

ORDINANCE NO. #,###-N.S.

AMENDMENTS TO THE RESIDENTIAL DISTRICT CHAPTER (BMC 23.202), COMMERCIAL DISTRICT CHAPTER (BMC 23.204), MANUFACTURING DISTRICT CHAPTER (BMC 23.206), SUPPLEMENTAL USE REGULATIONS CHAPTER (BMC 23.302), ALCOHOLIC BEVERAGE SALES AND SERVICE CHAPTER (BMC 23.310), NONCONFORMING USES, STRUCTURES AND BUILDINGS CHAPTER (BMC 23.324) AND THE GLOSSARY CHAPTER (BMC 23.502) TO SUPPORT BERKELEY BUSINESSES

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

Section 1. That the lines named “Alcoholic Beverage Service,” “Food Service Establishment” “Group Class Instruction,” and “Gym/Health Club” in Table 23.202-1 Allowed Land Uses in Residential Districts, within Berkeley Municipal Code 23.202.020 are amended, and lines named “Food Service Establishment, Under 3,000 sq. ft.,” “Food Service Establishment, 3,000 sq. ft. or larger,” and a new Incidental Use category with “Live Entertainment, Unamplified” and “Live Entertainment, Amplified” are added, to read:

Table 23.202-1: Allowed Land Uses in Residential Districts

	RESIDENTIAL DISTRICTS											USE-SPECIFIC REGULATIONS APPLIES TO USES WITH AN ASTERISK FOLLOWING THE PERMIT REQUIREMENT (E.G., ZC*)
	R-1	R-1A	ES-R	R-2	R-2A	R-3	R-4	R-5	R-S	R-SMU	R-BMU**	
Alcoholic Beverage Service	NP	NP	NP	NP	NP	NP	NP	NP	NP	ZC*	UP(PH)*	23.310—Alcoholic Beverage Sales and Service
Food Service Establishment, Under 3000 sq. ft.	NP	NP	NP	NP	NP	NP	NP	NP	NP	ZC*	ZC*	23.302.070(E) – Use-Specific Regulations
Food Service Establishment, 3,000 sq. ft. or larger	NP	NP	NP	NP	NP	NP	NP	NP	NP	AUP*	AUP*	23.302.070(E) – Use-Specific Regulations
Group Instruction	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH)*	23.202.150(C) R-BMU Residential BART Mixed Use District
Health and Fitness Facility	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	UP(PH)*	23.202.150(C) R-BMU Residential BART Mixed Use District
Incidental Uses												
Live Entertainment, Unamplified	NP	NP	NP	NP	NP	NP	NP	NP	NP	ZC	NP	

Live Entertainment, Amplified	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	AUP	NP	
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Section 2. That Berkeley Municipal Code 23.202.150(C)(2) is amended to read:

2. Group Instruction and Health and Fitness Facility. Group instruction and health and fitness facility uses are permitted at the Ashby BART station with a Zoning Certificate. Group instruction and health and fitness facility uses are permitted at the North Berkeley BART station with a Use Permit.

Section 3. That the lines named “Family Day Care Home, Large,” “Family Day Care Home, Small,” are removed; the lines named “Alcoholic Beverage Retail Sale,” “Pet Store,” “Retail General,” “Personal and Household Services, General,” “Laundromats and Cleaners,” “Video Tape/Disk Rental,” “Business Support Services,” “Bank and Financial Services, Retail,” “Insurance Agents, Title Companies, Real Estate Agents, Travel Agents,” “Medical Practitioners,” “Non-Chartered Financial Institutions,” “Office, Business and Professional,” “Bar/Cocktail Lounge/Tavern,” “Dance/Exercise/Martial Arts/Music Studio,” “Food Service Establishment,” “Gym/Health Club,” “Alternative Fuel Station,” “Large Vehicle Sales and Rental,” “Small Vehicle Sales and Rental,” “Vehicle Parts Store,” “Vehicle Rentals,” “Vehicle Repair and Service,” “Vehicle Sales, New,” “Vehicle Sales, Used,” “Cannabis Testing,” “Light Manufacturing,” “Wholesale Trade,” “Food and Beverage for Immediate Consumption,” “Food Service Establishment,” “Live Entertainment,” “Retail Sale of Goods Manufactured On-Site,” “Art/Craft Studio,” “Public Market, Enclosed” and the Notes in Table 23.204-1 Allowed Uses in the Commercial Districts, within Berkeley Municipal Code 23.204.020, are amended; and lines named “Group Instruction, 3,000 sq. ft. or larger,” “Food Service Establishment, Under 3,000 sq. ft.” “Food Service Establishment, 3,000 sq. ft. or larger” “Health and Fitness Facility, Under 7,500 sq. ft.,” “Health and Fitness Facility, 7,500 sq. ft.” “Live Entertainment, Unamplified,” and “Live Entertainment, Amplified,” are added, to read:

Table 23.204-1 Allowed Uses in the Commercial Districts

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.020(B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	COMMERCIAL DISTRICTS											USE-SPECIFIC REGULATIONS
	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
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) [*]	23.310
Pet Store	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	ZC	AUP	
Retail, General	ZC	ZC	ZC [*]	ZC [*]	ZC [*]	ZC [*]	ZC [*]	ZC [*]	ZC	ZC	ZC [*]	23.204.040(C)

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	C-C	C-U	C-N	C-E	C-NS	C-SA	C-T	C-SO	C-DMU	C-W	C-AC	
												23.204.040(D)
Personal and Household Services, General	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	
Laundromats and Cleaners	AUP	AUP	UP(PH)	UP(PH)	UP(PH)	AUP	AUP	UP(PH)	UP(PH)	AUP	AUP	
Video Tape/Disk Rental	ZC	ZC	ZC	AUP	ZC	--	ZC	ZC	ZC	ZC	NP	
Business Support Services	ZC	ZC	ZC	ZC	ZC	ZC	ZC*	ZC	ZC	ZC	ZC	23.204.110(B)(4)
Bank and Financial Services, Retail	AUP	AUP	UP(PH)	UP(PH)	UP(PH)	ZC	AUP*	UP(PH)	ZC*	AUP	ZC	23.204.110(B)(4) ; 23.204.130(B)(6) ; 23.204.130(D)(3)
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents	ZC	ZC	ZC*	ZC*	ZC*	ZC	ZC*	ZC*	ZC*	ZC	ZC	23.204.040(B); 23.204.110(B)(4) ; 23.204.130(D)(3)
Medical Practitioners	ZC	ZC [AUP	NP	UP(PH)	ZC	AUP*	UP(PH)	ZC*	ZC	ZC	23.204.040(B); 23.204.110(B)(4) ; 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)(4)
Office, Business and Professional	ZC	ZC	AUP*	AUP*	ZC*	ZC	ZC*	AUP*	ZC*	ZC	ZC	23.204.040(B); 23.204.110(B)(4); 23.204.130(D)(3)
Bar/Cocktail Lounge/Tavern/Tap Room/Wine Tasting	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	; 23.310
Food Service Establishment, under 3,000 sq. ft.	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	23.302.070(E)
Food Service Establishment, 3,000 sq. ft. or larger	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	23.302.070(E)
Group Instruction, Under 3,000 sq. ft.	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	
Group Instruction, 3,000 sq. ft. or larger	ZC	ZC	AUP	AUP	ZC	ZC	ZC	AUP	ZC	ZC	ZC	
Health and Fitness Facility, Under 7,500 sq. ft	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	
Health and Fitness Facility, 7,500 sq. ft. or larger	ZC	ZC	AUP	AUP	ZC	ZC	ZC	AUP	ZC	ZC	ZC	
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)(2) 23.204.140(B)(3)
Large Vehicle Sales and Rental	AUP	NP	NP	NP	NP	NP	NP	NP	NP	AUP* [1]	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)(3) ; 23.204.140(B)(3)

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 Parts Store	ZC	NP	ZC	ZC	ZC	ZC	ZC	ZC	NP	AUP* [1]	ZC	
Vehicle Rentals	AUP	NP	NP	NP	NP	NP	NP	NP	UP(PH)	AUP* [1]	NP	23.204.140(B)(3)
Vehicle Repair and Service	AUP	NP	NP	NP	NP	NP	NP	NP	NP	AUP* [1]	NP	
Vehicle Sales, New	AUP	NP	NP	NP	NP	UP(PH)*	NP	NP	UP(PH)	AUP* [1]	NP	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)(3) 23.204.140(B)(3) 23.204.140(D)(4)
Cannabis Testing	AUP	AUP	NP	NP	NP	NP	NP	NP	AUP	AUP [1]	NP	
Light Manufacturing	--	--	--	--	--	--	--	--	--	AUP [1]	--	
Wholesale Trade	--	--	--	--	--	--	--	--	--	AUP [1]	--	
Incidental Uses												
Food and Beverage for Immediate Consumption	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	
Food Service Establishment, Under 3,000 sq. ft.	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	ZC*	23.310.030
Food Service Establishment, 3,000 sq. ft. or larger	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	AUP*	23.310.030
Live Entertainment, Unamplified	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	
Live Entertainment, Amplified	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	
Retail Sale of Goods Manufactured On-Site	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	
Art/Craft Studio	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	ZC	
Public Market, Enclosed	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP	AUP [2]	AUP	
Notes [1] 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. [2] Requires a Use Permit if more than 10,000 sq. ft.												

Section 4. That Berkeley Municipal Code 23.204.040(B) through (F) be amended, to read:

B. Transparency Requirement for Office Uses. When office uses shown in Table 23.204-6: Office Uses Subject to Transparency Requirement are located on the ground floor adjacent to a street frontage, storefront windows shall either:

1. Include a storefront window display; or
2. Be transparent and provide pedestrian viewing at least 10 feet into the storefront area.

Table 23.204-6: Office Uses Subject to Transparency Requirement

OFFICE USE	DISTRICT
Insurance Agents, Title Companies, Real Estate Agents, Travel Agents	CN, C-E, C-NS, CT, C-SO, C-DMU
Medical Practitioners	C-T
Office, Business and Professional	CN, C-E, C-NS, C-T, C-SO, C-DMU

C. Department Stores. Table 23.204-7: Department Store Permit Requirements shows permits required for department stores in the Commercial Districts.

Table 23.204-7: Department Store Permit Requirements

DISTRICT/USE SIZE	PERMIT REQUIRED
C-SA, C-T	
3,000 sq. ft. or less	ZC
Over 3,000 sq. ft.	AUP
C-E, C-NS, C-SO	
3,000 sq. ft. or less	ZC
Over 3,000 sq. ft.	Not Permitted
C-N	
3,000 sq. ft. or less	AUP
Over 3,000 sq. ft.	Not Permitted
C-C, C-U	
ZC	
C-AC	
3,000 sq. ft. or less	ZC
Over 3,000 sq. ft.	AUP

D. Drugstores. The following requirements apply to drugstores in the C-N, CE, C-NS, and C-SO districts.

1. Where Prohibited. A new or expanded drugstore is not permitted if it is:

- a. Over 5,000 square feet in gross floor area; and
- b. Within 1,000 feet of any property containing an existing drugstore.

2. Measurement of Distance. Distances between drugstores are measured by a straight line from the nearest point of the property line of the parcel on which the drugstore is proposed to the nearest point of the lot line of the lot on which the nearest drugstore is located.

Section 5. That Berkeley Municipal Code 23.204.080(B)(2) be amended to read:

2. Size Limitations.

- a. Table 23.204-20 shows land uses subject to size limitations in the C-E district.

TABLE 23.204-20: C-E LAND USE NUMBER AND SIZE LIMITATIONS

USE	MAXIMUM SIZE	PERMIT REQUIRED
Art/Craft Shops, Gift/Novelty Shops, Jewelry/Watch Shops	1,500 sq. ft.	ZC
Bookstores, Periodical Stands	2,000 sq. ft.	ZC
Photocopy Stores, Printing, Fax, Magnetic Disk Reproduction Services	1,000 sq. ft.	ZC

- b. The ZAB may allow a use to exceed the limitations in Table 23.204-20 with a Use Permit upon finding that:
 - i. The use will result in the positive enhancement of the purposes of the district; and
 - ii. The use is likely to experience substantial patronage by surrounding residents as indicated by neighborhood resident support, merchant support, marketing surveys, or other information.

Section 6. That Berkeley Municipal Code 23.204.100(B) be amended to read:

1. **General.** See Table 23.204-1: Allowed Uses in the Commercial Districts

2. **Mixed-Use Permits Required.**

a. **Zoning Certificate.** A mixed-use project is allowed with a Zoning Certificate if the project:

i. Complies with all applicable standards in Table 23.204-27, Table 23.204-28, and Table 23.204-29;

ii. Includes only residential uses above the ground floor; and

iii. Is less than 5,000 square feet in gross floor area, including any existing floor area incorporated into the project.

b. **Use Permit.** If a mixed-use project does not meet the criteria for approval with a Zoning Certificate as provided above, the project requires a Use Permit and is subject to the findings in Section 23.204.100(E)– C-SA South Area Commercial District (Permit Findings).

3. **Vehicle Sales.**

a. **Applicability.**

i. In the C-SA district, small vehicle service is not permitted. Small vehicle sales that are exclusively indoor operations are permitted with a Zoning Certificate. Otherwise, a Use Permit is required.

ii. All new or relocated vehicle sales in the C-SA district shall be exclusively indoor operations with no outdoor activities and shall comply with the requirements of this subsection.

iii. Expansions or modifications of existing vehicle sales are:

a. Encouraged to comply with standards in Paragraph b (Standards) below where feasible; and

b. Shall not increase or exacerbate a non-conformity with these standards.

b. **Standards.**

i. **Street Frontage.** Outdoor vehicle display is permitted only along Shattuck Avenue and Adeline Street and is limited to 30 percent of the lot frontage on those streets.

ii. **Area for Outdoor Uses.** A maximum of 40 percent of the lot area may be used for outdoor uses, including but not limited to vehicle display and storage. Adequate landscaping and/or fencing shall be

used to filter the view of outdoor uses from the adjacent right-of-way and abutting properties, with the exception of outdoor vehicle display;

iii. **Service Entries.** Vehicle and repair service entries may not exceed 20 percent of the primary lot frontage, no entrance may exceed a width of 20 feet. The primary street frontage is the frontage towards which the primary building entrance is oriented.

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

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

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

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

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

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

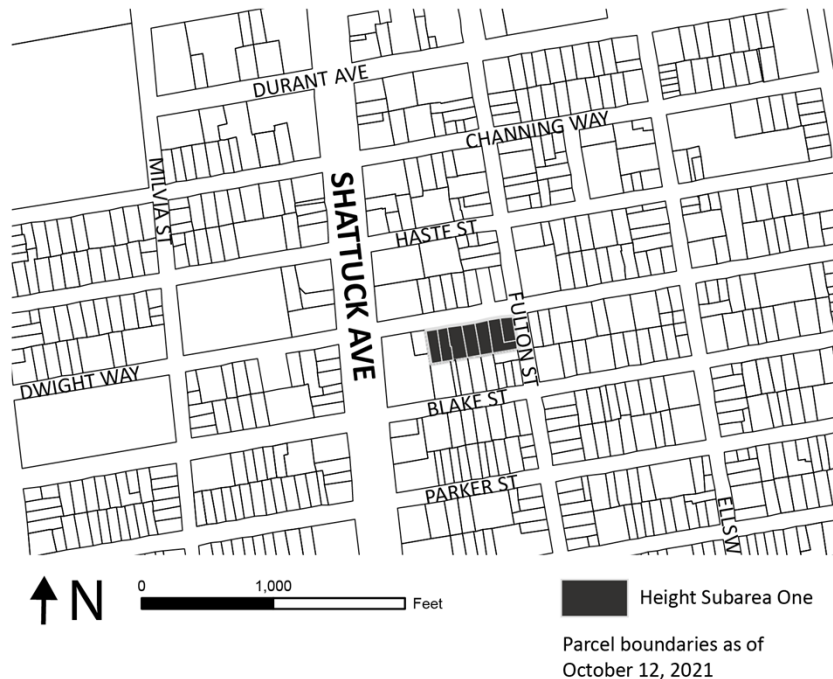
- i. Is necessary to facilitate incorporation of an existing structure;
- ii. Achieve greater consistency with the surrounding street pattern;
- iii. Buffers impacts to an adjacent residential district; or
- iv. Is needed to accommodate dealership operations.

Section 7. That Table 23.204-28 C-SA Maximum Building Heights and Figure 23.204-3 C-SA Building Height Sub-Areas be amended to read:

Table 23.204-28. C-SA Maximum Building Heights

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

Figure 23.204-3. C-SA Building Height Subarea One



Section 8. That Berkeley Municipal Code 23.204.110(B) be amended to read:

B. Allowed Land Uses.

1. **General.** See Table 23.204-1: Allowed Uses in the Commercial Districts.
2. **Fuel Stations.** Alternative fuel and gasoline stations are allowed with Use Permit when located in a parking structure.
3. **Residential Use, Ground Floor.** Residential uses are permitted on the ground floor where located behind a commercial use. The ground floor commercial use must meet the following standards:
 - a. Occupy a minimum 30-foot depth of the ground floor, as measured from the ground floor street frontage, and
 - b. Occupy the full extent of the building frontage, excluding required utilities, driveways, pedestrian access and residential lobby.
4. **Office Uses.**
 - a. Table 23.204-31 shows permits required for office uses in the C-T district.

Table 23.204-31: C-T Office Permit Requirements

Building Location	Permit Required	
	First and Second Story	Above Second Story
Adjacent to Bancroft Way	As required by Table 23.204-1	AUP
Not adjacent to Bancroft Way		UP(PH)

- b. When office uses are located on the ground floor adjacent to street frontage, the storefront windows must either:
 - i. Include a window display; or
 - ii. Be transparent and provide pedestrian viewing at least 10 feet into the storefront area.
5. **Upper Story Uses.**
 - a. Floor area above the ground floor may be occupied only by a residential or office uses.

- b. A commercial use that is an integral part of a ground floor establishment is permitted on the second story if the use:
 - i. Has no entrances or exits, other than required fire exits, outside of the ground floor space; and
 - ii. Does not exceed the ground-floor area of the use.

Section 9. That Berkeley Municipal Code 23.204.120(A)(2)(e) be amended to read:

- e. Encourage location of late-night commerce in appropriate areas in Berkeley, such as the downtown area, and allow businesses to address demand for late night service on Solano Avenue by establishing a 12:00 midnight closing time for businesses on Solano Avenue; and

Section 10. That Berkeley Municipal Code 23.204.130(D)(3) be amended to read:

3. Use Limitations; Findings. Offices on the ground floor adjacent to a street frontage require an AUP. To approve the AUP, the Zoning Officer must find that

- (a) The project meets the purposes of the Arts Overlay District as set forth above; and
- (b) The location, size, type, appearance, and signage of the proposed use will:
 - i. Animate and enhance the pedestrian experience on the street; and
 - ii. Be generally open to the public evenings and on weekends, whenever practicable.

Section 11. That Berkeley Municipal Code 23.204.130(E)(7)(a)(iv) be amended to read:

- iv. Health and Fitness Facility

Section 12. That Berkeley Municipal Code 23.204.150(B)(3)(b) be amended to read:

b. Active Commercial Uses Defined. Active Commercial uses are commercial uses which generate regular and frequent foot traffic. Uses include businesses in the following use categories: Retail Uses; Personal and Household Service Uses; Food and Alcohol Service, Lodging, Entertainment, and Assembly Uses; and the following uses: Banks and Financial Services, Retail; and Vehicle Parts Stores.

Section 13. That the lines named “Family Day Care Home, Large,” “Family Day Care Home, Small,” are removed; the lines named “Bar/Cocktail Lounge/Tavern,” “Dance/Exercise/Martial Arts/Music Studio,” “Food Service Establishment,” “Group Class Instruction,” “Gym/Health Club,” and “Food and Beverage for Immediate Consumption,” in Table 23.206-1 Allowed Uses in Manufacturing Districts, within Berkeley Municipal Code 23.206.020, are amended, and lines named “Food Service Establishment, Under 5,000 sq. ft.” “Food Service Establishment, 5,000 sq. ft. or larger,” “Food Service Establishment, Under 20,000 sq. ft.” “Food Service Establishment, 20,000 sq. ft. or larger” “Live Entertainment, Unamplified” and “Live Entertainment, Amplified” are added, to read:

TABLE 23.206-1: ALLOWED LAND USES IN MANUFACTURING DISTRICTS

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply	MANUFACTURING DISTRICTS				Use-Specific Standards Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	M	MM	MU-LI	MU-R	
Bar/Cocktail Lounge/Tavern/Tap Room/Wine Tasting	NP	NP	NP	See 23.306	
Food Service Establishment, Under 5,000 sq. ft	--	--	AUP*	AUP*	23.302.070(E)
Food Service Establishment, 5,000 sq. ft. larger	--	--	UP(PH)*	UP(PH)*	23.302.070(E)
Group Instruction	ZC	ZC	—	ZC	
Health and Fitness Facility	NP	NP	--	NP	
Incidental Uses					
Food Service Establishment, Under 20,000 sq. ft	AUP*	AUP*	AUP*	AUP*	23.302.070(E)
Food Service Establishment, 20,000 sq. ft. larger	NP	AUP*	NP	AUP*	23.302.070(E)
Live Entertainment, Unamplified	NP	NP	ZC	ZC	
Live Entertainment, Amplified	NP	NP	AUP	AUP	

Section 14. That Berkeley Municipal Code 23.302.020(B) be amended to read:

B. Hours of Operation.

1. **Allowed Hours.** Table 23.302-1: Allowed Hours of Operation shows allowed hours of operation for commercial uses in the commercial districts and the MU-R district, unless otherwise restricted by an existing permit.
2. **Hours of Operation Defined.**
 - a. For retail or customer-serving office commercial uses, hours of operation are those times that the business is open to customer access.
 - b. For food service establishments, hours of operation include the time that the business is open for customer access to the departure of the last patron. These limitations do not apply to:
 - i. The delivery, maintenance, security, product preparation and other pre-opening activities, and
 - ii. Cleanup, shutdown, and other post-closure activities which do not involve presence of customers.
 - c. For other commercial and manufacturing uses which do not involve customer access, hours of operation are those times that employees are present who are engaged in non-maintenance or security activities.
3. **Exceptions.** The City may allow extended hours of operations with the approval of a permit as shown in Table 23.302-1. If more restrictive hours of operation than what is permitted in Table 23.302-1 are imposed as a condition of approval on an existing AUP or UP, the hours may be modified within the district's current limits with approval of an AUP regardless of the original review authority.

Table 23.032-1: Allowed Hours of Operation

DISTRICT	ALLOWED HOURS OF OPERATION	PERMIT REQUIRED TO EXTEND HOURS
C-C, C-U, C-NS, C-AC, C-W nodes	6:00 a.m. – 2:00 a.m.	AUP
C-N, C-E, C-SO, C-SA, C-W outside nodes, MU-R	6:00 a.m. – 12:00 midnight	AUP
C-T, C-DMU	24 hours per day 7 days a week	N/A

4. **Alcohol Sales in C-T District.** A Use Permit is required in the C-T district for a business selling alcohol for off-site consumption to remain open past midnight. The Use Permit may be approved only if the business's ABC license does not require sales

of alcohol for off-site consumption to cease by midnight. The Zoning Adjustments Board (ZAB) may approve the Use Permit only upon finding that the extended hours will not generate excessive noise affecting the well-being of the residents of the district.

Section 15. That Berkeley Municipal Code 23.302.020(D) be removed and that Berkeley Municipal Code 23.302.020(E) be amended to read:

D. Outdoor Uses.

1. **Applicability.** This subsection applies to outdoor uses including but not limited to exterior service windows, outside automatic teller machines, and the outside storage of goods, containers and/or materials.
2. **General.** Commercial and manufacturing uses shall be conducted solely within an interior of a building unless:
 - a. The permit as required by Paragraph 3 (Permits Required) is obtained; or
 - b. the outdoor use is specifically allowed by the Zoning Ordinance.
3. **Permits Required.** Table 23.302-2 Permit Requirements for Outdoor Uses shows permits required for uses outside of a building in the Commercial and Manufacturing Districts.

Table 23.302-2: Permit Requirements for Outdoor Uses

DISTRICT/USE CHARACTERISTICS [1]	PERMIT REQUIRED
All Commercial Districts Except for C-W	
Not abutting a residential district	AUP
Abutting a residential district	UP(PH)
C-W	
Not abutting a residential district and less than 10,000 s. ft.	AUP
Abutting a residential district	UP(PH)
10,000 sq. ft. or more	UP(PH)
M, MM [2]	
Less than 20,000 sq. ft.	ZC
20,000 sq. ft. or more	AUP
MU-LI	
Less than 20,000 sq. ft.	ZC

20,000 to 30,000 sq. ft.	AUP
More than 30,000 sq. ft.	UP(PH)
MU-R	
Not abutting a residential district	AUP
Abutting a residential district	UP(PH)
Notes: [1] Size is measured as the lot area of the outdoor activity or storage [2] In the M and MM district permits are required only for activity or storage not ancillary to a permitted use.	

4. **C-W District.** In the C-W district, uses outside of a building must be permitted or incidental to permitted use in the district.
5. **M, MM, MU-LI Districts.** Outside uses in the M, MM, and MU-LI districts may not abut a residential district.

Section 16. That Berkeley Municipal Code 23.302.070(E) be amended to read:

E. Food Service Establishments.

1. Outdoor Cafe Seating.

- a. Outdoor cafe seating on private property outside of the public right-of-way is allowed in the commercial districts with the following permits:
 - i. Zoning Certificate when seating does not abut a residential district.
 - ii. AUP when seating abuts a residential district.
- b. Sidewalk cafe seating within the public right-of-way is subject to 23.302.060 (Sidewalk Cafe Seating).

2. Building Openings – C-E and C-NS Districts. Food service establishments in the C-E and C-NS districts may have no openings, other than fixed windows and required fire exits, within 50 feet of a residential district.

3. C-W District Requirements.

- a. Food service drive-through is not permitted on properties fronting San Pablo Avenue.

4. MU-LI and MU-R District – Findings.

- a. To approve an AUP to establish or expand a food service establishment in the MU-LI or MU-R district, the review authority must find that the establishment of the use, given its size, location, physical appearance and other relevant

characteristics, will not have a significant detrimental impact on the industrial character of the area.

Section 17. That Berkeley Municipal Code 23.302.070(G) and (H) be amended to read:

G. Parking Lot/Structure.

1. **Permits Required.** Table 23.302-7 shows required permits for the exclusive or primary use of a lot for off-street parking spaces.

TABLE 23.302-7: PERMIT REQUIREMENTS FOR PARKING LOTS/STRUCTURES

DISTRICT	PERMIT REQUIRED
Residential Districts	
R-3	Use Permit for all parking lots and structures. [1]
R-S, R-SMU, R-BMU	Use Permit for parking structures only. Parking lots are not permitted, except on lots between Acton Street and Virginia Gardens and between Peralta Avenue and Northside Avenue in the R-BMU.
All other residential districts	Use Permit for all parking lots and structures.
Commercial Districts	
C-C, C-U	Zoning Certificate for parking lots and structures with 5 spaces or fewer. Use Permit for more than 5 spaces.
C-SO	AUP for parking lots and structures with 5 spaces or fewer. Use Permit for more than 5 spaces.
C-DMU	AUP for parking lots with 8 spaces or fewer. Use Permit for all parking structures. Lots with more than 8 spaces not permitted.
C-N, C-E, C-NS, C-SA	Use Permit for all parking lots and structures.
C-T	Use Permit for all parking structures. All parking lots not permitted.
C-W	AUP for parking lots and structures with 10 spaces or fewer. Use Permit for parking lots and structures with more than 10 spaces.
Manufacturing Districts	
M, MM	AUP for parking lots and structures with 10 or fewer spaces exclusively for uses in the district. Use Permit for parking lots and structures with any number of spaces not exclusively for uses in the district.
MU-LI	Zoning Certificate for parking lots and structures with 10 or fewer spaces exclusively for uses in the district. AUP for parking lots and

	structures with 11 spaces or more exclusively for uses in the district. Use Permit for parking lots and structures with any number of spaces not exclusively for uses in the district.
MU-R	Zoning Certificate for parking lots and structures exclusively for uses in the district. Use Permit for parking lots and structures not exclusively for uses in the district.
Notes: [1] Parking lots and structures in the R-3 district are not permitted within the Southside Plan area	

- 2. Residential District Standards.** See 23.322.110– Parking Lots in Residential Districts for standards that apply to the exclusive or primary use of a lot for off-street parking spaces in a residential district.

H. Residential Use, Ground-Floor Units.

1. Southside Plan Area. In the R-3, R-S, R-SMU, and C-T districts within the Southside Plan boundaries, individual unit entries located within six feet of the front property line shall be at least 18 inches above the finished grade of the adjacent public frontage.
- I. **Senior Congregate Housing.** Table 23.302-8 shows permits required for senior congregate housing.

TABLE 23.302-8: PERMIT REQUIREMENTS FOR SENIOR CONGREGATE HOUSING

PROJECT	PERMIT REQUIRED
Change of use from an existing dwelling unit to accommodate six or fewer people	ZC
Change of use from an existing dwelling unit to accommodate seven or more people	AUP
New construction to accommodate any number of people	UP(PH)

Section 18. That Berkeley Municipal Code 23.310.020 be amended to read:

A. Applicability.

1. This section applies to any application to begin alcoholic beverage sales or service, excluding alcoholic beverage service incidental to a food service establishment (see 23.310.030 (Alcoholic Beverage Service When Incidental to a Food Service)).

B. Permit Required.

1. An Administrative Use Permit is required to begin service of alcoholic beverages, except as provided in 23.310.030 (Alcoholic Beverage Service When Incidental to Food Service).
2. To increase sales and service of alcoholic beverages, an existing Administrative Use Permit or Use Permit may be modified with an AUP regardless of the original review authority.

C. Findings of Public Convenience or Necessity. To approve a permit for alcoholic beverage sales or service, the decision-making body must make the following findings:

1. The number of alcoholic beverage sales licensees in the census tract does not exceed the limit set by the Department of Alcoholic Beverage Control, as defined in California Business and Professions Code Section 23958.4; and
2. At least one of the following:
 - a. The proposed establishment will promote the City's economic health, contribute to General Plan or area plan policies, or further the district purpose.
 - b. The economic benefits associated with the establishment could not reasonably be achieved without the proposed alcohol sales or service.
 - c. The applicant has operated a licensed establishment that has not been the subject of violations regarding alcohol, or violations of public safety or nuisance statutes or regulations in Berkeley. In making this finding, the decision-making body may consider the number, frequency, and severity of prior violations, the time elapsed since the last violation, and other relevant factors.
3. If the number of alcoholic beverage sales licenses in the census tract exceeds the limit set by the Department of Alcoholic Beverage Control; the decision-making body must find that the public convenience or necessity would be served by approving alcohol sales at the proposed location for any two or more of the following reasons:
 - a. The proposed establishment will promote the City's economic health, contribute to General Plan or area plan policies, or further the purposes of the district.
 - b. The economic benefits associated with the establishment could not reasonably be achieved without the proposed alcohol sales or service.
 - c. The sale of alcoholic beverages will enhance recreational or entertainment opportunities in the area.
 - d. The sale of alcoholic beverages complements the sale of other goods and merchandise at the location.

e. The issuance of a license at the proposed location will improve the convenience of area residents and visitors who purchase alcoholic beverages.

Section 19. That Berkeley Municipal Code 23.310.030 be amended to read:

A. **Permits Required.** Table 23.310-1 shows permits required for alcoholic beverage service when incidental to a food service establishment. If more restrictive requirements than what is permitted in Table 23.310-1 are imposed as a condition of approval on an existing AUP or UP, the use may be modified with an AUP regardless of the original review authority.

Table 23.310-1: Permits Required for Alcoholic Beverage Service

District	Permit Required Based on Type of Beverages Served When Incidental to Food Service	
	Beer and Wine	Distilled Spirits
R-SMU	UP(PH)	UP(PH)
R-BMU	ZC	UP (PH)
All Commercial Districts	ZC	AUP
MU-LI, MU-R	AUP	AUP

B. **Incidental Beer and Wine Service Standards.** The following standards apply to beer and wine service incidental to a food service establishment.

1. **Licensing.**

- a. The food service establishment shall comply with all applicable regulations of the California Department of Alcoholic Beverage Control.
- b. An operator of the licensed establishment may not have a prior licensed establishment that was the subject of verified complaints or violations regarding alcohol, public safety, or nuisance statutes or regulations before issuance or transfer of a business license at this location.

2. **Service.**

- a. Beer and wine beverage service shall be incidental to the primary food service use.
- b. Beer and wine service incidental to seated food service shall only be allowed at a bona fide eating place making actual and substantial sales of meals as

determined and required by the California Department of Alcoholic Beverage Control.

- c. The sale of beer and wine for off-site consumption is not permitted.
- d. Hours of operation are subject to review and amendment by the review authority as necessary to avoid detriment to the neighborhood or to achieve conformance with revised City of Berkeley standards or policies.

3. Operation.

- a. The food service establishment must operate at least five days a week.
- b. The service of beer and wine shall be limited to normal meal hours (per California Department of Alcoholic Beverage Control) during the food service establishment's hours of operation.
- c. During the food service establishment's hours of operation, all customer accessible areas shall be available for meal service and the food service establishment must possess the necessary utensils, and condiment dispensers with which to serve meals to the public.
- d. The owner or operator of the establishment shall take reasonable measures to prevent disturbances by patrons in the immediate vicinity. Such measures shall include:
 - i. Signs reminding patrons of nearby residences and requests not to congregate or loiter near such residences nor operate vehicles in a noisy manner on residential streets; and
 - ii. Surveillance to public areas near the establishment, keeping public areas free of trash and litter, providing lighting, and otherwise preventing conduct that might disturb the peace and quiet of residences in the vicinity.
- e. The operator shall assume reasonable responsibility for ensuring that patrons do not block the entrance or interfere with pedestrian activity on the adjacent public sidewalk.
- f. The applicant shall establish cash handling procedures to reduce the likelihood of robberies and theft.

4. Advertising.

- a. Establishments shall comply with Municipal Code Chapter 20.67 (Alcohol Product Advertising)

5. Training.

- a. The operator shall finish a Crime Prevention through Environmental Design (CPTED) survey before beginning alcohol service.

- b. All employees selling and/or serving beer and wine, or directly supervising such sales and/or service, shall comply with Municipal Code Section 9.84.030 (Responsible Beverage Service Training) and finish the Licensee Education on Alcohol and Drugs (LEAD) program, or another equivalent program offered or certified by the California Department of Alcoholic Beverage Control within 90 days of employment at the establishment. Employees who have finished the course within the last 12 months are exempt from this requirement.

Section 20. That Berkeley Municipal Code 23.324.040(B)(2)(b) be amended to read:

- b. **Uses with Major Investments.** Lawful nonconforming food services establishments with cooking or food preparation facilities, gas/auto fuel stations, theaters, manufacturing plants with specifically designed fixed facilities and other uses which represent a major investment in physical plant or facilities shall not be considered or declared terminated, regardless of the duration of non-use, unless:
 - i. Such fixed structures, equipment, or facilities are removed; or
 - ii. Other uses could not be established without major removal of or extensive remodeling or replacement of structures associated with the previous established use.

Section 21. That Berkeley Municipal Code 23.502.020(B)(4) be amended to read:

4. **Bar/Cocktail Lounge/Tavern/Tap Room/Wine Tasting.** A business devoted to serving alcoholic beverages for consumption by guests on the premises and in which the serving of food is incidental to the consumption of such beverages.

Section 22. That Berkeley Municipal Code 23.502.020(D) be amended to read:

D. **“D” Terms.**

1. **Deck.** An unenclosed structure, usually made of wood, built to provide a solid continuous surface for outdoor use and/or access to a door, which is accessible from the ground level, directly or from a connecting stairway and is separated from the ground by an air space.
2. **Demolition.** A building or enclosed structure shall be considered demolished for the purposes of this chapter when, within any continuous 12-month period, such building or enclosed structure is destroyed in whole or in part or is relocated from one lot to another. For purposes of this definition, destroyed in part means when 50 percent or more of the enclosing exterior walls and 50 percent or more of the

roof are removed. Removal of facades or portions of facades requires Design Review.

3. **Density.** See 23.106.100 - Residential Density
4. **Density Bonus.** See 23.332.020 (Definitions).
5. **Department.** The Planning and Development Department of the City of Berkeley or its successor administrative unit.
6. **Department Store.** A retail store selling several kinds of merchandise, which are usually grouped into separate sections, including but not limited to, apparel, housewares, household hardware, household appliances, household electronics and gifts.
7. **Dormer.** A projection built out from a sloping roof, usually housing a vertical window or ventilating louver. See also 23.304.110 (Dormers).
8. **Dormitory.** A building providing group living accommodations, occupied by individuals not sharing a common household, characterized by separate sleeping rooms without individual kitchen facilities and containing congregate bath and/or dining facilities or rooms.
9. **Drive-in Uses.** A use where a customer is permitted or encouraged, either by the design of physical facilities or by the service and/or packaging procedures offered, to be served while remaining seated within an automobile. This use includes drive-through food service establishments, financial services (banks), and automatic carwashes.
10. **Driveway.** A paved, vehicular accessway connecting an off-street parking space or parking lot with a public or private street.
11. **Drug Paraphernalia.** As defined in California Health and Safety Code Section 11364.5(d).
12. **Drugstore.** A retail establishment where the profession of pharmacy is practiced and/or where licensed prescription drugs and general merchandise are offered for sale. A food products store with a pharmacy is not a drugstore.
13. **Dry Cleaning and Laundry Plants.** A place where clothes are dry cleaned, dyed and/or laundered as part of a commercial business, whether or not such clothes were deposited by a customer at that location, or transported from another location, as part of a service. This use includes all establishments subject to Section 19233 of the State of California Business and Professions Code, regulating Dry Cleaning Plants, but excludes laundromats and cleaners as defined in this chapter.
14. **Duplex.** A building or use of a lot designed for, or occupied exclusively by, two households.

15. **Dwelling Unit.** A building or portion of a building designed for, or occupied exclusively by, persons living as one household.

Section 23. That Berkeley Municipal Code 23.502.020(F) (11) be amended to read:

11. **Food Service Establishments.** An establishment which in whole or in part prepares food or beverages for immediate consumption on or off the premises.

Section 24. That Berkeley Municipal Code 23.502.020(G)(6) be amended to read:

6. **Group Instruction.** An establishment that offers specialized programs in personal growth, development, and instruction in artistic, cultural, and academic pursuits, including music and choral schools, performing arts, arts and crafts, cooking, tutoring, martial arts and self-defense training. Excludes spaces designed exclusively for public performance.

Section 25. That Berkeley Municipal Code 23.502.020(G)(9) be removed.

Section 26. That Berkeley Municipal Code 23.502.020(H)(2) – (11) be amended to read:

2. **Health and Fitness Facility.** A facility where exercise equipment, swimming pools, group or aerobic classes (including yoga and Pilates) and other activities related to person health and fitness are available to customers or members. Excludes park/playground.

3. **Hedge.** Any line or row of plants, trees or shrubs planted in a continuous line to form a dense thicket or barrier.

4. **Height of Building, Average.** See 23.106.090.A (Average Building Height).

5. **Height of Building, Maximum.** See 23.106.090.B (Maximum Building Height).

6. **Home Occupation.** A business use conducted on property developed with a residential use, which is incidental and secondary to the residential use, does not change the residential character of the residential use, is limited so as not to substantially reduce the residential use of the legally established dwelling, Accessory Dwelling Unit, Accessory Building or Group Living Accommodation room and is operated only by the residents of the subject residence.

There are three classification of Home Occupations. For the purposes of this section, a "customer" is considered a single paying customer, but may include more than one person receiving the services at the same time:

- (1) Class I Home Occupation--Involves no more than five customer visits per day, with no more than four persons receiving services at a time. This class does not allow shipping of goods directly from the subject residence.
- (2) Class II Home Occupation--Involves no more than ten customer visits per day, with no more than four persons receiving services at a time and no more than one non-resident engaging in business-related activities on-site. This class does not allow shipping of goods directly from the subject residence.
- (3) Class III Home Occupation--Involves more than ten customer visits per day, with no more than four persons receiving services at a time and no more than one non-resident engaging in business-related activities on-site and/or involves shipping of goods directly from the subject residence.

7. **Hospital.** A facility for in-patient medical care licensed under California Administrative Code, Title 17, Section 237 or 238.
8. **Hot Tub.** A tub or small pool, usually made of wood or fiberglass, in which heated water is maintained for recreational or therapeutic activities, including, but not limited to, jacuzzis, whirlpools and spas.
9. **Hotel, Residential.** A type of group living accommodations which provides rooms for rent for residential purposes, including single residential occupancy (SRO) rooms.
10. **Hotel, Tourist.** A building with sleeping rooms used, designed, or intended for occupancy by transient guests for a period not to exceed 14 consecutive days. This use includes inns, bed and breakfasts (B&Bs), and hostels, and excludes building with residential hotel rooms and dwelling units.
11. **Household.** One or more persons, whether or not related by blood, marriage or adoption, sharing a dwelling unit in a living arrangement usually characterized by sharing living expenses, such as rent or mortgage payments, food costs and utilities, as well as maintaining a single lease or rental agreement for all members of the household and other similar characteristics indicative of a single household.
12. **Household Income, Gross.** The income of all adult members of the household as determined by the guidelines used by the Berkeley Housing Authority for its administration of the Section 8 Rental Subsidy Program. For purposes of this definition, household is the same as Family in the federal Section 8 Existing

Housing Program or its future equivalent. Classification of Households, based on income, shall be based on the following percentages of the Oakland Primary Metropolitan Statistical Area (PMSA) statistical figures for income of the most recent U.S. Census that are available:

- (a) *Low Income Household.* A household whose gross income is greater than 80 percent and less than 100 percent of the median income.
- (b) *Lower Income Household.* A household whose income is no greater than 80 percent and above 50 percent of the median income.
- (c) *Very Low Income Household.* A household whose gross income is 50 percent or less of the median income.

Section 27. That Berkeley Municipal Code 23.502.020(S)(31) be amended to read:

31. **Studio.** See Art/Craft Studio.

Section 28. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on February 27, 2024, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Hahn, Humbert, Kesarwani, Taplin, Wengraf, and Arreguin.

Noes: None.

Absent: None.

