilities.

## C. Review Authority.

1. **Zoning Officer.** The Zoning Officer takes action on reasonable accommodation applications unless the application is filed for concurrent review with a requested permit reviewed by the Zoning Adjustments Board (ZAB).
2. **Zoning Adjustments Board.** If a reasonable accommodation application is submitted concurrently with a permit application reviewed by the ZAB, the reasonable accommodation application shall be acted on by the ZAB.
3. **Referral to Zoning Adjustments Board.** The Zoning Officer may refer any reasonable accommodation application to the ZAB for review and final decision.

## D. Application Requirements.

1. **Application.** A request for reasonable accommodation shall be submitted on an official City application form. No application fee is required. The application shall include:
  - a. The name, address, and telephone number of the applicant;
  - b. The address of the property for which the accommodation is requested;
  - c. The current use of the property.
  - d. The ordinance provision for which modification is requested;
  - e. Reason that the requested accommodation may be necessary to enable the person with the disability to use the dwelling; and
  - f. Other information requested by the Zoning Officer.

2. **Concurrent Applications.** If the project for which the reasonable accommodation is requested requires another planning permit (e.g., Use Permit), the reasonable accommodation application shall be filed concurrently with the related permit application.

#### E. Review Procedure.

##### 1. Independent Application.

- a. 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.
- b. If necessary to reach a determination on the request for reasonable accommodation, the Zoning Officer may request further information from the applicant consistent with fair housing laws. If a request for additional information is made, the 45-day period to issue a decision is stayed until the applicant submits the requested information.

2. **Concurrent Application.** For a reasonable accommodation request submitted concurrently with another planning permit application, the reasonable accommodation request shall be reviewed and acted upon concurrently with the other application.

#### F. Action on Application.

1. **Decision.** The review authority shall make a written decision supported by findings and conclusions to approve, approve with conditions, or deny the application.
2. **Criteria.** The review authority shall consider the following factors when acting on the application:
  - a. Need for the requested modification.
  - b. Alternatives that may provide an equivalent level of benefit.
  - c. Physical attributes of and proposed changes to the property.
  - d. Whether the requested modification would impose an undue financial or administrative burden on the City.
  - e. Whether the requested modification would constitute a fundamental alteration of the City's zoning or subdivision regulations.
  - f. Whether the requested accommodation would result in a concentration of uses otherwise not allowed in a residential neighborhood to the substantial detriment of the residential character of that neighborhood.
  - g. Any other factor that may have a bearing on the request.

3. **Conditions of Approval.** The review authority may impose conditions of approval, including a condition to provide for the automatic expiration of the approval under appropriate circumstances (e.g., person with disability vacates home).
- G. **Appeals.** Reasonable accommodation decisions may be appealed in accordance with Chapter 23.410 (Appeals and Certification).

## **23.408 GREEN PATHWAY**

---

### **Sections:**

- 23.408.010– Purpose
- 23.408.020– Applicability
- 23.408.030– Eligibility Determination
- 23.408.040– Green Pathway Application
- 23.408.050– General Requirements
- 23.408.060– Requirements for Large Buildings and Hotels
- 23.408.070– Development Standards
- 23.408.080– Streamlined Permitting Process
- 23.408.090– Tolling
- 23.408.100– Compliance
- 23.408.110– City Manager Authority to Issue Regulations

### **23.408.010 – Purpose**

- A. The purpose of this chapter is to implement the “Green Pathway” provisions of Measure R (2010) by providing a voluntary streamlined permit process for buildings that:
  1. Exceed the Green Building requirements applicable in the C-DMU district; and
  2. Provide extraordinary public benefits that could not otherwise be obtained, as specified in this chapter.
- B. This chapter establishes standards and requirements to clarify the City’s expectations for projects eligible for approval under this chapter and to ensure they will be designed and developed consistent with the Downtown Area Plan.

### **23.408.020 – Applicability**

This chapter applies only to development projects in the Downtown Mixed Use (C-DMU) district that:

- A. Do not propose alteration or demolition of a historical resource as defined by the California Code of Regulations Title 14, Section 15064.5; and
- B. Will not have a significant adverse impact on any adjacent historical resource as defined by the California Code of Regulations Title 14, Section 15064.5.

### **23.408.030 – Eligibility Determination**

- A. **RFD Purpose.** To determine if a project is eligible for processing under this chapter, an applicant shall submit to the City a Request for Determination (RFD). The RFD process applies to development projects that may be eligible for Green

Pathway processing notwithstanding anything to the contrary in Chapter 3.24 (Landmarks Preservation Commission).

**B. RFD Submittal.** A property owner or the owner's authorized agent shall request the Landmarks Preservation Commission (LPC) to determine whether the subject property, as well as each adjacent property, is an historical resource under the California Code of Regulations Title 14, Section 15064.5, by submitting a RFD. Potential historical resources include, but are not limited to, properties identified in any of the following sources:

1. Downtown Plan and EIR (Adopted 1990).
2. State Historic Preservation Office California Historical Resources Information System Historical Resources Inventory for Alameda County, City of Berkeley (Most Recent).
3. Any site identified as a potential resource needing further evaluation in the Downtown Area Plan Historic Resource Evaluation (Architectural Resource Group, 5 November 2008).

**C. Processing an RFD.**

1. The City shall not accept an RFD unless it is accompanied by proof that the applicant has posted a conspicuous notice on the subject property in a location that is readily visible from the street on which the structure or site has its major frontage. Such notice shall be in a form specified by the Zoning Officer.
2. Upon receiving a RFD, the City shall contract with an independent consultant from a list of qualified consultants approved by the LPC to prepare an historic resource assessment. The costs of the assessment shall be borne by the applicant. Alternatively, the applicant for a RFD may submit its own historic resource assessment, which shall then be subject to peer review by the City's consultant at the applicant's expense. If a property that is the subject of the RFD is not identified on any of the lists in Subsection B (RFD Submittal) above, the applicant's assessment may consist of a statement of why the applicant believes the property does not include an historical resource.
3. A RFD shall be deemed complete upon completion of the City consultants' historic resource assessment or peer review that determines that the applicant's submitted historic resource assessment is complete and accurate.
4. The LPC shall begin its consideration of whether to designate a property that is the subject of a RFD at a public hearing at the first regular meeting that occurs no less than 21 days after the RFD is complete, and shall take final action no later than 90 days after it is complete. Notice of the public hearing shall be provided as set forth in Municipal Code Section 3.24.140 (Designation proposal-- Public hearing notice requirements).

- D. **Timeline Extensions; Failure to Act.** Any of the timelines specified in this section may be extended at the written request of the applicant. Failure to act within any of the timelines set forth in this section, as they may be extended, shall constitute a decision to take no action to designate.
- E. **When Chapter 3.24 Applies.** If a property that is the subject of a RFD is not designated within the time limitations set forth in this section, Municipal Code Chapter 3.24 (Landmarks Preservation Commission) shall not apply to that property unless and until the earliest of the following occurs:
1. The expiration of two years from the date of any final action not to designate the property; or
  2. If an application under this chapter is submitted within that period, then either:
    - a. The application is withdrawn or denied; or
    - b. Any entitlement approved for the property expires, is cancelled or revoked, or for any other reason ceases to have effect.
- F. **Appeal and Certification.** Decisions by the LPC under this section shall be subject to appeal as set forth in Section 3.24.300 (Appeals--Procedures required--City Council authority), and certification as set forth in Section 3.24.190 (Council certification authorized when—Effect).
- G. **Effect of Determination** If a subject property is determined to be an historical resource as defined by California Code of Regulations, Title 14, Section 15064.5, it shall not be processed as a Green Pathway Project under this chapter.

### **23.408.040 – Green Pathway Application**

- A. **Voluntary Option.** The Green Pathway authorized by this chapter is a voluntary development option under which applicants for development projects in the C-DMU district may waive certain rights and agree to certain obligations the City could not otherwise impose in return for certain processing benefits.
- B. **Application Contents.** An application for processing using the Green Pathway shall include the information otherwise required by the Zoning Ordinance for the entitlement sought, as well as:
1. The applicant's commitment to enter into binding agreements to satisfy all applicable Green Pathway requirements if the application is approved; and
  2. Proof that the LPC has not taken any action under Section 23.408.030 (Eligibility Determination) to designate the subject property as a structure of merit or landmark under Chapter 3.24 (Landmarks Preservation Commission).
- C. **Additive Requirements.** Except as expressly specified in this chapter, the requirements of this chapter are in addition to, and do not change or replace any



other requirements or standards of the Zoning Ordinance and Chapter 3.24 (Landmarks Preservation Commission).

### **23.408.050 – General Requirements**

All Green Pathway projects are subject to the following requirements.

#### **A. Affordable Units.**

1. In addition to any other applicable affordable housing mitigation fee or requirement, at least 20 percent of the total units in a proposed multi-unit rental development shall be rented to very low income households whose annual income does not exceed 50 percent of the annual median income for Alameda County adjusted for household size based upon income levels published by the U.S. Department of Housing and Urban Development.
2. Rents for these units shall be set at prices affordable to very low income households, as defined by Section 50053 of the California Health and Safety Code for the life of the project.
3. As an alternative, an applicant may pay an in-lieu fee to the Housing Trust Fund as established by the City Council.

**B. Density Bonus.** The applicant shall waive, in writing, any rights under State Density Bonus Law, Section 65915 of California Government Code.

#### **C. Local Hire Requirement.**

1. The applicant shall sign an agreement that no less than 30 percent of a project's construction workers will be Berkeley residents.
2. If insufficient Berkeley residents are available to fulfill the 30 percent local hire requirement, then the next tier of residents shall come from the East Bay Green Corridor (which includes the cities of Albany, Alameda, Berkeley, El Cerrito, Emeryville, Hayward, Richmond, Oakland, and San Leandro).
3. If insufficient residents are available from the Green Corridor to fulfill the 30 percent local hire requirement, then residents of Alameda County will be used to fulfill the local hire requirements.
4. An applicant who agrees to require employment of Berkeley residents on another project the applicant is building or has approval to construct in Berkeley may count such employment toward the 30 percent local hire requirement by providing the same documentation the City requires to show compliance with paragraphs 1 and 2 of this subsection.

**D. Use Regulations.** Uses shall comply with the requirements and limitations of Section 23.204.130 (C-DMU Downtown Mixed-Use District).

### **23.408.060 – Requirements for Large Buildings and Hotels**

In addition to the requirements of Section 23.408.050 (General Requirements), a Green Pathway project that includes either a hotel, a building over 75 feet in height, or a building with more than 100 units of housing, are subject to the following requirements.

#### **A. Prevailing Wage.**

1. All construction workers shall be paid state prevailing wage as established by the California Department of Industrial Relations.
2. Employees in hotels with a height over 75 feet shall be paid prevailing wages as established by the Department of Industrial Relations for hotel employees. If the Department of Industrial Relations does not establish prevailing wages for hotel employees, such employees shall be paid wages consistent with area mean wages per occupational category.

**B. State Certified Apprenticeship Program.** To the extent that enough qualified apprentices are reasonably available, no less than 16 percent of the construction workers shall be apprentices from a State Certified Apprenticeship program with a record of graduating apprentices.

**C. Requirements Binding to Future Owners.** As a condition of approval for any Green Pathway project subject to the requirements of this section, the owner shall enter into a written agreement that shall be binding on all successors in interest.

### **23.408.070 – Development Standards**

Green Pathway projects shall comply with the applicable development standards in Section 23.204.130 (C-DMU Downtown Mixed-Use District) and the following additional requirements.

**A. Building Setbacks Within View Corridors.** To minimize interference with significant views, buildings that are 75 feet in height or less that are located on a corner lot at any intersection with University Avenue, Center Street, or Shattuck Avenue must include upper story setbacks as follows: any portion of a building between 45 feet and 75 feet must be set back from property lines abutting the street by at least one foot for every one foot by which the height exceeds 45 feet.

**B. Street Wall Facade.** Notwithstanding the Downtown Design Guidelines, the street wall facade shall be architecturally modulated by volumes that are 50 feet in width or less.

1. Smaller modulations may be incorporated within larger volumes.
2. Volumes along the street wall must be defined by structural bays and/or substantial reveals or offsets in the wall plane, and by changes in the rhythmic pattern of one or more of the following features:

- a. Window openings, oriel windows, or balconies.
  - b. Awnings, canopies, or entrances.
  - c. Arcades, columns, or pilasters.
  - d. Materials and color.
  - e. Other architectural features.
- C. **Shadow Analysis.** A shadow analysis is required for buildings with heights between 60 and 75 feet. Applications shall include diagrams showing:
- 1. The extent of shading on public sidewalks and open spaces by a building 60 feet in height that complies with all applicable setback requirements on an area within a radius of 75 feet of the closest building wall that would be cast on March 21, June 21, December 21, and September 21 at the following times of day:
    - a. Two hours after sunrise;
    - b. 12 p.m. noon; and
    - c. Two hours before sunset.
  - 2. Features incorporated into the building design, including, but not limited to, additional upper floor setbacks that will reduce the extent of shadowing of the proposed building to no more than 75 percent of the shadowing projected in previous Paragraph (1).
- D. **Height Restrictions.** Consistent with the height standards of Measure R (adopted November 2, 2010), Section 4.B., as required by Section 3, Paragraph 12, Green Pathway Buildings of exceptional height are restricted as follows:
- 1. Two mixed-use buildings and one hotel/conference center in the Core, no more than 180 feet in height.
  - 2. Two buildings, up to 120 feet in height in the Core or Outer Core.
- E. **Mitigation Measures.** To ensure that potential environmental impacts are mitigated to less than significant levels, projects under this chapter are subject to applicable measures identified in the adopted Mitigation Monitoring Program of the Downtown Area Plan Final EIR.

### **23.408.080 – Streamlined Permitting Process**

- A. **Projects Involving Only Buildings at or Below 75 Feet in Height.**
- 1. **Projects Allowed By Right.** Notwithstanding anything to the contrary in the Zoning Ordinance, Green Pathway projects that do not involve either hotels, buildings over 75 feet, or buildings with more than 100 units of housing, shall be approved as a matter of right with a Zoning Certificate if they comply with the

applicable zoning requirements, standards, and requirements in this chapter and the Downtown Design Guidelines. Such projects are subject to Design Review under Section 23.406.070 (Design Review).

2. **Historic Resource.** If a proposed Green Pathway project is adjacent to a property that has been determined to be an historic resource under Section 23.408.030 (Eligibility Determination), the application for a Green Pathway project shall include an analysis demonstrating how the project meets the Secretary of the Interior's Standards for the Treatment of Historic Properties, including guidelines for the treatment of cultural landscapes with respect to such adjacent property.
  - a. After determining that the application is complete, the Zoning Officer shall forward the analyses described in Subsections A and B of Section 23.408.030 (Eligibility Determination) to the Secretary of the LPC to place on the agenda for the next regular meeting of the LPC that occurs no less than 21 days thereafter. The LPC shall then have 90 days in which to evaluate the submission and provide any comments to the Design Review Committee (DRC).
  - b. The DRC shall determine whether a project conforms to the Secretary of the Interior's Standards for the Treatment of Historic Properties and the associated guidelines, including the standards and guidelines for the treatment of cultural landscapes, with respect to adjacent historical resources. A project that clearly conforms to those standards and guidelines shall be considered to not have a significant impact on the historical resource. If the DRC determines that the proposed project would have a significant adverse impact on any adjacent historical resource and the project is not modified to avoid that impact, it shall not be processed as a Green Pathway project.
3. **Downtown Design Guidelines.**
  - a. Notwithstanding Section 23.406.070 (Design Review), the DRC shall determine whether the project conforms to the Downtown Design Guidelines and shall take final action on the project no later than 90 days from the date the application for a Green Pathway project, including for Design Review, is complete.
  - b. When determining whether a project subject to review under this section conforms to the Downtown Design Guidelines, the DRC shall treat applicable guidelines as standards.
  - c. The decision of the DRC regarding whether the project conforms to the Guidelines may be appealed directly to the City Council by filing an appeal stating the reasons for the appeal, along with the required fee, with the City Clerk within 14 days of the date of the DRC action. Design Review appeals shall be limited to design issues.

**B. Projects Involving Buildings Over 75 Feet in Height.**

1. Notwithstanding anything to the contrary in the Zoning Ordinance, the Zoning Adjustments Board (ZAB) shall take final action on a Green Pathway project over 75 feet in height or any other project not processed under previous Subsection (A) no later than 210 days after the application is complete, provided that this time limit shall be extended as necessary to comply with the California Environmental Quality Act (CEQA).
2. Such projects shall receive priority status to meet the review timeframes set forth in this section.

**23.408.090 – Tolling**

Timelines under this chapter shall be extended by the time taken for any proceedings pursuant to Chapter 3.24 (Landmarks Preservation Commission) relating to a Green Pathway project.

**23.408.100 – Compliance**

The applicable public benefit requirements of this chapter shall be included as conditions of approval and in a binding agreement for all Green Pathway projects.

**23.408.110 – City Manager Authority to Issue Regulations**

The City Manager or his/her designee may promulgate rules and regulations pertaining to this chapter, including, but not limited to

- A. Setting and administering gross rents and sale prices for below-market-rate units; and
- B. Specifying and requiring guarantees, including recorded agreements and other appropriate measures necessary or convenient to assure that required below-market-rate units are provided to and occupied by very low income households, and that other public benefits set forth in this chapter are secured.

## **23.410 APPEALS AND CERTIFICATIONS**

---

### **Sections:**

- 23.410.010– Chapter Purpose
- 23.410.020– Appeal Subjects and Jurisdiction
- 23.410.030– Filing and Processing of Appeals
- 23.410.040– Hearing and Decision
- 23.410.050– City Council Certifications

### **23.410.010 – Chapter Purpose**

This chapter establishes procedures for the appeal and certification of City actions made when administering the Zoning Ordinance.

### **23.410.020 – Appeal Subjects and Jurisdiction**

- A. **General.** City actions made when administering the Zoning Ordinance may be appealed as shown in Table 23.410-1: Appeal Subjects and Review Authority.
- B. **Code Enforcement Appeals.** See Municipal Code Chapter 1.24 (Abatement of Nuisances).
- C. **Landmarks Preservation Commission Appeals.** Decisions by the Landmarks Preservation Commission (LPC) when administering the Zoning Ordinance shall be appealed in accordance with Municipal Code Chapter 3.24 (Landmarks Preservation Commission).

**TABLE 23.410-1: APPEAL SUBJECTS AND REVIEW AUTHORITY**

| <b>ACTION</b>                                         | <b>ORDINANCE SECTION</b> | <b>MAY BE APPEALED BY</b> | <b>IS APPEALED TO</b> | <b>MUST BE FILED WITHIN</b>                              |
|-------------------------------------------------------|--------------------------|---------------------------|-----------------------|----------------------------------------------------------|
| <b>Zoning Officer Actions</b>                         |                          |                           |                       |                                                          |
| AUP decisions                                         | 23.406.030               | Any person                | ZAB                   | 20 days of posting Notice of Administrative Decision [1] |
| Staff-level Design Review                             | 23.406.070               | Any person                | ZAB                   | 14 days of posting the Notice of Design Review           |
| Zoning Officer Reasonable Accommodation decisions [2] | 23.406.090               | Applicant                 | ZAB                   | 14 days of mailing notice of decision                    |
| Termination of an AUP for sidewalk cafe seating       | 23.302.060               | Permit holder             | City Manager [3]      | 14 days of mailing of termination notice                 |
| Determination of lapsed permit                        | 23.404.080               | Permit holder             | ZAB                   | 20 days of mailing determination notice                  |
| <b>Design Review Committee Actions</b>                |                          |                           |                       |                                                          |
| Any Design Review action                              | 23.406.070               | Any person                | ZAB [4]               | 14 days of Committee action                              |
| <b>Zoning Adjustments Board Actions</b>               |                          |                           |                       |                                                          |
| Use Permit decisions                                  | 23.406.040               | Any person                | City Council          | 14 days of mailing Notice of Decision                    |
| Variance decisions                                    | 23.406.050               | Any person                | City Council          | 14 days of mailing Notice of Decision                    |
| Decisions on an appeal                                | 23.410                   | Any person                | City Council          | 14 days of mailing Notice of Decision                    |
| <u>Notes:</u>                                         |                          |                           |                       |                                                          |

| ACTION                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | ORDINANCE SECTION | MAY BE APPEALED BY | IS APPEALED TO | MUST BE FILED WITHIN |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|--------------------|----------------|----------------------|
| <p>[1] The Zoning Officer may extend the appeal period for a longer time.<br/>                     [2] For reasonable accommodation requests associated with a project requiring a discretionary permit (e.g., Use Permit), the appeal procedures are the same as for the discretionary permit.<br/>                     [3] The City Manager’s decision is final. No further appeal is allowed.<br/>                     [4] Determinations of conformity with Downtown Design Guidelines for Streamlined Entitlement Process (Section 23.408.090.C) is appealed directly to the City Council.</p> |                   |                    |                |                      |



### **23.410.030 – Filing and Processing of Appeals**

- A. **General.** Appeals shall be filed and processed consistent with Chapter 23.404 (Common Permit Requirements) except as otherwise specified in this chapter.
- B. **Eligibility and Timing of Appeal.** Table 23.410-1 shows who is eligible to file an appeal and the date by which an appeal must be filed.
- C. **Appeal Fees.**
  - 1. Appeal fees shall be paid by the person filing the appeal (the appellant) except as provided in Paragraph (2) below.
  - 2. The City shall not charge a fee for appeals of projects denied due to conflicting decisions of the Zoning Adjustments Board (ZAB) and Landmarks Preservation Commission as described in Sections 3.24.200 through 3.24.240 of Chapter 3.24 (Landmarks Preservation Commission).
- D. **Form of Appeal.**
  - 1. An appeal shall be submitted to the Department or City Clerk in writing together with all required application fees and shall include the name and contact information of the appellant.
  - 2. The appeal application shall state the pertinent facts and the basis for the appeal.
  - 3. The whole decision or part of the decision may be appealed. If an appellant chooses, an individual finding, action, or condition may be appealed.
- E. **Appeal Subject – Design Review.** Appeals of the Design Review Commission and staff-level Design Review decisions are limited to design-related issues.
- F. **Takings Claims.**
  - 1. If a basis of an appeal is that the review authority's action constituted a taking of property under the California or United States Constitutions, that basis and all supporting evidence and argument shall be clearly stated as a basis of the appeal, or it shall be waived.
  - 2. If specific evidence is not presented as part of the appeal, the takings claim shall be waived, and appellant shall be deemed to have waived any claim to sworn testimony and cross-examination.
  - 3. This requirement shall apply to appeals on the basis that the review authority's decision or any condition of approval:
    - a. Denied the applicant any reasonable economic use of the subject property;
    - b. Was not sufficiently related to a legitimate public purpose;
    - c. Was not sufficiently proportional to any impact of the project; or

- d. For any other reason constituted a taking of property for public use without just compensation.
- G. **Copy to Zoning Officer.** If the appeal is submitted to the City Clerk, the City Clerk shall forward a copy to the Zoning Officer.
- H. **Notice to Applicant.** If the appeal is made by someone other than the applicant, the Department shall forward a copy of the written appeal to the applicant.
- I. **Effect of Appeal.** Once an appeal is filed, any action on the associated project is suspended until the appeal is processed and a final decision is made by the review authority.

### **23.410.040 – Hearing and Decision**

#### **A. Scheduling of Hearing.**

1. Upon receiving an appeal, the Department shall schedule a hearing with the appropriate review authority.
2. For appeals of projects denied due to conflicting decisions of the ZAB and Landmarks Preservation Commission, the City Council shall schedule a hearing at the earliest feasible date after the final ZAB or Landmarks Preservation Commission action.
3. Any appeal of a Design Review decision shall be heard by the review body within 45 days of the appeal filing.
4. All appeals on a single project shall be considered together at the same hearing.

#### **B. Public Notice.** Notice of appeal hearings shall be given in accordance with Section 23.404.040 (Public Notice).

#### **C. Staff Report and Materials.** Before the hearing, Department staff shall prepare a staff report describing the appeal with relevant supporting materials.

#### **D. Hearing Procedures.** Public hearings on an appeal shall be conducted in accordance with applicable procedures in Section 23.404.040 (Public Notice).

#### **E. De Novo Review.**

1. The review authority may take action on the subject of the appeal or any aspect of the appealed project (de novo review), except as provided in Paragraph (2) below.
2. For appeals of Design Review decisions, the review authority may take action only on design-related issues.

- F. **Public Comment.** The review authority may consider written correspondence concerning the appeal that is submitted after the appeal is filed, as well as any other information or evidence permitted under the Council Rules of Procedure.
- G. **Action.** At the appeal hearing, the review authority may:
1. Continue the public hearing;
  2. Modify, reverse, or affirm, wholly or partly, any decision, determination, condition or requirement of the prior review authority; or
  3. For appeals to the City Council, remand the matter to the prior review authority to reconsider the application, and/or any revisions to the application submitted after the review authority's action.
- H. **Criteria for Decision.**
1. When acting on an appeal, the appeal review authority shall use the same decision-making criteria and shall make the same findings as the prior review authority.
  2. The review authority's action shall be based upon findings of fact about the appeal and shall identify the reasons for action on the appeal. In doing so, the appeal review authority may adopt the prior review authority's decision and findings as its own.
- I. **Timeframe for Action – Use Permit and Variance Appeals.** If the City Council does not act on a Use Permit or Variance appeal within 30 days from the date the public hearing was closed by the City Council, then the decision of the ZAB shall be deemed affirmed and the appeal denied.
- J. **Board Action on Remand.**
1. A ZAB decision on an appeal remanded by the City Council may be appealed in the normal manner unless otherwise directed by the City Council.
  2. If the ZAB does not act within 90 days after an appeal is remanded by the City Council, the original appeal of the ZAB's decision shall be placed back on the City Council agenda in the same manner as a new appeal.
- K. **Effective Date of Appeal Decisions.**
1. **City Council Decision.** The City Council's decision on an appeal is final and becomes effective on the date the decision is made.
  2. **ZAB Decisions.** Decisions on appeals made by the ZAB becomes effective 14 days after the mailing of the Notice of Decision.

**23.410.050 – City Council Certifications**

- A. **Purpose.** Certification is an action by the City Council to review a decision by the ZAB or LPC.
- B. **Eligible Actions.** The City Council may certify the following actions for review:
  - 1. Decisions of the ZAB on Use Permit and Variance applications.
  - 2. Decisions of the LPC on historic resource designations as provided in Section 3.24.190 (Council certification authorized when—effect).
- C. **Initiation.**
  - 1. Any Council member may initiate the certification process by submitting a written request to the City Clerk within:
    - a. 14 days from the mailing of the Notice of Decision for ZAB decisions; and
    - b. 15 days from the mailing of the Notice of Decision for LPC decisions.
  - 2. Certification shall not require any statement of reasons or justification and shall not represent opposition to or support of an application.
- D. **Effect of Certification.** After initiating certification, any action on the associated project is suspended until City Council review is completed.
- E. **Hearing and Decision.** Certified actions shall be reviewed by the City Council at a noticed public hearing in the same manner as for appeals as described in Section 23.410.040 (Hearing and Decision).

## **23.412 ZONING ORDINANCE AMENDMENTS**

---

### **Sections:**

- 23.412.010– Purpose
- 23.412.020– Initiation
- 23.412.030– Application
- 23.412.040– Planning Commission Hearing and Action
- 23.412.050– City Council Hearing and Action
- 23.412.060– Findings for Approval
- 23.412.070– Limitations on Resubmittals after Denial
- 23.412.080– Zoning Map Amendment Notations

### **23.412.010 – Purpose**

This chapter establishes procedures for amending the Zoning Ordinance, including the Zoning Map and Zoning Ordinance text. All amendments to the Zoning Ordinance shall be processed as set forth in Government Code Section 65853 et seq. and as specified in this chapter.

### **23.412.020 – Initiation**

- A. **Zoning Map Amendment.** A Zoning Map amendment may be initiated by:
  1. Resolution of the City Council or Planning Commission; or
  2. Application of one or more owners of the property for which the amendment is sought.
- B. **Zoning Ordinance Text Amendment.** A Zoning Ordinance text amendment may be initiated by resolution of the City Council or Planning Commission.

### **23.412.030 – Application**

An application for a Zoning Map amendment submitted by a property owner shall be filed and reviewed in compliance with Section 23.404.020 (Application Submittal). The application shall include the information and materials required by the Planning and Development Department, together with all required application fees.

### **23.412.040 – Planning Commission Hearing and Action**

- A. **Public Hearing.** The Planning Commission shall hold a public hearing on a proposed Zoning Ordinance Amendment in compliance with Section 23.404.040 (Public Notice).
- B. **Planning Commission Recommendation.**
  1. The Planning Commission may recommend that the City Council approve, conditionally approve, or deny the proposed Zoning Ordinance Amendment based upon the findings specified in Section 23.412.060 (Findings for Approval).

2. A recommendation for approval shall be made by a majority vote of the total membership of the Planning Commission.
3. If the Planning Commission recommends denial of a Zoning Map amendment, the City Council is not required to take further action on the proposed amendment unless the City receives a written request from an interested party for a City Council hearing within ten days after the Planning Commission action.

**C. Recommendation Expiration.**

1. A Planning Commission recommendation shall expire and have no further effect if the City Council takes no action on a proposed Zoning Ordinance Amendment within six months after the date the Planning Commission approved the recommendation.
2. The City Council may extend the effective period of a Planning Commission recommendation for up to an additional 18 months.

**23.412.050 – City Council Hearing and Action**

**A. Public Hearing.** After receiving the Planning Commission's recommendation, the City Council shall hold a public hearing on the proposed Zoning Ordinance Amendment in compliance with Section 23.404.050 (Public Hearings and Decisions).

**B. Council Action.**

**1. General.**

- a. The City Council may approve, conditionally approve, or deny the proposed Zoning Ordinance Amendment based upon the findings specified in Section 23.412.060 (Findings for Approval).
- b. The action by the City Council shall be made by a majority vote of the total membership of the City Council.

**2. Referral to Planning Commission.**

- a. If the City Council proposes to adopt a substantial modification to the Zoning Ordinance Amendment not previously considered by the Planning Commission, the proposed modification shall be first referred to the Planning Commission for its recommendation.
- b. The failure of the Planning Commission to report back to the City Council within 40 days after the reference, or within the time set by the City Council, shall be deemed a recommendation of approval.

**C. Effective Date.** Zoning Ordinance Amendments become effective 30 days after the adoption of the ordinance by the City Council.

**23.412.060 – Findings for Approval**

The City Council may approve a Zoning Ordinance Amendment only if all of the following findings are made:

**A. Findings for all Zoning Ordinance Amendments.**

1. The proposed amendment is consistent with the General Plan and any applicable specific plan or area plan.
2. The proposed amendment is consistent with state law.
3. The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare.

**B. Additional Finding for Zoning Ordinance Text Amendments.** The proposed amendment is internally consistent with other applicable provisions of the Zoning Ordinance.

**C. Additional Finding for Zoning Map Amendments.** The affected site is physically suitable in terms of design, location, shape, size, and other characteristics to ensure that the permitted land uses and development will comply with the Zoning Ordinance and General Plan and contribute to the health, safety, and welfare of the property, surrounding properties, and the community at large.

**23.412.070 – Limitations on Resubmittals after Denial**

**A. One-Year Prohibition.** If the City denies a Zoning Map Amendment, the City may not accept a resubmitted application for the same or substantially similar Zoning Map Amendment within one year from the date of denial, unless:

1. The original application is denied without prejudice; or
2. The City Council allows resubmittal within six-months of denial as allowed by Subsection B (Six-Month Exception) below.

**B. Six-Month Exception.**

1. The City Council may allow a resubmitted application within six months from the date of denial if the Council finds that:
  - a. Changed circumstances in relation to the property warrant early resubmittal, and
  - b. Any property owner objections to the original application have been withdrawn.
2. The burden rests with the applicant to submit evidence and show that the findings in Paragraph B.1 above can be made.

**23.412.080 – Zoning Map Amendment Notations**

All adopted amendments to the Zoning Map shall be noted on the map with the date and number of the amending ordinance.



## **23.414 NUISANCE ABATEMENT**

---

### **Sections:**

- 23.414.010– Purpose
- 23.414.020– Enforcement Responsibility
- 23.414.030– Violations a Misdemeanor
- 23.414.040– Nuisances Prohibited
- 23.414.050– City Attorney Action
- 23.414.060– Abatement Procedures
- 23.414.070– Statements of Violations
- 23.414.080– Remedies
- 23.414.090– Recovery of Costs
- 23.414.100– Private Right of Action

### **23.414.010 – Purpose**

This chapter establish procedures to abate public nuisances associated with land uses, structures, and events as regulated by the Zoning Ordinance. These procedures supplement generally applicable code enforcement provisions in Municipal Code Title 1 (General Provisions).

### **23.414.020 – Enforcement Responsibility**

The City Manager, or their designee, shall enforce the requirements of this chapter.

### **23.414.030 – Violations a Misdemeanor**

Any violation of the Zoning Ordinance is a misdemeanor but may be cited or charged, at the City's discretion, as an infraction. In all other respects, the provisions of Municipal Code Chapter 1.20 (General Penalty) apply.

### **23.414.040 – Nuisances Prohibited**

- A. **Public Nuisance Prohibited.** A land use, structure, or event shall not cause a public nuisance as defined in Subsection (B) below.
- B. **Public Nuisance Defined.** A use, structure, or event that meets any of the following criteria is a public nuisance.
  1. Any of the following activities: disturbances of the peace, illegal drug activity including sales or possession thereof, public drunkenness, drinking in public, harassment of passers-by, gambling, prostitution, public vandalism, excessive littering, excessive noise (particularly between the hours of 11:00 p.m. and 7:00 a.m.), noxious smells or fumes, curfew violations, lewd conduct or police detention, citations or arrests, or any other activity declared by the City to be a public nuisance.
  2. A violation of any City, state, or federal ordinance, law, or regulation.

3. A use or activity, other than one that takes place at a dwelling and is sponsored by a resident of that dwelling, that is conducted in a manner that results in a disturbance of any kind that requires six Berkeley Police Department patrol officers after 11:00 p.m. and before 2:00 a.m., or three Berkeley Police Department patrol officers at any other time, to quell such disturbance.

### **23.414.050 – City Attorney Action**

- A. **Immediate Action.** The City Attorney may take immediate action to abate, remove, and enjoin a public nuisance in the manner provided by law.
- B. **Judicial Relief.** To abate a public nuisance, the City Attorney may apply for relief from the courts to:
  1. Remove a use or structure;
  2. Prevent the establishment of a use or structure;
  3. Prevent the continued operation of a use or structure; or
  4. Prevent the removal or demolition of a structure.

### **23.414.060 – Abatement Procedures**

- A. **Initiation.**
  1. Proceedings to abate a nuisance may be initiated by Zoning Officer, Zoning Adjustments Board (ZAB), or City Council referral.
  2. A nuisance abatement referral shall identify the subject property, the nature of the violation, and the reason for the proposed abatement.
  3. After receiving a nuisance abatement referral, the Zoning Officer shall schedule the matter for a public hearing.
- B. **ZAB Recommendation.**
  1. **Public Hearing.**
    - a. The ZAB shall hold a public hearing on the proposed abatement in compliance with Section 23.404.050 (Public Hearing and Decision).
    - b. The Department shall provide notice of the hearing to the property owner, property occupants, the person who requested proceedings under this chapter (if any), and any person who has filed written request of notice.
  2. **Recommendation.**
    - a. The ZAB shall recommend that the City Council determine whether a nuisance exists and, if so, the appropriate remedy.
    - b. The ZAB recommendation shall be:

- i.* Based on the evidence, testimony, and facts presented to the ZAB at the hearing;
  - ii.* Supported by written findings; and
  - iii.* Issued within 35 days after the conclusion of the hearing.
3. **Final Decision.** A ZAB recommendation to abate a nuisance shall be deemed a final decision if the property owner consents to the recommendation within 10 days after the recommendation is made. In such a case, there shall be no City Council review and action on the matter.
  4. **Report to City Clerk.** The Department shall file the ZAB's recommendation with the City Clerk within 14 days following the recommendation. The City Clerk shall present a ZAB recommendation to the City Council at soonest possible regular City Council meeting.

#### C. **City Council Action.**

1. **Public Hearing.** The City Council shall hold a public hearing on the proposed abatement in compliance with Section 23.404.050 (Public Hearing and Decision). The hearing shall occur within:
  - a. 60 days of the ZAB recommendation if the ZAB recommends abatement; and
  - b. 30 days of the City Clerk report to the City Council of the ZAB decision.
2. **Decision.** After hearing, the City Council may find that the use, structure, or event constitutes a public nuisance and may impose any remedy provided for in this chapter, or take no action.

#### D. **Notice of Decision.**

1. If the City Council makes a nuisance determination, the City Clerk shall issue a Notice of Decision describing the City Council's action, with its findings.
2. The City Clerk shall mail the notice to any permit holder, the property owner, the person who requested proceedings under this chapter (if any), and any person who requests such a notification.
3. The City Clerk shall file a copy of the Notice of Decision with the Zoning Officer.

### **23.414.070 – Statements of Violations**

#### A. **Statement Filed with County Recorder.**

1. If a person does not comply with an order of the Zoning Officer to correct a violation of this chapter within the specified time as provided in Chapter 1.24 (Abatement of Nuisances), the City may file a statement in the Office of the County Recorder that:

- a. Describes the property and nature of the violation; and
  - b. Certifies that the property violates this chapter and that the owner has been so notified.
2. The City shall record proof of service with the filed notice and order.
- B. **Statement Filed after Correction.** When a violation is corrected, the Zoning Officer shall file a new statement with the County Recorder certifying that the property is no longer in violation of this chapter.

### 23.414.080 – Remedies

- A. **Potential Remedies.** If the City makes a nuisance determination, the City may impose any of the following remedies:
1. Enjoin the use in whole or in part.
  2. Impose reasonable conditions upon any continued operation of the use, including existing non-conforming uses.
  3. Require continued compliance with newly imposed any conditions.
  4. Require the permit holder to guarantee compliance with newly imposed conditions.
- B. **Administrative Penalty.** In addition to or as an alternative to any other remedy, the City may impose an administrative penalty of up to \$10,000 jointly and severally on persons responsible for the nuisance and/or the property owner. The City may also impose a condition that the property owners pay the costs of all City services (including but not limited to services for public safety and by the Department of Public Works) necessary to address continuing and unabated public nuisances once the City Council has determined that a public nuisance exists.
- C. **Remedies Are Cumulative.** The procedures and remedies in Subsections (A) and (B) above are cumulative and in addition to any other procedures and remedies to which the City may be entitled by law or equity.

### 23.414.090 – Recovery of Costs

- A. **Abatement Proceedings.**
1. The City may recover the costs to administer abatement proceedings in accordance with Sections 1.24.140 through 1.24.210 of Municipal Code Chapter 1.24 (Abatement of Nuisances), except as provided in Sub-paragraph (2) below.
  2. The hearing provided by Section 1.24.180 shall be held by the City Manager or his/her designee and may be appealed to the City Council within ten days after a

decision is mailed. The Council shall hold a hearing on appeals as specified in Section 1.24.180.

**B. Remedies.**

1. If the City imposes a remedy authorized in Section 23.414.080 (Remedies), the City may recover costs for time spent administering the remedy.
2. Payment of City costs shall be a condition of continued operation of a use or structure subject to a remedy.
3. Payments submitted under this Subsection B (Remedies) shall be deducted from any payments submitted under Subsection A (Abatement Proceedings) above.

**23.414.100 – Private Right of Action**

- A. **General.** Any resident of the City may bring a private action in a court of law for injunctive and compensatory relief to prevent or remedy a public nuisance as defined in this chapter.
- B. **Prior Notice Required.** No action may be brought under this section unless and until the prospective plaintiff has given the City and the prospective defendant at least 30 days written notice of the alleged public nuisance and the City has failed to initiate proceedings under this chapter within that period, or after initiation, has failed to diligently prosecute.
- C. **Recovery of Costs.** In any action prosecuted under this section a prevailing plaintiff may recover reasonable attorneys' fees.

## **DIVISION 5: GLOSSARY**

### **23.502: Glossary**

23.502.010– Purpose

23.502.020– Defined Terms

23.502.030– Acronyms

## 23.502 GLOSSARY

---

### Sections:

- 23.502.010– Purpose
- 23.502.020– Defined Terms
- 23.502.030– Acronyms

### 23.502.010 – Purpose

This chapter defines terms and phrases used in the Zoning Ordinance that are technical or specialized, or which may not reflect common usage. If any definitions in this chapter conflict with others in the Municipal Code, these definitions control in the Zoning Ordinance. If a word is not defined in the Zoning Ordinance, the Zoning Officer determines the appropriate definition.

### 23.502.020 – Defined Terms

#### A. “A” Terms.

1. **Abatement.** City proceedings to terminate, modify, or condition an unlawful use or structure.
2. **Abutting Lot.** See Lot, Abutting.
3. **Accessory Building.** See Building, Accessory.
4. **Accessory Dwelling Unit.** A secondary dwelling unit that is located on a lot which is occupied by one legally established single-family dwelling that conforms to the standards of Chapter 23.306. An accessory dwelling unit must comply with local building, housing, safety and other code requirements and provide the following features independent of the single-family dwelling: 1) exterior access to accessory dwelling unit; 2) living and sleeping quarters; 3) a full kitchen; and 4) a full bathroom. An accessory dwelling Unit also includes the following:
  - a. An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.
  - b. A manufactured home, as defined in Section 18007 of the Health and Safety Code.
5. **Accessory Structure:** See Structure, Accessory.
6. **Accessory Use:** See Use, Accessory.
7. **Addition.** The creation of any new portion of a building which results in a vertical or horizontal extension of the building, or results in any new gross floor area that was not present in the building before construction of the addition. Includes the

creation of a mezzanine or loft, or a conversion of a previously unused attic or underfloor space to usable floor area.

8. **Addition, Residential.** The creation of any new portion of a main building which results in a vertical or horizontal extension of the building, or results in additional residential gross floor area to an existing main building, as long as such new gross floor area does not exceed 15 percent of the lot area or 600 square feet, whichever is less. For purposes of this definition gross floor area does not include:
  - a. Additions of gross floor area devoted to required off-street parking spaces, creation of mezzanines or lofts within the building's shell;
  - b. Making previously unusable attics into habitable floor area (except where new areas with vertical clearance of 6 feet or greater are created through expansions of the building shell);
  - c. Excavations of earth within the existing building footprint (i.e. expansion of existing basements or new basements), or
  - d. Replacement of existing floor area that was lawfully constructed and is located entirely within the addition's shell.
9. **Addition, Major Residential.**
  - a. A residential addition greater than 15 percent of the lot area or 600 square feet. Floor area from all residential additions since October 31, 1991, with the exception of:
    - i.* Additions that are entirely subsumed within previously existing floor area; and
    - ii.* The floor area of subsequent stories where the addition does not exceed the district residential addition height limit, shall count towards the calculation of gross floor area for the purposes of this definition.
  - b. Any new floor shall be treated as a new major residential addition for the purpose of permit processing, when the cumulative square footage exceeds 15 percent of the lot area or 600 square feet, whichever is less.
10. **Adult-oriented Businesses.** Any business operated at a fixed location by whatever name, which appeals to prurient interests, sexual titillations, appetites, fantasies or curiosities. This use includes businesses which:
  - a. Predominantly exhibit, offer for sale or engage in the sale or distribution of publications, personal services, films, videotapes, devices, products or materials, which appeal to a prurient interest or sexual appetite of the purchases or user;



- b. Engage in the showing of motion pictures or videotapes in which sexual activity, including, but not limited to, intercourse, sodomy, oral copulation, masturbation, bestiality or any other form of sexual gratification, is the primary and recurring theme;
- c. Engage in the presentation of live adult entertainment in which the actors or performers simulate or engage in sexual activity, including, but not limited to, intercourse, sodomy, oral copulation, masturbation, bestiality or suggestive body movements connoting such acts, with or without another actor, patron or spectator, such showing appealing to a prurient interest or sexual appetite of the spectator;
- d. Engage in massage service, except when made in conjunction with professional services provided by the following persons holding unrevoked licenses or certificates:
  - i.* Chiropractors governed under provisions of California State law;
  - ii.* Medical practitioners practicing under the provisions of the California State Medical Practice Act;
  - iii.* Physical therapists practicing under the provisions of the California Physical Therapy Practice Act;
  - iv.* Nurses practicing under the provisions of the California Nursing Practice Act or the California Vocational Nursing Practice Act;
  - v.* Psychologists practicing under the provisions of the California Psychology Licensing Law;
  - vi.* Osteopaths practicing under the provisions of the California Osteopathic Act;
  - vii.* Persons working under the direct and immediate supervision of any persons certified as set forth in Sections *i-vi* above.
- e. Provide dating or escort services;
- f. Specialize in providing models who pose for photographing, drawing or other representative renditions, which modeling appeals to a prurient interest or sexual appetite;
- g. Engage in encounter, rap or counseling services which appeal to a prurient interest or sexual appetite;
- h. Engage in providing nude, bottomless or topless dance partners;
- i. Use nude, bottomless or topless entertainers, or use nude, bottomless or topless employees to attend to or service tables, bars or patrons or which

- allow nude, bottomless or topless entertainers or employees to be seen by members of the public or patrons of the business;
- j. Engage in providing sauna baths, water baths, showers, steam rooms or steam baths or any other body cleansing or toning arrangement wherein an attendant, clothed or nude, accompanies the customer for the purpose of talking, touching or appealing to the customer's prurient interest or sexual appetite; or
  - k. Engage in the reading of, or providing of tapes or records for listening to, erotic literature which appeals to the prurient interest or sexual fantasies of customers.
11. **Alcoholic Beverage Retail Sales.** The retail sale of beverages containing alcohol for off-site consumption subject to regulation by the State Department of Alcoholic Beverage Control (ABC) as an off-sale establishment. This use includes liquor stores and wine shops and sale of alcoholic beverages for off-site consumption at restaurants.
  12. **Alcoholic Beverage Service.** The retail sale of beverages containing alcohol for on-site consumption subject to regulation by the State Department of Alcoholic Beverage Control ABC as an on-sale establishment.
  13. **Alley.** A public right-of-way which affords only a secondary means of access for vehicles to any abutting property.
  14. **Alteration:** See Structural Alteration.
  15. **Alternative Fuel Station.** Any establishment that dispenses alternative fuel as defined by the Energy Policy Act of 2005.
  16. **Amusement Device.** Any machine or device which may be operated for use as a game, contest or amusement upon the insertion of a coin, slug, or token in any slot or receptacle attached or connected to such machine, and which does not contain a payoff device for the return of slugs, money, coins, checks, tokens or merchandise.
  17. **Amusement Device Arcade.** A type of commercial recreation center which contains six or more amusement devices. An amusement device arcade is a type of commercial recreation center irrespective of whether the amusement devices are the principal commercial activity of the establishment.
  18. **Ancillary Use:** See Use, Ancillary.
  19. **Application.** A written application for issuance of any permit.
  20. **Approval.** Approval of any permit.
  21. **Appraiser, Certified.** A person certified by the State of California Office of Real Estate Appraisers to estimate the value of a particular real property.

22. **Art/Craft Studio.** An establishment engaged in the creation of art or crafts that requires artistic skill. Such an establishment may participate in periodic open studios, but otherwise is subject to the applicable zoning district's requirements for incidental sales of goods made on site. Art/craft studios also include rehearsal spaces not designed for public performances. Examples of individuals typically engaged in this work include woodworkers, potters/ceramicists, costume makers, set designers, stained-glass makers, glassblowers, textile artists and weavers, jewelry makers, painters, fine art printmakers, photographers/filmmakers, leather workers, metal workers, musical instrument makers, model makers, papermakers, installation artists, sculptors, video artists, and other makers of art and crafts that the Zoning Officer determines to be consistent with this definition. The use of computers in an activity does not by itself prevent its classification as an art/craft studio. This use excludes architectural and landscape services, industrial or graphic design services, computer systems design services, and other commercial activities normally conducted in an office environment.
23. **Artist Studio.** A detached accessory building, used by residents of a main dwelling unit on the same lot, to create original works of art and crafts products, but not for living quarters or sleeping purposes.
24. **Attic.** The area located between the ceiling of the top story of a building and the building's roof and not usable as habitable or commercial space.
25. **Automatic Teller Machine (ATM).** An unstaffed machine which processes deposits, withdrawals and transfers of funds of customers of a bank, credit union, savings and loan association or other financial service or network.
26. **Automobile Use.** Any commercial establishment which sells, rents, repairs, services, paints and/or conducts bodywork on automobiles, trucks or other motor driven vehicles (excepting motorcycles) on the premises.

## B. "B" Terms.

### 1. Bakery.

- a. An establishment which engages primarily in the sale of breads or other baked goods, whether baked on-site or at another location. A bakery is not be considered a food service establishment if:
- i.* No customer seating or other physical accommodations for on-site dining are provided; and
  - ii.* The breads and baked goods are not packaged for immediate consumption.
- b. Any establishment whose breads and baked goods are predominantly sold at retail from a different location or locations are deemed a wholesale and/or

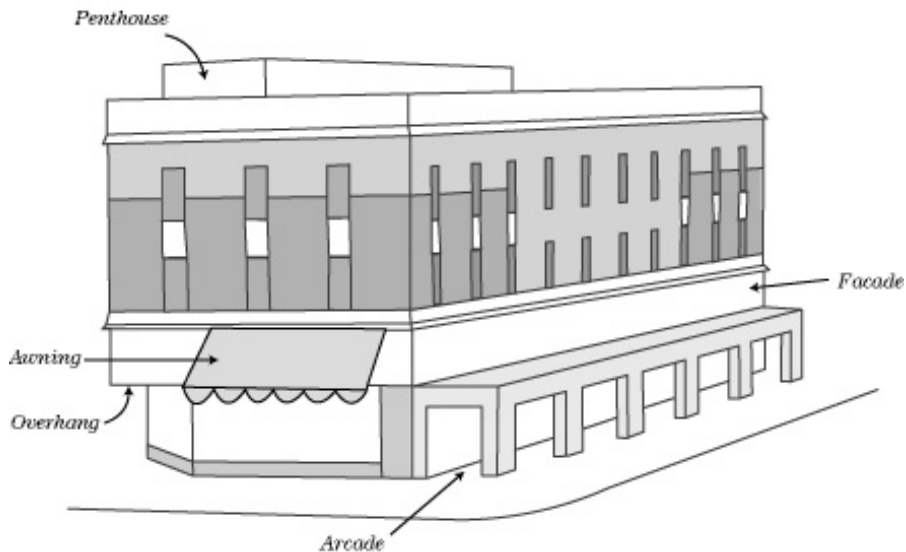
manufacturing use, subject to the regulations of the district in which it is located.

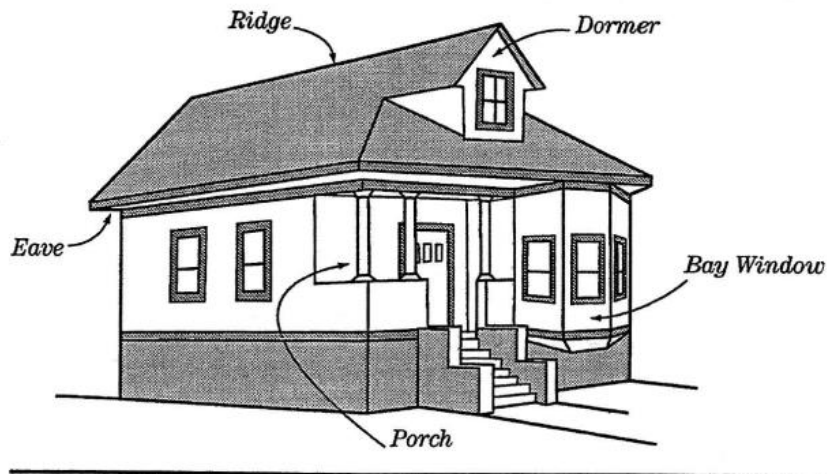
2. **Balcony.** A horizontal platform extending from the exterior wall of a building, accessible from the building's interior, and not directly accessible from the ground. A balcony is typically not covered by a roof or building overhang or enclosed on more than two sides by walls. However, railings shall not be considered enclosures.
3. **Banks and Financial Services, Retail.** An office, open to the public, offering teller or counter financial services including either cash, checking and/or savings account transactions or some combination of these services. This use includes banks, savings and loans, and credit unions providing these services on site, and excludes non-chartered financial institutions.
4. **Bar/Cocktail Lounge/Tavern.** A business devoted to serving alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages.
5. **Basement.** The lowest usable space of a building, between the floor and the ceiling, for non-habitable use such as, but not limited to, garage or storage use.
6. **Bay Window.** A portion of a building cantilevered so as to project out from a wall and containing windows which cover at least 50 of the projection's surface.
7. **Bed and Breakfast Establishment (B&B).** A single residential property containing no more than a total of three sleeping rooms or dwelling units that are offered for rent at any given time, which is the primary residence of the owner and in which rooms or units are rented out to persons who occupy them for periods not exceeding 14 days in any month.
8. **Bedroom.** Any habitable space in a dwelling unit or habitable accessory structure other than a kitchen or living room that is intended for or capable of being used for sleeping with a door that closes the room off from other common space such as living and kitchen areas that is at least 70 square feet in area, exclusive of closets and other appurtenant space, and meets Building Code standards for egress, light and ventilation. A room identified as a den, library, study, loft, dining room, or other extra room that satisfies this definition will be considered a bedroom for the purposes of applying this requirement. Bathrooms, toilet rooms, closets, halls, storage or utility spaces and similar areas are not considered habitable spaces.
9. **Block.** An area designated on an official map of the City, which is bounded on all sides by the public right-of-way, a railroad right-of-way, private streets or a boundary line of unsubdivided acreage or any combination thereof.
10. **Boarding House.** A building used for residential purposes, other than a hotel, where lodging and meals for five or more persons, who are not living as a

household, are provided for compensation, whether direct or indirect. In determining the number of persons lodging in a boarding house, all residents shall be counted, including those acting as manager, landlord, landlady or building superintendent.

11. **Building.** An enclosed structure having a roof and supported by columns or walls. See Figure 23.502-1 and Figure 23.502-2.
  - a. **Accessory Building.** A detached building containing habitable space, which is smaller in size than the main building on the same lot, and the use of which is incidental to the primary use of the lot.
  - b. **Main Building.** A building which is designed for, or in which is conducted, the primary use of the lot on which it is situated. In any residential district any dwelling, except an accessory dwelling unit, is the main building on the lot.

**FIGURE 23.502-1: COMMERCIAL BUILDING**



**FIGURE 23.502-2: RESIDENTIAL BUILDING**

12. **Building Separation.** See 23.106.080 (Building Separation).

13. **Building Site Area.** Same as lot area.

14. **Bus/Cab/Truck/Public Utility Depot.** A facility providing transportation operations for passengers and/or freight. Includes bus terminals and rail stations; facilities for transfer and movement of freight, courier, and postal services by truck or rail; and passenger transportation services, local delivery services, medical transport, and other businesses that rely on fleets of three or more vehicles.

15. **Business Activity.** Any activity subject to Municipal Code Chapter 9.04 and any economic activity which generates receipts but is exempt from Municipal Code Chapter 9.04 by state or federal law.

16. **Business Support Services.** An establishment providing goods and services to other businesses and residents, including maintenance, repair and service, testing, and rental. Permitted services for this use are limited to photocopying, desktop publishing, microfilm recording, slide duplicating, bulk mailing, parcel shipping, parcel labeling, packaging, messenger and delivery/courier, sign painting, lettering, and building maintenance.

C. **“C” Terms.**

1. **Cafeteria, On-Site.** A food service establishment intended primarily for use by employees or residents working or living at the same location, or for use by patients and/or visitors and restricted from use by the general public.
2. **Cannabis Retailer.** See 12.21.020 (Definitions).

3. **Cannabis Uses.** Includes retail sales, cultivation, manufacturing, testing, and distributing. See Municipal Code Chapters 12.21, and 12.22 for cannabis regulations and Chapter 23.320 for land use regulations.
4. **Carport.** A roofed structure for one or more automobiles which is enclosed by not more than two walls.
5. **Cemetery/Crematory/Mausoleum.** An establishment primarily engaged in operating sites or structures reserved for the interment of human or animal remains, including crematories, mausoleums, burial places, and memorial gardens.
6. **Chair Massage.** Massage given in a public, open setting to a person who is fully clothed and sitting upright on a professional bodywork seat, a stool, or office seat, wheelchair, or other chair-like device.
7. **Change of Use.** Any change in the nature or character of the use of a building or structure.
  - a. A residential change of use includes, but is not limited to, the elimination of any dwelling unit, the reduction in the floor area or habitability of a dwelling unit, or the reduction in the floor area or habitability of bedroom or sleeping quarters in a group living accommodation or residential hotel, when a new use is to replace a previous use. A residential change of use does not include the establishment of a home occupation in compliance with this chapter.
  - b. A commercial change of use includes a change to a different category of commercial or manufacturing use, but does not include changes between uses that are classified in the same category of commercial or manufacturing use.
8. **Child Care Center.** A state-licensed facility providing day care for children. This use includes nursery schools, day nurseries, infant day care centers, and cooperative day care centers, and excludes family day care homes.
9. **Circus or Carnival.** A commercial facility or event for public entertainment, typically held outdoors, with performances, rides, games, exhibitions, and other similar activities for paying customers. May be temporary or permanent.
10. **Club/Lodge.** A building occupied by a group of persons organized for a purpose to pursue common goals, activities or interests, usually characterized by certain membership qualifications, payment of fees or dues, regular meetings and a constitution or by-laws.
11. **City.** The City of Berkeley
12. **Columbaria.** A structure of vaults lined with recesses for cinerary urns or storage of cinerary remains.

13. **Commercial Districts.** The districts listed under the Commercial Districts heading in Table 23.108-1: Zoning Districts.
14. **Commercial Excavation.** The commercial excavation of earth, gravel, minerals, or other building materials, including drilling for, or removal of, oil or natural gas.
15. **Commercial Recreation Center.** Any establishment other than a theater at which recreation facilities are offered or amusement devices provided to the public as a principal commercial activity of such establishment. This use includes bingo parlors, bowling alleys, skating rinks, billiard or pool halls, miniature golf courses. Amusement device arcades are a separately defined types of commercial recreation center with their own permit requirements.
16. **Commercial Use.** The categories of commercial uses of a property include retail products store, personal/household service, food service establishment, entertainment establishment, office, tourist hotel, automobile uses, live/work units, mixed use development, wholesale use, parking lot and any use listed as a sub-category of the above uses; or any other use determined to be a business activity (except home occupations), as these terms are defined in this chapter.
17. **Community Care Facility.** A state-licensed facility for the non-medical care and supervision of children, adolescents, adults or elderly persons. This use includes community care facilities as defined in California Health and Safety Code (H&SC) Section 1500 et seq, residential care facilities for the elderly (H&SC Section 1569 et seq.), facilities for the mentally disordered or otherwise handicapped (California Welfare and Institutions Code Section 5000 et seq.), alcoholism or drug abuse recovery or treatment facilities (H&SC Section 11834.02), supportive housing (California Government Code Section 65582), and other similar facilities. This use excludes medical care institutions, skilled nursing facilities, nursing homes, foster homes, family day care homes, child care facilities, and transitional housing.
18. **Community Center.** A noncommercial facility where the public can meet for social, educational, or recreational activities.
19. **Community and Institutional Use.** The categories of community and institutional uses of a property including, but not limited to, religious assembly uses, clubs/lodges, community centers, hospitals, schools, public uses and utility uses, as these terms are defined in this chapter.
20. **Condition.** A requirement attached to a permit or entitlement, the satisfaction of which is necessary for the validity and effectiveness of the permit or entitlement.
21. **Condominium.** An estate in real property consisting of an undivided interest-in-common in a portion of a lot of real property together with a separate interest in space in a residential, industrial or commercial building on such real property



such as an apartment, office or store. A condominium may include, in addition, a separate interest in other portions of such real property.

22. **Controlled Rental Unit.** Any dwelling unit, live/work unit, bedroom or sleeping quarters portion of a group living accommodation or other unit that is subject to the City's Rent Stabilization Ordinance (Municipal Code Chapter 13.76).
23. **Construction.** The placing of construction materials and their fastening in a permanent manner to the ground or a structure or building for the purpose of creating or altering a structure or building, or excavation of a basement.
24. **Contractors Yard.** A storage facility for any person who contracts to undertake and complete a construction project or a discrete part of a construction project, including all persons defined as contractors and subject to Division 3, Chapter 9 of the State of California Business and Professions Code.
25. **Conversion, Residential.** The physical change of the floor area and/or walls of a building that is used for dwelling unit, group living accommodation or residential hotel room purposes, so as to change the number of dwelling units, sleeping rooms or residential hotel rooms, or reduce the floor area and/or habitable space of any residential living quarters.
26. **Craft.** An occupation, avocation or trade requiring special manual dexterity or artistic skill in the creation of a product.

#### D. "D" Terms.

1. **Dance/Exercise/Martial Arts/Music Studio.** An establishment in which customers assemble for group exercises, dancing, self-defense training, aerobics, choral or musical instrument instruction, other movement drills for learning, rehearsal or non-audience performances.
2. **Deck.** An unenclosed structure, usually made of wood, built to provide a solid continuous surface for outdoor use and/or access to a door, which is accessible from the ground level, directly or from a connecting stairway and is separated from the ground by an air space.
3. **Demolition.** A building or enclosed structure shall be considered demolished for the purposes of this chapter when, within any continuous 12-month period, such building or enclosed structure is destroyed in whole or in part or is relocated from one lot to another. For purposes of this definition, destroyed in part means when 50 percent or more of the enclosing exterior walls and 50 percent or more of the roof are removed. Removal of facades or portions of facades requires Design Review.
4. **Density Bonus.** See 23.332.020 (Definitions).
5. **Department.** The Planning and Development Department of the City of Berkeley or its successor administrative unit.

6. **Department Store.** A retail store selling several kinds of merchandise, which are usually grouped into separate sections, including but not limited to, apparel, housewares, household hardware, household appliances, household electronics and gifts.
7. **Dormer.** A projection built out from a sloping roof, usually housing a vertical window or ventilating louver. See also 23.304.110 (Dormers).
8. **Dormitory.** A building providing group living accommodations, occupied by individuals not sharing a common household, characterized by separate sleeping rooms without individual kitchen facilities and containing congregate bath and/or dining facilities or rooms.
9. **Drive-in Uses.** A use where a customer is permitted or encouraged, either by the design of physical facilities or by the service and/or packaging procedures offered, to be served while remaining seated within an automobile. This use includes drive-through food service establishments, financial services (banks), and automatic carwashes.
10. **Driveway.** A paved, vehicular accessway connecting an off-street parking space or parking lot with a public or private street.
11. **Drug Paraphernalia.** As defined in California Health and Safety Code Section 11364.5(d).
12. **Drugstore.** A retail establishment where the profession of pharmacy is practiced and/or where licensed prescription drugs and general merchandise are offered for sale. A food products store with a pharmacy is not a drugstore.
13. **Dry Cleaning and Laundry Plants.** A place where clothes are dry cleaned, dyed and/or laundered as part of a commercial business, whether or not such clothes were deposited by a customer at that location, or transported from another location, as part of a service. This use includes all establishments subject to Section 19233 of the State of California Business and Professions Code, regulating Dry Cleaning Plants, but excludes laundromats and cleaners as defined in this chapter.
14. **Duplex.** A building or use of a lot designed for, or occupied exclusively by, two households.
15. **Dwelling Unit.** A building or portion of a building designed for, or occupied exclusively by, persons living as one household.

#### E. "E" Terms.

1. **Electric Vehicle Charging Station.** A facility that supplies electric energy for the recharging of plug-in electric vehicles

2. **Emergency Shelter.** Temporary lodging for homeless persons with minimal supportive services that may be limited to occupancy of six months or less as defined in Health and Safety Code Section 50801(e)).
3. **Enhanced Transit Service.** Any facility that will result in the improved operational performance of bus and/or shuttle service, as well as improvements that will encourage the use of transit and make transit service more compatible with downtown's activities and appearance. Improvements for enhanced transit services include but are not limited to: "complete streets" to enhance pedestrian and bicycle routes to transit; transit signal priority; queue jump lanes and left turn signal phasing; bus shelters and raised bus platforms; bus curb extensions and concrete bus pads; transit pre-pay fare vending machines; bus layover facilities; transit plazas and bus stop amenities; bicycle parking and bicycle rental facilities near transit; and street improvements that mitigate the impact of transit operations on pedestrians and bicyclists.
4. **Entertainment Establishment.** A permanent establishment which includes live performances and/or patron dancing. This use includes cabarets, nightclubs, dance halls, and discotheques.

#### F. "F" Terms.

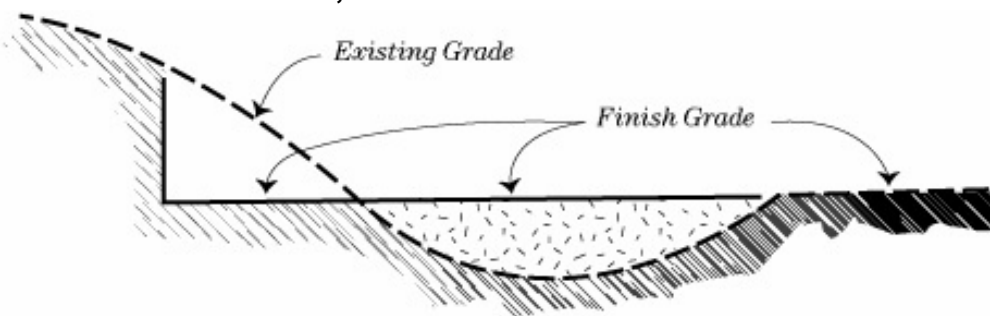
1. **Facade.** Those portions of a building, including exterior walls, porches, chimneys, balconies, parapets and roof portions, which are visible from a public right-of-way or an adjacent building.
2. **Family.** See Household.
3. **Family Day Care Home.** An establishment providing day care for 14 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 23.106.030– Floor Area, Gross.

7. **Floor Area, Leasable.** See 23.106.040– Floor Area, Leasable.
8. **Floor Area Ratio (FAR).** See 23.106.050– Floor Area Ratio.
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.

## G. "G" Terms.

1. **Garage, Residential.** A detached accessory structure or portion of a primary building, covered or roofed and enclosed on at least three sides with walls, used for off-street parking by members of the households residing on the premises.
2. **Gasoline/Vehicle Fuel Stations.** An establishment that dispenses gasoline, diesel or other similar fuel into vehicles. Excludes alternative fuel stations and electric vehicle charging stations.
3. **General Plan.** The City of Berkeley General Plan adopted pursuant to Government Code Section 65300 et seq.
4. **Gift/Novelty Shop.** A store selling small manufactured articles usually for personal use or household adornment, including, but not limited to, stores selling primarily T-shirts and/or sweatshirts with imprinted wording or images.
5. **Grade.** The location of ground surface. See also Slope.
  - a. **Existing Grade.** The elevation of the ground at any point on a lot as shown on the required survey submitted in conjunction with an application for a building permit or grading permit. See Figure 23.502-3.
  - b. **Finished Grade.** The lowest point of elevation of the finished surface of the ground between the exterior walls of a building and a point 5 feet distant from the wall, or the lowest point of elevation of the finished surface of the ground between the exterior wall of a building and the property line if it is less than 5 feet distant from the wall. In the case of walls which are parallel to and within 5 feet of a public sidewalk, alley or other public way, the grade shall be the elevation of the sidewalk, alley or public way. See Figure 23.502-3.

**FIGURE 23.502-3: GRADE, EXISTING AND FINISHED**



6. **Group Class Instruction.** An establishment that offer specialized programs in personal growth and development. Includes music studios, drama schools, dance academies, art schools, tutoring schools, and instruction in other cultural and academic pursuits.
7. **Group Living Accommodations.** A building or portion of a building designed for or accommodating a residential use by persons not living together as a

household. This use includes dormitories, convents and monasteries, and other types of organizational housing, and excludes hospitals, nursing homes and tourist hotels. Group living accommodations typically provide shared living quarters without separate kitchen or bathroom facilities for each room or unit. Residential hotels and senior congregate housing are separately defined types of group living accommodations each with their own permit requirements

8. **Ground Floor Street Frontage.** The occupied floor space in a structure nearest to the public right-of-way and closest to sidewalk grade.
9. **Gyms and Health Clubs.** An indoor facility where exercise equipment, classes and related activities related to personal health and fitness are available to paying customers. Excludes parks/playgrounds.

#### H. "H" Terms.

1. **Habitable Space.** A space in a building which is used or designed to be used for living, sleeping, eating or cooking, but not including garages, bathrooms, utility, storage and laundry rooms, halls or closets.
2. **Hedge.** Any line or row of plants, trees or shrubs planted in a continuous line to form a dense thicket or barrier.
3. **Height of Building, Average.** See 23.106.090.A (Average Building Height).
4. **Height of Building, Maximum.** See 23.106.090.B (Maximum Building Height).
5. **Home Occupation.** A business use conducted on property developed with a 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 classification 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:

1. 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.
2. 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.
3. Class III Home Occupation - Involves 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 and/or involves shipping of goods directly from the subject residence.

6. **Hospital.** A facility for in-patient medical care licensed under California Administrative Code, Title 17, Section 237 or 238.
  7. **Hot Tub.** A tub or small pool, usually made of wood or fiberglass, in which heated water is maintained for recreational or therapeutic activities, including, but not limited to, jacuzzis, whirlpools and spas.
  8. **Hotel, Residential.** A type of group living accommodations which provides rooms for rent for residential purposes, including single residential occupancy (SRO) rooms.
  9. **Hotel, Tourist.** A building with sleeping rooms used, designed, or intended for occupancy by transient guests for a period not to exceed 14 consecutive days. This use includes inns, bed and breakfasts (B&Bs), and hostels, and excludes building with residential hotel rooms and dwelling units.
  10. **Household.** One or more persons, whether or not related by blood, marriage or adoption, sharing a dwelling unit in a living arrangement usually characterized by sharing living expenses, such as rent or mortgage payments, food costs and utilities, as well as maintaining a single lease or rental agreement for all members of the household and other similar characteristics indicative of a single household.
  11. **Household Income, Gross.** The income of all adult members of the household as determined by the guidelines used by the Berkeley Housing Authority for its administration of the Section 8 Rental Subsidy Program. For purposes of this definition, household is the same as Family in the federal Section 8 Existing Housing Program or its future equivalent. Classification of Households, based on income, shall be based on the following percentages of the Oakland Primary Metropolitan Statistical Area (PMSA) statistical figures for income of the most recent U.S. Census that are available:
    - a. **Low Income Household.** A household whose gross income is greater than 80 percent and less than 100 percent of the median income.
    - b. **Lower Income Household.** A household whose income is no greater than 80 percent and above 50 percent of the median income.
    - c. **Very Low Income Household.** A household whose gross income is 50 percent or less of the median income.
- I. **“I” Terms.**
1. **Incidental Use.** See Use, Incidental.

2. **Inclusionary Unit.** A dwelling unit which is affordable by Households with income below the Oakland PMSA median income; or in the case of Limited Equity Cooperatives, Households with income below 120 percent of the Oakland PMSA median income.
3. **Industrial and Mining Product Sales.** Retail sale of equipment and productions for manufacturing, mining, and other industrial activities.
4. **Insurance Agents, Title Companies, Real Estate Agents, Travel Agents.** A commercial establishment providing insurance, title, real estate and travel services directly to customers.

J. **“J” Terms.**

K. **“K” Terms.**

1. **Kennels and Pet Boarding.** A facility for keeping, boarding, training, breeding or maintaining four or more dogs, cats, or other household pets not owned by the kennel owner or operator on a 24-hour basis. Excludes municipal animal shelters.
2. **Kitchen.** A habitable space used for preparation of food that contains at least a sink, a refrigerator of no less than 10 cubic feet, and either a cooktop and an oven, or a range.

L. **“L” Terms.**

1. **Laboratories.**

- a. **Commercial Physical or Biological.** A facility that provides controlled conditions in which scientific or technological research, experiments, and measurement may be performed.
- b. **Cannabis Testing.** A facility for the testing of the properties of cannabis intended for consumer use.
- c. **Class 1 Organism.** A microbe or biological agent classified as Biosafety Level 1 (BSL-1) by the U.S. Centers for Disease Control and Prevention.
- d. **Class 2 Organism.** A microbe or biological agent classified as Biosafety Level 2 (BSL-2) by the U.S. Centers for Disease Control and Prevention.
- e. **Class 3 Organism.** A microbe or biological agent classified as Biosafety Level 3 (BSL-3) by the U.S. Centers for Disease Control and Prevention.

2. **Land Use.** See “Use.”

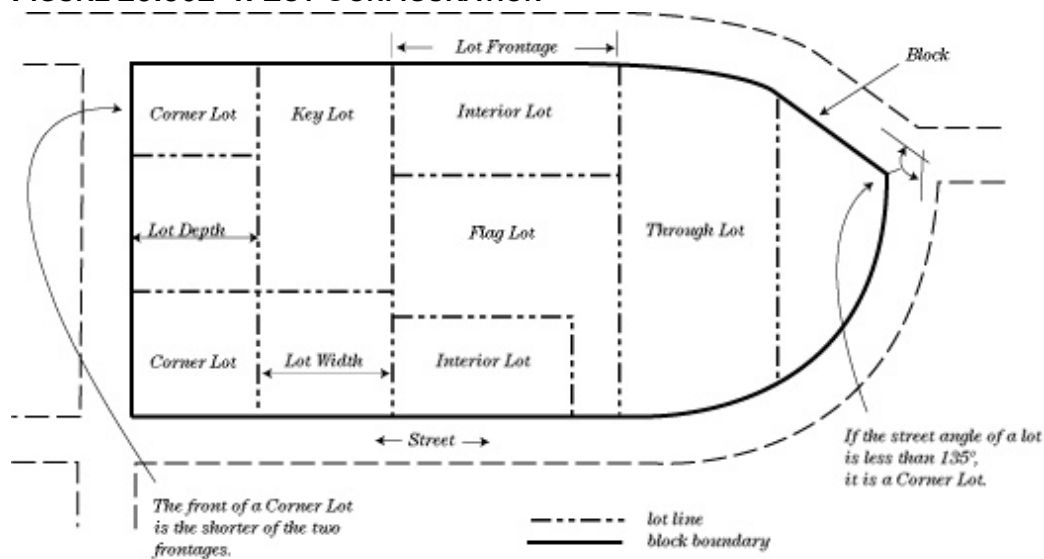
3. **Landscaped Area.** An area of ground within the boundaries of a lot which consists of living plant material including, but not limited to, trees, shrubs, ground covers, grass, flowers, gardens and vines.



4. **Large Vehicle Sales and Rental.** Establishments primarily engaged in renting or leasing trucks, truck tractors, buses, semitrailers, and utility trailers.
5. **Lattice Tower.** A support structure, erected on the ground that consists of metal crossed strips or bars to support antennas and related equipment.
6. **Laundromat and Cleaner.** A business which offers self-service laundry and/or dry-cleaning machines and dryers, which are coin, token or otherwise fee operated. This use excludes dry cleaning plants.
7. **Library.** A non-commercial facility where sources of information and similar resources (such as books, recordings, or films) are made available for public use.
8. **Limited Equity Cooperative.** The form of ownership defined in Section 11003.4(a) of the Business and Professions Code or other form of ownership, wherein appreciation of equity of dwelling units is no greater than appreciation permitted by California Health and Safety Code Section 33007.5 for a Limited Equity Cooperative.
9. **Live Entertainment.** Any one or more of any of the following, performed live by one or more persons, whether or not done for compensation and whether or not admission is charged: musical act (including karaoke); theatrical act (including stand-up comedy); play; revue; dance; magic act; disc jockey; or similar activity.
10. **Live/Work.** A built space used or designed to be used both as a workplace and as a residence by one or more persons in conformance with Chapter 23.312 (Live/Work).
11. **Loading Space, Off-street.** A covered or uncovered space for trucks or other delivery vehicles for the loading or unloading of freight, cargo, packages, containers or bundles of goods and/or bulky goods.
12. **Loft.** See mezzanine.
13. **Lot.** A separate legal subdivision of land, as recorded with the County of Alameda Recorder. See Figure 23.502-4: Lot Configuration.
  - a. **Abutting Lot.** A lot having a common property line or separated by a public path or alley, private street or easement to the subject lot.
  - b. **Confronting Lot.** A lot whose front property line is intersected by a line perpendicular to and intersecting the front property line of the subject lot.
  - c. **Corner Lot.** A lot bounded on two or more adjacent sides by street lines, providing that the angle of intersection is less than 135 degrees.
  - d. **Flag Lot.** A lot so shaped that the main portion of the lot area does not have direct street frontage, other than by a connection of a strip of land which is used for access purposes.

- e. **Interior Lot.** A lot bounded on one side by a street line and on all other sides by lot lines between adjacent lots or is bounded by more than one street with an intersection greater than or equal to 135 degrees.
- f. **Key Lot.** Any interior lot which abuts the rear lot line of a corner lot.
- g. **Receiving Lot.** The lot to which a building is relocated from a different lot.
- h. **Source Lot.** The lot from which a building is relocated to a different lot.
- i. **Through Lot.** A lot having frontage on two parallel or approximately parallel streets.

**FIGURE 23.502-4: LOT CONFIGURATION**



- 14. **Lot Area.** The total horizontal area within a lot's boundary lines.
- 15. **Lot Coverage.** See 23.106.020 (Lot Coverage).
- 16. **Lot Depth.** The average distance from the front lot line to the rear lot line measured in the general direction of the side lines.
- 17. **Lot Frontage.** That dimension of a lot's front lot line abutting on a street.
- 18. **Lot Lines.** The boundaries between a lot and other property or the public right-of-way.
- 19. **Lot Line, Front.** The shorter of the two intersecting lot lines along the rights-of-way of a corner lot shall be deemed to be the front of the lot for purposes of determining the lot frontage and for yard requirements. In the case of a lot having equal frontage, or in the case of an irregularly shaped lot, the Zoning Officer shall determine the front in such a manner as to best promote the orderly development of the immediate area.

20. **Lot Width.** The average distance between the side lot lines measured at right angles to the lot depth.

M. “M” Terms.

1. **Main Building.** See Building, Main.
2. **Maintenance of Building.** Those activities which preserve an existing building including, but not limited to cleaning, painting, refurbishing (but not altering) exterior and interior walls, equipment, facilities and fixtures.
3. **Manufactured Home.** A structure, designed or altered to be used as a dwelling unit, which is transportable in one or more sections and is built on a frame or chassis to which wheels may be attached so as to be transported, including mobile homes meeting the standards of the National Manufactured Housing Construction and Safety Act of 1974. If a manufactured home is mounted on a permanent foundation and connected to all utilities required for a dwelling unit built on the site, it is considered a dwelling unit.
4. **Manufacturing Districts.** The districts listed under the Manufacturing Districts heading in Table 23.108-1: Zoning Districts.
5. **Manufacturing.** A use primarily engaged in the mechanical or the chemical transformation of materials or substances into new products. Manufacturing activities include assembly, baking, brewing, fabrication, milling, processing, refining, smelting and treatment and any other uses determined by the Zoning Officer. Except as otherwise provided in this chapter, manufacturing uses are defined, and distinguished from nonmanufacturing uses, in the North American Industrial Classification Manual (311611 – 339999).
  - a. **Construction Products Manufacturing.** Manufacturing and/or processing asphalt, cement and/or concrete.
  - b. **Light Manufacturing.** Primarily involved in baking, brewing, fabricating, milling, processing and other similar forms of mechanical and chemical treatment. Light manufacturing uses are generally in the following groups in the North American Industrial Classification System (NAICS):

| Use                                                      | NAICS Code                                                     |
|----------------------------------------------------------|----------------------------------------------------------------|
| Apparel and Other Textile Mill Products                  | 314 – 33636                                                    |
| Electronic and Electric Equipment, except semiconductors | 334412 – 335311, 334413, 333319, 333618, 333992, 335129, 35999 |
| Fabricated Metal Products                                | 332 – 332999                                                   |
| Food Processing                                          | 311 – 311999                                                   |
| Furniture and Fixtures                                   | 337 – 33792                                                    |
| Industrial Machinery and Equipment                       | 333 – 333999                                                   |
| Instruments and Related Products                         | 334511 – 334518                                                |
| Leather and Leather Products, except leather tanning     | 3162 – 316999                                                  |
| Lumber and Wood Products, except logging                 | 321 – 321999                                                   |
| Miscellaneous Manufacturing                              | 339 – 339999                                                   |

| Use                                                                | NAICS Code                   |
|--------------------------------------------------------------------|------------------------------|
| Paper and Allied Products, except paper, pulp and paperboard mills | 3222 – 322299                |
| Perfumes, Cosmetics and Toilet Preparations                        | 325611 – 32562               |
| Printing and Publishing, except publishing without printing        | 323 – 323122                 |
| Rubber and Miscellaneous Plastic Products                          | 326 – 326299                 |
| Stone, Clay and Glass Products, except cement                      | 327 – 327215, 32733 – 327999 |
| Textile Mill Products                                              | 313 – 31332                  |
| Transportation Equipment                                           | 336 – 336999                 |

- c. **Pesticides, Herbicides and Fertilizers.** Manufacturing and/or processing of substances used for destroying insects or other organisms harmful to cultivated plants or to animals, substances toxic to plants used to destroy unwanted vegetation. and chemicals or natural substance added to soil or land to increase its fertility.
- d. **Petroleum Refining and Products.** The transformation of crude oil into gasoline and other similar petroleum products.
- e. **Pharmaceuticals.** Manufacturing and production of medical drugs.
- f. **Primary Production Manufacturing,** Manufacturing primarily involved in drawing, smelting, refining, rolling and extruding to produce materials such as metals or plastic. Primary production manufacturing uses are generally in the following groups in the North American Industrial Classification System (NAICS):

| Use                                                                                                   | NAICS Code                                  |
|-------------------------------------------------------------------------------------------------------|---------------------------------------------|
| Chemicals and allied products, except pharmaceuticals and perfumes, cosmetics and toilet preparations | 325 – 32532, 325413 – 325613, 3259 – 325998 |
| Leather Tanning                                                                                       | 31611                                       |
| Paper, pulp and paperboard mills                                                                      | 32211 – 3221                                |
| Primary Metal Industries                                                                              | 331 – 331528                                |

- g. **Semiconductors.** The manufacturing of a solid substance that has a conductivity between that of an insulator and that of most metals, either due to the addition of an impurity or because of temperature effects.
6. **Material Recovery Enterprise.** A business that diverts discarded materials from several waste streams including the Transfer Station, drop-off, pick-up and curbside collection. Such facilities must clean, sort, repair and/or process these materials and offer them for reuse and/or recycling through wholesale and/or retail sales, including bulk sales. The retail component of these facilities is limited to the sale of items recovered from the waste stream. No new items may be offered for sale at these facilities. This use excludes flea markets, automobile wrecking establishments, manufacturer's outlet stores (factory second stores),

consignment shops, second-hand stores, antique stores, and any store which offers only used furniture, clothing and/or household items.

7. **Media Production.** Commercial arts and art-related business services including audio and film recording and editing studios and services, film and video production, titling, video and film libraries, special effects production, motion picture and photograph processing, radio and television broadcast, and similar uses.
8. **Medical Practitioner Office.** Clinics or offices and related laboratories for doctors, dentists, chiropractors, optometrists, mental health practitioners, osteopaths, chiropodists, and similar practitioners of the traditional healing arts, as well as holistic healthcare providers and practitioners of a non-traditional nature. This use includes acupuncturists, herbalists, nutritionists, midwives, reflexologists, iridologists, physical therapists, and bodyworkers, but excludes offices for veterinarians or opticians.
9. **Mezzanine.** An intermediate level of a building interior containing floor area without complete enclosing interior walls or partitions, placed in any story or room and not separated from the floor or level below by a wall.
10. **Microbusiness.** Cannabis use involving more than one State license. See Municipal Code Chapter 12.21 for definition.
  - a. **Retail Nursery Microbusiness.** A microbusiness that is restricted to growing and selling cannabis plants and seeds. See Municipal Code Chapter 12.21 for definition.
  - b. **Retail Storefront Microbusiness.** A microbusiness that is restricted to a Storefront Retailer with limited manufacturing and distribution activities. See Municipal Code Chapter 12.21 for definition and limitations.
11. **Mini-storage.** A storage warehouse characterized by individual separate spaces, which are accessible by customers for storing and retrieval of goods.
12. **Mixed Use.** The use of a lot or building with two or more different land uses including, but not limited to, residential, commercial retail, office or manufacturing, in a single structure or a group of physically integrated structures.
13. **Mixed-Use Residential.** A development project with both residential and non-residential uses which are either 1) located together in a single building; or 2) in separate buildings on a single site of one or more contiguous properties.
14. **Microcell.** A set of antenna nodes networked with each other and connected to a wireless service source, such that a one or more high-power antennas that serve a given area are replaced by a group of lower-power antennas to serve the same geographic area.

15. **Monopole.** A single pole support structure greater than 15 feet in height erected on the ground or on a structure to support antennas and related communications equipment.
16. **Motel, Tourist.** An establishment which provides overnight lodging and parking which contains six or more guest rooms used, designed or intended to be used, let or hired out for occupancy by six or more transient individuals for compensation, whether direct or indirect, and in which the rooms are usually accessible from an outdoor parking lot.
17. **Multi-Family Dwelling.** A building, group of buildings, or portion of a building used or designed as three or more dwelling units.
18. **Municipal Animal Shelter.** A City-owned facility providing services for humane animal care with programs and services focused on maximizing opportunities for animal adoption. Supporting facilities may include medical care (including spay/neuter), kennels, exercise areas and adoption centers.

N. **“N” Terms.**

1. **New Construction.** Construction of a new main building
2. **Non-Chartered Financial Institutions.** A use, other than State or Federally chartered bank, credit union, mortgage lender, savings and loan association or industrial loan company, that offers deferred deposit transaction services or check cashing services and loans for payment of a percentage fee. This use includes deferred deposit transaction (payday loan) businesses that makes loans upon assignment of wages received, check cashing businesses that charge a percentage fee for cashing a check or negotiable instrument, and motor vehicle title lenders who offer short-term loan secured by the title to motor vehicles. This use excludes non-profit financial institutions or retail sellers engaged primarily in the business of selling consumer goods to retail buyers and that cash checks or issue money orders as a service to its customers that is incidental to its main purpose or business.
3. **Non-conforming Use or Building.** A use or building which is not consistent with a provision or provisions of the Zoning Ordinance, but which was lawfully established or constructed before the effective date of the provision(s) with which it is inconsistent. A use is not considered non-conforming if it is only inconsistent with the Zoning Ordinance with respect to the number of auto or bicycle spaces, their location on site, or screening.
4. **Non-Processed Edibles.** Foods, including fruit, vegetables, nuts, honey, and shell eggs from fowl or poultry, grown or raised in accordance with the Municipal Code, that are whole and intact and have not been processed, but not including cannabis as defined in Chapter 12.26 or meat. Washing, trimming, bundling, and

similar handling of otherwise whole and intact foods shall not be considered processing.

5. **Non-Residential Districts.** Those districts listed under the Commercial Districts, Manufacturing Districts, and Special Districts headings in Table 23.108-1: Zoning Districts.
6. **Non-Residential Use.** Any land use other than a residential use as defined by this chapter.
7. **Nursing Home.** An establishment which provides 24 hour medical, convalescent or chronic care to individuals who, by reason of advanced age, chronic illness or infirmity, are unable to care for themselves, and is licensed as a skilled nursing facility by the California State Department of Health Services. This use includes rest homes and convalescent hospitals and excludes community care facilities, senior congregate housing, and hospitals.

O. **“O” Terms.**

1. **Oakland Primary Metropolitan Statistical Area (PMSA).** A geographic area defined by the U.S. Bureau of the Census, composed of the counties of Alameda and Contra Costa.
2. **Office Use.** A building or portion of a building used for conducting the business or affairs of a profession, business service, non-profit organization, agency, public utility and/or government entity.
3. **Office, Business and Professional.** A building or portion of a building used for conducting the business or affairs of a profession, business service, non-profit organization, agency, public utility and/or government entity. Includes publishing without printing.
4. **One Ownership.** Ownership of property or possession thereof under a contract to purchase by a person or persons, firm, corporation or partnership, individually, jointly, in common or in any other manner whereby such property is under a single or unified control.
5. **Outdoor Cafe Seating.** Tables and/or chairs (including benches) and umbrellas associated with a lawfully operating food service establishment located in an outdoor area on private property.
6. **Owner.** The person or persons, firm, corporation or partnership exercising One Ownership as defined in this chapter.
7. **Owner or Operator (also Provider or Service Provider).** The person, entity or agency primarily responsible for installation and maintenance of the facility, which may or may not be the same person or entity which is the owner of the property on which the facility is located.

P. **“P” Terms.**

1. **Parapet.** A low wall or railing not exceeding 42 inches above the roof and along its perimeter, usually for fire containment and/or architectural purposes.
2. **Parcel.** A term used by the Alameda County Tax Collector to describe a lot, portion of a lot or a group of lots for property tax purposes.
3. **Park/Playground.** Non-commercial facilities that provide open space and/or recreational opportunities to the public.
4. **Parking Area, Accessory.** An area of a lot reserved for use as off-street parking intended to serve a building or use which is the primary or main use of the lot.
5. **Parking Lot/Structure.**
  - a. **Parking Lots.** The exclusive or primary use of a lot for off-street parking spaces in an open paved area.
  - b. **Parking Structures.** The exclusive or primary use of a lot for off-street parking spaces in a structure built specifically for parking purposes.
6. **Parking Space, Off-Street.** An area, covered or uncovered, designed for the storage of an automobile which is paved, accessible by an automobile, and usable for such automobile storage use without permanent obstruction.
7. **Path.** A City-owned right-of-way used or designed for pedestrian access.
8. **Pawn Shops and Auction Houses.** Establishments engaged in the buying or selling of new or secondhand merchandise and offering loans in exchange for personal property.
9. **Penthouse, Mechanical.** A room or enclosed structure, attached to the roof level for the uppermost story, for purposes of sheltering mechanical equipment, water tanks and/or vertical openings for stairwell and elevator shafts. Such a structure is considered a story if it contains usable floor area or habitable space.
10. **Permit, Discretionary.** The following types of permits and approvals: Administrative Use Permit, Use Permit, Master Use Permit, Modification of Development Standards, Reasonable Accommodations, and Variance.
11. **Permit.** A Use Permit, Administrative Use Permit, or Variance, unless the context specifies otherwise.
12. **Personal/Household Service, General.** A business establishment which provides commercial services directly to customers. This use includes barber/beauty shops, clothing, shoes and/or household items repair shops, dry cleaning and laundry agents, framing/mounting shops, optician shops, photocopy stores, photography studios postal/packaging/po box service shops, and other similar establishments. This use excludes massage.



13. **Pet Store.** Retail sales and services for animals kept as household pets. Includes sales and grooming of animals but not boarding.
14. **Plumbing Shop.** A business offering plumbing supplies and service which has on-site supply storage and service vehicles.
15. **Porch.** A covered projecting platform that extends from the main wall of a building where the covering is supported by columns, walls, or other vertical structural elements.
16. **Primary Dwelling Unit.** A legally established single-family dwelling that is on a lot with an accessory dwelling unit.
17. **Privately-Owned Public Open Space.** Area on a lot that is designed for active or passive recreational use and that is accessible to the general public without a requirement for payment or purchase of goods. Such areas may include mid-block passageways and other amenities intended to improve pedestrian access, and may be outdoors, indoors, or enclosed.
18. **Public Property.** All real property owned, operated or controlled by the City, other than the public right-of-way and any privately- owned area within City's jurisdiction which is not yet, but is designated as a proposed public place on a tentative subdivision map approved by City.
19. **Public Right-Of-Way.** Any public street, public way, public place or rights-of-way, now laid out or dedicated, and the space on, above or below it, and all extensions thereof, and additions thereto, owned, operated and/or controlled by the City or subject to an easement owned by City and any privately-owned area within City's jurisdiction which is not yet, but is designated as a proposed public place on a tentative subdivision map approved by City.
20. **Public Market.** A facility or location where people regularly gather for the sale and purchase of food, beverages, flowers, crafts, and other similar goods. Public markets are open daily, year-round, in a permanent location, with multiple vendors that are owner-operated.
  - a. **Open Air.** A public market conducted outdoors.
  - b. **Enclosed.** A public market conducted indoors.
21. **Public Safety and Emergency Service.** Facilities that provide police and fire protection.
22. **Public Utility Substation/Tanks.** A permanent structure or facility providing a utility service to the general public. Includes generating plants, electric substations, solid waste collection, solid waste treatment and disposal, water or wastewater treatment plants, and similar facilities.

Q. **"Q" Terms.**

1. **Quorum.** A majority of the appointed members.

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 Table 23.108-1: Zoning Districts.
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.

#### S. "S" Terms.

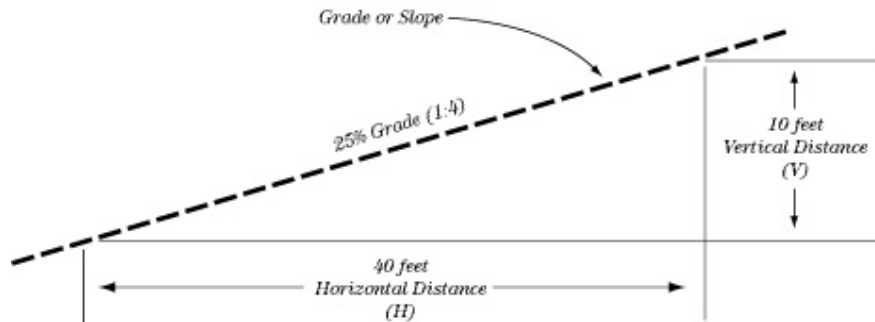
1. **Satellite Dish.** A device which is designed to receive signals or communications from orbiting satellites.
2. **School.** A building or group of buildings for educational and/or classroom purposes operated by the Berkeley Unified School District (BUSD) and/or other private or public education institutions offering a general course of study at primary, secondary or high school levels which is equivalent to the courses of study at such levels offered by the BUSD. Day nurseries, vocational and trade

schools are considered schools only when incidental to the conduct of a school as defined by this chapter.

3. **School, Vocational.** An educational institution which provides secondary or post-secondary training for technical skills required to complete the tasks of a specific job.
4. **Seasonal Product Sales.** Sales of products for a limited duration of time, usually associated with a seasonal holiday, including but not limited to, sales of Christmas trees and pumpkins.
5. **Service Use.** A business in which no more than fifty percent (50%) of its gross receipts are subject to retail sales taxes.
6. **Services to Buildings and Dwellings.** A business that provides services to customers at a location other than the business location. This use includes carpet/upholstery cleaning services, security services, and janitorial services.
7. **Senior Congregate Housing.** A type of group living accommodations occupied by persons 60 years or older who live in sleeping rooms without kitchen facilities, and which contains congregate bath and/or dining facilities or rooms. This use excludes community care facilities/homes and nursing homes.
8. **Setback.** A distance between a lot line and a building or other site improvement. See also 23.106.070 (Setbacks).
9. **Setback Area.** See 23.106.070.B (Setback Areas).
10. **Setback Line.** A line parallel to a specified lot line which defines a required setback area.
11. **Shed, Garden and/or Tool.** An accessory structure designed to store tools, lawn and garden care or maintenance equipment or materials, and which is not designed to contain any habitable space.
12. **Shelter, Homeless or Women's.** See Transitional Housing.
13. **Short-Term Rental.** See Section 23.314.020 (Definitions).
14. **Sidewalk Cafe Seating.** Tables and/or chairs (including benches) as defined in Municipal Code Section 14.48.150 (Sidewalk cafe seating, benches and planters).
15. **Sign.** Any sign as defined in Municipal Code Section 20.08.220 (Sign).
16. **Single-Family Dwelling.** A building designed for and occupied exclusively by one household.
17. **Single Residential Occupancy (SRO) Room.** A room for residential or sleeping purposes in a residential hotel which is designed for occupancy of one person only.

18. **Skateboard Ramp.** A ramp, platform, course or facility used for skateboard riding and made of wood or other solid material.
19. **Slope.** The steepness of a site, measured as the ratio of the vertical distance to the horizontal distance between the highest and lowest points of the site. See Figure 23.502-5: Grade or Slope.

**FIGURE 23.502-5: GRADE OR SLOPE**



20. **Small Vehicle Sales and Service.** An establishment which sells or leases long-term new, used, or pre-owned motorized vehicles other than passenger automobiles and trucks which are characterized by fewer than four wheels or a minimal frame. Types of vehicles sold or leased by this use include motorcycles, scooters, three-wheel motorcycles, electric carts, electric scooters, and such vehicles designed or refurbished for alternative fuels/power sources (alternative to conventional gasoline).
21. **Smoke Shop.** An establishment engaged primarily in the sale of tobacco and/or tobacco-related products.
22. **Solar Energy Device/Equipment.** Any solar collector or other solar energy device or any structural design feature of a building of which the primary purpose is to provide for the collection, storage or distribution of solar energy for space heating or cooling, water heating or the generation of electricity.
23. **Sorority House.** A building used for group living accommodations by an organization recognized by the UC Berkeley, or other institution of higher learning.
24. **Source Lot.** See Lot, Source.
25. **Story.** See Section 23.106.060 (Story)
26. **Street.** A public or private thoroughfare which provides principal means of access to abutting lots, including but not limited to, avenue, place, way, manor, drive, circle, lane, court, boulevard, highway, road and any other thoroughfare except an alley or a path as defined in this chapter.
27. **Street Line.** The boundary between a lot and an adjacent street.

28. **Structural Alteration.** Any physical change to or removal of the supporting members of a building, foundation or bearing walls, columns, beams or girders or creation or enlargement of a window or door, change of a roofline or roof shape, including creating, enlarging or extending a dormer.
29. **Structural Alteration, Public Safety.** Any structural alteration or physical change to a building that provides greater safety to the public or occupants by strengthening the building against seismic activity, which does not result in new floor area except that created by necessary structural improvements or physical changes as required under Municipal Code Chapter 19.38 and 19.39.
30. **Structure.** Anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground. A building is a structure for the purposes of this chapter.
- a. **Accessory Structure.** A detached structure, other than an accessory building, in which non-habitable uses or activities other than the principal use of the property are conducted. Residential accessory structures include, but are not limited to, enclosed structures such as garages, carports, garden or tool sheds, and non-enclosed structures such as, but not limited to, fences, gazebos, ground-mounted satellite dishes, skateboard ramps and wheelchair ramps. Non-residential accessory structures include, but are not limited to, storage buildings, garages, sheds and other outbuildings.
  - b. **Subterranean Structure.** A roofed structure constructed underground, with no building stories aboveground, of which the roof does not exceed 3 feet above the pre-existing grade. Such structures are either separated from a building or connected to a building only by a passageway or hallway with no openings to finished grade except for a doorway.
  - c. **Temporary Structure.** A tent, tent-house, trailer, mobile office, mobile home or other movable structure or other temporary structure whose construction does not require a building permit.
31. **Studio.** See Art/Craft Studio and Dance, Exercise, Martial Arts or Music Studio.
32. **Supportive Housing.** As defined in Health and Safety Code 50675.14(b): Any dwelling unit or a Group Living Accommodation, that is occupied by the target population as defined in subdivision (d) of Section 53260 of the CA Health and Safety Code with no limit on length of stay, that is linked to on- or off-site services that assist the supportive housing residents in retaining the housing, improving their health status, and maximizing their ability to live and, when possible, work in the community.

#### T. "T" Terms.

1. **Temporary Use.** See Use, Temporary.

2. **Tenant Space Reconfiguration.** any physical change to an existing building's walls separating leased spaces so as to change the number of lease spaces for commercial businesses or the square footage of leasable floor area of an existing commercial lease space.
3. **Theater.** Any establishment that has a permanent stage or screen for the presentation of live or recorded entertainment and which contains an audience viewing hall or room, with fixed seats. Theaters may be used for live performances of music, dance, plays, orations, and other stage performances and/or the showing of projected motion pictures and videotapes.
4. **Tire Sales and Service.** An establishment that sells, installs, and provides services for vehicle tires.
5. **Tourist Hotel.** See Hotel, Tourist.
6. **Tourist Hotel Room.** A sleeping room used, designed or intended for occupancy by transient guests for a period not to exceed 14 consecutive days, which is not a residential hotel room or a dwelling unit.
7. **Townhouse.** A dwelling unit in which ownership is in the form of a condominium arrangement which is located in a separate building from any other dwelling unit.
8. **Transitional Housing.** From Health and Safety Code Section 50675.2: Any dwelling unit or a Group Living Accommodation configured as a rental housing development, but operated under program requirements that call for the termination of assistance and recirculation of the assisted units to another eligible program recipient at some predetermined future point in time.
9. **Treehouse.** An accessory structure built within, on or above the branches of any living tree.
10. **Two-Family Dwelling.** A building or use of a lot designed for, or occupied exclusively by, two households.

#### U. "U" Terms.

1. **Unenclosed Accessory Structure.** An accessory structure that does not have a roof, and/or does not have walls on more than two sides. Unenclosed accessory structures include, but are not limited to, pergolas, trellises, shade structures, arbors, retaining walls, solar energy equipment, ground or pole-mounted satellite dishes, play structures, skateboard ramps, tree houses and windmills.
2. **Urban Agriculture.** The production of horticultural crops for harvest, sale, and/or donation, including community gardens. This use excludes include cannabis cultivation and does not pertain to raising animals.
  - a. **Low-Impact Urban Agriculture.** Urban agriculture that meets the thresholds in Section 23.318.040 (Thresholds).

- b. **High-Impact Urban Agriculture.** Urban agriculture that does not meet one or more of the thresholds in Section 23.318.040 (Thresholds).
3. **Urban Agricultural Products.** Horticultural crops including fruits, vegetables, nuts, flowers, herbs, and any other cultivar, and value-added products made from raw agricultural products grown at the site such as jams, fruit preserves, herb blends, and floral bouquets. Urban agricultural products do not include cannabis products.
  4. **Usable Open Space.** Outdoor space, including natural and landscaped ground areas, pools, patios, decks and balconies designed for active or passive recreational use and which is accessible to the occupants of a building on the same lot.
  5. **Usable Space.** Any portion of a building or structure which is designed to be or can be used as habitable space, which has finished walls (sheetrock or plaster) and/or is heated with any fixed furnace or central heating system, including bathrooms, halls, garages and laundry rooms. Storage areas with over 6 feet of vertical space shall also be considered usable space.
  6. **Use.** The purpose for which land or premises or a building thereon is designed, arranged, or intended or for which it is or may be occupied or maintained.
  7. **Use, Accessory.** A use that is of the same nature as or complementary to the principal use of a lot or a building located on the same lot, and that is not independent of the principal use.
  8. **Use, Ancillary.** A use that is both dependent on and commonly associated with the principal permitted use of a lot and/or building and that does not result in different or greater impacts than the principal use.
  9. **Use, Incidental.** A use of a lot and/or building that is secondary to the principal permitted use, but that by nature could be independent. An incidental use shall not exceed 25 percent of the floor area of the primary use, and if it consists of the commercial sales of a different line of products or services than the primary use, such incidental use may not generate gross receipts in excess of 33 percent of the gross receipts generated by the primary use.
  10. **Use, Primary.** The main purpose for which a site is developed and occupied, including the activities that are conducted on the site a majority of the hours during which activities occur.
  11. **Use, Temporary.** A use of a building, property or land area, that is limited in duration of time, does not permanently change the character or physical facilities of the premises or property and is in keeping with the purposes listed in the district where it is located.



12. **Utility.** An entity which provides water, sewage collection, electricity, natural gas, telephone, cable television or other public service or good to the public.

V. **“V” Terms.**

1. **Vehicle Parts Stores.** An establishment that sells automobile, truck or other vehicle parts or equipment. This use excludes service of vehicle parts.
2. **Vehicle Rentals.** An establishment which rents automobiles, trucks, motorcycles, boats, or other motor-driven vehicles that are stored either indoors or outdoors on its premises.
3. **Vehicle Repair and Service.** An establishment that repairs, services, paints and/or conducts bodywork on automobiles, trucks or other motor-driven vehicles on its premises. Includes restoration of antique and classic cars.
4. **Vehicle Sales.** An establishment which sells, or leases long-term, new, used or previously owned automobiles or trucks; restored vintage, specialty, or antique automobiles or trucks; or automobiles or trucks refurbished for alternative fuels (alternative to conventional gasoline). Ancillary uses and services that are supporting of an vehicle sales use may include the sale and installation of automobile parts, accessories and equipment; repair, maintenance, bodywork and other service of automobiles; loaning of vehicles to service patrons; storage of vehicles outdoors; and automobile washes. This use excludes establishments where more than 50 percent of vehicles sold are previously owned or used (see vehicles sales, used).
5. **Vehicle Sales, Used.** An establishment which sells automobiles and/or trucks of which more than fifty percent at any time are previously owned and/or used.
6. **Vehicle Sharing** (which includes “Car Sharing”). A membership-based service that:
  - a. Provides a mobility service that helps meet City goals for alternative transportation to enhance mobility options, reduce congestion and promote walking, biking and transit;
  - b. Is primarily designed for shorter time and shorter distance trips that can function as an extension of the public transportation network;
  - c. Offers membership to all qualified drivers in the City;
  - d. Does not require a separate written agreement or human intervention to access vehicles each time a member reserves and uses a vehicle;
  - e. Offers members access to a dispersed network of shared automotive vehicles, available 24 hours per day, 7 days a week, at self-service locations where the vehicles are not attended; and

- f. Provides vehicle usage without restriction at hourly and/or per mile rates that are directly proportional to usage and include fuels (gas), insurance, maintenance, and reserved parking when vehicles are not in use.
7. **Vehicle Sharing Pod.** Any location reserved for shared vehicles that:
    - a. Is located in a location approved for off-street parking or municipal parking lot; or
    - b. Is located on street in a site designated by the City for this use; and
    - c. Does not involve more than five shared vehicles per vehicle sharing service provider; and
    - d. Where the shared vehicles must be parked in assigned spaces in conformance with all applicable laws and ordinances.
  8. **Vehicle Wash.** An establishment where the Washing, waxing, or cleaning of automobiles or similar light vehicles are the primary use. Includes self-serve washing facilities.
  9. **Vehicle Wrecking.** An establishment which engages in the on-site dismantling or wrecking of automobiles, trucks, or trailers for the purpose of obtaining parts, metal, or materials for re-use or resale or the storage and keeping of such dismantled parts.
  10. **Veterinary Clinic.** A facility providing veterinarian and/or medical care or treatment for animals. This use includes pet hospitals but excludes kennels or other animal boarding facilities for non-medical care of animals of over 24 hours.
  11. **Video Tape/Disk Rental Stores.** A commercial establishment where the primary business is the rental of video tapes and DVD for the short-term use of customers.
  12. **View Corridor.** A significant view of the Berkeley Hills, San Francisco Bay, Mt. Tamalpais, or a significant landmark such as the Campanile, Golden Gate Bridge, and Alcatraz Island or any other significant vista that substantially enhances the value and enjoyment of real property.

#### W. "W" Terms.

1. **Warehouse.** A facility for the storage of commercial goods. Includes storage of goods for a contiguous and directly accessible retail space. Excludes mini-storage.
2. **Warehouse-Based Non-Store Retailers.** Retail activity that is based on sales without on-site customer visits. This use includes businesses engaged in catalog sales, internet sales, and phone orders. Goods may be both stored and distributed from site. This use includes delivery-only cannabis retailers located in the Manufacturing (M) district.

- 3. **Wheelchair Ramp.** A sloping ramp, designed in width and steepness to allow a person in a wheelchair to reach an entrance doorway of a building or a landing at the same level as the doorway.
- 4. **Wholesale Trade.** The sale of goods to other businesses for resale. Any use defined as conducting Wholesale Trade under Municipal Code Section 9.04.150 is considered a wholesale trade establishment.
- 5. **Windmill.** A device that converts the kinetic energy of the wind to a usable form of electrical or mechanical energy, usually by rotating blades.

X. **“X” Terms.**

Y. **“Y” Terms.**

- 1. **Yard.** See Setback Area

Z. **“Z” Terms.**

- 1. **Zoning Ordinance.** Title 23 of the City of Berkeley Municipal Code.

**23.502.030 – Acronyms**

- A. **Error! Reference source not found.** shows terms corresponding to acronyms used in the Zoning Ordinance. For zoning district names that correspond to district symbols (e.g., R-1 for Single-Family Residential), see Table 23.108-1: Zoning Districts.

**TABLE 23.502-1: ACRONYMS USED IN ZONING ORDINANCE**

| <b>ACRONYM</b> | <b>TERM</b>                                      |
|----------------|--------------------------------------------------|
| ADA            | Americans with Disabilities Act                  |
| AUP            | Administrative Use Permit                        |
| DU             | Dwelling Unit                                    |
| FAR            | Floor Area Ratio                                 |
| HUD            | U.S. Department of Housing and Urban Development |
| LPC            | Landmarks Preservation Commission                |
| NPO            | Neighborhood Preservation Ordinance              |
| TSF            | Transportation Services Fee                      |
| UBC            | Uniform Building Code                            |
| UP(PH)         | Use Permit, Public Hearing                       |
| ZAB            | Zoning Adjustments Board                         |
| ZC             | Zoning Certificate                               |

**Appendix A**  
**CITY OF BERKELEY BASELINE ZONING ORDINANCE (BZO)**  
**TABLE RELATING NEW ORDINANCE TO OLD ORDINANCE**

| New Chapters                              | Old Chapters                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Division 1: General Provisions</b>     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 23.102: Introductory Provisions           | 23A.04: Title, Adoption and Purposes<br>23A.12: General Regulations<br>23A.24: Applicability, Emergencies, Interpretation, Severability, Rules of Evidence and Procedure                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 23.104: Interpreting the Zoning Ordinance | 23A.08: Interpretation and Construction of the Zoning Ordinance                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 23.106: Rules of Measurement              | 23D.04: Lot and Development Standards<br>23F.04: Definitions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 23.108: Zoning Districts and Map          | 23A.16: Zoning Maps, Districts and Boundaries                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Division 2: Zoning Districts</b>       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 23.202: Residential Districts             | 23D.16: R-1 Single Family Residential District Provisions<br>23D.20: R-1A Limited Two-Family Residential District Provisions<br>23D.24: ES-R Environmental Safety-Residential District Provisions<br>23D.28: R-2 Restricted Two-Family Residential District Provisions<br>23D.32: R-2A Restricted Multiple-Family Residential District Provisions<br>23D.36: R-3 Multiple Family Residential District Provisions<br>23D.40: R-4 Multi-Family Residential District Provisions<br>23D.44: R-5 High Density Residential District Provisions<br>23D.48: R-S Residential Southside District Provisions |

| New Chapters                      | Old Chapters                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-----------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                   | 23D.52: R-SMU Residential Southside Mixed Use District Provisions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 23.204: Commercial Districts      | 23E.16: Special Use Standards<br>23E.18: Temporary Outdoor Uses on Private Property<br>23E.24: Sidewalk Café Seating<br>23E.36: C-1 General Commercial District Provisions<br>23E.40: C-N Neighborhood Commercial District Provisions<br>23E.44: C-E Elmwood Commercial District Provisions<br>23E.48: C-NS North Shattuck Commercial District Provisions<br>23E.52: C-SA South Area Commercial District Provisions<br>23E.56: C-T Telegraph Avenue Commercial District Provisions<br>23E.60: C-O Solano Avenue Commercial District Provisions<br>23E.64: C-W West Berkeley Commercial District Provisions<br>23E.68: C-DMU Downtown Mixed Use District Provisions<br>23E.70: C-AC Adeline Corridor Commercial District Provisions |
| 23.206: Manufacturing Districts   | 23E.72: M Manufacturing District Provisions<br>23E.76: MM Mixed Manufacturing District Provisions<br>23E.80: MU-LI Mixed Use-Light Industrial District Provisions<br>23E.84: MU-R Mixed Use-Residential District Provisions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 23.208: Special Purpose Districts | 23E.88: SP Specific Plan District Provisions<br>23E.92: U Unclassified District Provisions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 23.210: Overlay Zones             | 23E.96: H Hillside Overlay District Provisions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |

| New Chapters                                          | Old Chapters                                                                                                                                                                                                   |
|-------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                       | 23E.98: Civic Center District Overlay                                                                                                                                                                          |
| <b>Division 3: Citywide Provisions</b>                |                                                                                                                                                                                                                |
| 23.302: Supplemental Use Regulations                  | 23C.06: Bed and Breakfast Establishments in Residential Districts<br>23C.16: Home Occupations<br>23C.20: Exemptions<br>23E.18: Temporary Outdoor Uses on Private Property                                      |
| 23.304: General Development Standards                 | 23C.04: Lot and Development Standards<br>23D.08: Accessory Buildings and Structures<br>23E.04: Lot and Development Standards                                                                                   |
| 23.306: Accessory Dwelling Units                      | 23D.10: Accessory Dwelling Units                                                                                                                                                                               |
| 23.308: Emergency Shelters                            | 23C.10: Emergency Shelter Zoning                                                                                                                                                                               |
| 23.310: Alcoholic Beverage Sales and Service          |                                                                                                                                                                                                                |
| 23.312: Live/Work                                     | 23E.20: Live/Work                                                                                                                                                                                              |
| 23.314: Short-Term Rentals                            | 23C.22: Short-Term Rentals                                                                                                                                                                                     |
| 23.316: Percentage for Public Art on Private Projects | 23C.23: One-Percent for Public Art on Private Projects                                                                                                                                                         |
| 23.318: Urban Agriculture                             | 23C.26: Urban Agriculture                                                                                                                                                                                      |
| 23.320: Cannabis Uses                                 | 23C.25: Cannabis Uses                                                                                                                                                                                          |
| 23.322: Parking and Loading                           | 23C.19: Off-Street Parking Maximums for Residential Development<br>23D.12: Off-Street Parking Requirements<br>23E.28: Off-Street Parking and Transportation Services Fee<br>23E.32: Loading Space Requirements |
| 23.324: Nonconforming Uses, Structures, and Buildings | 23C.04: Conforming and Non-Conforming Uses, Buildings and Lots                                                                                                                                                 |
| 23.326: Demolition and Dwelling Unit Control          | 23C.08: Demolition and Dwelling Unit Control                                                                                                                                                                   |
| 23.328: Inclusionary Housing                          | 23C.12: Inclusionary Housing Requirements                                                                                                                                                                      |
| 23.330: Density Bonus                                 | 23C.14: Density Bonus                                                                                                                                                                                          |
| 23.332: Wireless Communication Facilities             | 23C.17: Wireless Telecommunication Facilities                                                                                                                                                                  |
| 23.334: Transportation Demand Management              | 23C.18: Transportation Demand Management                                                                                                                                                                       |

| New Chapters                                  | Old Chapters                                                                                                                                                                                                                                                                                                                        |
|-----------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Division 4: Permits and Administration</b> |                                                                                                                                                                                                                                                                                                                                     |
| 23.402: Administrative Responsibility         | 23B.04: Zoning Adjustments Board<br>23B.08: Design Review Committee<br>23B.12: Zoning Officer                                                                                                                                                                                                                                       |
| 23.404: Common Permit Requirements            | 23B.16: Use of Conflict Resolution or Mediation Service<br>23B.24: Applications for Permits<br>23B.56: Conditions Applicable to All Permits<br>23B.60: Compliance and Revocation                                                                                                                                                    |
| 23.406: Specific Permit Requirements          | 23B.20: Zoning Conformance Review<br>23B.28: Administrative Use Permits<br>23B.32: Use Permits<br>23B.36: Master Use Permits<br>23B.40: AUPs for Temporary Uses<br>23B.44: Variances<br>23B.48: Modification of Development Standards<br>23B.52: Reasonable Accommodation<br>23E.08: Design Review<br>23E.12: Design Review Process |
| 23.408: Green Pathway                         | 23B.34: Green Pathway                                                                                                                                                                                                                                                                                                               |
| 23.410: Appeals and Certifications            | 23.326: Demolition and Dwelling Unit Control                                                                                                                                                                                                                                                                                        |
| 23.412: Zoning Ordinance Amendments           | 23A.20: Zoning Ordinance Amendments                                                                                                                                                                                                                                                                                                 |
| 23.414: Nuisance Abatement                    | 23B.64: Abatement of Nuisances<br>23B.68: Private Right of Action                                                                                                                                                                                                                                                                   |
| <b>Division 5: Glossary</b>                   |                                                                                                                                                                                                                                                                                                                                     |
| 23.502: Glossary                              | 23F.04: Definitions                                                                                                                                                                                                                                                                                                                 |

**Appendix B**  
**CITY OF BERKELEY BASELINE ZONING ORDINANCE (BZO)**  
**TABLE RELATING OLD ORDINANCE TO NEW ORDINANCE**

| Old Chapters                                                                                      | New Chapters                                   |
|---------------------------------------------------------------------------------------------------|------------------------------------------------|
| <b>Sub-Title 23A: Ordinance Applicability</b>                                                     |                                                |
| 23A.04: Title, Adoption and Purposes                                                              | 23.102: Introductory Provisions                |
| 23A.08: Interpretation and Construction of Ordinance                                              | 23.104: Interpretation of the Zoning Ordinance |
| 23A.12: General Regulations                                                                       | 23.102: Introductory Provisions                |
| 23A.16: Zoning Maps, Districts and Boundaries                                                     | 23.108: Zoning Districts and Map               |
| 23A.20: Zoning Ordinance Amendments                                                               | 23.412: Zoning Code Amendments                 |
| 23A.24: Applicability, Emergencies, Interpretation, Severability, Rules of Evidence and Procedure | 23.102: Introductory Provisions                |
| <b>Sub-Title 23B: Ordinance Administration</b>                                                    |                                                |
| 23B.04: Zoning Adjustments Board                                                                  | 23.402: Administrative Responsibility          |
| 23B.08: Design Review Committee                                                                   |                                                |
| 23B.12: Zoning officer                                                                            |                                                |
| 23B.16: Use of Conflict Resolution or Mediation Service                                           | 23.404: Common Permit Requirements             |
| 23B.20: Zoning Conformance Review                                                                 | 23.406: Specific Permit Requirements           |
| 23B.24: Applications for Permits                                                                  | 23.404: Common Permit Requirements             |
| 23B.28: Administrative Use Permits                                                                | 23.406: Specific Permit Requirements           |
| 23B.32: Use Permits                                                                               |                                                |
| 23B.34: Green Pathway                                                                             | 23.408: Green Pathway                          |
| 23B.36: Master Use Permits                                                                        | 23.406: Specific Permit Requirements           |
| 23B.40: AUPs For Temporary Uses                                                                   |                                                |
| 23B.44: Variances                                                                                 |                                                |
| 23B.48: Modification of Development Standards                                                     |                                                |
| 23B.52: Reasonable Accommodation                                                                  |                                                |
| 23B.56: Conditions Applicable to All Permits                                                      | 23.404: Common Permit Requirements             |
| 23B.60: Compliance and Revocation                                                                 |                                                |
| 23B.64: Abatement of Nuisances                                                                    | 23.414: Nuisance Abatement                     |
| 23B.68: Private Right of Action                                                                   |                                                |
| <b>Sub-Title 23C: General Provisions Applicable in All Districts</b>                              |                                                |
| 23C.04: Conforming and Non-Conforming Uses, Buildings and Lots                                    | 23.324: Nonconforming Uses and Structures      |



| <b>Old Chapters</b>                                                      | <b>New Chapters</b>                                   |
|--------------------------------------------------------------------------|-------------------------------------------------------|
| 23C.06: Bed and Breakfast Establishments in Residential Districts        | 23.302: Supplemental Use Regulations                  |
| 23C.08: Demolition and Dwelling Unit Controls                            | 23.326: Demolition and Dwelling Unit Control          |
| 23C.10: Emergency Shelter Zoning                                         | 23.308: Emergency Shelters                            |
| 23C.12: Inclusionary Housing Requirements                                | 23.328: Inclusionary Housing                          |
| 23C.14: Density Bonus                                                    | 23.330: Density Bonus                                 |
| 23C.16: Home Occupations                                                 | 23.302: Use-Specific Regulations                      |
| 23C.17: Wireless Telecommunication Facilities                            | 23.332: Wireless Communication Facilities             |
| 23C.18: Transportation Demand Management                                 | 23.334: Transportation Demand Management              |
| 23C.19: Off-Street Parking Maximums for Residential Development          | 23.322: Parking and Loading                           |
| 23C.20: Exemptions                                                       | 23.302: Supplemental Use Regulations                  |
| 23C.22: Short-Term Rentals                                               | 23.314: Short-Term Rentals                            |
| 23C.23: One-Percent for Public Art on Private Projects                   | 23.316: Percentage for Public Art on Private Projects |
| 23C.24: Accessory Dwelling Units                                         | 23.306: Accessory Dwelling Units                      |
| 23C.25 Cannabis Uses                                                     | 23.320: Cannabis Uses                                 |
| 23C.26: Urban Agriculture                                                | 23.318: Urban Agriculture                             |
| <b>Sub-Title 23D: Provisions Applicable in All Residential Districts</b> |                                                       |
| 23D.04: Lot and Development Standards                                    | Chapter 23.304: General Development Standards         |
| 23D.08: Accessory Buildings and Structures                               |                                                       |
| 23D.10: Accessory Dwelling Units                                         | 23.306: Accessory Dwelling Units                      |
| 23D.12: Off-Street Parking Requirements                                  | 23.322: Parking and Loading                           |
| 23D.16: R-1 Single Family Residential District Provisions                | 23.202: Residential Districts                         |
| 23D.20: R-1A Limited Two-Family Residential District Provisions          |                                                       |
| 23D.24: ES-R Environmental Safety-Residential District Provisions        |                                                       |
| 23D.28: R-2 Restricted Two-Family Residential District Provisions        |                                                       |
| 23D.32: R-2A Restricted Multiple-Family Residential District Provisions  |                                                       |
| 23D.36: R-3 Multiple Family Residential District Provisions              |                                                       |
| 23D.40: R-4 Multi-Family Residential District Provisions                 |                                                       |

| Old Chapters                                                                 | New Chapters                                                          |
|------------------------------------------------------------------------------|-----------------------------------------------------------------------|
| 23D.44: R-5 High Density Residential District Provisions                     |                                                                       |
| 23D.48: R-S Residential Southside District Provisions                        |                                                                       |
| 23D.52: R-SMU Residential Southside Mixed Use District Provisions            |                                                                       |
| <b>Sub-Title 23E: Provisions Applicable in All Non-Residential Districts</b> |                                                                       |
| 23E.04: Lot and Development Standards                                        | 23.106: Rules of Measurement<br>23.304: General Development Standards |
| 23E.08: Design Review                                                        |                                                                       |
| 23E.12: Design Review Process                                                | 23.406: Specific Permit Requirements                                  |
| 23E.16: Special Use Standards                                                | 23.204: Commercial Districts                                          |
| 23E.18 Temporary Outdoor Uses on Private Property                            | 23.302: Supplemental Use Regulations                                  |
| 23E.20: Live/Work Provisions                                                 | 23.312: Live/Work                                                     |
| 23E.24: Sidewalk Cafe Seating                                                | 23.204: Commercial Districts                                          |
| 23E.28: Off-Street Parking and Transportation Services Fee                   | 23.332: Parking and Loading                                           |
| 23E.32: Loading Space Requirements                                           |                                                                       |
| 23E.36: C-1 General Commercial District Provisions                           |                                                                       |
| 23E.40: C-N Neighborhood Commercial District Provisions                      |                                                                       |
| 23E.44: C-E Elmwood Commercial District Provisions                           |                                                                       |
| 23E.48: C-NS North Shattuck Commercial District Provisions                   |                                                                       |
| 23E.52: C-SA South Area Commercial District Provisions                       |                                                                       |
| 23E.56: C-T Telegraph Avenue Commercial District Provisions                  | 23.204: Commercial Districts                                          |
| 23E.60: C-O Solano Avenue Commercial District Provisions                     |                                                                       |
| 23E.64: C-W West Berkeley Commercial District Provisions                     |                                                                       |
| 23E.68: C-DMU Downtown Mixed Use District Provisions                         |                                                                       |
| 23E.70: C-AC Adeline Corridor Commercial District Provisions                 |                                                                       |
| 23E.72: M Manufacturing District Provisions                                  |                                                                       |
| 23E.76: MM Mixed Manufacturing District Provisions                           | 23.206: Manufacturing Districts                                       |
| 23E.80: MU-LI Mixed Use-Light Industrial District Provisions                 |                                                                       |

| Old Chapters                                           | New Chapters                                     |
|--------------------------------------------------------|--------------------------------------------------|
| 23E.84: MU-R Mixed Use-Residential District Provisions |                                                  |
| 23E.88: SP Specific Plan District Provisions           | 23.208: Special Purpose Districts                |
| 23E.92: U Unclassified District Provisions             |                                                  |
| 23E.96: H Hillside Overlay District Provisions         | 23.210: Overlay Zones                            |
| 23E.98: Civic Center District Overlay                  |                                                  |
| <b>Sub-Title 23F: Definitions</b>                      |                                                  |
| 23F.04: Definitions                                    | 23.106: Rules of Measurement<br>23.502: Glossary |

# Official Zoning Map

of the  
City of Berkeley, California

Adopted by the Berkeley City Council on  
March 18, 1999 - Ordinance No. 6478-N.S.

### ZONING DISTRICTS

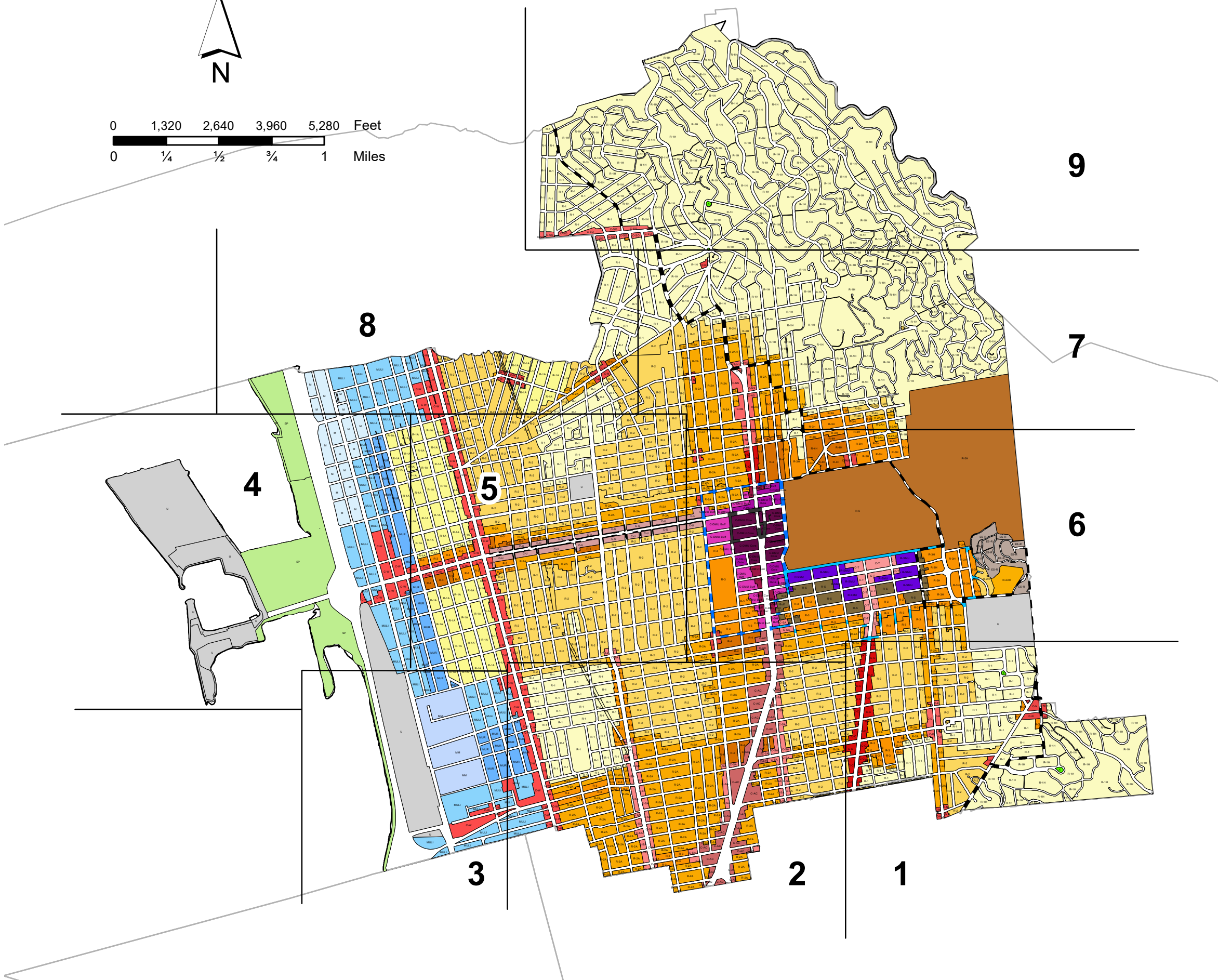
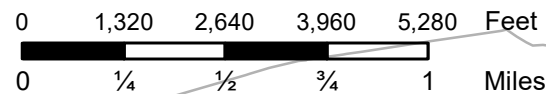
- R-1 Single Family Residential
- R-1A Limited Two-family Residential
- R-2 Restricted Two-family Residential
- R-2A Restricted Multiple-family Residential
- R-3 Multiple-family Residential
- R-4 Multi-family Residential
- R-5 High Density Residential
- ES-R Environmental Safety-Residential
- R-S Residential High Density Subarea
- R-SMU Residential Mixed Use Subarea
  
- C-DMU Core
- C-DMU Outer Core
- C-DMU Corridor
- C-DMU Buffer
  
- C-C Corridor Commercial
- C-E Elmwood Commercial
- C-N Neighborhood Commercial
- C-NS North Shattuck Commercial
- C-SA South Area Commercial
- C-AC Adeline Corridor Commercial
- C-SO Solano Avenue Commercial
- C-T Telegraph Avenue Commercial
- C-U University Avenue Commercial
- C-W West Berkeley Commercial
  
- M Manufacturing
- MM Mixed Manufacturing
- MULI Mixed Use-Light Industrial
- MUR Mixed Use-Residential
  
- SP Specific Plan
- U Unclassified

### OTHER MAP SYMBOLS

- Hillside Overlay Boundary
- Arts District Overlay
- Southside Plan
- Downtown Area Plan

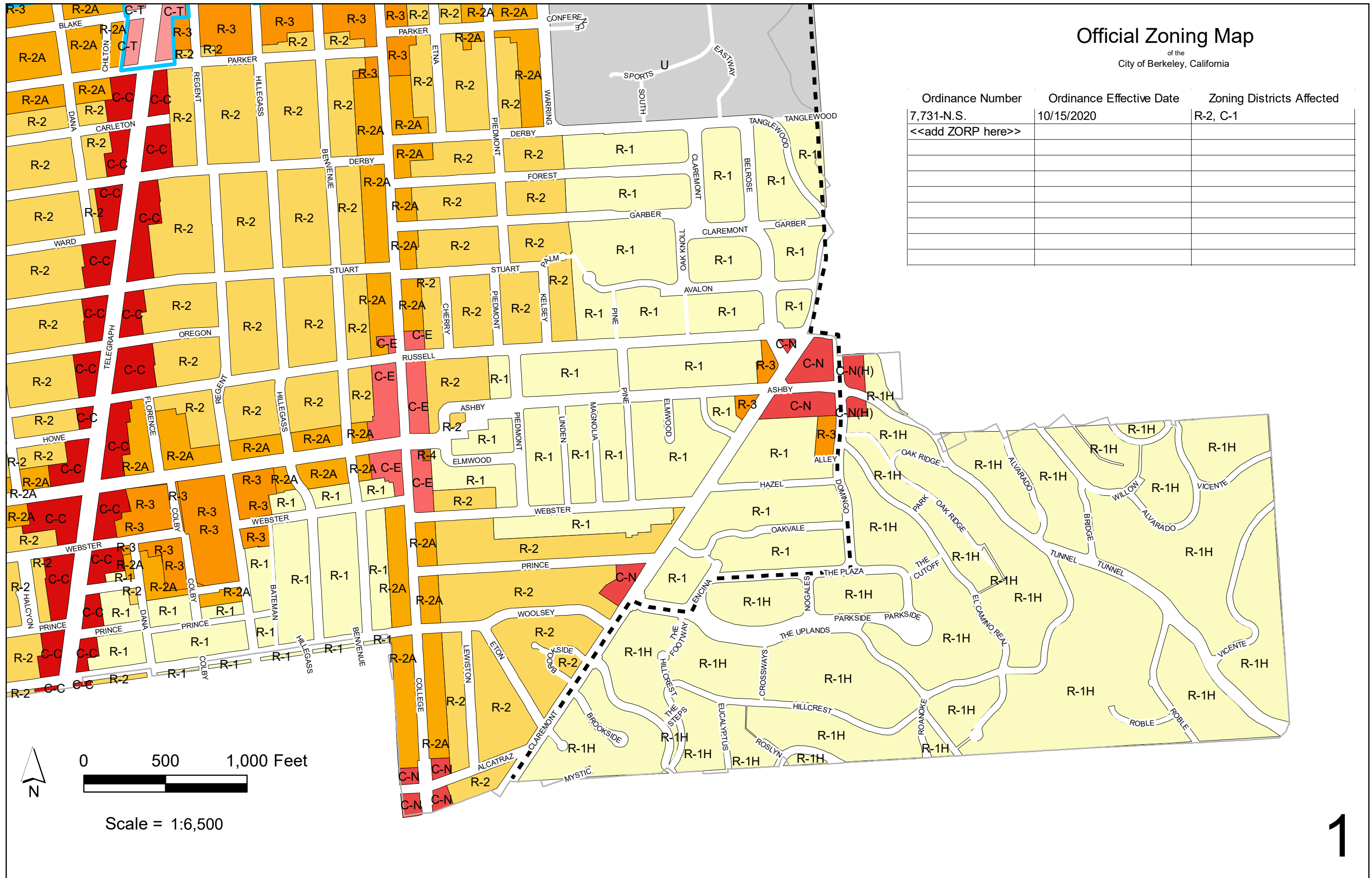
### University Ave Strategic Plan

- Avenue Mixed Use
- UASP Node



6

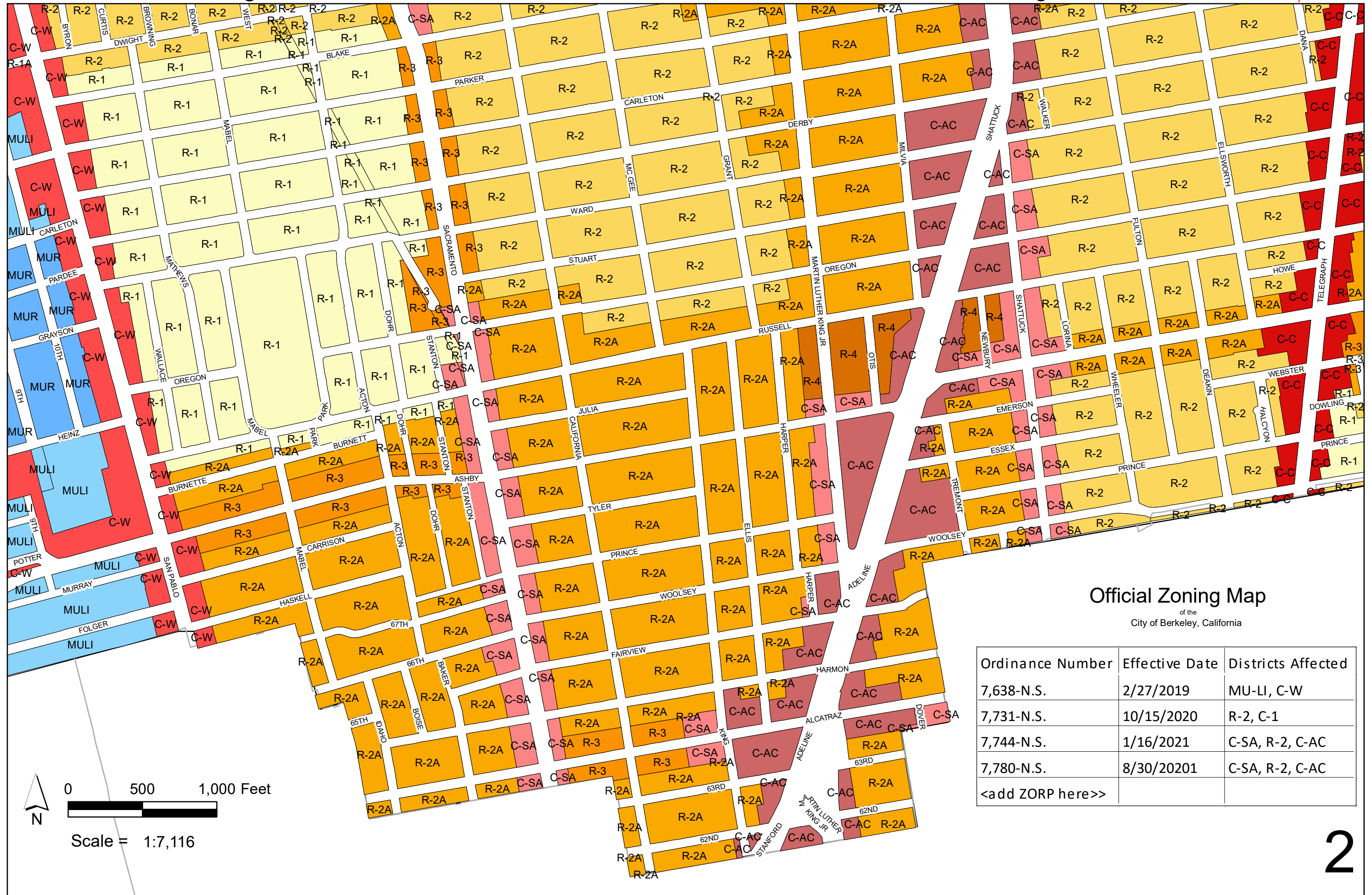
2



1

5

6



### Official Zoning Map

of the  
City of Berkeley, California

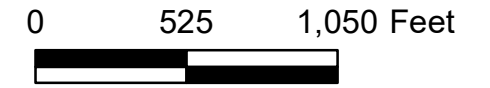
| Ordinance Number | Effective Date | Districts Affected |
|------------------|----------------|--------------------|
| 7,638-N.S.       | 2/27/2019      | MU-LI, C-W         |
| 7,731-N.S.       | 10/15/2020     | R-2, C-1           |
| 7,744-N.S.       | 1/16/2021      | C-SA, R-2, C-AC    |
| 7,780-N.S.       | 8/30/2021      | C-SA, R-2, C-AC    |
| <add ZORP here>> |                |                    |

2

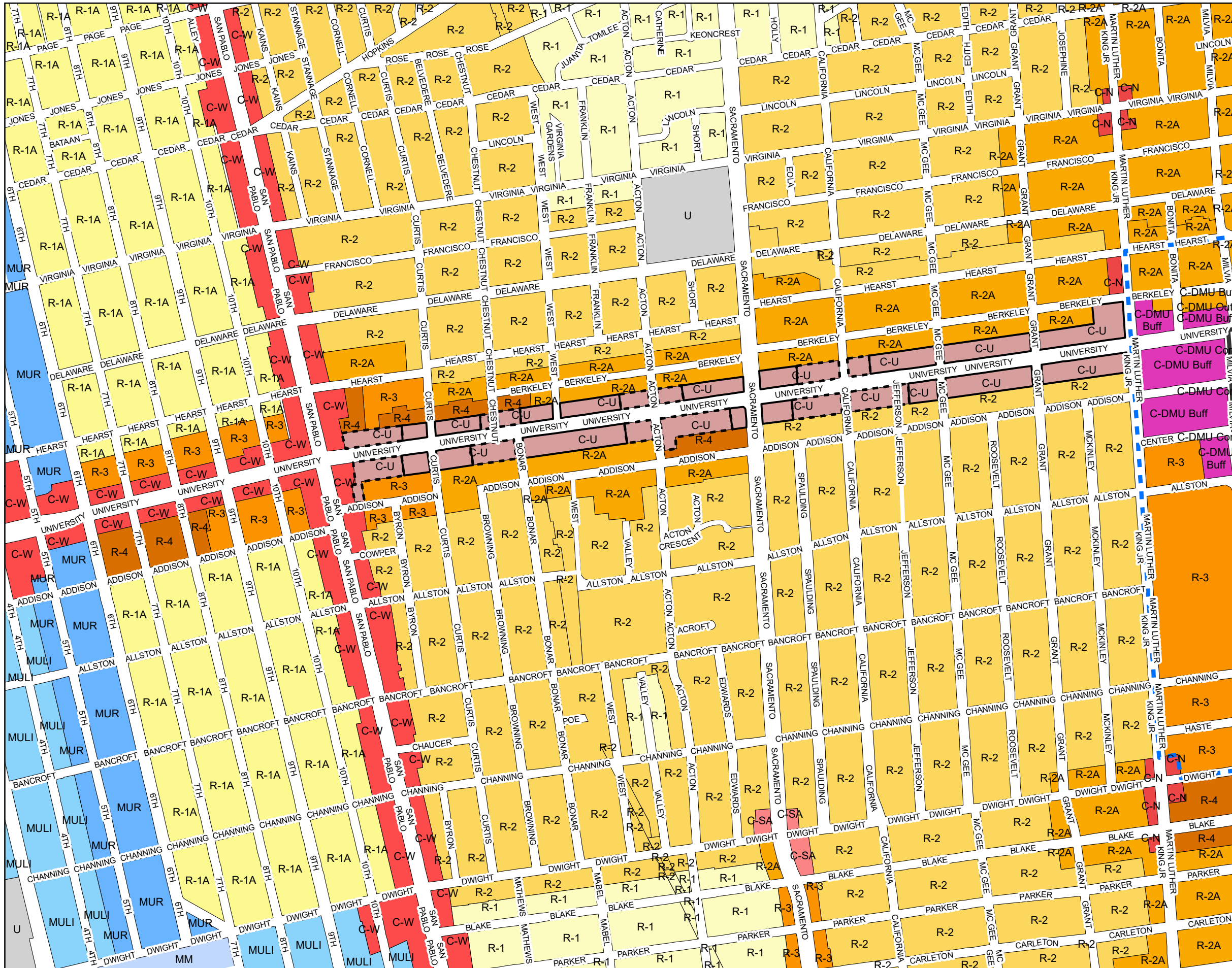
# Official Zoning Map

of the  
City of Berkeley, California

| Ordinance Number                      | Effective Date | Districts Affected |
|---------------------------------------|----------------|--------------------|
| 6,681-N.S.                            | 4/18/2002      | R-3, R-2A          |
| 6,830-N.S.                            | 1/6/2005       | C-1                |
| 7,232-N.S.                            | 5/14/2012      | R-3, C-DMU         |
| <a href="#">&lt;add ZORP here&gt;</a> |                |                    |



Scale = 1:8,000



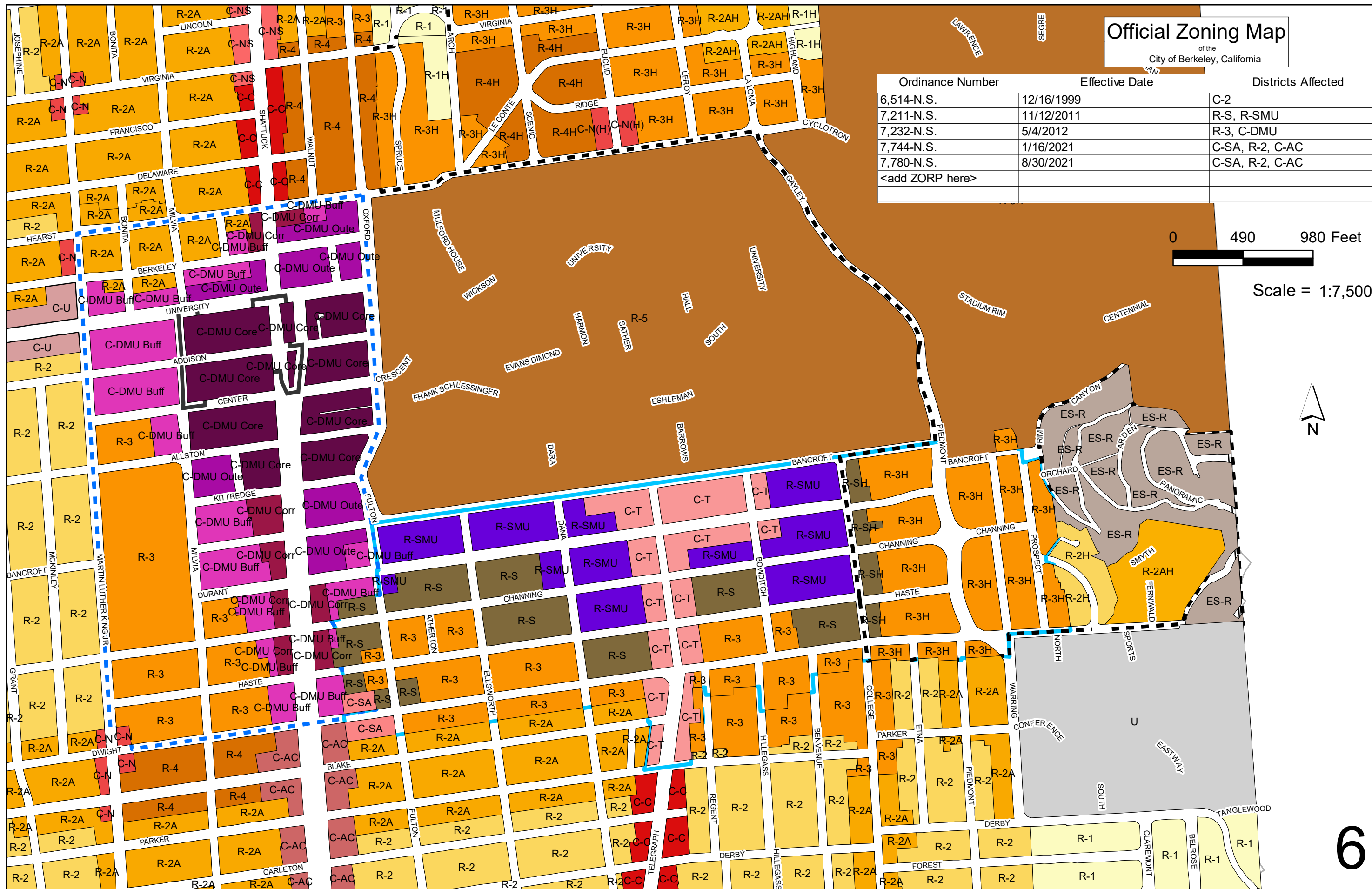
# Official Zoning Map

of the  
City of Berkeley, California

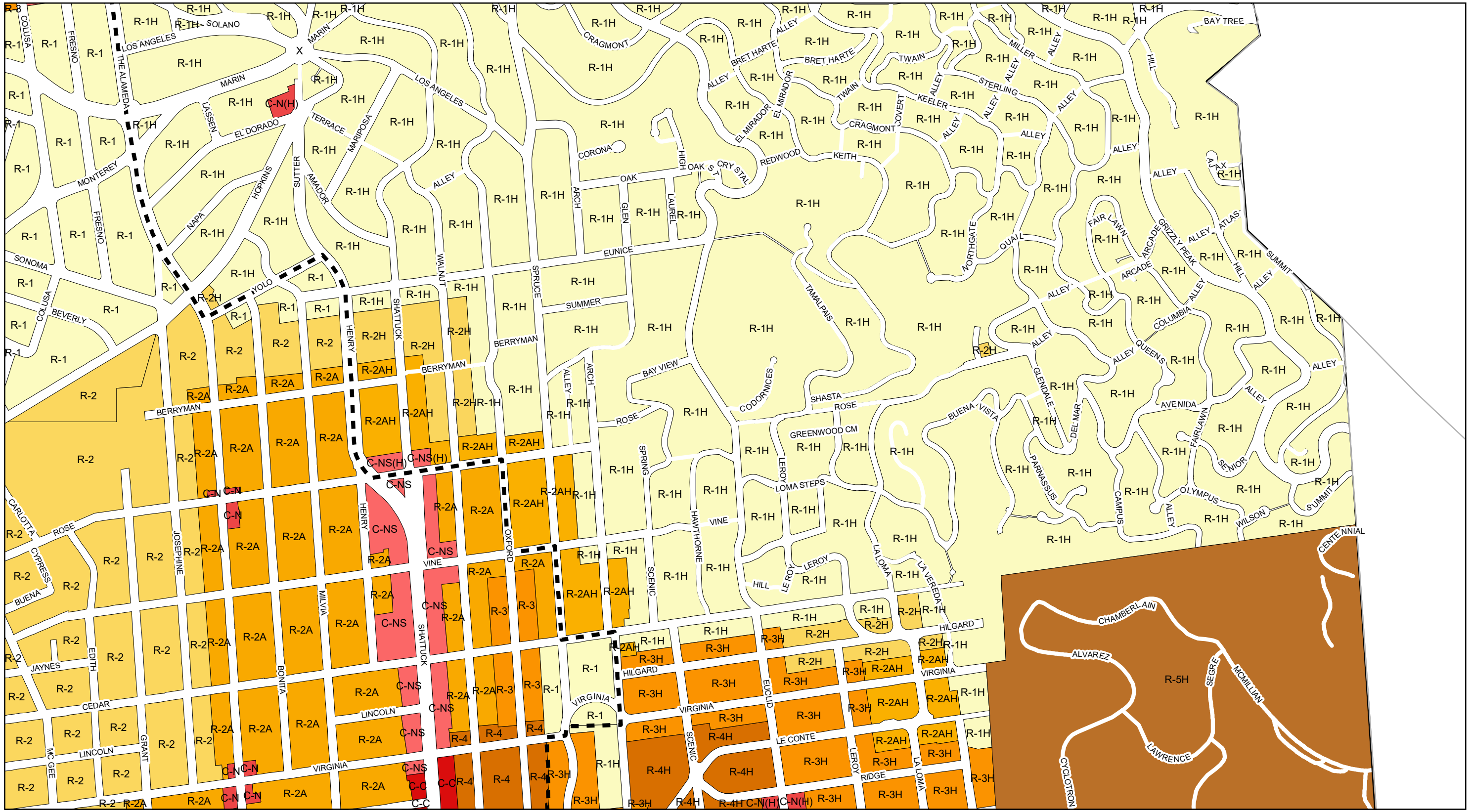
| Ordinance Number | Effective Date | Districts Affected |
|------------------|----------------|--------------------|
| 6,514-N.S.       | 12/16/1999     | C-2                |
| 7,211-N.S.       | 11/12/2011     | R-S, R-SMU         |
| 7,232-N.S.       | 5/4/2012       | R-3, C-DMU         |
| 7,744-N.S.       | 1/16/2021      | C-SA, R-2, C-AC    |
| 7,780-N.S.       | 8/30/2021      | C-SA, R-2, C-AC    |
| <add ZORP here>  |                |                    |

0 490 980 Feet

Scale = 1:7,500







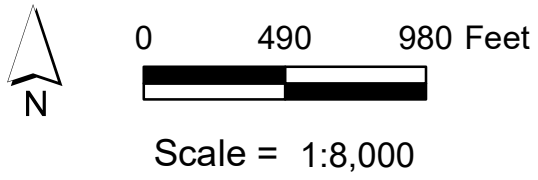
8

5

**Official Zoning Map**  
of the  
City of Berkeley, California

| Ordinance Number | Effective Date | Districts Affected |
|------------------|----------------|--------------------|
| <add ZORP here>  |                |                    |
|                  |                |                    |
|                  |                |                    |
|                  |                |                    |
|                  |                |                    |
|                  |                |                    |
|                  |                |                    |
|                  |                |                    |

6



7



Office of the City Manager

ACTION CALENDAR

January 26, 2016

To: Honorable Mayor and Members of the City Council

From: *DWR* Dee Williams-Ridley, Interim City Manager

Submitted by: Eric Angstadt, Director, Planning & Development

Subject: Customer Service Improvements to Land Use Permit Process

RECOMMENDATION

Direct staff to make structural improvements to the Zoning Ordinance, communication improvements to better explain complex technical and procedural elements to the public, and organizational improvements to the Land Use Planning Division; and authorize the issuance of a request for proposals (RFP) for the selection of consultants to make structural improvements to the Zoning Ordinance and develop graphic communication elements in an amount not to exceed \$300,000.

SUMMARY

This staff report describes the impact of the City of Berkeley's Zoning Ordinance and practices on land use applications, including the staffing and processing time required to conform to existing City regulations, and makes recommendations for future revisions with the goal of streamlining the process and better configuring City resources for the benefit of the public.

FISCAL IMPACTS OF RECOMMENDATION

If authorized, the hiring of a consultant to make structural improvements to the Zoning Ordinance and develop graphic communication elements would be a one-time cost of \$300,000 which would come from the Permit Service Center fund balance.

Budget Code:  
 833-8502-463.30-38..... \$300,000

In the event that future contract awards exceed the existing budget for Planning contracts in the current fiscal year, a request for additional appropriations will be submitted as part of a subsequent amendment to the Annual Appropriations Ordinance.

## CURRENT SITUATION AND ITS EFFECTS

### LAND USE PERMIT PROCESS

The Berkeley Zoning Ordinance is extremely complex and requires some type of discretionary review for most land use related activities, whether new construction, expansion or alteration of existing buildings, or establishment or change of land use. The complexity lies in the various requirements that trigger discretionary review being located in discrete sections of the Ordinance that are frequently not identified by applicants, and only discovered once staff has conducted a detailed review of the application.

This general complexity makes it difficult for staff to apply land use regulations consistently over time, which is especially true given the number of new personnel. As a result of vacancies and the addition of new positions, over 50% of the planners in the Land Use Division have a tenure of less than two years. It is also difficult to effectively educate the public regarding the many unique aspects of the Ordinance that result in more extensive submittal requirements and longer approval procedures than comparable cities.

Berkeley is a unique city. However, the Zoning Ordinance takes a “one size fits all” approach in regard to the prescribed processes for making discretionary decisions. There is also no differentiation between the operational impacts associated with a use from the environmental impacts associated with design. As a result, the establishment of a new use or change of an existing use must be processed the same way as the construction of a new building. Despite the numerous and complicated provisions in the Ordinance that trigger discretionary review, there are only two processes, Use Permit and Administrative Use Permit, to address the entire range of land use activities. The current structure of the Ordinance does not allow for any deviation from these two processes if the associated triggers are met.

The impact of having only two processes is that the level of review is often disproportionate to the potential land use impacts, and substantial time is added to the application review and approval process, with lead time required for public noticing and statutory timelines for appeals. Highly discretionary processes are also labor intensive, with staff required to prepare mailings, post properties, review and analyze applications, and document the analysis supporting the decision or recommendation. All of this translates into higher fees and longer timelines for applicants.

### COMMUNICATION

There is an ongoing effort to update the entire City of Berkeley website; however, there is an urgency to update web-based information for the Land Use Planning Division due to the need to provide more self-service options for the general public. The existing web pages for the Land Use Planning Division are excessively text-based and poorly organized. In addition, the lack of clarity in the Zoning Ordinance makes it very difficult

for the general public to look up information on their own, and this generates an extremely high volume of inquiries in all forms, whether in person, by telephone, or via email.

### STAFFING

The current organization of the Land Use Planning Division is very flat and lacks positions at the paraprofessional level (such as a Planning Technician) and project manager level (Senior Planner). In addition, customer service duties, including staffing the Zoning Counter, answering phone calls, and responding to email inquiries, are distributed among all staff from the Land Use Planning Manager to Office Specialist II. While it is beneficial for all staff to be cross-trained in all aspects of the Division, requiring that all staff participate in every function is not efficient and results in delayed and sometimes inconsistent responses to customers, and disrupts the review of land use applications.

### BACKGROUND

#### LAND USE PERMIT PROCESS

The following table compares the number of discretionary permits and associated appeals during 2015 in the City of Berkeley with those in other local cities. Permits are grouped into minor (similar to an Administrative Use Permit) and major (similar to a Use Permit) categories. Other than Piedmont and Oakland, which are significantly different in size, no other municipalities approached Berkeley in the number of discretionary permits and associated appeals.

| <b>Land Use Application Comparison for 2015</b> |                                                                                                                               |                                    |
|-------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|------------------------------------|
| <b>City</b>                                     | <b>Result</b>                                                                                                                 | <b>Population*</b>                 |
| Berkeley                                        | 75 Major (UPs)/4 appeals<br>161 Minor (AUPs)/3 appeals<br><br>Historically –<br>62.5 UPs/5 appeals<br>160.75 AUPs/8.5 appeals | 118,853<br>0.002<br>permits/capita |
| Albany                                          | 13 Major/2 appeals (both withdrawn)<br>1 Minor<br>Historically – 1 to 2 appeals/year<br>Fee: \$577                            | 19,488<br>0.0007<br>permits/capita |
| Dublin                                          | 3 Major<br>3 Minor<br>No appeals<br>Fee: \$200 general public, time and materials for applicant                               | 54,695<br>0.0001<br>permits/capita |
| Fremont                                         | 11 Major/1 Appeal                                                                                                             | 228,758                            |

|                                             |                                                                                                                                                                                                            |                                     |
|---------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|
|                                             | 29 Minor<br>Fee: Full cost recovery by appellant (typically \$5,900)                                                                                                                                       | 0.0002<br>permits/capita            |
| Oakland                                     | 89 Major (variance, design review, conditional use permit issued by Planning Commission)/5 appeals<br>275 Minor (variance, design review, conditional use permit issued by Zoning Administrator)/4 appeals | 413,775<br>0.0009<br>permits/capita |
| Piedmont                                    | 400 Applications (all Single-Family)/3 Appeals<br>Historically – 1 to 2 appeals/yr<br>Fee: \$630                                                                                                           | 11,236<br>0.004<br>permits/capita   |
| *American Community Survey estimate, 7/1/14 |                                                                                                                                                                                                            |                                     |

Additional analysis of land use decisions shows that of the last four Fiscal Years (FY), FY2012 through FY2015, there were 274 Use Permits (UPs) acted upon. Of those, 25 were appealed of which two were withdrawn resulting in an appeal rate of 8.3%. For those appeals that went to hearing, the staff recommendation was affirmed 84% of the time by ZAB and 89% by City Council. Looking at the total number of UPs processed over the last four fiscal years, the City Council disagreed with the staff recommendation only twice (0.73%).

The UP project types most frequently appealed were new dwellings in the R-1H, R-2A and R-3 districts (25%), and new mixed use buildings in the C-DMU Buffer, C-DMU Core, and R-SMU districts (13%). The zoning districts with the most appealed UPs were R-1H (17%), followed by the R-3 district (13%). The most frequent appeal claims were: Failure to make required findings (13%), Failure to comply with procedural requirements (13%), Loss of sunlight and/or views (12%) and Traffic (10%).

Similar analysis was conducted for Administrative Use Permits (AUPs). In the last four fiscal years, 532 AUPs were processed. Of those, 33 appeals were filed; however, eight were withdrawn, resulting in an appeal rate of 4.7%. Of the remaining 25 appeals that went to hearing, ZAB upheld the staff recommendation 95% of the time. Eight ZAB decisions were appealed to City Council, and in those cases the staff recommendation was upheld 100% of the time. When analyzing all of the 532 AUPs processed over the last four fiscal years, the staff recommendation was overturned only once (0.2%).

The AUP project type most frequently appealed was major residential addition (33%). The zoning districts with the most appealed AUPs were R-1H (33%), followed by R-2 (24%). The most frequent appeal claims were: Shadow impacts and/or loss of sunlight/views (27%), Parking (15%), and Noise (12%).

Cross-referencing the zoning district with type of project and basis for appeal demonstrates that the majority of appeals are related to the design of new residences or major residential additions in the R-1H zoning district. The R-1 zone is a single-family zoning district which requires a minimum lot size of 5,000 square feet. As such, the use

of property for single-family residential purposes is not in question. Rather, the question is one of the design of new or modified homes, and whether the purposes of the district are met by a proposed design. This would suggest that a design review process based on design guidelines developed specifically for single-family homes is the more appropriate mechanism to assure that the purposes of the district are met.

## COMMUNICATION

Graphically enhanced FAQ sheets and user guides are commonly used to help educate the general public regarding complex and/or technical subject areas, such as land use regulation. Many zoning related topics, such as how to measure building height, are often difficult to describe with text alone.

Complex land use topics are more easily understood when presented in a combination of text and graphics. Processes can be better understood when described in an annotated flow chart. Most zoning definitions can also benefit from figures and diagrams to more clearly convey complex and technical issues.

## STAFFING

The Land Use Planning Division is currently comprised of 17 planners, four administrative staff, and six interns. The planners are distributed among the follow job classifications: 1 Land Use Planning Manager, 5 Principal Planners, 1 Senior Planner, 6 Associate Planners, and 4 Assistant Planners. With the exception of the Land Use Planning Manager and Principal Planners, all planners participate in the staffing of the Zoning Counter and respond to emails and phone calls from the general public. All planners with the exception of the Land Use Planning Manager and two Principal Planners in the Policy and Special Projects Team also serve as project planners.

Similar to the “one size fits all” approach which describes the existing land use processes, the historic practice of requiring planners to be a master of all disciplines does not allow the development of special skills. Land use regulation is a rapidly evolving field that is very sensitive to changes in technology. In addition, federal and state regulations are constantly changing and can dictate how local jurisdiction may or must regulate certain uses. The continuing education required to stay abreast of the full range of such changes is often beyond the ability of any one individual. The organization of the Land Use Planning Division should be modified in acknowledgement of these requirements.

## ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

## RATIONALE FOR RECOMMENDATION

### LAND USE PERMIT PROCESS

The analyses of land use application data support the proposal to make changes to existing processes, such as introducing a minor use permit and staff-level single-family residential design review. Such structural modifications to the Zoning Ordinance would more closely align the regulation of land use with historic trends, and result in a level of discretionary review more commensurate with the documented concerns of the community. Right-sizing processes would also save the public time and money.

### COMMUNICATION

Providing illustrations in addition to text assures more consistent interpretation of complicated regulations. Processes also benefit from graphics, such as flow charts, that highlight the various actors, decision-making bodies, and timing of critical decision points. These graphic communication tools can be developed in advance of the city-wide website update, and then used in conjunction with that project.

### STAFFING

The requirements and expectations for responding to customer inquiries and managing projects are often in conflict, and staff struggle to achieve an appropriate balance. Reorganizing the Division by adding Senior Planner positions devoted to project management and creating a Planning Technician job classification that would be primarily responsible for responding to customer inquiries would significantly reduce the current conflicts. Planners would have more time to focus on increasingly complex land use applications, and the general public would receive more timely responses to their questions. Staff specialized in communications and whose focus is customer service would be more effective at explaining the proposed structural changes to the Zoning Ordinance, how they are applied, and how the public is involved.

### ALTERNATIVE ACTIONS CONSIDERED

The Council may affirm, modify or decline to provide direction to staff.

### CONTACT PERSON

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

**MINUTES**  
**BERKELEY CITY COUNCIL MEETING**  
**TUESDAY, JANUARY 26, 2016**  
**7:00 P.M.**

LONGFELLOW MIDDLE SCHOOL AUDITORIUM – 1500 DERBY STREET, BERKELEY, CA 94703

TOM BATES, MAYOR

Councilmembers:

DISTRICT 1 – LINDA MAIO  
DISTRICT 2 – DARRYL MOORE  
DISTRICT 3 – MAX ANDERSON  
DISTRICT 4 – JESSE ARREGUIN

DISTRICT 5 – LAURIE CAPITELLI  
DISTRICT 6 – SUSAN WENGRAF  
DISTRICT 7 – KRIS WORTHINGTON  
DISTRICT 8 – LORI DROSTE

**Preliminary Matters**

**Roll Call:** 7:15 p.m.

**Present:** Councilmembers Arreguin, Capitelli, Droste, Maio, Moore, Wengraf, Worthington and Mayor Bates.

**Absent:** Councilmember Anderson.

**Ceremonial Matters:**

1. Recognition of Walter Hood, Berkeley Artist
2. Celebrating the 43<sup>rd</sup> Anniversary of Roe v. Wade

**City Manager Comments:** None.

**Public Comment on Non-Agenda Matters:** 4 speakers.

**Public Comment on Consent Calendar and Information Items Only:** 3 speakers.

**Consent Calendar**

**Action:** M/S/C (Capitelli/Moore) to accept revised material from Councilmember Capitelli on Item 15.

**Vote:** Ayes – Maio, Moore, Arreguin, Capitelli, Wengraf, Worthington, Droste, Bates; Noes – None; Abstain – None; Absent – Anderson.

**Action:** M/S/C (Worthington/Moore) to adopt the Consent Calendar in one motion except as indicated.

**Vote:** Ayes – Maio, Moore, Arreguin, Capitelli, Wengraf, Worthington, Droste, Bates; Noes – None; Abstain – None; Absent – Anderson.



## Action Calendar – New Business

### 16. Customer Service Improvements to Land Use Permit Process

**From: City Manager**

**Recommendation:** Direct staff to make structural improvements to the Zoning Ordinance, communication improvements to better explain complex technical and procedural elements to the public, and organizational improvements to the Land Use Planning Division; and authorize the issuance of a request for proposals (RFP) for the selection of consultants to make structural improvements to the Zoning Ordinance and develop graphic communication elements in an amount not to exceed \$300,000.

**Financial Implications:** See report

Contact: Eric Angstadt, Planning and Development, 981-7400

**Action:** Moved to Consent Calendar. Approved recommendation.

### 17. a. Tobacco 21 Recommendation

**From: Community Health Commission**

**Recommendation:** In response to the City Council's referral, and upon further investigation, the Community Health Commission recommends that Council amend Berkeley Municipal Code section 9.80.035 to add a subdivision H, stating: "Effective January 1, 2017, no tobacco retailer or person shall sell tobacco-related products, including flavored tobacco products, electronic nicotine delivery systems and e-liquid, to individuals under the age of 21." This recommendation, in our belief, would advance three main objectives: 1. Decrease the rate of youth smoking in Berkeley, which would ultimately lower the rate of adult-aged regular smokers; 2. Lower the amount of secondhand smoke near schools and places where youth congregate; 3. Decrease long-term medical costs by decreasing smoking rates among the city population.

**Financial Implications:** See report

Contact: Tanya Bustamante, Commission Secretary, 981-5400

### b. Companion Report: Tobacco Minimum Age

**From: City Manager**

**Recommendation:** Take no action on the Community Health Commission's Tobacco Minimum Age recommendation at this time pending the outcome of proposed State legislation to raise the smoking age to 21 statewide.

**Financial Implications:** None

Contact: Kelly Wallace, Health, Housing and Community Services, 981-5400

**Action:** M/S/C (Bates/Maio) to suspend the rules and extend the meeting to 11:45 p.m.

**Vote:** Ayes – Maio, Arreguin, Capitelli, Worthington, Droste, Bates; Noes – Wengraf; Abstain – Moore; Absent – Anderson.

**Action:** 4 speakers. M/S/C (Arreguin/Moore) to adopt item 17.a.

**Vote:** Ayes – Maio, Moore, Arreguin, Capitelli, Wengraf, Worthington, Droste, Bates; Noes – None; Abstain – None; Absent – Anderson.



Planning Commission

**FINAL MINUTES OF THE SPECIAL PLANNING COMMISSION MEETING  
December 16, 2020**

The meeting was called to order at 7:02 p.m.

**Location:** Virtual meeting via Zoom

**1. ROLL CALL:**

**Commissioners Present:** Benjamin Beach, Barnali Ghosh, Savlan Hauser, Robb Kapla, Shane Krpata, Mary Kay Lacey, Christine Schildt, Jeff Vincent, and Brad Wiblin.

**Commissioners Absent:** None.

**Staff Present:** Secretary Alene Pearson, Katrina Lapira, Justin Horner, Jordan Klein, Liz Redman Cleveland and Alisa Shen.

**2. ORDER OF AGENDA:** No changes.

**3. PUBLIC COMMENT PERIOD:** 1

**4. PLANNING STAFF REPORT:**

- City Council
  - January 26 – Parking Reform (4pm)
  - February 9 – Home Occupations Ordinance
- Land Use Planning received Local Early Action Planning (LEAP) that will be used to fund consultant help on the Sixth Cycle Housing Element Update. RFP available on COB website. Proposals due on January 12, 2021.

**Information Items:**

- Referral to Planning Commission: Re-designation and rezone of five parcels adjacent to the Adeline Corridor Plan Area (adopted by City Council on November 17, 2020)

**Communications:**

- None

**Late Communications:** *See agenda for links.*

- Supplemental Packet One
- Supplemental Packet Two
- Supplemental Packet Three

**5. CHAIR REPORT:**

- Welcome new Planning Commissioners!
  - Barnali Ghosh
  - Savlan Hauser

**6. COMMITTEE REPORT:** Reports by Commission committees or liaisons. In addition to the items below, additional matters may be reported at the meeting.

- CAG Meeting on December 14 – Discussed and received feedback on various concepts including built form, site design, and the overall vision for both BART sites

**7. APPROVAL OF MINUTES:**

Motion/Second/Carried (Wiblin/Lacey) to amend Line 56 and approve the Planning Commission Meeting Minutes from December 16, 2020.

Ayes: Beach, Hauser, Kapla, Krpata, Lacey, Schildt, Vincent, and Wiblin. Noes: None. Abstain: Ghosh. Absent: None. (8-0-1-0)

**8. FUTURE AGENDA ITEMS AND OTHER PLANNING-**

- January 6
  - Background on Gentrification and Displacement Referral
  - Discussion of Parking Reform Item Recommendation
- January 20 – Special Concurrent Meeting with Housing Advisory Commission (HAC) to address Gentrification and Gentrification Referral

**AGENDA ITEMS**

**9. Action:** *Public Hearing to Recommend Adoption of the Baseline Zoning Ordinance (BZO)*

Staff shared the draft Baseline Zoning Ordinance (BZO), noting edits made since Planning Commission’s last review that address Commission and public feedback, responses to Commissioners’ questions, and a summary of outreach efforts.

**Public Comments: 4**

Motion/Second/Carried (Vincent/ Krpata) to close the public hearing on the BZO at 8:06pm. Ayes: Beach, Hauser, Kapla, Krpata, Lacey, Schildt, Vincent, and Wiblin. Noes: None. Abstain: Ghosh. Absent: None. (8-0-1-0)

Motion/Second/Carried (Vincent/ Wiblin) to recommend that the City Council adopt the draft BZO after incorporating Zoning Ordinance amendments adopted by City Council between Planning Commission's action and City Council's action and sharing with the Chair for confirmation.

Ayes: Beach, Hauser, Kapla, Krpata, Lacey, Schildt, Vincent, and Wiblin. Noes: None. Abstain: Ghosh. Absent: None. (8-0-1-0)

**10. Discussion:** ***Business Support Zoning Amendment Referrals – Research and Development***

Staff shared background information, research, and recommendations to address the City Council referral regarding the modification of the Research and Development (R&D) definition. After the presentation, the Commission asked questions and provided comment on protected uses, ancillary office space, and specifics related R&D jobs and high technology.

**Public Comments:** 3

**11. Discussion:** ***Adeline Corridor Plan Adoption***  
 The Planning Commission discussed and received public comment on the adoption of the Adeline Corridor Plan.

**Public Comments:** 4

**12. Action:** ***2021 Meeting Schedule***  
 The Planning Commission reviewed the 2021 meeting schedule.

Motion/Second/Carried (Kapla/ Vincent) to adopt the following 2021 Planning Commission schedule:

- Wednesday, January 6, 2021
- Wednesday, January 20, 2021 – Special Concurrent meeting with HAC
- Wednesday, February 3, 2021
- Wednesday, March 3, 2021
- Wednesday, April 7, 2021
- Wednesday, May 5, 2021
- Wednesday, June 2, 2021
- Wednesday, July 7, 2021
- Wednesday, September 1, 2021
- Wednesday, October 6, 2021
- Wednesday, November 3, 2021
- Wednesday, December 1, 2021

Ayes: Beach, Ghosh, Hauser, Kapla, Krpata, Lacey, Schildt, Vincent, and Wiblin. Noes: None.  
Abstain: None. Absent: None. (9-0-0-0)

Motion/Second/Carried (Krpata/ Lacey) to adjourn the Planning Commission meeting at 10:43pm.

Ayes: Beach, Ghosh, Hauser, Krpata, Lacey, Schildt, Vincent, and Wiblin. Noes: None.  
Abstain: Kapla. Absent: None (8-0-1-0)

**Public Comments: 0**

**Members in the public in attendance: 28**

**Public Speakers: 11 speakers**

**Length of the meeting: 3 hours and 41 minutes**

**COMPARRISON OF VARIANCE SECTION  
IN THE CURRENT ZONING ORDINANCE AND THE PROPOSED  
BASELINE ZONING ORDINANCE (BZO)**

Current Zoning Ordinance section on Variances:

**23B.44.010 Variances**

*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; provided, however, that a use permit, rather than a variance, may be approved to vary or modify the strict application of any of the regulations or provisions of this Ordinance with reference to the yard setbacks of buildings, the percentage of lot coverage, or the parking space requirements when development is proposed on property which is located within thirty feet of an open creek and where varying from or modifying existing regulations is necessary to enable the property owner to comply with BMC Chapter 17.08, Preservation and Restoration of Natural Watercourses.*

Draft BZO section on Variances:

**Section 23.406.050 - Variances**

**B. When Allowed**

1. **Deviations Allowed with a Variance.** *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.*
2. **Deviations Allowed with a Use Permit.** *The ZAB may allow deviations from building setback, lot coverage, and on-site parking standards with a Use Permit instead of a Variance if:
 
  - a. *The property is 30 feet or less from an open creek; and*
  - b. *Deviation from the standard is necessary to comply with Chapter 17.08 (Preservation and Restoration of Natural Watercourses).**

**BASELINE ZONING ORDINANCE CONSENT CHANGES MATRIX**

| <b>Topic</b>                               | <b>Description</b>                                                                                                                                              | <b>BZO Location</b> | <b>Existing Location</b> | <b>Rationale for Change</b>                                                                                                        |
|--------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|--------------------------|------------------------------------------------------------------------------------------------------------------------------------|
| <b>23.102 – Introductory Provisions</b>    |                                                                                                                                                                 |                     |                          |                                                                                                                                    |
| 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.          |

| <b>Topic</b>                                      | <b>Description</b>                                                                                                                                                                                                                                                                                                                                                                                                                                         | <b>BZO Location</b> | <b>Existing Location</b> | <b>Rationale for Change</b>                                                              |
|---------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|--------------------------|------------------------------------------------------------------------------------------|
| 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 |
| <b>23.104 – Interpreting the Zoning Ordinance</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                     |                          |                                                                                          |
| 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<br>see<br>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                                             |



| <b>Topic</b>                            | <b>Description</b>                                                                                                                                                         | <b>BZO Location</b> | <b>Existing Location</b> | <b>Rationale for Change</b>                                                                                                      |
|-----------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|--------------------------|----------------------------------------------------------------------------------------------------------------------------------|
| Zoning Map                              | Clarifies intention to follow city limits                                                                                                                                  | 23.104.050 A 3      | NEW                      | Greater clarity to resolve uncertainty in zoning district boundaries                                                             |
| <b>23.106 Rules and Measurement</b>     |                                                                                                                                                                            |                     |                          |                                                                                                                                  |
| 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                                                                                 |
| <b>23.108 –Zoning Districts and Map</b> |                                                                                                                                                                            |                     |                          |                                                                                                                                  |
| 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                                                                                  |
| <b>23.202 – Residential Districts</b>   |                                                                                                                                                                                                                                                                                                                                                                                                                                          |                |                                                                          |                                                                                                                                                     |
| 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 <a href="#">Gov’t Code Section 65852.2</a>                                                               |
| <b>23.206 – Manufacturing Districts</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                          |                |                                                                          |                                                                                                                                                     |
| Industrial Performance Standards        | Removes statements allowing City Manager to establish industrial performance standards.                                                                                                                                                                                                                                                                                                                                                  | 23.206.040.F   | 23E.64.070.E<br>23E.72.070.E<br>23E.76.070.E<br>23E.80.D<br>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                                                                                                         |
|-------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|-------------------------------|------------------------------------------------------------------------------------------------------------------------------|
| <b>23.302 – Supplemental Use Regulations</b>                            |                                                                                                                                                                                                              |                |                               |                                                                                                                              |
| 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.            |
| <b>23.304 – General Development Standards</b>                           |                                                                                                                                                                                                              |                |                               |                                                                                                                              |
| 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;<br>23E.04.020.A | Removal of extraneous language.<br><br>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                                     |
|--------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|-------------------|----------------------------------------------------------|
| <b>23.310 – Alcohol Beverage Sales and Service</b>           |                                                                                                                                                                                                             |                |                   |                                                          |
| Chapter Purpose                                              | States purpose of chapter                                                                                                                                                                                   | 23.310.010     | NEW               | BZO standard includes purpose statement for each chapter |
| <b>23.320 – Cannabis Uses</b>                                |                                                                                                                                                                                                             |                |                   |                                                          |
| Chapter Purpose                                              | States purpose of chapter                                                                                                                                                                                   | 23.320.010     | NEW               | BZO standard includes purpose statement for each chapter |
| <b>23.324 – Nonconforming Uses, Structures and Buildings</b> |                                                                                                                                                                                                             |                |                   |                                                          |
| Chapter Purpose                                              | States purpose of chapter                                                                                                                                                                                   | 23.324.010     | NEW               | BZO standard includes purpose statement for each chapter |
| <b>23.326 – Demolition and Dwelling Unit Control</b>         |                                                                                                                                                                                                             |                |                   |                                                          |
| Chapter Purpose                                              | States purpose of chapter                                                                                                                                                                                   | 23.326.010     | NEW               | BZO standard includes purpose statement for each chapter |
| <b>23.328 – Inclusionary Housing</b>                         |                                                                                                                                                                                                             |                |                   |                                                          |
| 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                            |
| <b>23.402 – Administrative Responsibility</b>                |                                                                                                                                                                                                             |                |                   |                                                          |
| 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                                                   |
| <b>23.404 – Common Permit Requirements</b> |                                                                                                                                |                |                   |                                                                                       |
| 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 <a href="#">Gov't Code Section 65091</a>                                              |
| 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 <a href="#">Gov't Code Section 65091</a>               |
| 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 <a href="#">15074</a> and <a href="#">15090</a>                 |
| 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.<br><br>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.<br>b | 23B.56.100.C<br>&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."                                                   |
| <b>23.406 – Specific Permit Requirements</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                |                   |                                                                                                                                                                     |
| Variations - Eligibility                     | <p><u>Existing Language:</u> "The Board may grant Variations 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 |
| Variations – 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 <a href="#">Gov't Code Section 65906</a> .                                                                                       |
| 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> |
| <b>23.410 – Appeals</b>                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                      |              |                   |                                                                                                                                                                                 |
| 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                                                                                                                                         |
| <b>23.412 – Zoning Ordinance Amendments</b>               |                                                                                                                                                                                                                                                                                                                                                                                                                                                      |              |                   |                                                                                                                                                                                 |
| 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 <a href="#">Gov’t Code Section 65853-65857</a>                                                                                                 |
| 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 <a href="#">Gov't Code Section 65853-65857</a>                                                                                      |
| 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 <a href="#">Gov't Code Section 65853-65857</a>                                                                                      |
| Zoning Ordinance Amendments – Findings             | Adds findings for Zoning Ordinance amendments                                                                                                                                        | 23.412.060   | N/A               | Best Practice.                                                                                                                                     |
| <b>23.502 – Glossary</b>                           |                                                                                                                                                                                      |              |                   |                                                                                                                                                    |
| 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: December 16, 2020

TO: Members of the Planning Commission

FROM: Justin Horner, Associate Planner

SUBJECT: Public Hearing to Recommend Adoption of Baseline Zoning Ordinance (BZO)

---

### RECOMMENDATION

Hold a public hearing, consider input, and make a recommendation to City Council on adoption of the Draft Baseline Zoning Ordinance (BZO; *Attachment 1*) to replace Berkeley's current Zoning Ordinance (Subtitles 23A, 23B, 23C, 23D, 23E and 23F of the Berkeley Municipal Code).

### BACKGROUND

Development of the BZO is Phase 1 of the Zoning Ordinance Revision Project (ZORP). ZORP originates from a 2016 City Council Referral to "direct staff to make structural improvements to the Zoning Ordinance, communication improvements to better explain complex technical and procedural elements to the public, and organizational improvements to the Land Use Planning Division."

At its meeting of September 2, 2020, the Planning Commission was presented with a draft of the BZO, heard a presentation from staff describing the process of the development of the BZO, and was asked to provide comments and guidance to staff to finalize the BZO for formal consideration at this evening's public hearing. Specifically, the Planning Commission directed staff to return with additional details on the following three matters: the content of the Consent Changes Matrix (*Attachment 2*); clarification of the basis for some of the recommendations; and details about the outcome of community outreach efforts.

### DISCUSSION

For a detailed discussion of the BZO and its development, please see the September 2, 2020 Planning Commission staff report included as *Attachment 3*. The Discussion below includes only responses to questions asked of staff at the September 2, 2020 meeting.

### **Consent Changes Matrix**

Although the development of the BZO has not included any major policy changes, there are a number of minor substantive changes to the Zoning Ordinance that are included in the BZO. These changes explicitly state existing legal requirements, codify current practices, and clarify ambiguous terms. These changes are either revisions of existing Zoning Ordinance language or brand new language added to the BZO. In either case, these changes do not result in any significant changes in policy. To reflect their minor nature, these changes are collectively called “consent changes,” and have been collected in a Consent Changes Matrix for ease of review.

The Consent Changes Matrix reviewed at the September 2, 2020 Planning Commission meeting included only those changes that were made to existing Zoning Ordinance language. At that meeting, the Planning Commission directed staff to include two pieces of additional information in the Consent Changes Matrix. The first was to add a Rationale column to the matrix to offer a brief justification of each consent change. The second was to add any new language that qualified as a consent change to the Consent Change Matrix.

The revised Consent Changes Matrix is included as *Attachment 2* of this report.

### **Baseline Zoning Ordinance Clarifications**

The Planning Commission had four specific questions regarding language included in the BZO.

Two questions related to Section 23.102.070 of the BZO and pertain to the relationship between the BZO and other laws and regulations. Section 23.102.070 of the BZO reads:

#### **23.102.070 – CONFLICTING PROVISIONS**

- A. **Conflict with State or Federal Regulations.** Where the Zoning Ordinance conflicts with state or federal laws, higher law applies unless local variation is permitted.
- B. **Conflict with Other City Regulations.** Where the Zoning Ordinance conflicts with other ordinances, resolutions, or regulations of the City of Berkeley, the more restrictive regulation is applied.
- C. **Conflict with Private Agreements.** It is not the intent of the Zoning Ordinance to interfere with, abrogate, or annul any easement, covenant, deed restriction, or other agreement between private parties. If the Zoning Ordinance imposes a greater restriction than imposed by a private agreement, the Zoning Ordinance controls. Private agreements may impose greater restrictions than the Zoning

The first question raised by the Planning Commission was whether Section 23.102.070(A) accurately characterizes the relationship between the BZO and state and federal law. The Planning Commission was concerned that this provision was not a correct statement of the law and could unintentionally cede legislative authority to the state and federal governments beyond the authority they already possess. There was also concern that the statement was so expansive that readers of the BZO may not feel confident that the

rules in the BZO are set and not subject to unexpected changes from the state and federal governments.

City staff consulted with the City Attorney's Office and was advised that Section 23.102.070(A) is a correct statement of the law, consistent with the Supremacy Clause of the United States Constitution and Article XI, Section 5(a) of the California Constitution ("It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws.").

For the second question, the Planning Commission requested the legal basis for Section 23.102.070(B) which discusses conflicts between the BZO and other city regulations. City staff consulted with the City Attorney's Office and was advised that 23.102.070(B) is an interpretative statement that the Planning Commission may or may not choose to include. However, generally, staff was advised that compliance with the Zoning Ordinance does not excuse non-compliance with other applicable laws or regulations, so this statement reflects a correct interpretation of the law in the vast majority of cases.

The third question was whether Section 23.404.070(C) of the draft BZO, which pertains to the modification of approved permits, is an accurate restatement of what is included in the current Zoning Ordinance. Section 23.404.070(C) reads:

**C. Review Authority.** A permit shall be modified by the review authority which originally approved the permit.

Staff can confirm that Section 23.404.070(C) is an accurate summary of the Zoning Ordinance's requirements. Staff notes that the Zoning Adjustments Board (ZAB), pursuant to an administrative procedure, has delegated authority to the Zoning Officer for certain modifications.

The fourth question was whether Section 23A.104.020 of the draft BZO granted the Zoning Officer broader authority to interpret the Zoning Ordinance than what is stated in the Zoning Ordinance itself. To more accurately reflect the authority stated in the existing Zoning Ordinance, Section 23.104.020 has been amended to read:

**23.104.020 – Authority**

The Zoning Officer is responsible for interpreting the meaning and applicability of all provisions in the Zoning Ordinance. Zoning Officer Interpretations are subject to review and modification by the ZAB and City Council.

***Summary of Community Outreach Efforts for the BZO***

Staff designed a Community Outreach Plan to solicit input on the BZO. The Plan consisted of the following efforts, the results of which are summarized below:

1. Creation of [Zoning Ordinance Revision Project website](#).

The ZORP webpage includes basic project information, background documents and links to past and future public meetings regarding ZORP.

2. Targeted outreach to frequent project applicants

Staff contacted about three dozen frequent project applicants to introduce them to the BZO and to request their review and comments, as well as announcing the three office hours sessions and survey (see below). Staff heard from a few parties in response to this outreach, who either requested additional information or expressed support for the simplified format.

3. Internal outreach to Current Planning project staff

Staff asked three Current Planning project staff (Planners) to utilize the BZO to review projects to which they are already assigned, to give the BZO a test run as an actual administrative document. All three Planners provided insightful feedback about the usability of the ordinance and identified some important edits. In general, all three Planners appreciated the clearer language and layout, and, even though they were utilizing a non-hyperlinked pdf document, were supportive of the BZO.

4. Office Hours sessions

Staff held three Zoom “office hours” sessions, all of which were open to the public, to introduce the BZO and take questions or comments. These sessions were held on September 7<sup>th</sup>, 9<sup>th</sup> and 14<sup>th</sup>.

5. Berkeley Considers survey

Staff launched a Berkeley Considers survey entitled “Please Review and Provide Your Feedback on the Baseline Zoning Ordinance” (Survey) to solicit input on the BZO. The Survey was publicized by the Public Information Officer in an email to approximately 60,000 recipients. The Survey was open for the month of September and received 194 visitors and 29 registered responses.

The Survey asked respondents to rate nine sections of the BZO on a scale of 1-to-5 (5 being best) based upon how well the BZO satisfies the following:

- Can be understood by a person without a technical background.
- Is organized so that users can easily find what they are looking for.
- Is written with clarity so it is easy to determine which rules apply to a project or property.
- Is organized so that users did not need to hunt for hidden information.
- Is organized so that users are unlikely to overlook something important.

The Survey also provided space for respondents to leave narrative comments.

On average, respondents judged each of the 9 sections as a “3” on a scale of 1-to-5 with respect to meeting the above criteria. There were clearly a number of respondents who judged the BZO with respect to its content, as opposed to whether it was a good revision of the existing Zoning Ordinance (for example, one commenter noted “REPEAL ENTIRE ZONING CODE”), and there were two who noted having bad experiences getting permits themselves. A number of respondents provided helpful suggestions (“more diagrams”) and a few expressed support for the clearer presentation style of the BZO.

### **Environmental Review**

Pursuant to CEQA Guidelines Sections 15378(a), 15060(c)(2) and 15064(d)(3), environmental review is not required because the proposed Zoning Ordinance change is not a Project. The proposed Zoning Ordinance amendment does not meet the definition of a Project under CEQA Guidelines Section 15378(a), nor does it constitute an activity covered by CEQA under CEQA Guidelines Section 15060(c)(2), because passage of the BZO does not constitute a direct physical impact on the environment, nor would it result in an indirect, reasonably foreseeable physical impact on the environment. As the BZO only constitutes a revision of the existing Zoning Ordinance, and does not include any substantive policy changes, identifying and quantifying any potential changes would be highly speculative. Pursuant to CEQA Guidelines Section 15064(d)(3), any change that is speculative is not considered reasonably foreseeable.

Notwithstanding the above, even if it could be demonstrated that the Zoning Ordinance changes are a Project under CEQA, the amendment--a written revision of the Zoning Ordinance--would not constitute a significant impact on the environment under the “Common Sense Exemption,” pursuant to CEQA Guidelines Section 15061(b)(3).

The proposed amendment does not include any provisions that would exempt or otherwise reduce environmental review required under CEQA for individual development projects.

### **NEXT STEPS**

Staff recommends Planning Commission hold a public hearing, consider public testimony, and make a recommendation to the City Council regarding the Baseline Zoning Ordinance.

#### **Attachments:**

1. Draft Baseline Zoning Ordinance (BZO)
2. Consent Changes Matrix
3. Planning Commission Staff Report: Baseline Zoning Ordinance Update and Discussion (September 2, 2020) – without attachments
4. Public Hearing Notice

**NOTICE OF PUBLIC HEARING  
BERKELEY CITY COUNCIL**

**REPEAL THE EXISTING ZONING ORDINANCE AND ZONING MAP AND  
ADOPT THE NEW ZONING ORDINANCE AND ZONING MAP  
(BERKELEY MUNICIPAL CODE TITLE 23)**

The Department of Planning and Development is proposing to repeal the current Zoning Ordinance (Berkeley Municipal Code [BMC] Title 23), including the Official Zoning Map, and adopt the new Baseline Zoning Ordinance (BZO) and Official Zoning Map as BMC Title 23 with an effective date of December 1, 2021.

The BZO was developed as part of the Zoning Ordinance Revision Project (ZORP), initiated by a City Council referral in 2016, that is aimed at improving customer service. The Baseline Zoning Ordinance rewords and formats the existing Zoning Ordinance to make land use regulations easier to read, understand and administer. The BZO contains all the regulatory elements of the existing Zoning Ordinance and contains no major substantive policy changes.

The hearing will be held on, SEPTEMBER 14, 2021 at 6:00 p.m. The hearing will be held via videoconference pursuant to Governor's Executive Order N-29-20.

A copy of the agenda material for this hearing will be available on the City's website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of **September 2, 2021**. **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](mailto:council@cityofberkeley.info) in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

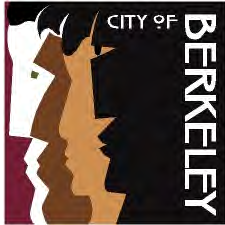
Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication 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](mailto:clerk@cityofberkeley.info) for further information.



**Published:** Friday, September 3, 2021, 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 September 2, 2021.

Mark Numainville, City Clerk



Office of the City Manager

SUPPLEMENTAL AGENDA MATERIAL

Meeting Date: March 23, 2021

Item Number: 17

Item Description: Objective Standard Recommendations for Density, Design and Shadows

Supplemental/Revision Submitted By: Alene Pearson, Secretary, Joint Subcommittee for the Implementation of State Housing Laws (JSISHL)

“Good of the City” Analysis:

The analysis below must demonstrate how accepting this supplement/revision is for the “good of the City” and outweighs the lack of time for citizen review or evaluation by the Council.

JSISHL’s recommendation for objective design standards references a set of proposed standards for review by other City Commissions. This supplemental communication provides the matrix of proposed objective design standards, for benefit of Council and public while discussing this item.

[from page two of the staff report]

*To aid JSISHL in making a recommendation, staff created a matrix of design guidelines to identify design goals, introduced objective language to reflect desired design outcomes, and test-fit approved projects to double-check objective language. **JSISHL recommended the proposed objective design standards be reviewed by the Design Review Committee and further refined by Planning Commission.***

Consideration of supplemental or revised agenda material is subject to approval by a two-thirds roll call vote of the City Council. (BMC 2.06.070)

A minimum of **42 copies** must be submitted to the City Clerk for distribution at the Council meeting. This completed cover page must accompany every copy.

Copies of the supplemental/revised agenda material may be delivered to the City Clerk Department by 12:00 p.m. the day of the meeting. Copies that are ready after 12:00 p.m. must be delivered directly to the City Clerk at Council Chambers prior to the start of the meeting.

Supplements or Revisions submitted pursuant to BMC § 2.06.070 may only be revisions of the original report included in the Agenda Packet.

Objective Standards for Design Guidelines				Row #
Section	Subsection	Proposed Objective Design Standards	Definitions	
1. Neighborhood Context	<p>Massing</p> <p>Goal: Promote harmony in scale and massing.</p>	<p>Differentiate the base. A base shall visually carry the weight of the building. A base <i>is defined as a plane or material change between the ground floor and the upper floors</i> and can be made by thickening the walls or a change in material and color and <i>shall extend</i> at least 75% of <i>each individual</i> building facade.</p> <p>Buildings over three stories tall shall have major massing breaks at least every 100 feet <i>along every building frontage</i> through the use of varying setbacks, building entries, and recesses, courtyards or structural bays. Major breaks shall be a minimum of 5 feet deep and 10 feet wide and shall extend at least two-thirds of the height of the building.</p>	Base - a plane or material change between the ground floor and the upper floors	1
	<p>Materials</p> <p>Goal: Provide texture and visual interest while minimizing glare.</p>	<p>At least two materials shall be used on any building face visible from the street or adjacent parcel in addition to glazing and railings. Any one material must comprise at least 20% of <i>street facing building facade</i>.</p> <p>Materials shall not cause glare on the public right of way or adjacent parcels.</p>		2
2. Building Design	<p>Rooflines</p> <p>Goal: Vertically break up building mass at the roofline.</p>	Rooflines shall be <i>articulated at least every 50 feet along the street frontage, through the use of architectural elements such as cornices, clerestory windows, canopies, or varying roof height and/or form.</i>	Roofline - Top termination of the massing.	3
	<p>Façade Design</p> <p>Goal: Give depth to the building façade.</p>	<p>Provide balconies or upper facade projections or recesses every 25 to 30 feet.</p> <p>Blank walls on side and rear facades shall not exceed 30 ft in length.</p>	<p>Upper façade projection or recess - Any balcony, window box, window articulation that either creates a recess in or projects out from the building face.</p> <p>Blank wall - A length of uninterrupted wall space that does not include a window, door, material change, or plane change.</p>	4
	<p>Windows</p> <p>Goal: Give depth to the building façade.</p>	<p>Windows <i>shall not exceed 75% of upper facades</i>.</p> <p>Windows set in wall surfaces shall be recessed a minimum of 2 inches <i>unless in a contiguous vertical bay, in which case the recess may be substituted with a vertical fin or projection.</i></p>		5
3. Ground Floor Design	<p>Residential Lobbies</p> <p>Goal: Create a focal point for residents and pedestrians.</p>	<p>A primary building entrance shall be visible from the street. Direct pedestrian access shall be provided between the public sidewalk and such primary entrance.</p> <p><i>A primary building entrance</i> must have a roofed projection <i>in the form of either a canopy or the extension of a vertical bay</i>, or recess with a minimum depth of 5 feet and a minimum area of 60 sq. feet. <i>Entrances to upper floors shall be distinguished with either plane changes, material transitions, or building signage.</i></p>		6
	<p>Ground Floor Height</p> <p>Goal: Enhance ground floor experience.</p>	Ground floor <i>commercial spaces</i> shall have a minimum interior height of <i>13 feet</i> .		7
	<p>Storefronts</p> <p>Goal: Enhance pedestrian experience and provide visual cues that distinguish between retail and residential entries.</p>	<p>Retail spaces shall be accessed directly from the sidewalk, rather than through lobbies or other internal spaces. Clear glass shall comprise at least 60% of the street facing façade where it is between 3 feet and 8 feet above elevation of adjacent sidewalk.</p> <p>Maintain the typical rhythm of 15-30 foot storefronts at ground level. Provide at least one of the following architectural features to protect pedestrians from inclement weather:</p> <p>A) awnings B) canopies C) recessed entries</p> <p>Except for recessed entries, a majority of storefront glazing shall be at the property line.</p>		8

Objective Standards for Design Guidelines				Row #
Section	Subsection	Proposed Objective Design Standards	Definitions	
3. Ground Floor Design	<p>Public Service Street Frontages</p> <p>Goal: Activate the public street.</p>	<p>At least one publicly-accessible street-level entrance shall be provided for every 40 feet along a streetfacing property line. Any remainder exceeding 30 feet shall also have a publicly-accessible street-level entrance. No two entrances shall be separated by more than 50 feet.</p> <p>~ <i>Downtown only</i></p> <p>*reference Figure 43: Public Serving Frontages on page 61 of the Downtown Design Guidelines for applicability.</p>		9
4. Parking Lots, Garages and Driveways	<p>General Guidelines</p> <p>Goal: Reduce visual impact of parking on the street frontage.</p>	Locate parking structures underground or behind buildings or provide either landscape or architectural elements to screen view of parking from the street.		10
	<p>Surface Lots</p> <p>Goal: Screen surface lots from view of the street while providing shade and landscaping.</p>	Perimeter landscaping shall include trees and shrubs. In addition to required screening, parking area shall have trees which achieve a canopy coverage of at least 50% within seven years.		11
	<p>Garage Lighting and Ventilation</p> <p>Goal: Reduce impact of garages on neighboring parcels.</p>	All parking garage lighting shall be shielded so that light does not shine through vents at night and headlights are not visible from the street and adjacent parcels. If forced venting is required for the garage, air shall not vent directly onto the sidewalk or podium courtyards.		12
5. Building Accessories	<p>Lighting</p> <p>Goal: Prevent glare on public right of way.</p>	All lighting shall be downcast and not cause glare on the public right of way or neighboring parcels.		13
	<p>Security and Fences</p> <p>Goal: Reduce visual impact.</p>	<p>Security devices and grillwork visible from the street shall be integrated into the overall building design.</p> <p>Perimeter fencing utilized along public street shall be constructed of decorative iron, pre-painted welded steel, or wood picket material.</p>		14
	<p>Trash Service, Mechanical and Utilities</p> <p>Goal: Reduce visual impact.</p>	Garbage receptacles, utility meters and mechanical and electrical equipment at rooftop and ground shall be screened from the view of pedestrians.		15
6. Street Trees	<p>Goal: Preserve and/or add street trees.</p>	Existing street trees shall be retained and protected <i>if determined to be healthy by the Urban Forester</i> . Work with Berkeley's Urban Forestry Department and Public Works to determine preferred locations for new street trees.		16
7. Signs and Awnings	<p>Goal: Cohesive sign program that is in keeping with the building design</p>	<p>Coordinate the design and alignment of signs and awnings on buildings with multiple storefronts in order to achieve a cohesive appearance to the base of the building.</p> <p>Signs and awnings shall not obscure architectural elements such as clerestory windows or columns.</p> <p>All front faces shall be opaque.</p>		17



Joint Subcommittee for the Implementation of State Housing Laws

ACTION CALENDAR

September 28, 2021

(Continued from
September 14, 2021)

To: Honorable Mayor and Members of the City Council

From: Joint Subcommittee for the Implementation of State Housing Laws
(JSISHL)

Submitted by: Igor Tregub, Chairperson

Subject: Objective Standards Recommendations for Density, Design and Shadows

RECOMMENDATION

Refer to the Planning Commission and Design Review Committee to review the recommendations from the Joint Subcommittee for the Implementation of State Housing Laws (JSISHL) for objective standards for density, design and shadows and draft Zoning Ordinance amendments for City Council consideration.

FISCAL IMPACTS OF RECOMMENDATION

This project will involve staff and consultant time that will total approximately \$200,000. Budget for the consultant time was previously allocated from the General Fund in the 2021-2022 fiscal year budget (\$115,000). Additional staff time amounting to \$100,000 would have to be covered by re-arranging staff priorities within existing resources to support the effort.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley's Zoning Ordinance and permitting process for residential and mixed use projects relies heavily on discretion and subjective development standards. State laws, such as Senate Bill (SB) 35, limit interpretation of zoning regulations and require a streamlined permit approval process for many housing projects. JSISHL was tasked with reviewing approaches to objective standards for density, design, shadows and views. Between April 2018 and July 2020 JSISHL, including representatives of the Planning Commission, Zoning Adjustments Board, and Housing Advisory Commission, met eleven times to discuss these topics and ultimately prepared the recommendations summarized below.

Objective Standards for Density (Building Intensity)

The referral specifically requested that JSISHL consider dwelling units per acre as an objective measurement of density. JSISHL also considered a form-based code method and floor area ratio (FAR) as approaches to objectively regulate lot buildout and development proportions. No unanimous agreement could be reached as to the best

path forward. In the end, a recommendation was made using FAR as the primary density standard in residential and commercial districts and form-based code¹, which emphasizes standards with predictable physical outcome such as build-to lines and frontage and setback requirements, as a secondary approach. There was also an interest in a units/acre approach that assumed average unit sizes and bedroom counts; however, this approach was not adopted. See Attachment 1 (July 22, 2020 Final Minutes) for the text of these options. **JSISHL recommended developing an objective standard for density using FAR and potentially form-based code.**

Objective Standards for Design

Berkeley's design review process relies heavily on four sets of design guidelines:

1. Design Review Guidelines (applied citywide);
2. Downtown Design Guidelines;
3. Southside Strategic Plan Design Guidelines; and
4. University Strategic Plan Design Guidelines.

This process heavily relies on the discretion of staff and the Design Review Committee; however, recent State laws require that cities develop objective standards for streamlined and ministerial approval processes for qualified projects. To aid JSISHL in making a recommendation, staff created a matrix of design guidelines to identify design goals, introduced objective language to reflect desired design outcomes, and test-fit approved projects to double-check objective language. **JSISHL recommended the proposed objective design standards be reviewed by the Design Review Committee and further refined by Planning Commission.**

Objective Standards for Shadows

The Berkeley Municipal Code (BMC) addresses shadows as follows:

- Section 23E.36.070(C)(1)(a): Projects on the north side of University Avenue within the University Avenue Strategic Plan Overlay area must meet a Solar Rear Yard Setback (subject to override by Density Bonus waivers). Required daylight plane analysis is incorporated directly into the development standards: “...*shall not cast a shadow at noon more than 20 feet onto any lot in a residential zone as calculated when the sun is at a 29 degree angle above the horizon (winter solstice).*”
- Section 23B.34.070(C): Green Pathway Projects² within the Downtown Mixed-Use District (C-DMU) that are between 60 and 75 feet tall. Shadow analysis for these projects must show that:

¹ <https://formbasedcodes.org/standards-of-practice/>

² As defined in in Chapter 23B.34 of the municipal code, the “Green Pathway” is a streamlined permit process for buildings that exceed the Green Building requirements applicable to the C-DMU district and confer extraordinary public benefits.

1. *The extent of shading on public sidewalks and open spaces within a radius of 75 feet of the closest building wall that would be cast at two (2) hours after sunrise, 12 p.m., and two (2) hours before sunset, on March 21, June 21, December 21, and September 21, by a building 60 feet in height that complies with all applicable setback requirements; and*
2. *Features incorporated into the building design, including, but not limited to, additional upper floor setbacks that will reduce the extent of shadowing of the proposed building to no more than 75 percent of the shadowing projected in paragraph 1 above.*

Otherwise, shading impacts are evaluated on a discretionary basis during Use Permit review and are permissible provided they are not “unreasonable” or provided they will not result in a “significant reduction in sunlight.” Although the review of shadow studies is somewhat objective – administrative guidelines establish methods for analyzing impacts by time of day and time of year on living area windows and yards - the ultimate finding is subjective. Therefore, while shadow studies provide accurate information on shading due to proposed projects, the amount of shading from new development that is deemed “reasonable” depends on the context.

JSISHL discussed many aspects of shadow impacts, including shading of solar panels and roofs, windows, yards and gardens. The recommendation is fairly detailed, including five applicability considerations and four methods of measuring shadow impacts that depend on project elements. **JSISHL recommended that the proposal for objective shadow standards be reviewed and further refined by staff and the Planning Commission.**

BACKGROUND

On July 17, 2017, the City Council adopted a referral to address the State Housing Accountability Act (Government Code Section 65589.5) and to preserve local land use discretion (see Attachment 2). The referral requested research into a set of objective zoning standards for new development projects in the following four topic areas:

- Density and/or building intensity;
- Public health and safety standards;
- Design review standards; and
- Views, shadows, and other impacts that often underlie detriment findings.

In the time since the referral was adopted by City Council in 2017, the State adopted several bills to streamline the approval process for housing developments. Legislation facilitates housing production for projects that comply with a jurisdiction’s objective standards and prohibits localities from adopting standards what would reduce the number of residential units allowed (i.e. downzones a property or area). As a result of

these legislative actions, jurisdictions benefit from adopting objective planning standards that can guide the development process and reflect goals of the local community.

JSISHL's first few meetings in 2018 were focused on understanding and analyzing 2017 State housing laws and associated City Council referrals. At its fourth meeting, in January 2019, JSISHL adopted a work plan (see Attachment 3) to direct efforts towards researching approaches to objective standards for density, design, shadows and views. In March and May of 2019, JSISHL examined existing conditions at the City of Berkeley and implementation of the Zoning Ordinance and of State law (i.e. Density Bonus, SB-35, the Housing Accountability Act). Since September 2019, JSISHL has evaluated objective standards for density, design and shadows in order to develop a recommendation to City Council. At its final meeting on July 22, 2020, JSISHL recommended approaches to objective standards for design, density and shadows to City Council for consideration. JSISHL was not able to address objective standards for views.

ENVIRONMENTAL SUSTAINABILITY

Adoption of objective standards will streamline the permitting process for housing projects, encouraging infill development and density, creating opportunities to live and work within close proximity and reduce reliance on private vehicle use and/or vehicles miles traveled.

RATIONALE FOR RECOMMENDATION

State law requires that jurisdictions adopt objective standards in order to ministerially approved projects.

ALTERNATIVE ACTIONS CONSIDERED

The city can choose to not adopt objective standards, in which case projects will be ministerially approved without meeting certain standards.

CITY MANAGER

The City Manager concurs with the content and recommendations of the Commission's Report.

CONTACT PERSON

Alene Pearson, Subcommittee Secretary, Planning and Development Department, 510-981-7489

Attachments:

- 1: Meeting Minutes (July 22, 2020)
- 2: City Council Referral (July 17, 2017)
- 3: Work Plan (January 17, 2019)



Planning Commission

**DRAFT MINUTES OF THE REGULAR MEETING OF THE JSISHL
(JOINT SUBCOMMITTEE FOR IMPLEMENTATION OF STATE HOUSING LAWS)**

July 22, 2020

The meeting was called to order at 7:02 p.m.

Location: N/A (This meeting was conducted exclusively through videoconference and teleconference)

Commissioners Present: Teresa Clarke, Dohee Kim, Thomas Lord, Shoshana O’Keefe, Igor Tregub, Alfred Twu, Jeff Vincent, Marian Wolfe (left at 9:29), Rob Wrenn

Commissioners Absent: None

Staff Present: Alene Pearson, Nilu Karimzadegan, Anne Burns and Desiree Dougherty

ORDER OF AGENDA: No Change

CONSENT CALENDAR: N/A

PUBLIC COMMENT: 1 speaker

PLANNING STAFF REPORT: Staff announced that three supplemental communications were sent out via email prior to the meeting and are posted on the online agenda. Communications received “At the Meeting” will be posted by the end of Friday.

COMMUNICATIONS IN PACKET:

- Email from Cantor Lois on 10/24/19 re: BART apartments
- Email from Vicki Sommer on 10/24/19 re: Objective Standards for Sunlight Detriment
- Email from Alene Pearson on 11/15/19 to JSISHL re: JSISHL October follow up and December supplemental material request
- Letter from Toni Mester on 12/2/19 re: density and solar recommendation
- Letter from David Ushijima on 12/2/19 re: Objective Standards for Shadow and Sunlight
- Email from Commissioner Wolfe on 12/2/19 re: JSISHL October follow up and December supplemental material request

COMMISSIONER ATTACHMENTS IN PACKET:

- Email from Alene Pearson to JSISHL on June 26, 2020 re: JSISHL Meeting scheduled for July 22
- Email from Alene Pearson to JSISHL on May 15, 2020 re: JSISHL Meeting via Zoom

- Email from Timothy Burroughs, Planning Director on April 23, 2020 re: Update on status of board and commission meetings
- Email from Commissioner Lord on April 13, 2020 re: “The Constitution.....”
- Email from Commissioner Lord on March 30, 2020 re: Objectifying and Modernizing Study Standards
- Email from Commissioner Kim on March 30, 2020 re: Follow Up to February 26 JSISHL Meeting
- Email from Commissioner Wolfe on March 28, 2020 re: Follow Up to February 26 JSISHL Meeting
- Email from Commissioner Wright on March 12, 2020 re: Follow Up to February 26 JSISHL Meeting
- Email from Alene Pearson to JSISHL on March 6, 2020 re: Follow Up to February 26 JSISHL Meeting

LATE COMMUNICATIONS (Received after the Packet deadline):

- Supplemental Communication 1
- Supplemental Communication 2
- Supplemental Communication 3

LATE COMMUNICATIONS (Received and distributed at the meeting):

- Supplemental Communication 4

CHAIR REPORT: None

COMMITTEE REPORT: None

7. APPROVAL OF MINUTES:

Motion/Second/Carried (Wolfe/Clarke) to approve the JSISHL Meeting Minutes from February 26, 2020. Ayes: Clarke, Kim, Lord, Tregub, Vincent, Wolfe, Wrenn. Noes: None. Abstain: O’Keefe, Twu. Absent: None (7-0-2-0)

8. FUTURE AGENDA ITEMS AND OTHER PLANNING-RELATED EVENTS: None

AGENDA ITEMS

9. Action: Objective Standards for Density

PUBLIC COMMENT: 4 speakers

Primary Motion/Second/No Action Taken (O’Keefe/Wrenn) to recommend that the City Council refer to staff and Planning Commission development of a dwelling units per acre standard in all commercial districts and in the MULI and MUR districts with consideration of a cap on average number of bedrooms. Take into consideration size of parcel and develop an average bedroom/unit (to be determined) for multi-unit buildings. Develop Floor Area Ratios (FARs) for residentially zoned (“R” prefix) districts such as R-2, R-2A, and R-3, to help clarify and make more objective what is permitted in these districts.

Substitute Motion/Second/Carried (Kim/Clarke) to recommend using FAR as a density standard with a secondary form-based approach in Residential and Commercial districts. Ayes: Clarke, Kim, Wolfe, Twu, Vincent. Noes: Lord, O’Keefe, Tregub, Wrenn. Abstain: None
Absent: None
(5-4-0-0)

10. Action: Objective Standards for Design

PUBLIC COMMENT: 1 speakers

Primary Motion/Second/Carried (Wolfe/Clarke) to recommend to City Council the proposed design standards be reviewed and further developed by the Design Review Committee and Planning Commission. These standards were included in JSISHL’s July 22, 2020 packet. Ayes: Clarke, Kim, O’Keefe, Tregub, Vincent, Wolfe, Wrenn. Noes: None. Abstain: Lord, Twu.
Absent: None
(7-0-2-0)

Substitute Motion/Second/Not Carried (Twu/O’Keefe) to recommend to City Council the proposed design standards -- minus the first four design standards (massing, material, rooflines, facades) -- be reviewed and further developed by the Design Review Committee and Planning Commission. These standards were included in JSISHL’s July 22, 2020 packet. Ayes: O’Keefe, Twu. Noes: Clarke, Kim, Lord, Tregub, Vincent, Wolfe, Wrenn. Abstain: None.
Absent: None
(2-7-0-0)

11. Action: Objective Standards for Shadows

PUBLIC COMMENT: 2 speakers

Motion/Second/Not Carried (Wrenn/Tregub) to recommend to City Council the following:

In developing draft objective standards, staff should start with existing daylight plane standards, including the standards for San Pablo Avenue in El Cerrito, and with the City’s own standard in effect for University Avenue.

Shadowing standards would only apply if the proposed project was asking for a Use Permit, AUP, waiver or density bonus to exceed the “base” residential and commercial zoning district development standards that are in effect as of 7/1/20.

Where there is a lot coverage limit, adjustments to the location and orientation of the massing can be required in order to minimize shadowing impacts.

In the development of shadowing standards, impacts on light and air and existing windows and door openings of the applicable adjacent buildings will be taken into consideration.

JSISHL should recommend that the City Council direct staff to go forward with drafting of an objective standard to protect existing rooftop solar panels from shadowing by new development on adjacent and nearby parcels.

JSISHL should recommend that the City Council direct staff to go forward with drafting objective shadowing standards to limit shadowing of residential buildings by new development on adjacent or nearby parcels.

Standards should apply in residentially zoned (“R” prefix) districts and to properties in commercially zoned (“C” prefix) districts that are adjacent to residential properties, where new development could cause shadowing impacts on residential properties. Staff could present to Council a range of options with draft language for each.

JSISHL should recommend that the City Council direct staff to work on standards to protect open, currently unshadowed areas of public parks, and open currently unshadowed areas of school grounds that are used for student recreation.

Ayes: O’Keefe, Tregub, Vincent, Wrenn. Noes: Lord, Abstain: Clarke, Kim, Twu. Absent: Wolfe (4-1-3-1)

Motion/Second/Carried (Clarke/Vincent) to recommend to City Council the following proposed shadow standards be reviewed and further developed by the staff and Planning Commission.

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

2. Elements of consideration for Shadow Impact:

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

The shadow impact would only be calculated on the increase in shadow caused by the additional height or reduced setback portion of the project, not the cumulative.

Ayes: Clarke, Kim, O’Keefe, Twu, Vincent. Noes: Lord, Wrenn. Abstain: Tregub. Absent: Wolfe. (5-2-1-1)

The meeting was adjourned at 11: 01 p.m.

Commissioners in attendance: 9 of 9

Members in the public in attendance: 7

Public Speakers: 7

Length of the meeting: 2 hours and 59 minutes

APPROVED:

Alene Pearson

Secretary to the JSISHL

DRAFT

RESOLUTION NO. 69,159-N.S.

EXTENSION OF THE JOINT SUBCOMMITTEE FOR THE IMPLEMENTATION OF
STATE HOUSING LAWS

WHEREAS, the Joint Subcommittee for the Implementation of State Housing Laws (JSISHL) was established under Resolution No. 68,308-N.S. in January 2018; and

WHEREAS, the mission of JSISHL is to advise Council regarding issues around density bonuses, the Housing Accountability Act, inclusionary zoning, and permit streamlining to attain compliance with state law and take advantage of new opportunities for the development of affordable housing; and

WHEREAS, under its enabling legislation, JSISHL is tasked with completing its work by January 2020, reporting to Council by March 2020; and

WHEREAS, in order to fulfill its mission an extension is needed to provide adequate time to review recently passed State housing laws, and to provide adequate feedback on recommendations on units per acre density standards, Floor to Area Ratios (FARs) and daylight plane shadowing standards, along with anything else such as an objective definition of detriment.


NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby extends the timeline for the Joint Subcommittee for the Implementation of State Housing Laws to complete its work by July 2020, with the recommendations being brought to the City Council for consideration by the end of September 2020.

The foregoing Resolution was adopted by the Berkeley City Council on October 29, 2019 by the following vote:

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

Noes: None.

Absent: None.



Jesse Arreguin, Mayor

Attest: 

Mark Numainville, City Clerk

RESOLUTION NO. 68,308–N.S.

ESTABLISHING A JOINT SUBCOMMITTEE FOR THE IMPLEMENTATION OF STATE HOUSING LAWS.

WHEREAS, Berkeley and California is facing an unprecedented housing affordability crisis; and

WHEREAS, rents for a two bedroom apartment in Berkeley have risen by 62.5% over the past five years; and

WHEREAS, Berkeley has so far achieved 48% of its housing allocation goals for 2014-2022 set out by the Association of Bay Area Governments, including 0% for extremely low income and moderate income; and

WHEREAS, many residential developments that have received zoning approval have yet to receive a building permit; and

WHEREAS, to address the rising crisis of housing in the State of California, 15 state bills were signed into law, with many dealing with how local municipalities respond to the development of new units; and

WHEREAS, issues around density bonuses, the Housing Accountability Act, inclusionary zoning, and permit streamlining need to be addressed by the City to be compliant with state law and to take advantage of new opportunities for the development of affordable housing; and

WHEREAS, because the Zoning Adjustments Board, Housing Advisory Commission, and Planning Commission have policy and quasi-judicial powers around housing, it would be beneficial for representatives of these commissions to meet jointly to develop policies for consideration by the Planning Commission and City Council; and

WHEREAS, community input is of vital importance in the review and implementation of these housing policies, and such input can be encouraged by regular publicly-noticed meetings of the Task Force; and

WHEREAS, the Joint Subcommittee should be comprised of nine voting members, with representatives from each commission.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley does hereby establish a Joint Subcommittee composed of members from the Zoning Adjustments Board, Housing Advisory Commission, and Planning Commission.

BE IT FURTHER RESOLVED that the Joint Subcommittee members shall be appointed from the membership of the Zoning Adjustments Board, Planning Commission or Housing Advisory Commission. Any Commissioner on any of those commissions is eligible for appointment to the Joint Subcommittee, as long as there is representation from each commission on the Joint Subcommittee.


BE IT FUTHER RESOLVED that the Joint Subcommittee shall complete its work by January 2020. Staff shall forward the Joint Subcommittee's recommendations to each parent Commission for comment, and bring the Joint Subcommittee's recommendations to the City Council for consideration by the end of March 2020, along with comments by any parent commissions.

The foregoing Resolution was adopted by the Berkeley City Council on January 23, 2018 by the following vote:

Ayes: Davila, Droste, Hahn, Harrison, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

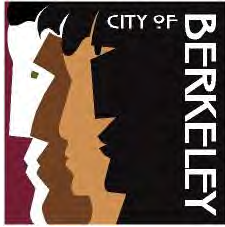
Absent: Bartlett.



Jesse Arreguin, Mayor

Attest: 

Mark Numalville, City Clerk



Mayor Jesse Arreguin
Councilmember Sophie Hahn, District 5

SUPPLEMENTAL AGENDA MATERIAL

Meeting Date: June 13, 2017

Item Number: # 59

Item Description: Housing Accountability Act

Submitted by: Mayor Jesse Arreguin and Councilmember Sophie Hahn

The revision removes the idea that staff and the Planning Commission consider as one of several options downzoning and then upzoning by increasing development standards on a discretionary basis.

These ideas largely reflect those originally proposed by the City Attorney and Planning staff.

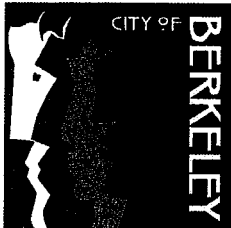


Mayor Jesse Arreguin
Councilmember Sophie Hahn, District 5

Motion, Item # 59: Housing Accountability Act

Refer to the City Manager and Planning Commission to consider the following actions, and others they may find appropriate, to address the potential impacts of the Housing Accountability Act and to preserve local land use discretion:

- Amend the General Plan and Zoning Ordinance to adopt numerical density and/or building intensity standards that can be applied on a parcel-by-parcel basis in an easy and predictable manner. These would constitute reliable and understandable “objective general plan and zoning standards” that would establish known maximum densities. This could be done across the board or for specified districts.
- Devise and adopt “objective, identified written public health or safety standards” applicable to new housing development projects.
- Adopt “design review standards that are part of ‘applicable, objective general plan and zoning standards and criteria’”.
- ~~Downzone & increase the number and amount of additional height, setback, and other elements available on a discretionary basis.~~
- Quantify and set standards for views, shadows, and other impacts that often underlie detriment findings.



Office of the Mayor

RECEIVED AT
COUNCIL MEETING OF:

MAY 30 2017

OFFICE OF THE CITY CLERK
CITY OF BERKELEY

Motion, Item # 46: Housing Accountability Act

Refer to the City Manager and Planning Commission to consider the following actions, and others they may find appropriate, to address the potential impacts of the Housing Accountability Act and to preserve local land use discretion:

- Amend the General Plan and Zoning Ordinance to adopt numerical density and/or building intensity standards that can be applied on a parcel-by-parcel basis in an easy and predictable manner. These would constitute reliable and understandable “objective general plan and zoning standards” that would establish known maximum densities. This could be done across the board or for specified districts.
- Devise and adopt “objective, identified written public health or safety standards” applicable to new housing development projects.
- Adopt “design review standards that are part of ‘applicable, objective general plan and zoning standards and criteria’”.
- Downzone & increase the number and amount of additional height, setback, and other elements available on a discretionary basis.
- Quantify and set standards for views, shadows, and other impacts that often underlie detriment findings.

Meeting Date: January 17, 2019

To: Joint Subcommittee for the Implementation of State Housing Law (JSISHL)

From: Chris Schildt, Chairperson

Subject: JSISHL background, mission, objectives, and developing 2019 Workplan

Background

JSISHL held three meetings last year in April, May, and July, and had two meetings cancelled in September and November. Due to the long gap since our last meeting, I thought it'd be helpful to revisit the mission and objectives of this subcommittee, as background to a discussion of our workplan for the coming year.

At our April 17, 2018 meeting, we reviewed the mission and objectives of this subcommittee (from April 17, 2018 staff presentation to JSISHL):

Mission: Assist the City of Berkeley to effectively implement new State housing laws and advance City Council priorities that are designed to increase affordable housing.

Objectives:

- Learn about the new State housing law package and its implications for our community
- Assist the City to incorporate new practices designed to enable implementation of new State housing laws
- Based on City Council priorities and referrals, assist with development of new policies for consideration by parent commissions and City Council.

At our subsequent meetings, we heard information about and discussed new state housing laws and a range of related issues, including developing objective standards, streamlining affordable housing, density bonus, and inclusionary zoning.

Developing a 2019 Workplan

While we heard information and had a lot of discussion last year, my aim for this coming year is for this body to move forward on a finite number of items that will best position the City to implement State housing laws. To that aim, I recommend we develop a workplan with agreed upon priorities that we will work on in the coming year. This would not preclude commissioners from submitting agenda items on other topics for JSISHL to consider, but would help to align our efforts and focus.

The workplan should build off of our existing work and discussion. In last year's meetings, we discussed the following areas that relate to implementation of new State housing laws:

- Developing objective standards
- Streamlining affordable housing
- Density bonus
- Inclusionary housing

Proposal:

Numerous state laws, including the Housing Accountability Act, SB 35, and other potential future state legislation (e.g. SB 50) have made it difficult to implement our local laws, which were developed to be flexible with local discretion. The City has recently undertaken a review of the applicable standards that can be enforced under these laws in the light of three recent projects that have applied for approval under SB 35. For an example of how the City applied objective standards for one of the projects, 1601 Oxford Street, see:

https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_ZAB/2018-12-21_Attachment%20C_SB35_Objective%20Standards_1601%20Oxford.pdf

One outcome of the recent reviews has been the clear identification of those areas where the City does not have objective standards, including design review and use permit findings, which are by necessity discretionary and flexible to address unique circumstances. Developing objective standards in areas such as view, sunlight, density, and detriment could help to ensure local needs and goals are included in the development review process for all projects. These objective standards would also help address some of the other topics that have come up on this commission, such as facilitating streamlined review of affordable housing projects and improving the density bonus process.

As a proposed workplan, we could decide as a commission to use each of the next several meetings to do research and discussion on a separate topic within objective standards, and develop a set of recommendations for the City Council and/or our parent commissions. For each topic, commissioners and members of the public would be encouraged to submit information and research to this commission related to the topic to inform discussion. Attached is an example of research provided by a member of public, David Ushijima, on providing objective standards for sunlight detriment.

For example, we could dedicate one of each of these topics for each upcoming meeting:

- Daylight.
- Views.
- Density standards (Note: The city has hired a consultant, Opticos Design, to develop density standards this year. They will be presenting to this commission in 2019, date TBD).
- Detriments to health, comfort, and general welfare.

We could also agendaize for a future meeting to review the City's existing objective standards table.

At the end of the year, we can compile our research and discussion and develop a set of recommendations to send to the City Council and/or our parent bodies.

Questions for discussion:

- Do the members of the commission agree to develop a workplan for 2019?
- If yes, what should our priorities be for 2019?



Planning Commission

1 **DRAFT MINUTES OF THE REGULAR MEETING OF THE JSISHL**
2 **(JOINT SUBCOMMITTEE FOR IMPLEMENTATION OF STATE HOUSING LAWS)**

3
4 **January 17, 2019**

5 The meeting was called to order at 7:05 p.m.

6 **Location:** 2180 Milvia Street 1st Floor, Cypress Conference Room

7 **Commissioners Present:** Thomas Lord, Shoshana O'Keefe (arrived at 7:16), Christine Schildt
8 Igor Tregub, Marian Wolfe, Rob Wrenn.

9 **Commissioners Absent:** None

10 **Staff Present:** Alene Pearson, Nilu Karimzadegan and Beth Greene

11 **ORDER OF AGENDA:** Order of Agenda was changed to:

12 Discussion Item 9 (Adopt 2019 JSISHL Work Plan), Discussion Item 10 (Renewing
13 Democratized Planning in Berkeley), Action Item 11 (Approve 2019 JSISHL Meetings Calendar)
14 and Action Item 12 (Elections: Elect 2019 JSISHL Chair and Vice Chair).

15 Motion/Second/Carried (Lord/ Tregub) to move Agenda Item 12 to Agenda Item 10 and vote
16 on the 2019 JSISHL Work Plan after Agenda Item 10. Ayes: Lord, O'Keefe, Schildt, Tregub,
17 Wolfe, Wrenn. Noes: None. Abstain: None. Absent: None (6-0-0-0)

18
19 **CONSENT CALENDAR:** N/A.

20 **PUBLIC COMMENT:** 1 speaker

21 **PLANNING STAFF REPORT:**

22 Staff announced that 2019 meeting dates will be decided tonight with Agenda Item 11 and future
23 meeting location will depend upon room availability.

24 **COMMUNICATIONS IN PACKET:**

- 25 • White Paper on Sunlight Impacts by David Ushijima (October 15, 2018).
26 • 2019-01-08_Communication_BNC_Support of White Paper by Dean Metzger (January 8,
27 2019)

28
29 **LATE COMMUNICATIONS** (Received after the Packet deadline): None

30

31 **LATE COMMUNICATIONS** (Received and distributed at the meeting): None

32 **CHAIR REPORT:** None

33 **COMMITTEE REPORT:** None

34 **7. APPROVAL OF MINUTES:**

35 Motion/Second/Carried (Tregub/Wrenn) to approve the JSISHL Meeting Minutes from July 17,
36 2018. Ayes: Lord, O’Keefe, Schildt, Tregub, Wrenn. Noes: None. Abstain: Wolfe. Absent:
37 None (5-0-1-0)

38
39 **8. FUTURE AGENDA ITEMS AND OTHER PLANNING-RELATED EVENTS:** None.

40 **AGENDA ITEMS**

41 **9. Discussion:** Adopt 2019 JSISHL Work Plan:

42 The Commission discussed a work plan for 2019 and developed a proposed schedule with
43 meeting dates and topics that focus on objective standards for the implementation of State
44 Housing Law. Below is a summary of that discussion:

45 January 17: Work Plan Development

46 March 27: Existing Objective Standard Framework

47 May 22: Density Standards and Density Bonus

48 September 25: Daylight, shadowing, and solar access

49 October 23: Views and other objective standards

50 December 12: Report out.

51 The Commissioners and the members of the public were encouraged to submit information and
52 research related to future meeting topics. This work plan will result in a set of recommendations
53 to parent commissions and/or City Council.

54 **PUBLIC COMMENT:** 1 speaker

55 **10. Discussion:** Renewing Democratized Planning in Berkeley

56 Commissioner Lord explained his memo and suggested modifications to the work plan
57 developed during discussion of Agenda Item 9. The Commission added the topic of local
58 overlay zones to the September and October meetings.

59 **PUBLIC COMMENT:** 1 speaker

60 Motion/Second/Carried (O’Keefe/Wolfe) to adopt the proposed 2019 workplan. Ayes: O’Keefe,
61 Schildt, Tregub, Wolfe, Wrenn. Noes: Lord. Abstain: None. Absent: None (5-1-0-0)

62
63 **11. Action:** Approve 2019 JSISHL Meetings Calendar:

64 The Commission discussed their availability and agreed on the following 2019 calendar:

65 January 17, 2019 (Wednesday)

66 March 27, 2019 (Wednesday)

67 May 22, 2019 (Wednesday)

68 September 25, 2019 (Wednesday)

69 October 23, 2019 (Wednesday)

70 December 12, 2019 (Thursday)

71 Motion/Second/Carried (O’Keefe/Tregub) to adopt the proposed 2019 calendar. Ayes: Lord,
72 O’Keefe, Schildt, Tregub, Wolfe, Wrenn. Noes: None. Abstain: None. Absent: None
73 (6-0-0-0)

74
75 **12. Elections:** Elect 2019 JSISHL Chair and Vice Chair:

76 Motion/Second/Carried (Wolfe/O’Keefe) to Elect Chris Schildt as Chair and Igor Tregub as
77 Vice Chair for 2019 JSISHL. Ayes: Lord, O’Keefe, Schildt, Tregub, Wolfe, Wrenn. Noes: None.
78 Abstain: None. Absent: None (6-0-0-0)

79
80 **The meeting was adjourned at 9: 03 p.m.**

81 **Commissioners in attendance: 6 of 6**

82 **Members in the public in attendance: 2**

83 **Public Speakers: 2**

84 **Length of the meeting: 1 hour and 58 minutes**



Office of the City Manager

INFORMATION CALENDAR
September 28, 2021

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Henry Oyekanmi, Director, Finance
 Subject: Sanctuary City Contracting Compliance Report for FY 2020

INTRODUCTION

City Council adopted Ordinance 7,650-N.S., which is referred to as the Sanctuary City Contracting Ordinance (SCCO), in 2019. The SCCO states that the City shall not enter into a new, amended, or extended contract or agreement with any entity that provides United States Immigration and Customs Enforcement with data broker or extreme vetting services.

Section 13.105.040 requires the City Manager to report annually regarding compliance with section 13.105.030 for the prior year. Section 13.105.030 of the Berkeley Municipal Code details the prohibition on the use of City resources.

CURRENT SITUATION AND ITS EFFECTS

The Sanctuary City Contracting Ordinance establishes the City as a leader in social responsibility. The SCCO is a Strategic Plan Priority Project, advancing our goal to champion and demonstrate social and racial equity.

Report Requirements

(1) detail with specificity the steps taken to ensure compliance with Section 13.105.030:

City solicitations include invitations for bids (IFB), requests for proposals (RFP), and requests for qualifications (RFQ). Following adoption of the SCCO, Solicitation documents were amended to include a Sanctuary City Compliance Certificate for all bidders to attest that they have reviewed and comply with the SCCO. IFB, RFP, and RFQ public postings likewise each contain the SCCO language. Signed certificates are submitted with proposals and bid responses.

Also following adoption of the SCCO, contract and amendment boilerplates were revised to include the SCCO language. New and amended contracts and agreements include the Compliance Certificate attesting review of and

compliance with the SCCO. Signed certificates are required as part of the City's contract documents.

(2) disclose any issues with compliance, including any violations or potential violations of this Ordinance:

City Council issued a waiver of ordinance 7,650-N.S. related to Berkeley Tuolumne Camp Projects. The waiver was issued on 12/10/2019 in order to ensure compliance with FEMA contracting provisions as required for the City to receive a federal reimbursement grant for the construction project.

(3) detail actions taken to cure any deficiencies with compliance:

There were no complaints of non-compliance brought forth for investigation.

BACKGROUND

The City received notification in December 2020 that the required report was not submitted to City Council by November 1 as required in the ordinance. The report should have been drafted by General Services staff. The General Services division had a new manager in 2020, and had been an active part of the City's Covid-19 response program during the year, thus experiencing significant disruption to normal and typical tasks. The division was also in the process of recruiting for vacant positions in late 2020 and early 2021. Inadvertently, due to those circumstances, the report was not drafted and submitted.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no environmental/climate impacts from this report.

POSSIBLE FUTURE ACTION

This report will be submitted annually.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

None.

CONTACT PERSON

Darryl Sweet, General Services Manager, Finance, 510-981-7329

Attachments:

1. City Council waiver of SCCO (12/10/2019)

Sanctuary City
waiver

RESOLUTION NO. 69,218-N.S.

WAIVER OF ORDINANCE NO. 7,650-N.S. FOR BERKELEY TUOLUMNE CAMP
CONTRACTS

WHEREAS, the City operated the Berkeley Tuolumne Camp, a residential family camp, since 1922 on United States Forest Service land pursuant to a special use permit; and

WHEREAS, in August 2013, the Berkeley Tuolumne Camp was destroyed by the California Rim Fire; and

WHEREAS, in December, 2013, the City received a Federal Emergency Management Agency (FEMA) Public Assistance Grant for the reconstruction of Berkeley Tuolumne Camp; and

WHEREAS, rejection of a qualified contractor or vendor based solely on their inability to comply with Ordinance No. 7,650-N.S. would be in violation of federal guidelines that require maximum free and open competition, and prohibit the placement of unreasonable requirements on firms in order to qualify them to do business (Code of Federal Regulations §200.319); and

WHEREAS, if the waiver of Ordinance No. 7,650-N.S. is not granted, FEMA may rescind up to \$35 Million in grant funding for the Berkeley Tuolumne Camp Reconstruction Project; and

WHEREAS, if the waiver is granted, Berkeley Tuolumne Camp contracts would not include notice of the prohibition in qualification, proposal, or bid solicitations. Once the preferred contractor is selected, however, they will be asked to voluntarily complete the "Sanctuary City Compliance Statement". As such, the intent and purpose of the ordinance will be applied to the maximum extent feasible while still complying with federal procurement guidelines. Through this voluntary process, it is possible that all contracts for the Berkeley Tuolumne Camp Project will be in full compliance with Ordinance No. 7650-N.S.; and

WHEREAS, the City does not have sufficient funds allocated to complete the Berkeley Tuolumne Camp Project without federal funding.




NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that Ordinance No. 7,650-N.S. is waived for Berkeley Tuolumne Camp Project contracts.

The foregoing Resolution was adopted by the Berkeley City Council on December 10, 2019 by the following vote:

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

Noes: None.

Absent: None.



Jesse Arreguin, Mayor

Attest: 

Mark Numainville, City Clerk

INFORMATION CALENDAR

September 28, 2021

To: Honorable Mayor and Members of the City Council

From: Jenny Wong, City Auditor *JW*

Subject: Financial First Aid Kit: A Guide to Emergency Financial Preparedness for Berkeley Residents

INTRODUCTION

To promote Berkeley's financial fitness, my office created a guide to assist residents in preparing a Financial First Aid Kit for their households.

FISCAL IMPACTS

A Financial First Aid Kit can reduce the financial burden on residents in recovering from disasters or emergencies.

CURRENT SITUATION AND ITS EFFECTS

As climate change increases the risk of catastrophic wildfires and Berkeley's location near the Hayward fault creates an ever-present risk of earthquakes, it is always important to be prepared for evacuation if disaster strikes. One way to prepare is to create a Financial First Aid Kit that contains the critical information needed to begin the recovery process after an emergency evacuation or other incident. My office compiled information from the Federal Emergency Management Agency (FEMA) and other sources to create a guide for Berkeley residents to prepare a Financial First Aid Kit for their household.

FEMA recommends that a Financial First Aid kit include key records and contact information that you will need to recover from disasters or emergencies, including identification documents, financial and legal documentation, medical information for all family members and pets, contact information, passwords, and cash. FEMA also recommends that Financial First Aid Kits are stored in a safe location and to save multiple electronic copies on secure devices.

BACKGROUND

Emergencies can lead to unexpected expenses and may also require residents to evacuate their homes with little notice. It is important to be able to access financial information needed to meet basic needs during an emergency situation and to recover after the initial threat of harm has passed.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with this item.

CONTACT PERSON

Jenny Wong, City Auditor, City Auditor's Office, 510-981-6750

Attachments:

1: Financial First Aid Kit: A Guide to Emergency Financial Preparedness for Berkeley Residents

Financial First Aid Kit

A Guide to Emergency Financial Preparedness for Berkeley Residents

Be Prepared for Emergencies

As climate change increases the risk of catastrophic wildfires and Berkeley's location near the Hayward fault creates an ever-present risk of earthquakes, it is always important to be prepared for evacuation if disaster strikes. September is National Preparedness Month, which is a great reminder to take steps now to be ready for emergencies. One way to prepare is to create a **Financial First Aid Kit** that contains some of the critical information you will need to begin the recovery process after an emergency evacuation or other incident. This guide compiles information from the Federal Emergency Management Agency (FEMA) and other sources to help you prepare a Financial First Aid Kit for your household.

How to Create a Financial First Aid Kit

1. **Assemble** your documents and information. When using copies of original documents, make sure to scan both sides of each page.
2. **Verify** that the information is correct and up-to-date.
3. **Store** your completed Financial First Aid Kit in a safe location. It's best to save multiple electronic copies on secure devices, in addition to any physical copies.
4. **Update** this file at least once per year.

While the documents in the checklist to the right are a good starting point, keep in mind that this list is not comprehensive. You may need to customize or add to your Financial First Aid Kit based on the needs of your household. See the sources below for more details.

If you believe your Financial First Aid Kit has been stolen or illegally accessed, you should immediately contact all relevant financial and insurance institutions to report the concern.

Sources

(1) FEMA. 2019. *Emergency Financial First Aid Kit (EFFAK): Strengthen Your Financial Preparedness for Disasters and Emergencies*. https://www.fema.gov/sites/default/files/documents/fema_effak_toolkit.pdf.

(2) LA City Controller. 2020. "How to Build a Financial First Aid Kit." <https://lacontroller.org/data-stories-and-maps/financialfirstaidkit/>.

(3) Ready Campaign. 2021. National Preparedness Month Information. <https://www.ready.gov/september>.

Document and Information Checklist

Identification Documents

- Driver's license(s) or other photo ID(s)
- Birth certificate(s), adoption/custody papers
- Marriage license or divorce decree
- Social Security card(s)
- Child ID card(s) with photograph, fingerprints/DNA swabs
- Passport(s)/Green Card(s)
- Naturalization papers
- Military ID or discharge papers
- Pet ID(s), proof of ownership or adoption, emotional support letter/service animal certification, microchip information,

Medical Information

- Physician, pediatrician, dentist, medical specialist contacts
- Health insurance, pharmacy card(s)
- Medicare/Medicaid cards
- Immunization, allergy, and dental records
- List of prescriptions/medications
- Disability documents
- Caregiver agency contract or service agreement, living will/power of attorney
- Medical information for pet(s), e.g., veterinarian information, immunization records, prescriptions/medications
- Models, serial numbers, and suppliers for medical equipment

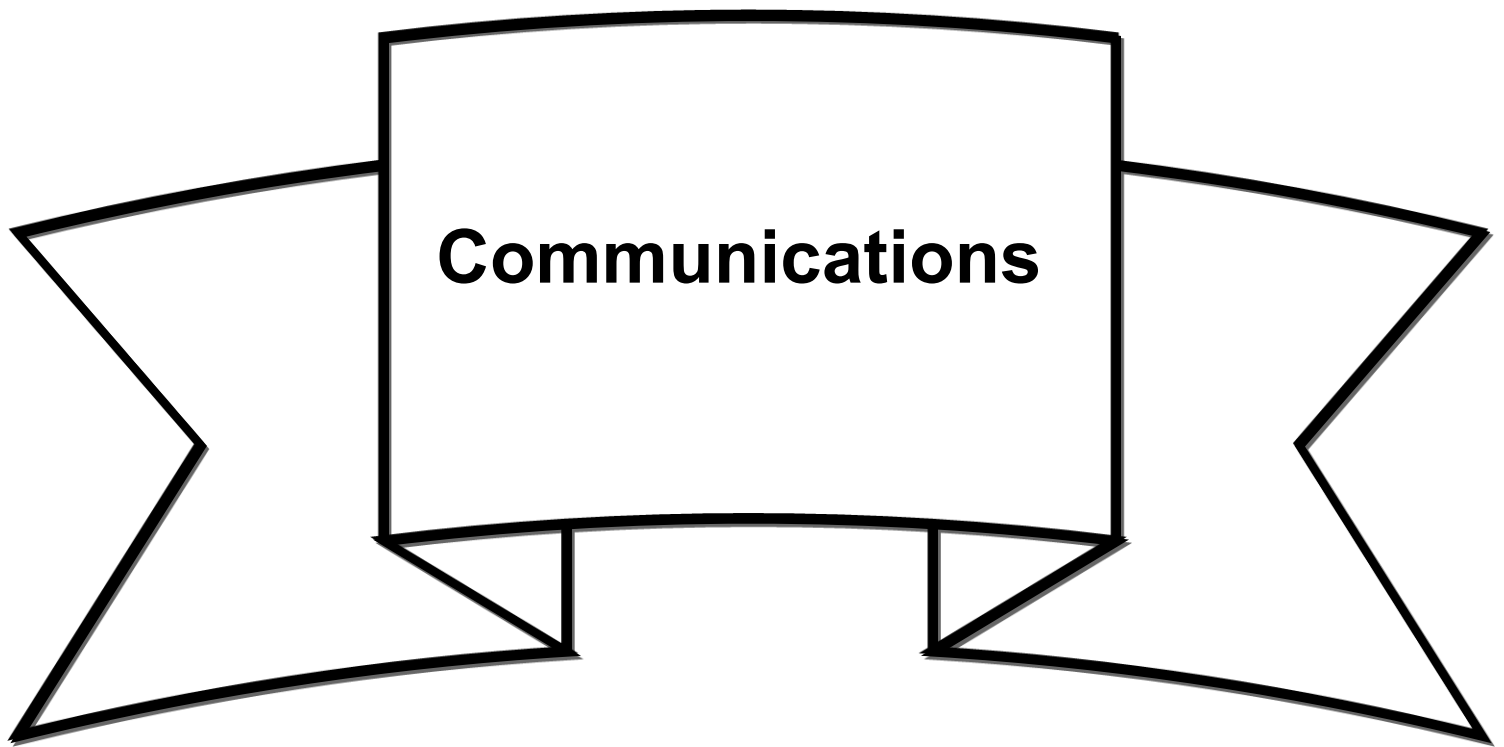
Contacts, Passwords, and Cash

- List of emergency contacts
- List of usernames and passwords
- Cash for daily expenses (physical file only)

Legal and Financial Documents

- Bank/financial institution, investment, and retirement account statements
- Lease/rental agreements
- Mortgage papers/real estate deed of trust
- Home equity line of credit
- Utility bills (e.g., electric, gas, water)
- Other financial obligations (e.g., vehicle loans, credit cards, student loans, alimony/child support payments, elder care facilities, automatic payments)
- Vehicle registration/proof of ownership
- Insurance papers for medical, life, property, renters, auto, pet, flood, funeral, etc.
- Photographs/appraisals of property
- Pay stubs, alimony/child support income
- Contracts to which you are a party
- Government benefit statements (e.g., CalFresh)
- Estate planning papers, wills and trusts, power(s) of attorney
- Rewards accounts (e.g., frequent flyer programs, hotels)





All communications submitted to the City Council are public record. Communications are not published directly to the City's website. Copies of individual communications are available for viewing at the City Clerk Department and through Records Online.

City Clerk Department

2180 Milvia Street
Berkeley, CA 94704
(510) 981-6900

Records Online

<http://www.cityofberkeley.info/recordsonline>

To search for communications associated with a particular City Council meeting using Records Online:

1. Select Search Type = “Public – Communication Query (Keywords)”
2. From Date: Enter the date of the Council meeting
3. To Date: Enter the date of the Council meeting (this may match the From Date field)
4. Click the “Search” button
5. Communication packets matching the entered criteria will be returned
6. Click the desired file in the Results column to view the document as a PDF