



**Planning and Development Department**  
Land Use Planning Division

## STAFF REPORT

DATE: April 6, 2022

TO: Members of the Planning Commission

FROM: Justin Horner, Associate Planner

SUBJECT: Public Hearing on Zoning Ordinance Amendments that Address Technical Edits and Corrections to Berkeley Municipal Code (BMC) Title 23 – Package #2

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### **RECOMMENDATION:**

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

- BMC Section 23.202.140 (R-SMU Zoning District)
- BMC Section 23.204.020 (Commercial Districts -- Allowed Land Uses)
- BMC Section 23.204.030 (Additional Permit Requirements)
- BMC Section 23.204.060 (C-U Zoning District)
- BMC Section 23.204.130 (C-DMU District)
- BMC Section 23.206.202 (Manufacturing Districts – Allowed Land Uses)
- BMC Section 23.302.030 (Temporary Uses and Structures)
- BMC Section 23.302.070 (Use-Specific Regulations)
- BMC Section 23.404.040 (Public Notice)
- BMC Section 23.502.020 (Glossary)

### **BACKGROUND**

On October 12, 2021, the City Council passed Ordinance No. 7,787-NS, which repealed the then-existing Title 23 of the Berkeley Municipal Code and zoning maps (“the old Zoning Ordinance”) and adopted a new Title 23 of the Berkeley Municipal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

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

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

## **PROPOSED ZONING ORDINANCE AMENDMENTS**

Since the new Zoning Ordinance came into effect on December 1, 2021, a number of clean-up amendments have been identified. The project team anticipated technical edits and corrections during the roll-out of the new Zoning Ordinance and was prepared with an efficient process and schedule for addressing these requests. This report is the product of that process and is labeled "Package #2" because it is the second set of edits to come before Planning Commission. Future reports will be numbered accordingly.

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

### **Category One Zoning Ordinance Amendments**

#### **1. BMC Section 23.202.140 (R-SMU Zoning District)**

**Old Zoning Ordinance:** Section 23D.52.070 of the old Zoning Ordinance regulated height requirements for Main Buildings in the R-SMU. The Section set a maximum height of 60 feet, but provides for heights above that maximum with a Use Permit. The maximum height attainable with a Use Permit depended upon a parcel's location in the R-SMU District:

- Within the portions of the District located east of Telegraph Avenue and/or more than 130 feet south of Bancroft Way, the Board may approve a Use Permit to increase a project's maximum height to five stories and 65 feet;
- Within the portion of the District located west of Telegraph Avenue and within 130 feet from Bancroft Way, the Zoning Board may approve a Use Permit to increase a project's maximum height to five stories and 75 feet.

**New Zoning Ordinance:** Figure 23.202-2 in the new Zoning Ordinance includes a map of R-SMU subareas. The map does not accurately represent the subarea boundaries created to reflect the text above from the old Zoning Ordinance. The parcels in Figure 23.202-2 that are not assigned to any subarea should be assigned to Height Sub Area Two.

**Proposed Amendment:** Amend Figure 23.202-2 to accurately read:



ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see <b>Error!</b> <b>Reference source not                      found.(B)</b> [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	COMMERCIAL DISTRICTS											USE-SPECIFIC REGULATIONS
	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
Research and Development	--	--	--	--	--	--	--	--	--	AUP --	--	

**3. BMC Section 23.204.130 (C-DMU Zoning District)**

**Old Zoning Ordinance:** Section 23E.68.070.D of the old Zoning Ordinance included provisions regulating required on-site open space. Section 23E.68.070.D.3 allowed a project to meet their on-site open space requirement by either constructing improvements consistent with the Streets and Open Space Improvement Plan (SOSIP) or paying an appropriate in-lieu fee towards similar improvements. Either option required a Use Permit.

**New Zoning Ordinance:** [Section 23.204.130.E.6](#) of the new Zoning Ordinance includes the option to construct or fund construction improvements consistent with the SOSIP, but does not include the requirement to obtain a Use Permit.

**Proposed Amendment:** Amend [Section 23.204.130.E.6](#) to read:

**6. Open Space Alternatives.**

(a) In lieu of providing the open space required by this section on-site, an applicant may either:

- i. Pay an in-lieu fee to help fund the Streets and Open Space Improvement Plan (SOSIP); and/or
- ii. Construct public improvement consistent with the SOSIP.

(b) Payment of an in-lieu fee in lieu of open space requires a Use Permit. 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) Construction of public improvements consistent with the SOSIP in lieu of open space requires a Use Permit. To allow construction of public improvements, the ZAB must find that the public improvements...

**4. BMC Section 23.302.070 (Use Specific Regulations – Food Service Establishments)**

**Old Zoning Ordinance:** Table 23E.56.030 of the old Zoning Ordinance indicated that uses established by an AUP in the C-T district require public notification of a decision within a 300-foot radius of the subject property.

**New Zoning Ordinance:** [Section 23.302.070.E.3](#) of the new Zoning Ordinance identifies the zoning districts in which a public notification is required for food service establishments that receive an AUP. The C-T district is missing from the list.

**Proposed Amendment:** Amend [Section 23.302.070.E.3](#) to read:

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

**5. BMC Section 23.404.040 (Public Notice)**

**Old Zoning Ordinance:** Pursuant to [California Government Code Section 65090](#), amendments to the Zoning Ordinance require a public hearing, with a 10 day public notice.

**New Zoning Ordinance:** [Section 23.404.040.C.3](#) of the new Zoning Ordinance indicates that a public hearing notice must be provided 14 days prior to a public hearing

**Proposed Amendment:** Amend [Section 23.404.040.C.3](#) to read:

3. *Timing of Notice.* Notice shall be provided at least **14 10** days before the hearing unless a longer notice period is required by state law. The Planning Commission or City Council may require an extended notice period for applications of major significance.

**6. BMC Section 23.404.040 (Public Notice)**

**Old Zoning Ordinance:** Pursuant to [California Government Code Section 65090](#), amendments to the Zoning Ordinance require a public hearing, with a 10 day public notice and the publication of a public hearing notice (PHN) in a newspaper of general circulation no more than 7 days prior to the public hearing.

In addition to the requirement above, pursuant to section 23A.20.030 of the old Zoning Ordinance, the following public notices were required for amendments to the Zoning **Map**:

- For a zoning map amendment of less than 5 acres, a PHN must be posted at 3 locations near the subject property no fewer than 14 days before the hearing, and a mailing to property owners, residents, tenants and neighborhood associations within 300 feet of the property no fewer than 14 days before the hearing.
- For a zoning map amendment of 5 acres or more, a PHN must be posted on each block front involved no fewer than 14 days prior to the hearing; a mailing to

all owners, tenants and residents occupying the subject property no fewer than 14 days before the hearing; and the publication of the PHN in a newspaper of general circulation **14 days prior to the hearing and, again, 7 days prior to the hearing.** [*emphases added*]

**New Zoning Ordinance:** [Section 23.404.040.C.5](#) of the new Zoning Ordinance indicates that text amendments to the Zoning Ordinance must be published in a newspaper of general circulation both 14 days and 7 days prior to a public hearing. The double-publication requirement only applies to amendments to the Zoning Map of 5 acres or more.

**Proposed Amendment:** Amend [Section 23.404.040.C.5](#) to read:

5. *Zoning Ordinance Text Amendments.* In addition to requirements in Paragraph [4](#) (All Zoning Ordinance Amendments) above, notice of a Zoning Ordinance Text Amendment shall be published in a newspaper of general circulation in the city at

~~(a) At least 14 days before the hearing; and then again~~

~~(b) At~~ least 7 days before the hearing.

## **7. BMC Section 23.502.020 (Glossary)**

**New Zoning Ordinance:** The Glossary includes the following definition for [Family Day Care Home](#) (*emphasis added*):

*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.

The definition is imprecise, however, as there is no definition of “primary dwelling” in the Zoning Ordinance.

**Proposed Amendment:** Amend the definition of Family Day Care Home in the Glossary to read:

*Family Day Care Home.* An establishment providing day care for 14 or fewer children in a dwelling unit as licensed by the California Department of Social Services. A family day care homes must be incidental to a residential use and

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

**Category Two Zoning Ordinance Amendments**

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

**Table 1: Text Edits and Other Routine Amendments**

Zoning Ordinance Section	Proposed Amendment	Rationale											
<a href="#">23.204.030</a> (Additional Permit Requirements—Commercial Districts)	Remove definition of Change of Use	Glossary already contains exact same definition language. Stating it twice raises the opportunity for discrepancies in future updates. One location for definitions is best practice.											
<a href="#">Table 23.204-12</a> (C-U Setback Standards)	Lots on <del>south</del> north side of University Avenue	Parcels on the north side of University Avenue are subject to C-U Solar Access Standards, not on the south side.											
<a href="#">Table 23.206-6</a> (Permits Required for Changes to Protected Land Uses)	<table border="1"> <thead> <tr> <th>Zoning District</th> <th>Change to Protected Use</th> <th>Permit Required</th> </tr> </thead> <tbody> <tr> <td>MM</td> <td>Change any amount of ground-floor protected use to a non-protected use</td> <td>UP(PH)</td> </tr> <tr> <td rowspan="2">MU-LI</td> <td>Change <del>less than or equal to</del> 20,000 sq. ft. or less <del>than or equal to and</del> 25% of protected use to a non-protected use</td> <td>AUP</td> </tr> <tr> <td>Change over 20,000 sq. ft. or <del>over</del> 25% of protected use to a non-protected use</td> <td>UP(PH)</td> </tr> </tbody> </table>	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 <del>less than or equal to</del> 20,000 sq. ft. or less <del>than or equal to and</del> 25% of protected use to a non-protected use	AUP	Change over 20,000 sq. ft. or <del>over</del> 25% of protected use to a non-protected use	UP(PH)	Clarification of appropriate thresholds.
	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 <del>less than or equal to</del> 20,000 sq. ft. or less <del>than or equal to and</del> 25% of protected use to a non-protected use	AUP										
Change over 20,000 sq. ft. or <del>over</del> 25% of protected use to a non-protected use		UP(PH)											

Public Hearing on Zoning Ordinance Technical Edits & Corrections

<a href="#">23.302.030.D.3.d</a> (Temporary Outdoor Uses on Private Property – COVID Local Emergency)	(d) Permits issued pursuant to this subsection must be posted in plain view within the commercial establishment for which the permit has been issued.	Spelling correction
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**NEXT STEPS**

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

**ATTACHMENTS**

1. Ordinance – Zoning Ordinance Amendments
2. Consent Changes Matrix
3. Public Hearing Notice

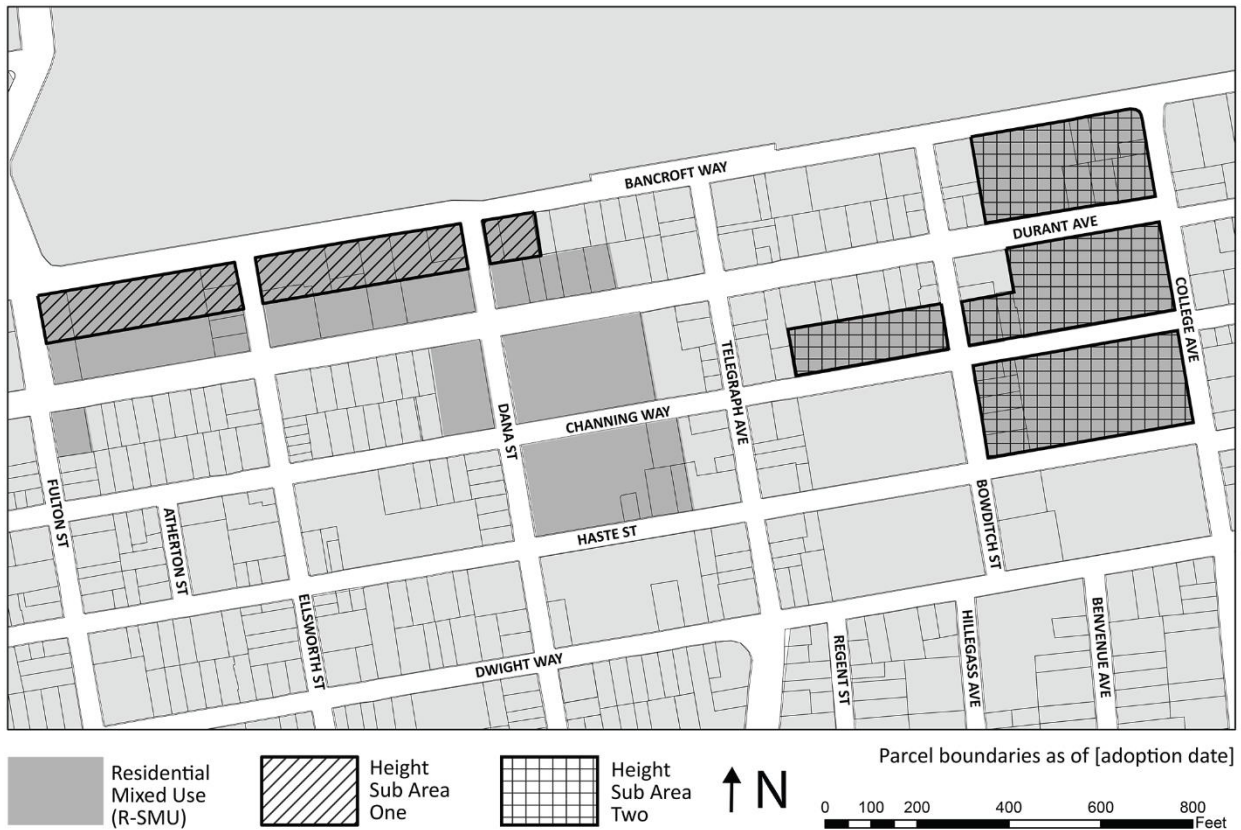
ORDINANCE NO. -N.S.

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

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

Section 1. That Berkeley Municipal Code Section 23.202.140 Figure 23.202-2 is  
amended to read as follows:

**Figure 23.202-2. R-SMU SUBAREAS**



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Item 10 - Attachment 1  
 Planning Commission  
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	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
Mixed-Use Residential	UP(PH)	UP(PH)*	UP(PH)	UP(PH)	UP(PH)	UP(PH)*	UP(PH)	UP(PH)	UP(PH)	See Table 23.204-41	UP(PH)	23.204.060.B.3; 23.204.100.B.4
Senior Congregate Housing	See 23.302.070.H											
<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)	
Cemetery/Crematory/Mausoleum	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	
Club/Lodge	UP(PH)	UP(PH)	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	UP(PH)	
Columbaria	See 23.302.070.C											
Community Care Facility	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	ZC	AUP	
Community Center	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Emergency Shelter	See 0		--	--	See 0							
Family Day Care Home, Large	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	
Family Day Care Home, Small	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	
Hospital	UP(PH)	UP(PH)	NP	NP	NP	NP	NP	NP	UP(PH)	UP(PH)	NP	
Library	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Mortuaries and Crematories	UP(PH)	UP(PH)	NP	NP	NP	NP	NP	NP	NP	UP(PH)	NP	
Municipal Animal Shelter	--	--	--	--	--	--	--	--	--	--	--	
Nursing Home	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Park/Playground	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	AUP	ZC	
Public Safety and Emergency Service	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Public Utility Substation/Tank	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Religious Assembly	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	AUP	UP(PH)	
School	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
School, Vocational	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	UP(PH)	AUP	
<b>Retail Uses</b>												
Alcoholic Beverage Retail Sale	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	NP	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	23.204.060.B.2; 23.310
Cannabis Retailer	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	23.320; 12.21; and 12.22
Cannabis Retailer, Delivery Only	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	--	23.320; 12.21; and 12.22
Firearm/Munitions Business	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	NP	UP(PH)	UP(PH)*	23.302.070.D
Industrial and Mining Products	--	--	--	--	--	--	--	--	--	--	--	
Pawn Shop/Auction House	UP(PH)	--	NP	NP	NP	NP	NP	NP	UP(PH)	UP(PH)	NP	
Pet Store	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	ZC [3]	UP(PH)	
Retail, General	ZC [1]	ZC [1]	ZC* [2]	ZC* [2]	ZC* [2]	ZC [1]	ZC	ZC* [2]	ZC	ZC* [3]	ZC*	23.204.040.E (for department stores) 23.204.040.F (for drug stores)
Smoke Shop	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	UP(PH)*	NP	UP(PH)*	UP(PH)*	23.302.070.I
<b>Personal and Household Service Uses</b>												
Personal and Household Services, General	ZC [1]	ZC [1]	ZC [2]	ZC [2]	ZC [2]	ZC [1]	ZC	ZC [2]	ZC	ZC [5]	ZC	
Kennels and Pet Boarding	NP	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH)	NP	

Item 10 - Attachment 1  
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	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
Laundromats and Cleaners	AUP	AUP	UP(PH)	UP(PH)	UP(PH)	AUP	AUP	UP(PH)	UP(PH)	AUP [4]	AUP	
Veterinary Clinic	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Video Tape/Disk Rental	ZC [1]	ZC [1]	ZC [2]	AUP	ZC [2]	-	ZC	ZC [2]	ZC	ZC [5]	NP	
<b>Office Uses</b>												
Business Support Services	ZC [1]	ZC [1]	ZC [2]	ZC [2]	ZC [2]	ZC [1]	ZC*	ZC [2]	ZC	ZC [5]	ZC [6]	23.204.110.B.6
Banks and Financial Services, Retail	AUP	AUP	UP(PH)	UP(PH)	UP(PH)	ZC [1]	AUP*	UP(PH)	ZC*	AUP	ZC	23.204.110.B.6; 23.204.130.B.3; 23.204.130.D.3
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents	ZC [1]	ZC [1]	ZC* [2]	ZC* [2]	ZC* [2]	ZC [1]	ZC*	ZC* [2]	ZC*	ZC [5]	ZC [6]	23.204.040.D;23.204.110.B.6; 23.204.130.D.3
Medical Practitioners	ZC [1]	ZC [1]	AUP	NP	UP(PH)	ZC [1]	AUP*	UP(PH)	ZC*	ZC [5]	ZC [6]	23.204.040.D; 23.204.110.B.6; 23.204.130.D.3
Non-Chartered Financial Institutions	UP(PH)*	UP(PH)*	NP	NP	NP	UP(PH)*	UP(PH)*	NP	NP	UP(PH)*	UP(PH)	23.302.070.F 23.204.110.B.6
Office, Business and Professional	ZC [1]	ZC [1]	AUP*	AUP*	AUP*	ZC [1]	AUP*	AUP*	ZC*	ZC [5]	ZC [6]	23.204.040.B; 23.204.110.B.6; 23.204.130.D.3
<b>Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses</b>												
Adult-oriented Business	UP(PH)*	UP(PH)*	NP	NP	NP	NP	NP	NP	UP(PH)*	UP(PH)*	NP	23.302.070.A
Amusement Device Arcade	UP(PH)*	UP(PH)*	NP	NP	NP	UP(PH)*	NP	NP	UP(PH)*	UP(PH)*	UP(PH)	23.302.070.B
Bar/Cocktail Lounge/Tavern	UP(PH)*	UP(PH)*	UP(PH)*	-	NP	UP(PH)*	UP(PH)*	NP	UP(PH)*	UP(PH)*	UP(PH)	23.204.100.B.3; 23.204.110.B.2;  23.310
Commercial Recreation Center	See 23.204.040.A											
Dance/Exercise/Martial Arts/Music Studio	ZC [1]	ZC [1]	ZC [2]	AUP	AUP [4]	ZC [1]	ZC	AUP	ZC	ZC [7]	ZC	
Entertainment Establishment	UP(PH)	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Food Service Establishment	See 23.204.040.E											
Group Class Instruction	ZC [1]	ZC [1]	AUP	AUP	AUP*	ZC [1]	ZC*	AUP	ZC*	ZC	ZC	23.204.040.B
Gym/Health Club	See 23.204.040.C											
Hotels, Tourist	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	
Motels, Tourist	UP(PH)	UP(PH)	NP	NP	NP	NP	NP	NP	UP(PH)	UP(PH)	NP	
Theater	UP(PH)	UP(PH)	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	NP	AUP	UP(PH)	UP(PH)	
<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; 23.204.140.B.3
Electric Vehicle Charging Station	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP*	AUP	
Gasoline Fuel Stations	UP(PH)	UP(PH)	UP(PH)	NP	UP(PH)	UP(PH)	NP*	UP(PH)	NP	UP(PH)*	UP(PH)	23.204.140.B.3
Large Vehicle Sales and Rental	AUP	NP	NP	NP	NP	NP	NP	NP	NP	AUP* [8]	NP	23.204.140.B.3
Small Vehicle Sales and Service	AUP	NP	NP	NP	NP	UP(PH)*	NP	NP	UP(PH)	UP(PH)*	NP	23.204.100.B.5; 23.204.140.B.3
Tire Sales and Service	UP(PH)	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH)*	NP	23.204.140.B.3
Vehicle Parts Store	ZC [1]	NP	ZC [2]	ZC [2]	ZC [2]	ZC [1]	ZC	ZC [2]	NP	AUP* [8]	ZC	
Vehicle Rentals	AUP	NP	NP	NP	NP	NP	NP	NP	UP(PH)	AUP* [8]	NP	23.204.140.B.3
Vehicle Repair and Service	AUP	NP	NP	NP	NP	NP	NP	NP	NP	AUP* [8]	NP	

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ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.020(B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	COMMERCIAL DISTRICTS											USE-SPECIFIC REGULATIONS	
	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC		
Vehicle Sales, New	AUP	NP	NP	NP	NP	UP(PH)*	NP	NP	UP(PH)	AUP* [8]	NP	23.204.100.B.5 23.204.140.B.3	
Vehicle Sales, Used	AUP	NP	NP	NP	NP	UP(PH)*	NP	NP	UP(PH)	UP(PH)*	NP	23.204.100.B.5; 23.204.140.B.3; 23.204.140.D.4	
Vehicle Wash	UP(PH)	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH)*	NP	23.204.140.B.3	
Vehicle Wrecking	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP		
<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)	UP(PH)	--	NP	UP(PH)	
Contractors Yard	--	--	--	--	--	--	--	--	--	--	AUP	--	
Dry Cleaning and Laundry Plant	UP(PH)	UP(PH)	NP	--	UP(PH)	NP	NP	NP	NP	UP(PH)	NP	NP	
Laboratory													
Commercial Physical or Biological	AUP	AUP	NP	NP	NP	NP	NP	NP	NP	AUP	NP	NP	
Cannabis Testing	AUP	AUP	NP	NP	NP	NP	NP	NP	NP	AUP	AUP [9]	NP	
Manufacturing													
Construction Products	--	--	--	--	--	--	--	--	--	--	UP(PH)	--	
Light Manufacturing	--	--	--	--	--	--	--	--	--	--	AUP [8]	--	
Pesticides/Herbicides/Fertilizers	--	--	--	--	--	--	--	--	--	--	UP(PH)	--	
Petroleum Refining and Products	--	--	--	--	--	--	--	--	--	--	UP(PH)	--	
Pharmaceuticals	--	--	--	--	--	--	--	--	--	--	UP(PH)	--	
Primary Production Manufacturing	--	--	--	--	NP	--	--	--	--	--	UP(PH)	--	
Semiconductors	--	--	--	--	NP	--	--	--	--	--	UP(PH)	--	
Material Recovery Enterprise	--	--	--	--	--	--	--	--	--	--	--	--	
Media Production	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)*	AUP	UP(PH)	23.204.130.B.4
Mini-storage	UP(PH)	NP	NP	NP	NP	NP	NP	--	UP(PH)	NP	NP		
Recycled Materials Processing	--	--	--	--	--	--	--	--	--	--	--	--	
Recycling Redemption Center	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	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*	AUP*	UP(PH)	23.302.070.B
Alcoholic Beverage Service	See 23.310												
Cafeteria, On-Site	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	UP(PH)	AUP	UP(PH)	
Columbaria	See 23.302.070.C												
Food and Beverage for Immediate Consumption	ZC	ZC	AUP	UP(PH)	UP(PH)	ZC	AUP	UP(PH)	ZC	ZC	ZC		
Food Service Establishment	See 23.302.070.E												
Live Entertainment	See 23.302.020.D												

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ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.020(B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	COMMERCIAL DISTRICTS											USE-SPECIFIC REGULATIONS
	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
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)*	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	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)*	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)	
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			NP	See 23.314			NP	See 23.314		NP	
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											
Notes: [1] Change of use of floor area over 3,000 square feet requires an AUP. Change of use of floor area over 2,000 square feet requires an AUP. Requires an AUP for uses 3,500 sq. ft. to 7,500 square feet. Requires a Use Permit for uses more than 7,500 sq. ft. Requires a Use Permit if 5,000 sq. ft. or more. Requires an AUP for uses 3,000 sq. ft. to 5,000 square feet. Requires a Use Permit for uses more than 5,000 sq. ft. Requires an AUP for uses 2,500 sq. ft. or greater or 50 ft. wide or greater on Shattuck, between Ward and Russell; Adeline between Russell and the City boundary; on Ashby, east of Adeline; or on the north side of Ashby, west of Adeline. Requires a Use Permit if 7,500 square feet or more. Require a Use Permit if either 5,000 sq. ft. or more of floor area or 10,000 square feet or more of lot area. Requires a Use Permit if more than 10,000 sq. ft.												

31  
 32  
 33  
 34

**Section 3.** That Berkeley Municipal Code 23.204.030 is hereby amended to read:

35 23.204.030 Additional Permit Requirements.

36 ~~A. Change of Use.~~

37 ~~1. Uses subject to additional permit requirements with a change of use are shown in Table~~  
 38 ~~23.204-1: Allowed Uses in the Commercial Districts with a note [1] or [2] following the~~  
 39 ~~permit requirement (e.g., ZC [1]).~~

40 ~~2. A change of use means a change to a different category of commercial or~~  
 41 ~~manufacturing use but does not include changes between uses that are classified in the~~  
 42 ~~same category of commercial or manufacturing use. For example, changing a pet store (in~~  
 43 ~~"Retail Use" category) to a medical practitioner (in "Offices" category) is subject to change~~  
 44 ~~of use permit requirements in Table 23.204-1. Changing a pet store to general retail (also in~~  
 45 ~~"Retail Use" category) is not subject to the change of use permit requirements.~~

46 **BA.** *New Floor Area.*

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

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

53 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)

DISTRICT/NEW GROSS FLOOR AREA	PERMIT REQUIRED FOR NEW FLOOR AREA
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)

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

56 (a) The addition or new building is compatible with the visual character and form of the  
 57 district; and

58 (b) No designated landmark structure, structure of merit, or historic district in the  
 59 vicinity would be adversely affected by the appearance or design of the proposed  
 60 addition.

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

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

66 (a) Be compatible with the purposes of the District;

67 (b) Be compatible with the design and character within the District and the adjacent  
 68 residential neighborhoods;

69 (c) Encourage utilization of public transit and off-street parking facilities in the area of  
 70 the proposed building; and

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

74 **EB.** *Tenant Space Reconfiguration.*

75 1. Reconfiguration of tenant space in an existing building requires a permit as listed in  
 76 Table 23.204-3: Tenant Space Reconfiguration Permit Requirements.

77 2. As used in this section, tenant reconfiguration means any physical change to an existing  
 78 building's walls separating leased spaces so as to change:

79 (a) The number of lease spaces for commercial businesses; or

80 (b) The square footage of leasable floor area of an existing commercial lease space.

81 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

82 ~~DC~~. *Major Residential Additions.*

83 1. *Where Allowed/Required Permits.*

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

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

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

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

94 ~~FE~~. *Accessory Structures.* For accessory structure permit requirements, see the following:

95 1. Section [23.304.060](#)--Accessory Buildings and Enclosed Accessory Structures.

96 2. Section [23.304.070](#)--Unenclosed Accessory Structures in Residential Districts.

97 3. Section [23.304.080](#)--Fences. (Ord. 7787-NS § 2 (Exh. A), 2021)

98 Section 4. That the Berkeley Municipal Code 23.204.130.E.6 is hereby amended to  
99 read:

100

101

6. *Open Space Alternatives.*

102

a. In lieu of providing the open space required by this section on-site, an  
103 applicant may either:

104

*i.* Pay an in-lieu fee to help fund the Streets and Open Space Improvement  
105 Plan (SOSIP); and/or

106

*ii.* Construct public improvement consistent with the SOSIP.

107

b. Payment of an in-lieu fee in lieu of open space requires a Use Permit. To  
108 allow payment of in-lieu fee, the ZAB must find that the payment will support  
109 timely development of open space improvements that will serve the needs of  
110 both project residents and other people living in and using the downtown.

111

c. Construction of public improvements consistent with the SOSIP in lieu of  
112 open space requires a Use Permit. To allow construction of public  
113 improvements, the ZAB must find that the public improvements:

- 114           *i.* Will be located within the vicinity of the project and are consistent with the  
 115           SOSIP;
- 116           *ii.* Will be coordinated with other ongoing or approved SOSIP or other right-  
 117           of-way improvements in the vicinity, and will not create a hazardous  
 118           situation or an unusual appearance in the downtown; and
- 119           *iii.* Will be finished before issuance of a certificate of occupancy for the  
 120           project, unless otherwise allowed by the project conditions of approval.

121 Section 5. That Berkeley Municipal Code 23.206.202 Figure 23.206-6 is hereby  
 122 amended to read:  
 123

124 **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 <u>less than or equal to</u> 20,000 sq. ft. or less <u>than or equal to and</u> 25% of protected use to a non-protected use	AUP
	Change over 20,000 sq. ft. or <u>over</u> 25% of protected use to a non-protected use	UP(PH)

125  
 126  
 127 Section 6. That Berkeley Municipal Code Section 23.302.030.D.3.d is amended to read  
 128 as follows:  
 129

- 130           (d) Permits issued pursuant to this subsection must be posted in plain view  
 131           within the commercial establishment for which the permit has been issued  
 132

133 Section 7. That Berkeley Municipal Code Section 23.302.070.E.3 is amended to read  
 134 as follows:  
 135

- 136           3. *Notification of Decision.* Food service establishments requiring an AUP in the  
 137           C-N, C-E, C-NS, C-SA, C-T, C-SO districts must provide public notification of  
 138           decision (NOD) within a 300-foot radius of the subject property.  
 139

140 Section 8. That Berkeley Municipal Code Section 23.404.040.C is amended to read:  
 141

142 **C. Public Notice for Zoning Ordinance Amendments.**

- 143           1. **When Required.** Public notice shall be given as required by this section for  
 144           Planning Commission and City Council hearings on proposed Zoning Ordinance  
 145           Amendments.

- 146 2. **Content of Notice.** Notice of a public hearing shall contain the following  
147 information:
- 148 a. The date, location, and time of the hearing.
- 149 b. A written description of the proposed amendment.
- 150 c. A map showing the location of a proposed Zoning Map amendment, if  
151 applicable.
- 152 d. The environmental review status under the California Environmental Quality  
153 Act (CEQA).
- 154 e. Directions on how to obtain further information about the proposed  
155 amendment or hearing.
- 156 f. Instructions to submit written comments on the proposed amendment.
- 157 3. **Timing of Notice.** Notice shall be provided at least ~~14~~10 days before the  
158 hearing unless a longer notice period is required by state law. The Planning  
159 Commission or City Council may require an extended notice period for  
160 applications of major significance.
- 161 4. **All Zoning Ordinance Amendments.** The following notice requirements apply  
162 to all Zoning Ordinance Amendments.
- 163 a. Notice shall be posted at the Civic Center (Old City Hall) and in the lobby of  
164 the Permit Service Center.
- 165 b. Notice shall be mailed to:
- 166 i. Neighborhood and community organizations with a registered interest in  
167 receiving notice of the proposed amendment. See Section 23.404.040.E  
168 (Public Notice).
- 169 ii. The City of Berkeley Central Library; and
- 170 iii. Any person who has filed a written request for notice.
- 171 5. **Zoning Ordinance Text Amendments.** In addition to requirements in Paragraph  
172 4 (All Zoning Ordinance Amendments) above, notice of a Zoning Ordinance Text  
173 Amendment shall be published in a newspaper of general circulation in the city:
- 174 ~~a. At least 14 days before the hearing; and then again~~
- 175 ~~b. At~~at least 7 days before the hearing.
- 176 6. **Zoning Ordinance Map Amendments.** The following notice requirements apply  
177 to Zoning Ordinance Map Amendments in addition to requirements in Paragraph  
178 4 (All Zoning Ordinance Amendments) above.

- 179 a. **Less the 5 Acres.** For Zoning Map Amendments affecting an area less than  
180 5 acres, public notice shall be:
- 181 i. Posted at three visible locations in the vicinity of the subject property; and  
182 ii. Mailed to subject property owners, residents and tenants of the subject  
183 property, and all property owners, residents, and tenants within 300 feet of  
184 any part of the subject property.
- 185 b. **5 Acres or More.** For Zoning Map Amendments affecting an area 5 acres or  
186 more, public notice shall be:
- 187 i. Posted on each street frontage adjacent to the subject property.  
188 ii. Mailed to all property owners, residents, and tenants within the subject  
189 property.  
190 iii. Published twice in a newspaper of general circulation in the city at least 14  
191 days before the hearing, and then again at least 7 days before the  
192 hearing.
- 193 7. **Additional Notice.** The Zoning Officer, Planning Commission, and City Council  
194 may require additional public notice as determined necessary or desirable.
- 195 8. **Failure to Receive Notice.** The validity of the hearing shall not be affected by  
196 the failure of any property owner, resident, tenant, or neighborhood or community  
197 organization to receive a mailed notice.

198  
199 Section 9. That Berkeley Municipal Code Section 23.502.020.F.3 is hereby amended to  
200 read as follows:  
201

- 202 3. **Family Day Care Home.** An establishment providing day care for 14 or fewer  
203 children in a dwelling unit as licensed by the California Department of Social  
204 Services. A family day care homes must be incidental to a residential use. ~~The~~  
205 day care operator must live in the primary dwelling on the lot. and must be  
206 operated in the dwelling unit or accessory building where the family day care  
207 operator resides.
- 208 a. **Small Family Day Care Home.** A family day care homes for eight or fewer  
209 children, including children who live at the home.
- 210 b. **Large Family Day Care Home.** A family day care homes for nine to fourteen  
211 children, including children who live at the home.

212  
213 Section 10: Copies of this Ordinance shall be posted for two days prior to adoption in the  
214 display case located near the walkway in front of the Maudelle Shirek Building, 2134  
215 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be

216 filed at each branch of the Berkeley Public Library and the title shall be published in a  
217 newspaper of general circulation.

**BASELINE ZONING ORDINANCE CONSENT CHANGES MATRIX**

Topic	Description	BZO Location	Existing Location	Rationale for Change
<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.

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

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Topic	Description	BZO Location	Existing Location	Rationale for Change
Zoning Map	Clarifies intention to follow city limits	23.104.050 A 3	NEW	Greater clarity to resolve uncertainty in zoning district boundaries
<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 23E.72.070.E 23E.76.070.E 23E.80.D 23E.84.070.H	Language is unnecessary and implies authorization is required for other similar requirements.

Topic	Description	BZO Location	Existing Location	Rationale for Change
<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; 23E.04.020.A	Removal of extraneous language.  Calling out these uses implies other uses may exceed height limit, which is not true.
Adeline Corridor Plan	States that projects in the Adeline Plan Area are subject to mitigation measures in the Adeline Plan FEIR	23.304.140.D	NEW	Adds Adeline Corridor Plan to list of existing plans

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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

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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

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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.

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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.  Adds effective dates of actions by the Zoning Officer, Design Review Committee or ZAB	23.404.060.A	NEW	Codifies current practice and legal requirements consistent with Gov't Code Section 65853-65857
Expiration of Permit	Adds that if a permit is not exercised after one year, it will not lapse if the applicant has made a substantial good faith effort to obtain a building permit and begin construction.	23.404.060.C.2. b	23B.56.100.C &D	Best practice
Expiration of Permit	Defines a lapsed permit as "void and of no further force and effect," and that a new permit application must be submitted to establish a use or structure.	23.404.060.C.3	NEW	Provides explicit definition of what a lapsed permit means and makes explicit the

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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>				
Variances - Eligibility	<p><u>Existing Language:</u> "The Board may grant Variances to vary or modify the strict application of any of the regulations or provisions of this Ordinance with reference to the use of property, the height of buildings, the yard setbacks of buildings, the percentage of lot coverage, the lot area requirements, or the parking space requirements of this Ordinance."</p> <p><u>BZO Language:</u> "The ZAB may grant a Variance to allow for deviation from any provision in the Zoning Ordinance related allowed land uses, use-related standards, and development standards."</p>	23.406.050.B.1	23B.44.010	ZAB should have authority to grant a variance to any use or development-related standard, not just uses, heights, yard setbacks, lot coverage, lot area, or parking
Variances – Not Allowed	Adds: "A Variance may not be granted to allow deviation from a requirement of the General Plan."	23.406.050.C	N/A	Codifies state law consistent with <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

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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.

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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 COMMISSION

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## Notice of Public Hearing

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### Wednesday, April 6, 2022

**Zoning Ordinance Amendments that Address Technical Edits and Corrections to the Berkeley Municipal Code Sections 23.202.140 (R-SMU District); 23.204.020 (Allowed Uses -- Commercial Districts); 23.204.030 (Additional Permit Requirements -- Commercial Districts); 23.204.060 (C-U District); 23.204.130 (C-DMU District); 23.206.202 (Manufacturing Districts -- Allowed Land Uses); 23.302.030 (Temporary Uses and Structures); 23.302.070 (Use-Specific Regulations); 23.322.050 (Parking Reductions) 23.404.040 (Public Notice); 23.502.020 (Glossary)**

The Planning Commission of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 23.412, on **Wednesday, April 6, 2022 at 7:00 p.m.** **The hearing will be conducted via Zoom** – see the Agenda for meeting details. The agenda will be posted on the Planning Commission website (<https://www.cityofberkeley.info/PC>) no later than 5pm on April 1, 2022.

**PUBLIC ADVISORY:** This meeting will be conducted exclusively through videoconference and teleconference. Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the Planning Commission will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available

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

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

#### **PUBLIC COMMENT & FURTHER INFORMATION**

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All persons are welcome to attend the virtual hearing and will be given an opportunity to address the Commission. Comments may be made verbally at the public hearing and/or in writing before the

Zoning Ordinance Amendments

NOTICE OF PUBLIC HEARING  
Posted March 18, 2022

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hearing. Written comments must be directed to:

Zoe Covello  
Planning Commission Clerk  
Email: [zcovello@CityofBerkeley.info](mailto:zcovello@CityofBerkeley.info)

City of Berkeley, Land Use Planning Division  
1947 Center Street, 2<sup>nd</sup> Floor  
Berkeley, CA 94704

Correspondence received by **12 pm on Wednesday, March 30, 2022**, will be included as a Communication in the agenda packet. Correspondence received after this deadline will be conveyed to the Commission and the public in the following manner:

- Correspondence received by 12pm noon two days before this public hearing will be included in a Supplemental Packet, which will be posted to the online agenda as a Late Communication one day before the public hearing.
- Correspondence received by 5pm one day before this public hearing, will be included in a second Supplemental Packet, which will be posted to the online agenda as a Late Communication by 5pm on the day of the public hearing.
- Correspondence received after 5pm one day before this public hearing will be saved as part of the public record.

Note: It will not be possible to submit written comments at the meeting.

### **COMMUNICATION ACCESS**

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To request a meeting agenda in large print, Braille, or on audiocassette, or to request a sign language interpreter for the meeting, call (510) 981-7410 (voice) or 981-6903 (TDD). Notice of at least five (5) business days will ensure availability. All materials will be made available via the Planning Commission agenda page online at <https://www.cityofberkeley.info/PC/>.

### **FURTHER INFORMATION**

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Questions should be directed to Justin Horner, at (510) 981-7476 or [jhorner@cityofberkeley.info](mailto:jhorner@cityofberkeley.info). Current and past agendas are available on the City of Berkeley website at: <https://www.cityofberkeley.info/PC/>