



Office of the City Manager

PUBLIC HEARING
September 20, 2022

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

RECOMMENDATION

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

- BMC Section 23.204.050 (C-C Zoning District)
- BMC Section 23.204.080 (C-E Zoning District)
- BMC Section 23.204.090 (C-NS Zoning District)
- BMC Section 23.204.130 (C-DMU District)
- BMC Section 23.206.050 (Protected Uses)
- BMC Section 23.304.030 (Setbacks)
- BMC Section 23.304.090 (Usable Open Space)
- BMC Section 23.322.030 (Required Parking Spaces)
- BMC Section 23.406.070 (Design Review)

FISCAL IMPACTS OF RECOMMENDATION

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

CURRENT SITUATION AND ITS EFFECTS

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

On October 12, 2021, the City Council adopted a new Zoning Ordinance (Title 23 – Berkeley Municipal Code). This action was the culmination of the first comprehensive review of the Zoning Ordinance since 1999, rewording and reformatting Berkeley’s land use regulations to make them easier to understand and administer. Aside from a specific list of “consent changes” to maintain consistency with State law and codify

existing practices, no substantive policy changes were included. The new Zoning Ordinance became effective December 1, 2021.

Since then, certain inconsistencies and inadvertent changes have come to light which need to be corrected to ensure that the Zoning Ordinance accurately reflects City Council policy. The ordinance included with this staff report would make 10 amendments / corrections to the new Zoning Ordinance. These are summarized below in **Table 1**.

Table 1. Recommended Zoning Ordinance Amendments

Subject/Section	Issue	Amendment
Sec 23.204.050.D: C-C Zoning District <i>Development Standards</i>	Reference for <i>Abutting/Confronting a Residential District</i> is incorrect.	Correct reference.
Sec 23.204.080.D: C-E Zoning District <i>Development Standards</i>	Note [2] on Development Standards table includes an incorrect reference.	Correct reference.
Sec 23.204.090.D: C-NS Zoning District <i>Development Standards</i>	The Usable Open Space requirement in the C-NS is erroneously listed as 200 square feet (sf) per unit for Non-Residential and Mixed Use projects, when it should be 40 sf.	Correct development standards table to 40 sf of Usable Open Space per unit.
Sec 23.204.130.E: C-DMU Zoning District <i>Open Space Requirements</i>	BMC does not include requirement in the C-DMU that balconies can only constitute 50% or less of required Usable Open Space.	Amend the C-DMU Usable Open Space Requirements table to include this requirement.
Sec 23.206.050.A: MU-LI Zoning District <i>Lot Ownership</i>	Section applies to multiple lots that are under common ownership, <i>not</i> single lots with multiple owners.	Amend section to clarify that it applies to multiple lots that are under common ownership, not single lots with multiple owners.
Sec 23.304.030.B: Setbacks <i>Allowed Setbacks in Residential Districts</i>	BMC includes additional setback reduction option for parcels in the R-1A, west of San Pablo Avenue, which was previously repealed.	Strike this option.
Sec 23.304.030.B: Setbacks <i>Solar Energy Equipment</i>	BMC refers to the Residential Energy Conservation Ordinance (RECO), which no longer exists.	Strike reference to RECO.

Subject/Section	Issue	Amendment
Sec 23.304.090: Usable Open Space <i>Applicability</i>	Applicability section includes an incorrect limitation.	Strike listed districts; standard applies to all districts.
Sec 23.322.030.C: Required Parking Spaces <i>Manufacturing Districts</i>	BMC includes incorrect required parking spaces for Manufacturing Uses in the MU-LI.	Change from 1.5 spaces per 1,000 sf to 1.0 spaces.
Sec 23.406.070: Design Review <i>Purpose</i>	Purpose erroneously states that Design Review only applies to non-residential buildings.	Amend section to clarify that Design Review can apply to buildings other than non-residential (mixed use, for example).

BACKGROUND

At its meeting of July 6, 2022, the Planning Commission held a public hearing on the proposed amendments,¹ and recommended adoption by a vote of 8-0-0-1 (Moved by Twu, Seconded by Hauser. Ayes: Ghosh, Hauser, Mikiten, Moore, Oatfield, Twu, Vincent, Wiblin. Noes: None. Abstain: None. Absent: Kapla).

When the new Zoning Ordinance was presented for adoption by the City Council in October, 2021, staff indicated that routine updates would follow periodically to correct unintended errors and make text edits. This is the third such package of amendments.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

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

ALTERNATIVE ACTIONS CONSIDERED

No alternatives were considered.

¹ Agenda-related materials for the July 6, 2022 Planning Commission meeting can be found at: https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2022-07-06%20PC%20Agenda%20Packet%20with%20attachments_no%20links_0.pdf

CONTACT PERSON

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Attachments:

- 1: Ordinance
- 2: Consent Changes Matrix
- 3: Report to Planning Commission, July 6, 2022
- 4: 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 23.204.050.D Table 23.204-8 is amended as follows:

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
Abutting/Confronting a Non-residential District	No minimum		See Table 23.204-9	
Abutting/Confronting a Residential District	See 23.304.139030.C-2			
Building Separation, Minimum	No minimum		23.304.040--Building Separation in Residential Districts	
Lot Coverage, Maximum	100%		See Table 23.204-10	23.304.120--Lot Coverage

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 reduced with a UP(PH). See 23.204.050.D.3.

[3] In mixed use buildings, the third and higher stories must be used for residential purposes.

[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).

Section 2. That Berkeley Municipal Code Section 23.204.080.D Table 23.204-21 is amended as follows:

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--Lot Requirements
New Lots	No minimum	5,000 sq. ft.	
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 23.204.060080.D.3			
[3] A basement level devoted exclusively to parking is not counted as a story.			

Section 3. That Berkeley Municipal Code 23.204.090.D Table 23.204-24 is amended as follows:

Table 23.204-24. C-NS DEVELOPMENT STANDARDS

	Project Land Use		Supplemental Standards
	Non-Residential and Mixed Use	Residential Only	
Lot Area, Minimum			
New Lots	4,000 sq. ft.	5,000 sq. ft.	23.304.020
Per Group Living Accommodation Resident	350 sq. ft. [1]		
Usable Open Space, Minimum			
Per Dwelling Unit	200 40 sq. ft. [2]	200 sq. ft.	23.304.090--Usable Open Space
Per Group Living Accommodation Resident	No minimum	90 sq. ft.	
Floor Area Ratio, Maximum	1.0	No maximum	
Main Building Height [23]			
Minimum	2 stories	No minimum	
Maximum	35 ft. and 3 stories	28 ft. and 2 stories	
Lot Line Setbacks, Minimum			
Abutting/Confronting a Non-residential District	No minimum	See Table 23.204-25	23.304.030
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] For mixed use projects, usable open space dimensions may be smaller than required in 23.304.090.B.3, but no dimension may be less than 6 feet.			
[23] Basement levels devoted exclusively to parking are not counted as a story.			
[34] 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.			

Section 4. That the Berkeley Municipal Code 23.204.130.E.4 Table 23.204-40 is amended as follows:

Table 23.204-40. C-DMU USABLE OPEN SPACE REQUIREMENTS

	MINIMUM USABLE OPEN SPACE	SUPPLEMENTAL STANDARDS
Residential Uses	80 sq. ft./unit [1]	See 23.304.090—Usable Open Space
Non-Residential Uses	1 sq. ft. of privately-owned public open space per 50 sq. ft. of commercial floor area.	
Notes:		
[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.		

Section 5. That Berkeley Municipal Code 23.206.050.A.7.(d) is amended as follows:

(d) *MU-LI Lots ~~with Multiple Under Common~~ Ownerships*. 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.

Section 6. That Berkeley Municipal Code Section 23.304.030.B Table 23.304-1 is amended as follows:

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]
Front Setback Reductions				
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

Rear Setback Reductions

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
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

Side Setback Reductions

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	No minimum	AUP	The unit would not cause a detrimental impact on emergency

	construct a dwelling unit			access; or on light, air or privacy for neighboring properties.
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
<p>Notes:</p> <p>[1] Findings are in addition to any AUP or Use Permit findings required in 23.406--Specific Permit Requirements.</p> <p>[2] Fire Department must review and approve reduced setbacks in respect to fire safety.</p> <p>[3] For lots less than 5,000 square feet, reductions are not allowed for property lines abutting a property under different ownership.</p> <p>[4] Not permitted for rear main buildings in the R-1A district.</p>				

Section 7. That Berkeley Municipal Code Section 23.304.090.A is amended as follows:

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).~~

Section 8. That Berkeley Municipal Code Section 23.304.030.B.7 is amended as follows:

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).~~

Section 9. That Berkeley Municipal Code Section 23.322.030.C.2 Table 23.322-4 is amended as follows:

Table 23.322-4. REQUIRED OFF-STREET PARKING IN MANUFACTURING DISTRICTS

Land Use	Required Parking Spaces
Residential Uses	
Accessory Dwelling Unit	See Chapter 23.306
Dwellings	None required
Group Living Accommodation	None required
Non-Residential Uses	
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.
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.
	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 0 per 1,000 sq. ft.
	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
	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
<p>Notes:</p> <p>[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.</p>	

Section 10. That Berkeley Municipal Code Section 23.406.070.A is amended as follows:

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.

Section 11: Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

BASELINE ZONING ORDINANCE CONSENT CHANGES MATRIX

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

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

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

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

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

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

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

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

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

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

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

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



Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: July 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 #3

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 23.204.050 (C-C Zoning District)
- BMC Section 23.204.080 (C-E Zoning District)
- BMC Section 23.204.090 (C-NS Zoning District)
- BMC Section 23.204.130 (C-DMU District)
- BMC Section 23.206.050 (Protected Uses)
- BMC Section 23.304.030 (Setbacks)
- BMC Section 23.304.090 (Usable Open Space)
- BMC Section 23.322.030 (Required Parking Spaces)
- BMC Section 23.406.070 (Design Review)

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 #3” because it is the third 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 three 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 spelling, punctuation or grammatical errors, or inaccurate references. These amendments are summarized in *Table 1: Text Edits and Other Routine Amendments*.

Category One Zoning Ordinance Amendments

1. BMC Section 23.204.090 (C-NS Zoning District)

Old Zoning Ordinance: Section 23E.48.070 of the old Zoning Ordinance included development standards for projects in the C-NS zoning district. Specifically, the Section set forth requirements for Usable Open Space in Mixed Use buildings that included the following:

- Each Dwelling Unit shall have Usable Open Space of at least 40 square feet (sq. ft.), with no dimension less than six feet.

New Zoning Ordinance: Table 23.204-24 [C-NS Development Standards](#) in the new Zoning Ordinance includes the development standards for projects in the C-NS district. The Table includes two errors:

- For Non-Residential and Mixed Use Projects, the Minimum Usable Open Space is noted as 200 sq. ft. per dwelling unit, when the proper development standard for these projects is 40 sq. ft. per dwelling unit; and
- Note [4], which refers to the 6-foot minimum dimension for Usable Open Space, is incorrectly associated with the Minimum Building Separation, when it should be associated with Minimum Usable Open Space.

Additionally, the Usable Open Space section of Table 23.204-24 includes reference to the Supplemental Standard 23.304.090—Usable Open Space, which requires a minimum dimension of 10 feet for Usable Open Space. The proposed amendment clarifies in note [4] that the 6-foot dimension standard is controlling for mixed-use projects in the C-NS.

Proposed Amendment: Amend Table 23.204-24 to read:

	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]		
Usable Open Space, Minimum			23.304.090--Usable Open Space
Per Dwelling Unit	200 40 sq. ft. [2]	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 3]			
Minimum	2 stories	No minimum	
Maximum	35 ft. and 3 stories	28 ft. and 2 stories	
Lot Line Setbacks, Minimum			
Abutting/Confronting a Non-residential District	No minimum	See Table 23.204-25	23.304.030
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] For mixed use projects, usable open space dimensions may be smaller than required in 23.304.090.B.3, but no dimension may be less than 6 feet.

[2] [3] Basement levels devoted exclusively to parking are not counted as a story.

[3] [4] For mixed use projects, minimum building separation shall be as required for residential-only projects. See Table 23.204-25.

2. BMC Section 23.204.130 (C-DMU Zoning District)

Old Zoning Ordinance: Chapter 23D.040.050.B (Usable Open Space) of the old BMC states that “no more than 50% of the total usable open space required may be satisfied by balconies.” This regulation applies to all zoning districts (residential, commercial and manufacturing).

New Zoning Ordinance: Section 23.304.090.B.4 of the new Zoning Ordinance includes the above regulation regarding balconies, and is referenced as a Supplemental Standard in the development tables for all districts, except the C-DMU. Table 23.204-40: C-DMU Usable Open Space Requirements does not include a reference to this section, although it should, as the regulation in the old Zoning Ordinance refers to all districts.

Proposed Amendment: Amend Table 23.204-40: C-DMU Usable Open Space Requirements as follows:

	MINIMUM USABLE OPEN SPACE	SUPPLEMENTAL STANDARDS
Residential Uses	80 sq. ft./unit [1]	<u>23.304.090—Usable Open Space</u>
Non-Residential Uses	1 sq. ft. of privately-owned public open space per 50 sq. ft. of commercial floor area.	
Notes: [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.		

3. BMC Section 23.304.030 (Setbacks)

Old Zoning Ordinance: Section 23D.20.070 of the old Zoning Ordinance included development standards in the R-1A zoning district. The Section did not include any provision for additional setback reductions for properties in the R-1A zoning district located west of San Pablo. Such a provision did exist at one time, but was removed from the R-1A zoning district regulations as part of amendments to the old Zoning Ordinance in 2018 (Ordinance No. 7,593).

New Zoning Ordinance: Table 23.304-1 Allowed Setback Reductions in Residential Districts of the new Zoning Ordinance includes a provision permitting specific setback reductions for properties in the R-1A located west of San Pablo Avenue.

Proposed Amendment: Amend Table 23.304-1 Allowed Setback Reductions in Residential Districts to strike the provision:

District Where Allowed	When Allowed	Minimum Setback with Reductions	Required Permit	Required Additional Findings
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.

Category Two Zoning Ordinance Amendments

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

Table 1: Text Edits and Other Routine Amendments

Zoning Ordinance Section	Proposed Amendment	Rationale
23.204.050.D Table 23.204-8 (C-C Development Standards Table)	Under Non-Residential and Mixed Use projects, revise reference for <i>Abutting/Confronting a Residential District</i> from 23.304.130.C.2 to 23.304.030.C.	Incorrect reference.
23.204.080.D Table 23.204-21 (C-E Development Standards Table)	Revise Note [2]: [2] Open space requirements for mixed use projects may be modified by the ZAB. See 23.204.060080.D.3	Incorrect reference.
23.206.050.A.7.d (Protected Uses in the MM and MU-LI Districts)	Revise the heading for 23.206.050.A.7.d: (d) <i>MU-LI Lots <u>Under Multiple Common Ownerships</u></i>	Clarification that this section applies to multiple lots that are under common ownership, not single lots with multiple owners.
23.304.090.A (Usable Open Space)	Revise as follows: A. <i>Applicability.</i> 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).	The Usable Open Space standards in this section apply to all districts, not only to those listed.
23.304.030.B.7.c (Solar Energy Equipment)	Revise as follows: (c) The building served by the solar energy equipment complies with the Residential Energy Conservation Ordinance (RECO).	The RECO no longer exists.
23.322.030.C.2 Table 23.322-4 (Required Off-Street Parking in Manufacturing Districts)	Revise Required Parking Spaces for Manufacturing uses in the MU-LI to 1.0 space per 1,000 sf: MU-LI District: 1.05 per 1,000 sq. ft.	Does not reflect the correct parking rate, as stated in the old Zoning Ordinance.
23.406.070.A (Design Review—Purpose)	Revise the first sentence of the Purpose as follows: A. <i>Purpose.</i> 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.	Design Review can apply to both non-residential and residential buildings.

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

NOTICE OF PUBLIC HEARING – BERKELEY CITY COUNCIL

Zoning Ordinance Amendments that Address Technical Edits and Corrections to the Berkeley Municipal Code Sections 23.204.050 (C-C District); 23.204.080 (C-E District); 23.204.090 (C-NS District); 23.204.130 (C-DMU District); 23.206.050 (Protected Uses); 23.304.030 (Setbacks); 23.304.090 (Usable Open Space); 23.322.030 (Required Parking Spaces) and 23.406.070 (Design Review)

PUBLIC PARTICIPATION BY REMOTE VIDEO ONLY

The Department of Planning and Development is proposing amendments to the Zoning Ordinance. The hearing will be held on September 20, 2022 at 6:00 p.m. On October 12, 2021, the City Council passed Ordinance No. 7,787-NS, which repealed the then-existing Title 23 of the Berkeley Municipal Code and zoning maps (“the old Zoning Ordinance”) and adopted a new Title 23 of the Berkeley Municipal Code and zoning maps (“the new Zoning Ordinance”). The new Zoning Ordinance became effective December 1, 2021.

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

The proposed amendments are exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines Sec.15061(b)(3). The proposed amendments are only text changes to clarify and correct the Berkeley Municipal Code and, therefore, there is no possibility of a significant effect on the environment.

The hearing will be held on **Tuesday, September 20, 2022 at 6:00 PM**. The hearing will be held via videoconference pursuant to Government Code Section 54953(e) and the state declared emergency.

A copy of the agenda material for this hearing will be available on the City’s website at www.CityofBerkeley.info as of **September 8, 2022**. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology.**

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

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

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or clerk@cityofberkeley.info for further information.

Published: September 9, 2022 per California Government Code Sections 65856(a) and 65090.

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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 8, 2022.

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Mark Numainville, City Clerk